



CAJ/71/11

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

Geneva

**ADMINISTRATIVE AND LEGAL COMMITTEE****Seventy-First Session  
Geneva, March 26, 2015**

## REPORT

*adopted by the Administrative and Legal Committee**Disclaimer: this document does not represent UPOV policies or guidance*Opening of the session

- \*1. The Administrative and Legal Committee (CAJ) held its seventy-first session in Geneva on March 26, 2015, under the chairmanship of Mr. Martin Ekvad (European Union).
- \*2. The session was opened by the Chair, who welcomed the participants. The list of participants is reproduced in the Annex to this report.
- \*3. The Chair informed the CAJ that the South Centre had been granted observer status in the Council and the CAJ, and that the World Farmers' Organization (WFO) had been granted observer status in the Council, the CAJ and the Technical Committee (TC).
- \*4. The Chair confirmed that the report of the seventieth session of the CAJ, held in Geneva on October 13, 2014 (document CAJ/70/11), had been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

- \*5. The CAJ adopted the revised draft agenda, as proposed in document CAJ/71/1 Rev.
- \*6. The CAJ noted that document CAJ/71/9 "Report on developments in the Technical Committee" would be considered under items 3, 5, 6, 7 and 8.

Report on developments in the Technical Committee

- \*7. The CAJ considered document CAJ/71/9.
- \*8. The CAJ noted the report made by Mr. Alejandro Barrientos Priego (Mexico), Chair of the TC, on developments in the TC at its fifty-first session, held in Geneva from March 23 to 25, 2015. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were reported in document CAJ/71/9. It further noted that the report of the TC was available in document TC/51/39 "Report".

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\* An asterisk next to the paragraph number indicates that the text is reproduced from the Report on the Conclusions (document CAJ/71/10).

Development of information materials concerning the UPOV Convention

\*9. The CAJ considered documents CAJ/71/2, CAJ-AG/14/9/6, UPOV/EXN/PPM/1 Draft 4, UPOV/EXN/CAN/2 Draft 3, UPOV/EXN/NUL/2 Draft 3 and UPOV/EXN/PRP/2 Draft 3.

*Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)*

10. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CLOPORA) expressed the wish of CLOPORA to contribute to the discussions on the status of non-protected EDVs. He was of the view that it would be advisable to start the preparation of a document on non-protected EDVs immediately, without waiting until the adoption of document UPOV/EXN/EDV/2. The representative was in favor of the organization of a meeting with members of the Union to share their experience and knowledge, and to explore the possible role of UPOV in alternative dispute settlement mechanisms. However, he recalled that CLOPORA did not have dispute settlement mechanisms in place.

11. The Vice Secretary-General suggested that it would be sensible to have clearer guidance on EDV, before developing a document on EDVs that were not granted protection in their own right. He further noted that the issue of non-protected EDVs would not arise if breeders chose to protect the varieties concerned.

\*12. The CAJ noted that the CAJ-AG, at its ninth session, had welcomed the presentation made by Australia by electronic means, via the internet, containing the additional information on the context of the examples provided by Australia at the EDV Seminar, and that a copy of the presentation had been posted on the CAJ-AG/14 section of the UPOV website.

\*13. The CAJ agreed to consider the development of guidance concerning the status of essentially derived varieties that were not granted protection in their own right, after the adoption of the revised document UPOV/EXN/EDV/2, as set out in document CAJ/71/2, paragraph 11.

14. The Delegation of Brazil expressed its wish to make a presentation about the experience of Brazil on essentially derived varieties to the CAJ in October 2015.

\*15. The CAJ agreed to invite members of the Union to make presentations on their systems concerning essentially derived varieties at its seventy-second session.

16. The Delegation of the European Union expressed its support in principle for the organization of a meeting for UPOV members to exchange information with CLOPORA, ISF and WIPO. It recalled the guidance in document UPOV/INF/21/1 "Alternative Dispute Settlement Mechanisms", and noted that UPOV did not provide alternative dispute settlement mechanisms. The Delegation added that it was in favor of preparing a revised version of document UPOV/EXN/EDV/2 as presented in document CAJ/71/2.

\*17. The CAJ agreed to consider, at its seventy-second session, the proposal for the Office of the Union to organize a meeting to exchange information with the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CLOPORA), the International Seed Federation (ISF) and the World Intellectual Property Organization (WIPO) in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters. The CAJ noted that the Council had adopted document UPOV/INF/21/1 "Alternative Dispute Settlement Mechanisms".

\*18. The CAJ agreed to consider a new draft of the "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention" (Revision) (document UPOV/EXN/EDV/2 Draft 6) at its seventy-second session, as set out in document CAJ/71/2, paragraphs 15 and 16.

*Explanatory Notes on Propagating Material under the 1991 Act of the UPOV Convention*

19. The Delegation of the Russian Federation proposed to delete paragraph 2 of document UPOV/EXN/PPM/1 Draft 4. It expressed its concern that the existing wording of paragraph 2 might provoke a breeder to include acts concerning plant material in the scope of the breeder's right guided only by a potential possibility for one of the parties (sellers, buyers, farmers) to infringe the breeder's right. However, it considered that it was not applicable: an infringer was a person who reproduced a new batch of propagating material of a variety without the authorization of a breeder. The acts of offering for sale, selling and the use

of propagating material for production of any other marketable material were covered by the provisions of Article 16 of the 1991 Act on the “Exhaustion of the Breeder’s Right”. The Delegation of the Russian Federation further proposed to delete paragraph 4 of document UPOV/EXN/PPM/1 Draft 4. It considered that the wording of that paragraph would unreasonably allow, at a national level, for Contracting Parties to be guided not by the provisions of the UPOV Convention but to extend the breeder’s right. It considered that it was enough for Contracting Parties to be guided by Articles 14(3) and 14(4) of the UPOV Convention.

20. The Delegation of Argentina was of the view that document UPOV/EXN/PPM/1 Draft 4 should refer to the 1978 Act and the 1991 Act of the UPOV Convention. It noted that the term “*engloba*”, in paragraph 1 of the Spanish version of document UPOV/EXN/PPM/1 Draft 4, would benefit from clarification. It observed that Articles 6, 8 and 9 of the 1991 Act, reproduced in document UPOV/EXN/PPM/1 Draft 4, had no direct relevance for the concept of propagating material for the scope of the breeder’s right. The Delegation of Argentina acknowledged the views of the Russian Federation and noted that certain elements would require clarification because they would depend on the applicable legislation in the territory concerned: for instance, what was a matter of fact, the intention of the interested parties and contractual obligations.

21. The representative of CropLife International expressed support for the document as presented in UPOV/EXN/PPM/1 Draft 4.

22. The representative of the European Seed Association (ESA) expressed support for the development of explanatory notes on propagating material.

23. The representative of CIOPORA expressed support for the document as presented in UPOV/EXN/PPM/1 Draft 4. He recalled that the UPOV Convention did not provide a definition of propagating material.

\*24. The CAJ agreed to consider a new draft of the “Explanatory Notes on Propagating Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/PPM/1 Draft 5) at its seventy-second session, as follows:

- (a) to change the title of the document and the preamble to refer to the UPOV Convention;
- (b) to update Section (a) to include relevant articles of the 1978 Act;
- (c) to delete paragraphs 2 and 3; and
- (d) to replace the word “decide” with “determine” in paragraph 4.

*Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (Revision)*

\*25. The CAJ noted the conclusion of the CAJ-AG, at its ninth session, that it would not be appropriate to seek to develop a revision of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/HRV/1) for the time being. However, it agreed that it would be useful to invite members of the Union, at its seventy-second session, to present the issues concerning harvested material that should be considered in relation to a possible revision of document UPOV/EXN/HRV/1 as a basis for considering how to proceed.

*Explanatory Notes on Cancellation of the Breeder’s Right under the UPOV Convention (Revision)*

\*26. The CAJ approved document UPOV/EXN/CAN/2 Draft 3 as the basis for the revision of the “Explanatory Notes on Cancellation of the Breeder’s Right under the UPOV Convention” (Revision) (document UPOV/EXN/CAN/1), by the Council at its forty-ninth ordinary session, to be held on October 29, 2015.

\*27. The CAJ noted that the CAJ, at its sixty-ninth session, had agreed to invite the TC to consider the development of guidance on certain matters concerning variety descriptions, as set out in document CAJ/71/2, paragraph 26.

*Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (Revision)*

\*28. The CAJ approved document UPOV/EXN/NUL/2 Draft 3 as the basis for the revision of the "Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention" (Revision) (document UPOV/EXN/NUL/1), by the Council at its forty-ninth ordinary session, to be held on October 29, 2015.

*Explanatory Notes on Provisional Protection under the UPOV Convention (Revision)*

\*29. The CAJ approved document UPOV/EXN/PRP/2 Draft 3 as the basis for the revision of the "Explanatory Notes on Provisional Protection under the UPOV Convention" (Revision) (document UPOV/EXN/PRP/1), by the Council at its forty-ninth ordinary session, to be held on October 29, 2015, subject to the following changes:

(a) paragraph 9, to delete the sentence "Therefore if the right is not granted, provisional protection is not applicable."; and

(b) paragraph 12 to read: "In some members of the Union, legal action in respect of provisional protection can only be initiated after the right is granted. In some other members of the Union, it is possible to initiate legal proceedings before the grant of a breeder's right. In those cases, the competent judicial authority may decide that any damages during the period of provisional protection would only be enforceable once the right has been granted. In such cases, the judicial authority could, for example, request the third party to transfer the amount of the damages to a depository account for payment to the breeder if and when the right is granted."

*Matters concerning variety descriptions considered by the CAJ-AG*

\*30. The CAJ endorsed the conclusion of the CAJ-AG, at its ninth session, on the purpose(s) of the variety description developed at the time of the grant of the breeder's right (original variety description), as set out in document CAJ/71/2, paragraph 37, as follows:

"37. The CAJ-AG agreed that, on the basis of document TGP/5 "Experience and Cooperation in DUS Testing", Section 6 "UPOV Report on Technical Examination and UPOV Variety Description", the purpose of the variety description developed at the time of the grant of the breeder's right (original variety description) might be summarized as follows:

- (a) to describe the characteristics of the variety; and
- (b) to identify and list similar varieties and differences from these varieties;  
combined with the information on the basis for (a) and (b), namely:
  - Date and document number of UPOV Test Guidelines;
  - Date and/or document number of Reporting Authority's test guidelines;
  - Reporting Authority;
  - Testing station(s) and place(s);
  - Period of testing;
  - Date and place of issue of document;
  - Group: (Table: Characteristics; States of Expression; Note; Remarks);
  - Additional Information;
    - (a) Additional Data
    - (b) Photograph (if appropriate)
    - (c) RHS Colour Chart version used (if appropriate)
    - (d) Remarks."

\*31. The CAJ endorsed the conclusion of the CAJ-AG, at its ninth session, on the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right, as set out in document CAJ/71/2, paragraphs 38 and 39, as follows:

"38. The CAJ-AG considered the status of the original variety description in relation to the verification of plant material of a protected variety for the purposes of enforcement of the breeder's right and noted that UPOV guidance on the enforcement of breeders' rights contained in document UPOV/EXN/ENF/1 "Explanatory notes on the enforcement of breeders' rights under the UPOV Convention" explains as follows<sup>1</sup>:

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<sup>1</sup> See document CAJ-AG/14/9/6 "Report on the Conclusions", paragraph 21.

“SECTION II: Some possible measures for the enforcement of breeders’ rights

“While the UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders’ rights, it is a matter for breeders to enforce their rights.”

[...]

\*39. The CAJ-AG agreed that, in relation to the use of the original variety description, it should be recalled that the description of the variety characteristics and the basis for distinctness from the most similar variety are linked to the circumstances of the DUS examination, as set out in paragraph 10 (c) of this document, namely<sup>2</sup>:

- Date and document number of UPOV Test Guidelines;
- Date and/or document number of Reporting Authority’s test guidelines;
- Reporting Authority;
- Testing station(s) and place(s);
- Period of testing;
- Date and place of issue of document;
- Group: (Table: Characteristics; States of Expression; Note; Remarks);
- Additional Information;
  - (a) Additional Data
  - (b) Photograph (if appropriate)
  - (c) RHS Colour Chart version used (if appropriate)
  - (d) Remarks”

\*32. The CAJ noted that the TC had noted the existence of different approaches for generating variety descriptions and verifying the maintenance of varieties in different UPOV members and under different DUS testing systems. It also noted that the TC had agreed to invite experts to present to the TWPs, at their sessions in 2015, how variety descriptions were generated in DUS examination, how were they used after the granting of a breeders’ right and how variety maintenance was verified. The CAJ further noted that the TC had agreed that experts should also be invited to present to the TWPs, at their sessions in 2015, the role of the plant material used as the basis for the DUS examination in relation to matters presented in document TC/51/38, paragraph 8.

\*33. The CAJ noted that the TC had agreed to include discussion on variety descriptions and the role of plant material, including minimum number of growing cycles for DUS examination, during its fifty-second session, to be held in Geneva in 2016.

*Variety denominations*

\*34. The CAJ noted that a report on the work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and proposals concerning a possible revision of document UPOV/INF/12/4 “Explanatory Notes on Variety Denominations under the UPOV Convention” were provided in document CAJ/71/3 “Variety denominations.

*Matters concerning observers in the CAJ-AG*

\*35. The CAJ agreed to consider matters concerning observers in the CAJ-AG in the event that a session of the CAJ-AG is convened by the CAJ.

*Matters referred by the CAJ to the Consultative Committee and the Council*

\*36. The CAJ noted that the interest to discuss the relationship and effects of the implementation of the “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity” for the breeder’s exemption had been reported to the Consultative Committee and the Council, as set out in document CAJ/71/2, paragraph 48.

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<sup>2</sup> See document CAJ-AG/14/9/6 “Report on the Conclusions”, paragraph 22.

*Tentative program for the development of information materials*

37. The CAJ approved the tentative program for the development of information materials, as set out in document CAJ/71/2, paragraphs 50 to 52.

\*38. The CAJ agreed to discuss the following information materials at the seventy-second session of the CAJ:

- (i) Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)
- (ii) Explanatory Notes on Variety Denominations under the UPOV Convention (Revision)
- (iii) Explanatory Notes on Propagating Material under the UPOV Convention.

\*39. The CAJ agreed to defer the preparation of a draft revision of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" (document UPOV/INF/5/1 Draft 1), pending developments in relation to the development of a prototype electronic form (see document CAJ/71/4).

\*40. The CAJ noted that the Council, at its forty-ninth ordinary session, would be invited to adopt:

- (i) the "Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention" (Revision) (document UPOV/EXN/CAN/2);
- (ii) the Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/NUL/2);
- (iii) the "Explanatory Notes on Provisional Protection under the UPOV Convention" (Revision) (document UPOV/EXN/PRP/2); and
- (iv) in conjunction with the above explanatory notes, a revision of document UPOV/INF/6/3 "Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention" (document UPOV/INF/6/4).

Variety denominations

\*41. The CAJ considered documents CAJ/71/3 and CAJ/71/9.

\*42. The CAJ noted the work on the possible development of a UPOV similarity search tool for variety denomination purposes by the Working Group for the Development of a UPOV Denomination Similarity Search Tool (WG-DST), including the test study, as set out in document CAJ/71/3, paragraphs 6 to 13.

\*43. The CAJ approved the proposed revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" in relation to changes of registered variety denominations and to present that guidance for adoption by the Council at its forty-ninth ordinary session, to be held on October 29, 2015, as follows:

"7.2 The following items provide guidance in relation to changes of registered variety denominations:

(a) The UPOV Convention requires a change of the registered denomination where the denomination of the variety is cancelled after the grant of the right. The competent authority should cancel a variety denomination if:

(i) by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it (see paragraph (4) "Prior rights of third persons");

(ii) the denomination is unsuitable because it is contrary to the provisions in paragraph (2) "Characteristics of the denomination";

(b) In cases where the registered denomination is subsequently refused in another member of the Union because it is unsuitable in that territory (e.g. prior right), at the request of the breeder, the authority may consider it appropriate to change the denomination to the denomination registered in the

said other member of the Union (see provisions in paragraph (5) “Same denomination in all Contracting Parties”); and

(c) In general, subject to (a) and (b) above, it would not be appropriate for the authority to change a registered denomination following a request by the breeder.”

\*44. The CAJ decided to invite the WG-DST to consider the comments by the CAJ-AG on the proposals in document UPOV/INF/12/5 Draft 2 concerning Sections 2.2.2 (b), 2.3.1 (c) and (d), and 2.3.3, as set out in document CAJ/71/3, paragraph 27.

\*45. The CAJ noted the interest of Japan to participate in the WG-DST.

\*46. The CAJ agreed to consider the proposals of the CAJ-AG under Sections 2.2.2 (c), 4(a) and 4(e)(i), at its seventy-second session, as set out in document CAJ/71/3, paragraph 28.

47. The Delegation of the European Union recalled its comments at the fifty-first session of the TC held from March 23 to 25, 2015, on the work of the WG-DST, concerning the importance of ensuring that any new algorithm would be more effective than the existing tools. It further recalled that it was important that the rules concerning variety denominations be applied uniformly by the members of the Union.

48. The Vice Secretary-General recalled his explanation to the TC that objective criteria had been defined in order to assess the effectiveness of new algorithms, compared to the existing tools.

\*49. The CAJ noted that the Delegation of Argentina was conducting a study on variety denominations that would be presented to the CAJ at its seventy-second session on October 26 and 27, 2015.

#### Information and databases

##### *(a) Electronic application systems*

\*50. The CAJ considered documents CAJ/71/4 and CAJ/71/9 and a presentation by the Office of the Union, a copy of which will be provided as an addendum to document CAJ/71/4.

\*51. The CAJ noted the developments concerning the development of a prototype electronic form as set out in document CAJ/71/4.

\*52. The CAJ received an oral report by the Vice Secretary-General on the fifth Meeting on the Development of a Prototype Electronic Form (EAF), held in Geneva on March 25, 2015, which set out the timetable for the development of version 1 of the prototype electronic application form (proof of concept). The Vice Secretary-General reported that the sixth Meeting on the Development of a Prototype Electronic Form would be held on the evening of October 26, 2015. At that meeting the EAF planned to: review version 1 of the prototype electronic application form (proof of concept); discuss legal aspects, including payment modalities and authorization, filing/priority date, data confidentiality; technical aspects, including payment authorization and user authentication, electronic signatures, high availability, interaction with external systems (e.g. GENIE /WIPO accounts); and maintenance and support. In addition, it would discuss the way forward for the project, including possible plans for implementation. The Vice Secretary-General also reported that it was proposed to make a presentation of version 1 of the prototype electronic application form (proof of concept) to the CAJ and Consultative Committee at their sessions in October 2015 and to invite the CAJ and Consultative Committee to consider proposals for the ways forward for the project. With regard to work after October 2015, subject to discussions at the CAJ and Consultative Committee, it was planned to extend the prototype to cover potato, rose and apple, to explore further harmonization and to consider proposals for a launch of the electronic form.

\*53. The CAJ noted that the request to WIPO for a two-letter code “XU” to represent the name of UPOV had been accepted and included in the revised version of WIPO ST.3 “Recommended Standard on Two-Letter Codes for the Representation of States, Other Entities and Intergovernmental Organizations”.

##### *(b) UPOV information databases*

\*54. The CAJ considered documents CAJ/71/5 and CAJ/71/9.

- \*55. The CAJ noted the information on allocation of crop type(s) for UPOV codes currently used in the PLUTO database, as set out in document CAJ/71/5, paragraphs 10 and 11.
- \*56. The CAJ noted that the information on crop type(s) would be introduced in the GENIE database and the GENIE database would be modified to show the crop type(s) for each UPOV Code by the end of March 2015.
- \*57. The CAJ noted that a standard report for TWP allocations for UPOV codes would be introduced on the GENIE webpage by the end of March 2015.
- \*58. The CAJ noted that allocation of crop type(s) for further UPOV codes would occur when UPOV codes were used in the PLUTO database for the first time.
- \*59. The CAJ noted that the Office of the Union would prepare tables of allocation of crop type(s) for UPOV codes used in the PLUTO database for the first time for checking by the relevant authorities, for each of the TWP sessions in 2015.
- \*60. The CAJ noted the developments concerning UPOV codes, as set out in document CAJ/71/5, paragraph 14.
- \*61. The CAJ noted the summary of contributions to the PLUTO database from 2012 to 2014 and the current situation of members of the Union on data contribution, as presented in Annex II to document CAJ/71/5.
- \*62. The CAJ noted that the number of submissions to the PLUTO database in Annex II to document CAJ/71/5 did not include all of the submissions made by the CPVO during transitional arrangements for online uploading of data and noted that the Office would provide a corrected version of Annex II.
- \*63. The CAJ noted that an additional column in the PLUTO search screen, showing the date on which the information was provided, would be introduced by the end of March 2015.
- \*64. The CAJ agreed that both the fields "Denomination" and "Breeder's Ref" be searchable, independently or in combination, by denomination search tools on the "Denomination Search" page of the PLUTO database, as set out in document CAJ/71/5, paragraphs 25 and 26.
- \*65. The CAJ noted the information concerning the training course "Contributing data to the PLUTO database", held in Geneva in December 2014, as set out in document CAJ/71/5, paragraphs 28 to 30, and the plans to organize three further courses, in English, French and Spanish, in 2015.
- (c) *Exchange and use of software and equipment*
- \*66. The CAJ considered documents CAJ/71/6 and CAJ/71/9.
- \*67. The CAJ noted that the Council, at its forty-eighth ordinary session, had adopted the revision of document UPOV/INF/16 "Exchangeable Software" (document UPOV/INF/16/4).
- \*68. The CAJ noted that the discussions on the inclusion of the SISNAVA software in document UPOV/INF/16 would be continued in the Technical Working Party on Automation and Computer Programs (TWC), subject to the conclusion on discussions on the variation of variety descriptions over years in different locations.
- \*69. The CAJ approved the proposed revision of document UPOV/INF/16/4 concerning the inclusion of information on the use of software by members of the Union, as set out in Annex I to document CAJ/71/6.
- \*70. The CAJ agreed that a draft of document UPOV/INF/16 "Exchangeable Software" be presented for adoption by the Council at its forty-ninth ordinary session, to be held on October 29, 2015.
- \*71. The CAJ noted that the Council, at its forty-eighth ordinary session, held in Geneva, on October 16, 2014, had adopted document UPOV/INF/22/1 "Software and equipment used by members of the Union".



\*72. The CAJ agreed the information in Annex II to document CAJ/71/6 for inclusion in document UPOV/INF/22, subject to corrections to be provided by Germany and to checking of the data provided by Uruguay.

\*73. On the above basis, the CAJ agreed that a draft of document UPOV/INF/22 “Software and equipment used by members of the Union” be presented for adoption by the Council at its forty-ninth ordinary session, to be held on October 29, 2015.

#### TGP documents

\*74. The CAJ considered documents CAJ/71/7 and CAJ/71/9.

#### *TGP/9: Examining Distinctness*

\*75. The CAJ approved the revision to document TGP/9 previously agreed by the TC, as set out in Annex I to document CAJ/71/7.

\*76. The CAJ approved the proposal for revisions of the flow diagram in TGP/9, Section 1.6 “Schematic overview of TGP documents concerning distinctness” for adoption in 2015, as set out in Annexes II and III of document CAJ/71/7.

\*77. The CAJ considered the proposed guidance on photographs for inclusion in document TGP/9, Section 2.5 “Photographs”, and agreed the guidance to read as follows:

“2.5.3 The suitability of photographs for the identification of similar varieties is strongly influenced by the quality of the photographs taken by the authority for the varieties in the reference collection and the photograph of the candidate variety provided by the applicant with the Technical Questionnaire. Comprehensive guidance for taking suitable photographs is provided in document TGP/7, GN 35. The guidance was developed in particular for the applicants to provide suitable photographs of the candidate variety. The same instructions are important and useful for the authorities to take photographs of the varieties in the variety collection under standardized conditions.”

\*78. The CAJ noted that editorial changes needed to be made to the draft text in German and recalled that the language experts of the Editorial Committee would be requested to check the translations in French, German and Spanish of all technical documents before they were prepared for adoption by the Council.

(iii) *Revision of document TGP/9: Sections 4.3.2 and 4.3.4 Method of Observation (Single Measurement – MG)*

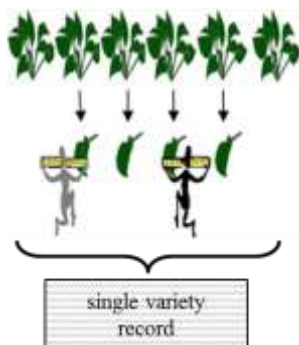
\*79. The CAJ considered the proposed example of a single record for a group of plants (MG) taken on plant parts for inclusion in document TGP/9, Section 4.3.2 “Single record for a group of plants or parts of plants (G)” and Section 4.3.4 “Schematic Summary”, and agreed the guidance to read as follows:

“Example (MG)

“Measurement (MG): ‘Leaf blade: width’ in Hosta (vegetatively propagated): a representative measurement in the plot.”

\*80. The CAJ agreed that the illustration for inclusion in Subsection 4.3.4, should be amended to appear as follows:

Section 4.3.2.3  
Example (MG): Leaf blade:  
width  
(hosta: vegetatively  
propagated)



TGP/14: Glossary of Terms Used in UPOV Documents

(i) *Revision of document TGP/14: Section 2.4 “Apex/tip shape characteristics”*

\*81. The CAJ considered the revision of document TGP/14 Section 2.4 as presented in document TC/51/25 and agreed that the wording should read as follows:

“2.4 *Apex/Tip Shape Characteristics*

“2.4.1 The APEX (apical or distal part) of an organ or plant part is the end furthest from the point of attachment. In some cases, the distal extremity of the apex may be differentiated into a ‘TIP’.

“2.4.2 In considering the approach to describe the apex, the size of the organ and the number of apex shapes should be taken into account. Apex characteristics can be described in simple terms and if a differentiated tip is present it could be further described as a separate characteristic. Generally, it is not necessary to separate the apex shape characteristic into differentiated tip and apex characteristics.

“2.4.3 In cases where it is appropriate to separate into differentiated tip and apex characteristics, the shape of the apex is taken as the general shape, excluding any differentiated tip (if present) and the separation of tip and apex should be indicated in the explanation of the characteristic. For example:

[...]”

\*82. The CAJ noted that editorial changes needed to be made to the draft text in German and recalled that the language experts of the Editorial Committee would be requested to check the translations in French, German and Spanish of all technical documents before they were prepared for adoption by the Council.

*TGP/14: Glossary of Terms Used in UPOV Documents*

\*83. The CAJ noted the correction to the French translation of the color group “dark purple red” to read “rouge-pourpre foncé” in document TGP/14 Subsection 3: “Color”, as set out in document CAJ/71/7, paragraph 14.

*TGP/5: Experience and Cooperation in DUS Testing*

(i) *Revision of document TGP/5: Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders’ Rights*

\*84. The CAJ agreed that document TGP/5: Section 3 should read as follows:

“A model Technical Questionnaire is provided in document TGP/7 ‘Development of Test Guidelines’: Annex 1: TG Template: Chapter 10. The UPOV Test Guidelines ([http://www.upov.int/edocs/tgpdocs/en/tgp\\_7.pdf](http://www.upov.int/edocs/tgpdocs/en/tgp_7.pdf)) contain, in Chapter 10, a specific Technical Questionnaire for varieties covered by those Test Guidelines.”

(ii) *Revision of document TGP/5: Section 8: Cooperation in Examination*

\*85. The CAJ agreed that document TGP/5: Section 8 should read as follows:

“A synopsis of cooperation in examination between authorities is provided in the form of a Council document:

“C/[session]/5 (e.g. C/49/5) ([http://www.upov.int/meetings/en/topic.jsp?group\\_id=251](http://www.upov.int/meetings/en/topic.jsp?group_id=251)).”

(iii) *Revision of document TGP/5: Section 9: List of Species in Which Practical Knowledge has Been Acquired or for Which National Test Guidelines Have Been Established*

\*86. The CAJ agreed that document TGP/5: Section 9 should read as follows:

“A list of genera and species in which practical knowledge has been acquired or for which national test guidelines have been established is provided in the Technical Committee document:

“TC/[session]/4 (e.g. TC/51/4) ([http://www.upov.int/meetings/en/topic.jsp?group\\_id=254](http://www.upov.int/meetings/en/topic.jsp?group_id=254)).”

*TGP/0: List of TGP Documents and Latest Issue Dates*

\*87. The CAJ noted that the Council would be invited to adopt document TGP/0/8, in order to reflect the revisions of TGP documents.

*Program for the development of TGP documents*

\*88. The CAJ approved the program for the development of TGP documents, as set out in Annex V of document CAJ/71/7.

Molecular techniques

\*89. The CAJ considered documents CAJ/71/8 and CAJ/71/9.

\*90. The CAJ noted the report on developments in the BMT, as set out in document CAJ/71/8, paragraphs 6 to 9.

\*91. The CAJ noted that the OECD/UPOV/ISTA Joint Workshop on Molecular Techniques, held in Seoul, Republic of Korea, on November 12, 2014, had agreed that it would be useful to repeat the joint workshop at relevant meetings of the OECD and ISTA and, in that regard, that the Technical Working Group Meeting of the OECD Seed Schemes, had agreed that another OECD/UPOV/ISTA Joint Workshop on Molecular Techniques should be organized either back-to-back with the Annual Meeting of the OECD Seed Schemes, to be held in Paris, in June, 2015, or in conjunction with the Technical Working Group Meeting to be held in January, 2016.

\*92. The CAJ noted that the TC, at its fifty-first session, had approved the program for the fifteenth session of the BMT, to be held in 2016, including the dedication of a particular date (“Breeders’ Day”), for the items on the use of molecular techniques in the consideration of essential derivation and variety identification.

\*93. The CAJ noted that the TC had agreed to develop a joint document explaining the principal features of the systems of OECD, UPOV and ISTA (e.g. DUS, variety identification, variety purity, etc.), subject to the approval of the Council and in coordination with OECD and ISTA.

\*94. The CAJ noted that the TC had agreed to develop an inventory on the use of molecular marker techniques, by crop, with a view to developing a joint OECD/UPOV/ISTA document containing that information, in a similar format to UPOV document UPOV/INF/16 “Exchangeable Software”, subject to the approval of the Council and in coordination with OECD and ISTA. The CAJ agreed that it would be necessary to establish criteria and a process for information to be added to the document.

\*95. The CAJ noted that the TC had agreed that the BMT, at its fifteenth session, should develop lists of possible joint initiatives with OECD and ISTA in relation to molecular techniques.

\*96. The CAJ noted that the TC had considered the development of a draft question and answer concerning the information on the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general. The TC had agreed to request the TWPs, at their sessions in 2015, to consider the following initial draft discussed during the TC session (see document TC/51/39 "Report", paragraphs 172 to 181):

"Is it possible to obtain protection of a variety on the basis of its DNA-profile?"

"For a variety to be protected, it needs to be clearly distinguishable from all existing varieties on the basis of characteristics that are physically expressed, e.g. plant height, time of flowering, fruit color, disease resistance etc. [Molecular techniques (DNA profiles) may be used as supporting information]."

"A more detailed explanation is provided in the FAQ 'Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability ("DUS")?'"

"See also:

"What are the requirements for protecting a new plant variety?"

97. The representative of the Association for Plant Breeding for the Benefit of Society (APBREBES) expressed concern about the costs of DNA-profiling and was of the view that DNA fingerprints should not replace field trials. She was of the view that if molecular data were used to enforce plant breeders' rights, farmers and other breeders would need access to that data for their defense. With regard to ownership of DUS samples and of DNA data, she noted the differences between trade secrets and patents and considered that it was necessary to conduct a survey on public disclosure rules and confidentiality rules regarding PVP titles.

#### Program for the seventy-second session

\*98. The following program was agreed for the seventy-second session of the CAJ:

1. Opening of the session
2. Adoption of the agenda
3. Development of information materials concerning the UPOV Convention
  - (a) Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (document UPOV/EXN/EDV/2 Draft 6)
  - (b) Explanatory Notes on Propagating Material under the UPOV Convention (document UPOV/EXN/PPM/1 Draft 5)
4. Variety denominations
5. Harvested material
6. Information and databases
  - (a) Electronic application systems
  - (b) UPOV information databases
  - (c) Exchange and use of software and equipment
7. Program for the seventy-third session
8. Adoption of the report on the conclusions (if time permits)
9. Closing of the session

99. The Chair noted that there were important issues on the agenda, but observed that there were only a few items to be discussed. That led him to wonder whether those items could be considered in a single two-day session rather than the current practice of a one-day CAJ session in March/April and a two-day CAJ session in October/November. He was of the opinion that two days would be sufficient to discuss the agenda items. He made reference to the TC, which held one session per year, and suggested that the CAJ might also wish to consider the benefits of meeting only once a year. He indicated that a decision would not

need to be taken at that time but expressed the view that it would be appropriate to reflect on that question, in October 2015, when considering the program for the seventy-third session of the CAJ.

100. The Vice Secretary-General explained that the possibility of holding a CAJ session once per year had been raised by the Chair after consultation with the Office of the Union. In support of the question raised by the Chair, he noted that certain delegates had expressed the wish to have draft information materials and explanatory notes published on the UPOV website earlier than six weeks before the session, in order to give more time for consultation. However, with only six months between the two sessions of the CAJ, it was difficult to prepare new versions of documents in the four languages earlier than six weeks before the session. The Vice Secretary-General also made reference to the costs for each session of the CAJ, and costs for participants.

\* 101. The CAJ decided that, under the item "Program for the seventy-third session", at its seventy-second session, the CAJ would consider the schedule of CAJ sessions in 2016.

\* 102. The CAJ agreed to hold its seventy-second session on October 26 and 27, 2015, and decided not to convene a session of the CAJ-AG on October 30, 2015.

103. *This report was adopted by correspondence.*

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /  
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des membres /  
in the alphabetical order of the French names of the Members /  
in alphabetischer Reihenfolge der französischen Namen der Mitglieder /  
por orden alfabético de los nombres en francés de los miembros)

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