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| INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS | | |
| Geneva | | |

COUNCIL

Forty-Ninth Ordinary Session  
Geneva, October 29, 2015

Progress report of the work of the Administrative and Legal Committee

prepared by the Office of the Union  
  
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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). An oral report on the seventy-second session of the CAJ, to be held in Geneva on October 26 and 27, 2015, and on the program for its seventy‑third session, will be made by the Chair of the CAJ at the forty‑ninth ordinary session of the Council (see document CAJ/72/9 “Report on the Conclusions”).

Table of contents

Report on the seventy-first session of the CAJ 2

Report on developments in the Technical Committee 2

Development of information materials concerning the UPOV Convention 2

Variety denominations 4

Electronic application systems 4

UPOV information databases 5

Exchange and use of software and equipment 5

TGP documents 6

Molecular techniques 7

Program for the seventy-second session 8

# Report on the seventy-first session of the CAJ

### Report on developments in the Technical Committee

The CAJ noted the report made by Mr. Alejandro Barrientos Priego (Mexico), Chair of the Technical Committee (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” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 8).

### Development of information materials concerning the UPOV Convention

The CAJ noted that the Administrative and Legal Committee Advisory Group (CAJ­AG), 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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 10).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 11).

The CAJ agreed to invite members of the Union to make presentations on their systems concerning essentially derived varieties at its seventy-second session (see document CAJ/71/10 “Report on the Conclusions”, paragraph 12).

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 (CIOPORA), 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” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 13).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 14).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 15):

(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.

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 16).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 17).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 18).

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.(see document CAJ/71/10 “Report on the Conclusions”, paragraph 19).

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 specific amendments (see document CAJ/71/10 “Report on the Conclusions”, paragraph 20).

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) (see document CAJ/71/10 “Report on the Conclusions”, paragraph 21).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 22).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 23).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 24).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 27).

The CAJ approved the tentative program for the development of information materials (see document CAJ/71/10 “Report on the Conclusions”, paragraph 28).

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) (see document CAJ/71/10 “Report on the Conclusions”, paragraph 30).

The CAJ noted that the Council, at its forty-ninth ordinary session, would be invited to adopt the following (see document CAJ/71/10 “Report on the Conclusions”, paragraph 31).

(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

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 33).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 34).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 35).

The CAJ noted the interest of Japan to participate in the WG-DST (see document CAJ/71/10 “Report on the Conclusions”, paragraph 36).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 37).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 38).

### Electronic application systems

The CAJ noted the developments concerning the development of a prototype electronic form as set out in document CAJ/71/4 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 40).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 41).

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” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 42).

### UPOV information databases

The CAJ noted the information on allocation of crop type(s) for UPOV codes currently used in the PLUTO database (see document CAJ/71/10 “Report on the Conclusions”, paragraph 44).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 45).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 46).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 47).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 48).

The CAJ noted the developments concerning UPOV codes (see document CAJ/71/10 “Report on the Conclusions”, paragraph 49).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 50).

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 of the Union would provide a corrected version of Annex II (see document CAJ/71/10 “Report on the Conclusions”, paragraph 51).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 52).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 53).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 54).

### Exchange and use of software and equipment

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) (see document CAJ/71/10 “Report on the Conclusions”, paragraph 56).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 57).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 58).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 59).

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” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 60).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 61).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 62).

### TGP documents

The CAJ approved the revision to document TGP/9 previously agreed by the TC (see document CAJ/71/10 “Report on the Conclusions”, paragraph 64).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 65).

The CAJ agreed the proposed guidance on photographs for inclusion in document TGP/9, Section 2.5 “Photographs” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 66).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 67).

The CAJ agreed 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” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 68).

The CAJ agreed an illustration for inclusion in document TGP/9, Subsection 4.3.4 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 69).

The CAJ agreed the revision of document TGP/14 Section 2.4 “Apex/Tip Shape Characteristics” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 70).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 71).

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” (see document CAJ/71/10 “Report on the Conclusions”, paragraph 72).

The CAJ agreed that document TGP/5: Section 3 should read as follows (see document CAJ/71/10 “Report on the Conclusions”, paragraph 74):

“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>) contain, in Chapter 10, a specific Technical  Questionnaire for varieties covered by those Test Guidelines.”

The CAJ agreed that document TGP/5: Section 8 should read as follows (see document CAJ/71/10 “Report on the Conclusions”, paragraph 75):

“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>).”

The CAJ agreed that document TGP/5: Section 9 should read as follows (see document CAJ/71/10 “Report on the Conclusions”, paragraph 76):

“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>).”

The CAJ noted that the Council would be invited to adopt document TGP/0/8, in order to reflect the revisions of TGP documents (see document CAJ/71/10 “Report on the Conclusions”, paragraph 77).

The CAJ approved the program for the development of TGP documents (see document CAJ/71/10 “Report on the Conclusions”, paragraph 78).

### Molecular techniques

The CAJ noted the report on developments in the BMT (see document CAJ/71/10 “Report on the Conclusions”, paragraph 80).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 81).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 82).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 83).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 84).

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 (see document CAJ/71/10 “Report on the Conclusions”, paragraph 85).

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 CAJ/71/10 “Report on the Conclusions”, paragraph 86):

“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?”

The CAJ noted the intervention made by the representative of the Association for Plant Breeding for the Benefit of Society (APBREBES) (see document CAJ/71/10 “Report on the Conclusions”, paragraph 87).

# Program for the seventy-second session

The following program was agreed for the seventy-second session of the CAJ to be held in Geneva on October 26 and 27, 2015: Opening of the session; Adoption of the agenda; 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) and (b) Explanatory Notes on Propagating Material under the UPOV Convention (document UPOV/EXN/PPM/1 Draft 5)); Variety denominations; Harvested material; Electronic application systems; UPOV information databases; Exchange and use of software and equipment; Program for the seventy-third session; Adoption of the report on the conclusions (if time permits); Closing of the session (see document CAJ/71/10 “Report on the Conclusions”, paragraph 88).

The Council is invited to:

(a) note the work of the CAJ, as reported in this document and in the oral report to be made by the Chair of the CAJ; and

(b) approve the work program for the seventy-third session of the CAJ, as presented in the oral report of the Chair of the CAJ (see document CAJ/72/9 “Report on the Conclusions”).

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