



SUPPORT TO THE ACCESSION OF SEA COUNTRIES TO UPOV 1991

Relationship of the UPOV Convention
with other International Treaties

Yolanda Huerta | Legal Counsel and Director of Training and Assistance UPOV

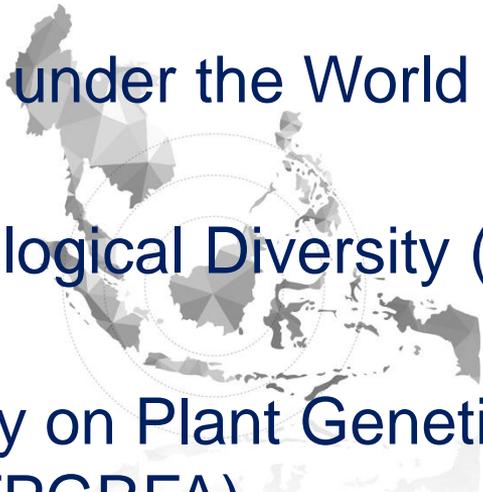
LIVE WEBINAR | 18 January 2022 | 09:00 (CET) / 15:00 (UTC+7)

www.ipkey.eu



The UPOV Convention and other International Treaties

- TRIPS Agreement under the World Trade Organization (WTO)
- Convention on Biological Diversity (CBD) & Nagoya Protocol
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

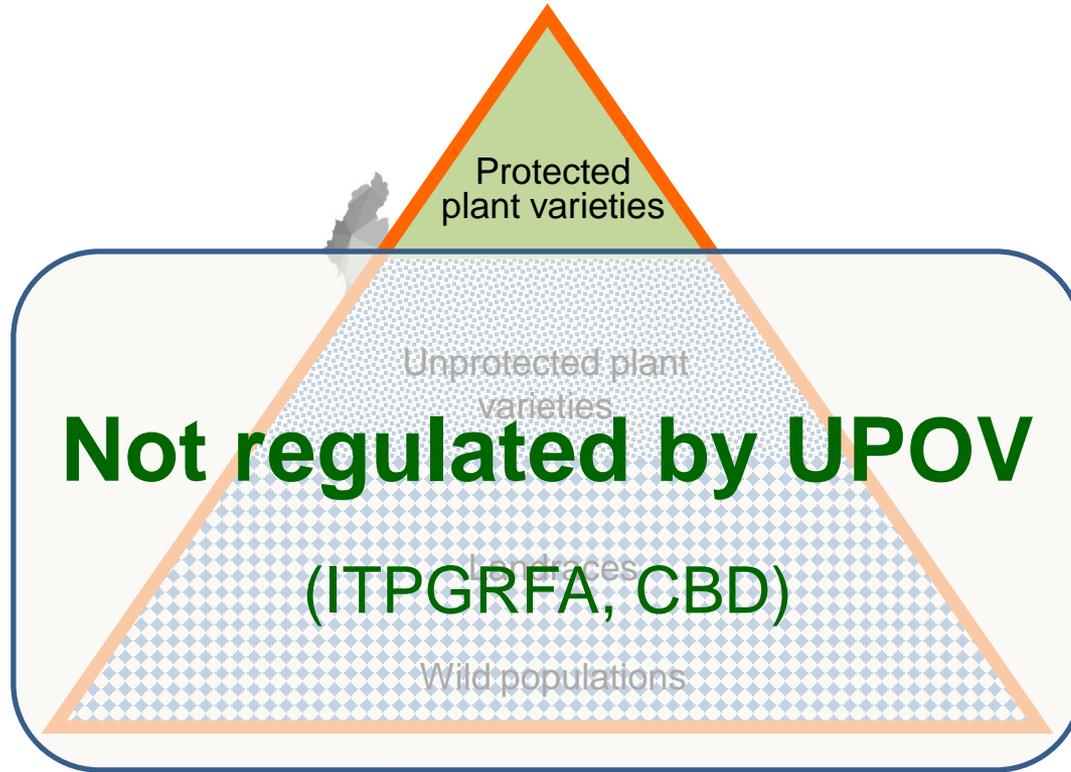


TRIPS Agreement Article 27 (WTO)

Patentable subject matter

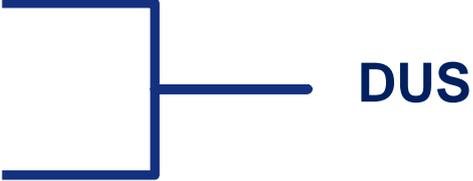
1. ..., patents shall be available for any invention, ...,
3. Members **may also exclude from patentability** [...]
- (b) **plants** and animals other than micro-organisms, However, Members shall provide for the **protection of plant varieties either by patents or by an effective *sui generis* system** or by any **combination thereof ...**





CONDITIONS FOR GRANTING A BREEDER'S RIGHT 1991 Act Art. 5

Criteria to be satisfied

- NOVELTY
 - DISTINCTNESS
 - UNIFORMITY
 - STABILITY
- 
- DUS
- VARIETY DENOMINATION
 - FORMALITIES and PAYMENT OF FEES

NO OTHER CONDITIONS!

1991 ACT- EXCEPTIONS TO THE BREEDER'S RIGHT

Compulsory Art. 15(1)

Acts done:

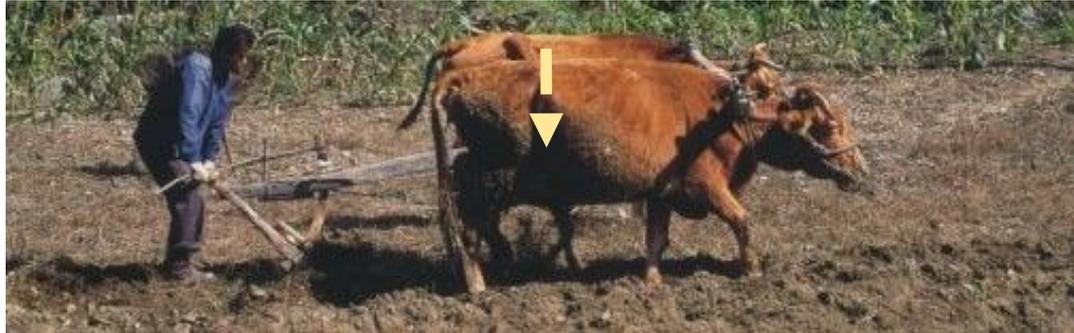
- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties (breeder's exemption")

Optional Art. 15(2)

Farm-saved seed

WORK IN UPOV ON SMALLHOLDER FARMERS

Development of guidance regarding the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers



OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT Farm-saved seed – 1991 ACT Article 15(2)

A Contracting Party may restrict the breeder's rights in order **to permit farmers to use:**

- for propagating purposes **on their own holdings**
the product of the harvest
- **obtained on their own holdings**
from the protected variety
- **within reasonable limits**
- subject to **safeguarding legitimate interests of the breeder**

Key elements in CBD/ITPGRFA

Disclosure of origin

- UPOV encourages information on the origin of plant material, used in breeding a plant variety, to be provided where this facilitates the DUS examination
- **UPOV Convention does not allow provision of information on the origin to be a condition of protection**

⇒ Separate legislation on disclosure and legislation on plant variety protection - but compatible and mutually supportive

Key elements in CBD

Prior informed consent (PIC)

CBD: Prior informed consent for access to genetic resources

- States have sovereign rights over their own natural resources
- Access is subject to national legislation (Article 15.1)

UPOV: Encourages principles of transparency and ethical behavior but does not allow PIC to be a condition of protection

⇒ Separate legislation on PIC and legislation on plant variety protection - but compatible and mutually supportive



BREEDER'S EXEMPTION UNDER THE ITPGRFA

ITPGRFA recognizes the concept of the breeder's exemption, in that breeders are excepted from mandatory financial benefit-sharing whenever their products are **“available without restriction to others for further research and breeding ...”** (ITPGRFA Article 13(d)(ii))



Relevant Treaties

CBD

Article 22. Relationship with Other International Conventions

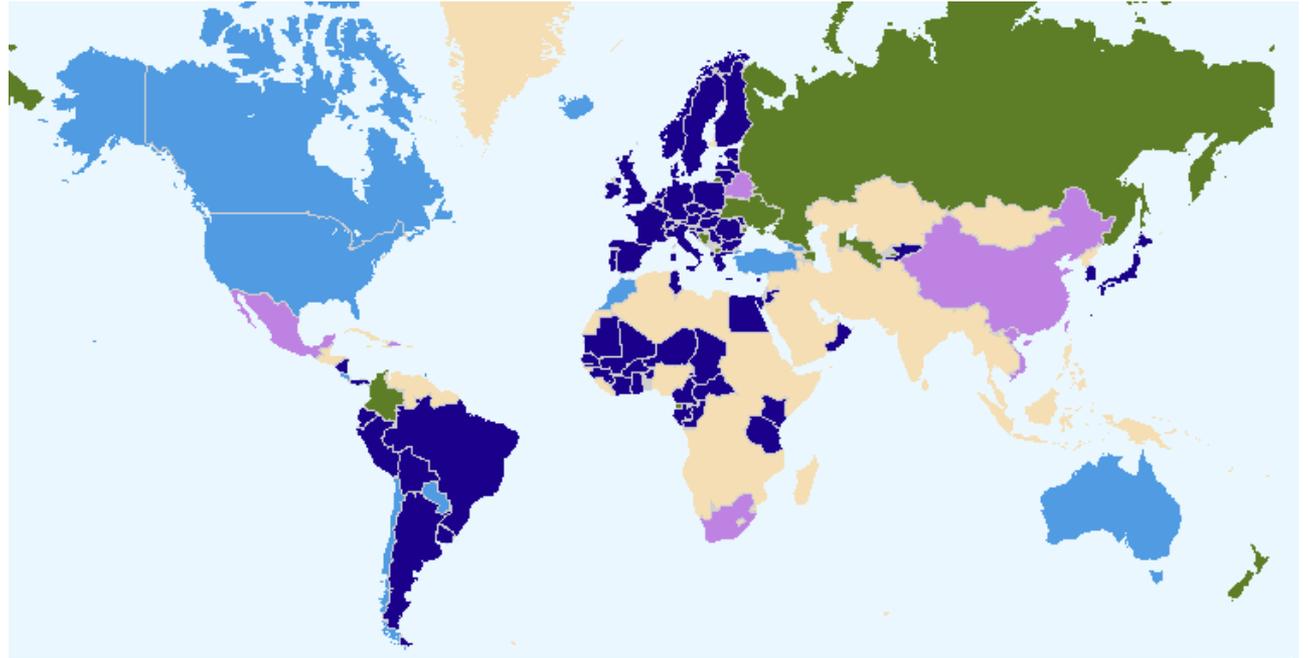
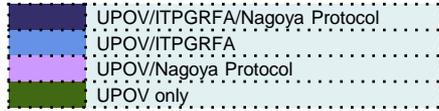
1. The provisions of this Convention **shall not affect** the rights and obligations of any Contracting Party deriving from any **existing international agreement**, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

ITPGRFA

Preamble: Affirming that **nothing** in this Treaty shall be interpreted as implying in any way a **change** in the rights and obligations of the Contracting Parties under **other international agreements**

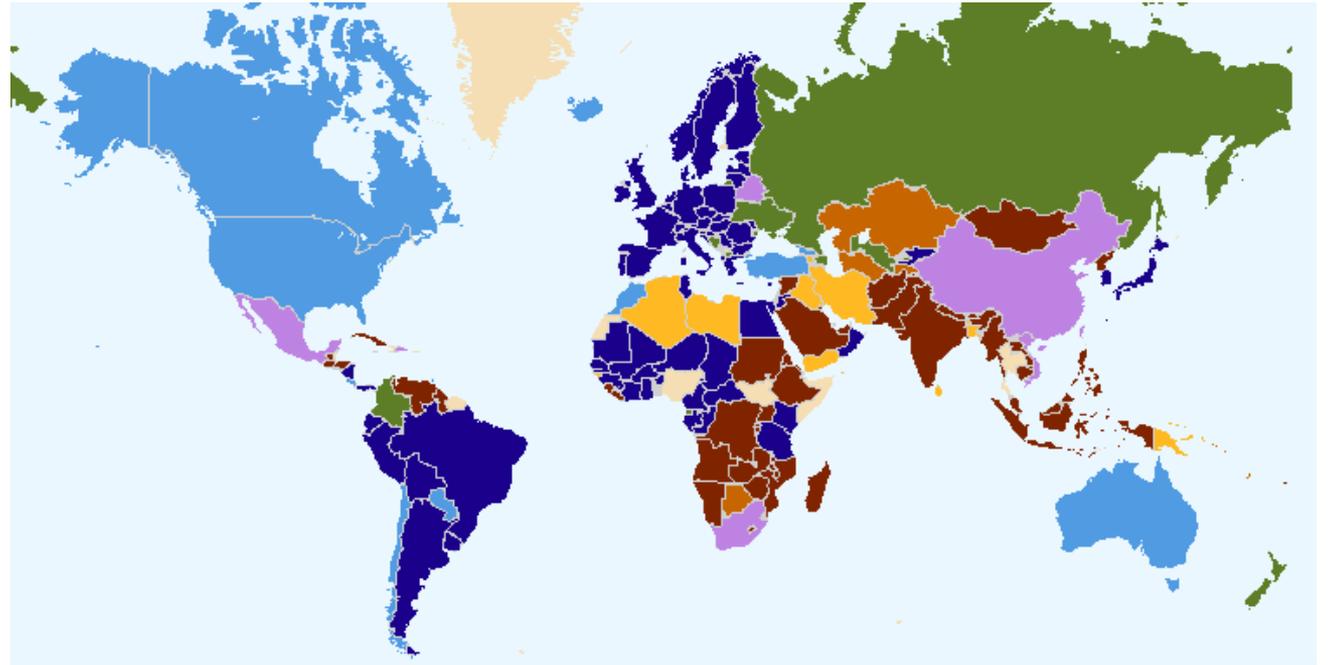
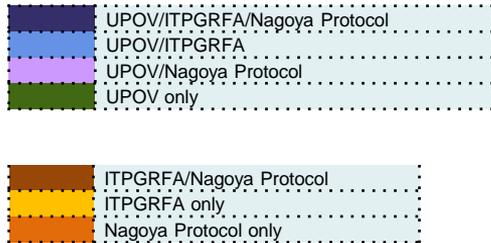


States bound by the **UPOV Convention** indicating those that are also bound by the ITPGRFA and/or the Nagoya Protocol as of January 14, 2022



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

States that are bound by the **UPOV Convention**, the **ITPGRFA** and/or the **Nagoya Protocol** as of January 14, 2022



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory



Funded by the European Union



UPOV = more choice...



	Landraces / Farmer selections	Freely available varieties	New, protected varieties
Certified seed	n/a	?	✓
Farm-saved seed	✓	✓	Optional & compulsory exceptions
Neighbor's seed	✓	✓	Breeder decides
Local market seed	✓	✓	Breeder decides

PBR – a farmer's right to choice...

Source: UPOV/ITPGRFA 2016 Symposium
Extract from Presentation of Bram de Jonge, Seed Policy Officer,
Oxfam Novib, Netherlands





Using the UPOV System to benefit custodians of native wild germplasm in Argentina



“The royalties derived from commercialization of the variety are shared between the breeder and **the provinces that contributed the native plant genetic resource.**”



“A large part of the profits, basically, **50 per cent**, that are generated from the commercialization **return to those provinces.**”

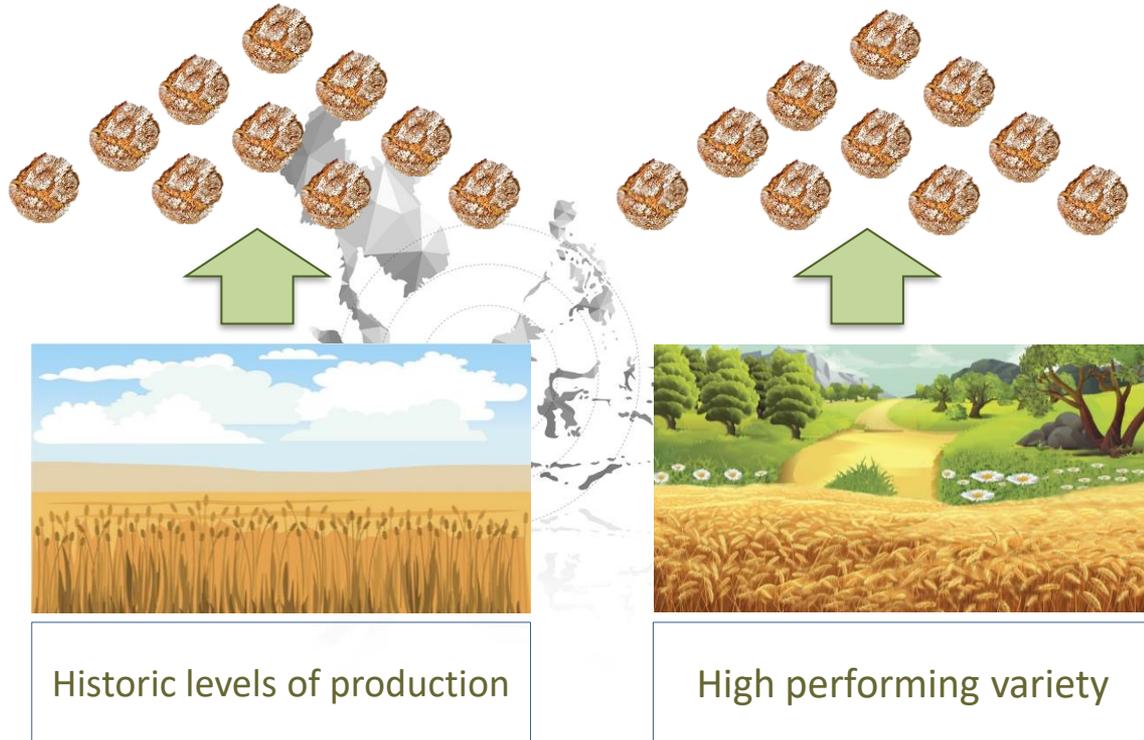


Using the UPOV System to benefit custodians of native wild germplasm in Argentina



“the erosion/loss from their natural habitat is reduced and this is therefore our own contribution, working together with INTA, for the conservation of our native natural resources.”





Closing remarks by the Co-Moderators at the ITPGRFA/UPOV Symposium in 2016:
Mr. Muhamad Sabran, Chairperson of the Seventh Session of the Governing Body, ITPGRFA and
Mr. Raimundo Lavignolle, Vice-President of the Council of UPOV

- We have seen the objectives and benefits of both treaties: UPOV Convention, ITPGRFA;
- It is important to interpret and **implement the two treaties in a mutually supportive way in the context of each Contracting Party;**
- In order to succeed in these objectives, it is important for the two organizations to work together and to provide the necessary support;
- The Symposium highlights the need to involve all stakeholders in this process.

