

Council

C/55/13

Fifty-Fifth Ordinary Session  
Geneva, October 29, 2021

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**REPORT BY THE PRESIDENT ON THE WORK OF THE NINETY-EIGHTH SESSION OF  
THE CONSULTATIVE COMMITTEE; ADOPTION OF RECOMMENDATIONS, IF ANY,  
PREPARED BY THAT COMMITTEE**

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

1. The Consultative Committee held its ninety-eighth session in Geneva on October 28, 2021, and on the morning of October 29, 2021.
2. The recommendations made by the Consultative Committee on the following items, as set out in this report, will be considered by the Council under the relevant agenda items (see document C/55/1 Rev.2):
  - (a) Examination of the conformity of the New Plant Varieties (Rights of Breeders) Bill, 2021, of Jamaica with the 1991 Act of the UPOV Convention (document C/55/15) (see paragraph 6)
  - (b) Calendar of meetings in 2022 (document C/55/8) (see paragraph 40)
  - (c) Press release (document C/55/14) (see paragraph 41)
3. The Council is invited to:
  - (a) consider the recommendations of the Consultative Committee to:
    - (i) support the proposal of the OECD Seed Schemes for an International Year of Seed, as set out in paragraph 22;
    - (ii) approve the organization of a seminar in 2022 to explore the role of plant breeding and plant variety protection in enabling agriculture to adapt to, and mitigate, climate change, as set out in paragraphs 31 to 33;
    - (iii) under item 16 of the agenda, agree to the inclusion of an item "Revision of the 'Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention'", in the agenda of the seventy-ninth session of the CAJ to be held on October 26, 2022, as set out in paragraph 35(h); and
  - (b) note the work of the Consultative Committee at its ninety-eighth session, as reported in this document.
4. The work of the Consultative Committee at its ninety-eighth session is summarized in the following paragraphs.

Outcome of the consideration of documents by correspondence

5. The Consultative Committee noted the information on the outcome of the procedure for consideration of documents by correspondence.

Preliminary examination of the conformity of the New Plant Varieties (Rights of Breeders) Bill, 2021, of Jamaica with the 1991 Act of the UPOV Convention

6. The Consultative Committee recommended to the Council to:
- (a) note the analysis in document C/55/15;
  - (b) take a positive decision on the conformity of the New Plant Varieties (Rights of Breeders) Bill, 2021, of Jamaica ("Draft Law") with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Jamaica once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act; and
  - (c) authorize the Secretary-General to inform the Government of Jamaica of the above decision.

Performance Report for 2020

7. The Consultative Committee noted the UPOV Performance Report 2020.

Report of the External Auditor

8. The Consultative Committee noted the responses received to Circular E-21/124 of August 23, 2021, included comments on document C/55/6 "Report of the External Auditor", which was not part of the procedure for approval by correspondence. The Consultative Committee noted that the comments and the reply provided by the Office of the Union were presented in paragraphs 42 and 43 of document "Outcome of the consideration of documents by correspondence" for information of the Consultative Committee, as reproduced below:

"Comments from the European Union

'The EU and its Member States take note of the report of the External Auditor and ask the UPOV Office to follow the two recommendations as regards to after-service health insurance and consultation of staff in relation to costs and benefits of alignment with WIPO Staff Regulations and Rules UN common system.'

"Comments from Switzerland

'We have the following comments on the External Auditor's report (document C/55/6):

"Under point 5, it is mentioned that the employee benefits liability for health insurance has increased by CHF 1 million to a total of CHF 3 million. The amount seems to us to be exorbitant given the size of the Organization. We would like to request more detailed information on the subject. In particular, we would like to know whether the adjustment was a one-off or rather that such increases are likely to be a regular occurrence in the coming years.

'The financial situation of UPOV could take a significant turn for the worse in the absence of measures to make savings or increase the employees' share of the cost of the insurance. Recommendations to that effect have been made in the Report. However, in our view, concrete solutions for implementation are lacking.'

"43. The Office of the Union invited the European Union and Switzerland to make its comments at the Consultative Committee session and explained that the Controller would make an intervention on this point at the session."

9. The Consultative Committee noted the information provided by the Controller in relation to agenda item 9 "Report of the External Auditor (document C/55/6)" and decided to include an item "Financing of long-term employee benefits" in the agenda for its ninety-ninth session, to provide a report on the WIPO Asset and Liability Management Study (ALM study) and other developments across the UN system with regard to measures to mitigate the growth in the after-service health insurance (ASHI) liability.

#### Arrears in contributions as of September 30, 2021

10. The Consultative Committee noted the status of payment of contributions as of September 30, 2021, and noted that due to recent payments, Albania, Jordan, Trinidad and Tobago and Uruguay had no arrears.

#### Strategic Business Plan

11. The Consultative Committee noted that a draft Strategic Business Plan 2023-2027 would be developed for consideration by the Consultative Committee at its ninety-ninth session, to be held on October 27, 2022, as set out in paragraph 6 of document CC/98/2.

12. The Consultative Committee agreed that the draft Strategic Business Plan 2023-2027, as approved by the Consultative Committee, be proposed for adoption by the Council at its fifty-sixth session, to be held on October 28, 2022.

#### UPOV Accountability Framework

13. The Consultative Committee noted the information contained in the UPOV Accountability Framework.

#### Long-term Financial Issues of UPOV

14. The Consultative Committee noted developments and measures that had been taken within UPOV since 2006, concerning the issues on which the Consultative Group had prepared recommendations that were accepted by the Consultative Committee and other relevant developments on matters considered by the Consultative Group.

15. The Consultative Committee noted that measures to address the long-term financial issues of UPOV were systematically addressed in the Strategic Business Plan and the Program and Budget.

16. The Consultative Committee noted that opportunities for individual members of the Union to improve the financial situation of UPOV included, as appropriate:

- (i) joining UPOV PRISMA and:
  - offering coverage for all crops and species for which protection is available;
  - requiring all applications to be made via UPOV PRISMA;
  - providing a discounted application fee for applicants applying via UPOV PRISMA.
- (ii) increasing their number of contribution units;
- (iii) establishment of Funds-in-Trust;
- (iv) making professional personnel available to the Office of the Union at no, or minimal, cost.

#### Communication strategy

17. The Consultative Committee noted the developments reported in document "Communication strategy".

18. The Consultative Committee agreed that the Office of the Union would send a circular to the Consultative Committee with the preliminary draft FAQ on CBD, ITPGRFA and UPOV, as presented in Annex I to document "Communication strategy", and the preliminary draft FAQ with the proposed revisions presented by Norway, for comments within 30 days. It further agreed that, based on the replies to the Circular and subsequent consultations, as appropriate, the Office of the Union would prepare a new draft for consideration by the Consultative Committee by correspondence.

19. The Consultative Committee noted that the launch of the new website was planned for November 1, 2022.

20. The Consultative Committee noted that results related to the Communication Strategy, are presented in the Performance Report for 2020 (document C/55/2).

21. The Consultative Committee noted that the responses received to Circular E-21/124 of August 23, 2021, included comments on document “Communication strategy”, which was not part of the procedure for approval by correspondence. The Consultative Committee noted that the comments and the reply provided by the Office of the Union were presented in document “Outcome of the consideration of documents by correspondence” for information of the Consultative Committee, as reproduced below:

“Comments from the European Union

‘The EU and its Member States wish to point out that in the last Annual Meeting of the OECD Seed Schemes it was decided that the Secretariat will propose an International Year of Seed at its next meeting with the World Seed Partnership. We ask that the Consultative Committee will endorse that the UPOV office will support the proposal on an International Year of Seed. This would give space to a unique communication exercise in various forms and allowing to highlight and raise awareness of the UPOV system and plant breeding in more general.’

“53. The Office of the Union explained that the proposal of the European Union for UPOV to support the OECD Seed Schemes proposal on an International Year of Seed in the next meeting of the World Seed Partnership could be raised by the European Union at the Consultative Committee session with a view to obtaining approval by the Council.”

22. The Consultative Committee recommended to the Council to support the proposal of the OECD Seed Schemes for an International Year of Seed.

Training and assistance strategy

23. The Consultative Committee noted the developments reported in document “Training and assistance strategy”.

24. The Consultative Committee noted that the Addendum to document “Training and assistance strategy” provided information on the training and assistance activities held by virtual means from October 2020 to September 2021.

25. The Consultative Committee agreed that the updating of distance learning materials to include information on the benefits of UPOV membership be done together with recent developments in PLUTO.

26. The Consultative Committee approved the proposals for the development of an international program on plant variety protection with the aim to obtain an International Certificate on Plant Variety Protection recognized by UPOV.

Program for the use of the Russian language in UPOV

27. The Consultative Committee noted the developments reported in document “Program for the use of the Russian language in UPOV”.

New developments in members of the Union

28. The Consultative Committee agreed to invite members of the Union to present new developments at the ninety-ninth session of the Consultative Committee.

29. The Consultative Committee noted the report on the seminar and the concluding remarks by Mr. Marien Valstar, President of the Council, reported in the addendum to document “New developments in members of the Union”.

30. The Consultative Committee noted that the proceedings and video recording of the seminar on strategies that address policies involving plant breeding and plant variety protection would be published on the UPOV website.

31. The Consultative Committee agreed to propose to the Council the organization of a seminar in 2022 to explore the role of plant breeding and plant variety protection in enabling agriculture to adapt to, and mitigate, climate change.

32. The Consultative Committee noted that the Office of the Union would send a circular inviting members of the Union and observers to the Council to propose possible topics and speakers for the Seminar.

33. The Consultative Committee noted that the information presented at the Seminar might provide useful information on the impact of the UPOV system.

#### Possible guidance concerning smallholder farmers in relation to private and non-commercial use

34. The Consultative Committee noted the comments from the European Union on document “Possible guidance concerning smallholder farmers in relation to private and non-commercial use”, received in response to Circular E-21/124 of August 23, 2021, that were not of a straightforward nature. The Consultative Committee noted the explanation that had been provided by the Office of the Union that the proposals in the document would be considered by the Consultative Committee at its virtual session on October 28, 2021, in conjunction with the comments from the European Union.

35. The Consultative Committee:

(a) noted the developments since the ninety-seventh session of the Consultative Committee on possible guidance concerning smallholder farmers in relation to private and non-commercial use;

(b) decided to establish a Working Group to develop guidance concerning smallholder farmers in relation to private and non-commercial use, to include drafting a revision of the “Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention” and drafting a revision of the FAQs on exceptions to the breeder’s right;

(c) agreed that the terms of reference of the Working Group be approved by the Consultative Committee by correspondence;

(d) agreed that the Working Group be composed of those members of the Union and observers to the Council that reply to a Circular expressing an interest to be part to the Working Group;

(e) agreed that the first meeting of the Working Group be held on March 17, 2022, by electronic means;

(f) agreed to invite the Project Team (Euroseeds, Plantum and Oxfam), in conjunction with the Office of the Union, to prepare an analysis of the contributions in the compendium with the replies to UPOV Circular E20/246 and present a report with recommendations for consideration by the Working Group at its first meeting;

(g) agreed that a copy of the compendium with the replies to UPOV Circular E 20/246 be provided to the Project Team and the Working Group subject to the agreement of the observer State and observer organizations that contributed to the compendium;

(h) recommended to the Council to agree to the inclusion of an item “Revision of the ‘Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention’”, in the agenda of the seventy-ninth session of the CAJ to be held on October 26, 2022; and

(i) agreed to include an item in the agenda of the ninety-ninth session of the Consultative Committee, to be held on October 27, 2022, for a report on the work of the Working Group and recommendations, if appropriate.

#### Developments of relevance to UPOV in other international fora

36. The Consultative Committee noted the developments reported in document “Developments of relevance to UPOV in other international fora”.

37. The Delegation of Norway recalled that the Consultative Committee, at its ninety-seventh session, had noted that the Delegation of Norway would propose that the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) contact the Office of the Union to explore the possibilities for free access to and use of the information in the PLUTO database, including downloading

information, for example by linking PLUTO to GLIS and requested an update on that matter. The Vice Secretary-General reported that he had met virtually with Mr. Kent Nnadozie, Secretary of the ITPGRFA, on November 25, 2020, to discuss that matter. He reported that he had provided information on the PLUTO database and had explained that UPOV would be willing to discuss options according to the interest of the ITPGRFA.

38. The Consultative Committee noted the developments concerning the World Seed Partnership. The Consultative Committee did not agree for the World Seed Partnership to explore possible synergies with FAO.

#### Matters for information:

39. The Consultative Committee noted the following documents under item 24 "Matters for information":

- (a) Internal oversight and the WIPO Independent Advisory Oversight Committee (IAOC)
- (b) Observers in UPOV bodies
- (c) Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention
- (d) UPOV PRISMA

#### Calendar of meetings

40. The Consultative Committee agreed that the following changes be presented for the approval of the Council and a revised version of document C/55/8 be prepared:

##### Administrative and Legal Committee

CAJ/79                      October 26

Working group on harvested material and unauthorized use of propagating material (WG-HRV)

WG-HRV/1    ~~(date to be decided)~~ March 15, 2022

Working group on guidance concerning smallholder farmers in relation to private and non-commercial use

WG-SHF/1    March 17, 2022

##### Consultative Committee

CC/99                      October 27

Ad hoc Sub-Committee of the Consultative Committee (date to be decided)

Seminar to explore the role of plant breeding and plant variety protection in enabling agriculture to adapt to, and mitigate, climate change (date to be decided)

#### Draft press release

41. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in the Annex to document C/55/14 Prov..

42. *The Council is invited to:*

*(a) consider the recommendations of the Consultative Committee to:*

*(i) support the proposal of the OECD Seed Schemes for an International Year of Seed, as set out in paragraph 22;*

*(ii) approve the organization of a seminar in 2022 to explore the role of plant breeding and plant variety protection in enabling agriculture to adapt to, and mitigate, climate change, as set out in paragraphs 31 to 33;*

*(iii) under item 16 of the agenda, agree to the inclusion of an item "Revision of the 'Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention'", in the agenda of the seventy-ninth session of the CAJ to be held on October 26, 2022, as set out in paragraph 35(h); and*

*(b) note the work of the Consultative Committee at its ninety-eighth session, as reported in this document.*

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