

Council

C/57/15

**Fifty-Seventh Ordinary Session
Geneva, October 27, 2023****Original:** English
Date: October 27, 2023**REPORT BY THE PRESIDENT ON THE WORK OF THE HUNDRED AND FIRST 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 hundred and first session in Geneva on October 26, 2023, and on the morning of October 27, 2023.
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/57/1 Rev.):
 - (a) Development of guidance and documents proposed for adoption by the Council (document SESSIONS/2023/2)
 - (b) Appointment of the External Auditor (document C/57/14)
 - (c) Draft press release (document C/57/16 Prov.)
3. The Council is invited to:
 - (a) consider the recommendation of the Consultative Committee to approve the FAQ on CBD, ITPGRFA and UPOV, as set out in paragraph 44; and
 - (b) note the work of the Consultative Committee at its hundred and first session, as reported in this document.
4. The work of the Consultative Committee at its hundred and first session is summarized in the following paragraphs.
5. The Consultative Committee welcomed Ghana's signing the acknowledgement letter of the UPOV e-PVP Terms of Use.

Development of guidance and documents proposed for adoption by the Council*Information Materials*UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/12 Draft 1)

6. The Consultative Committee recommended to the Council to adopt the proposed revisions to document UPOV/INF/16/11 "Exchangeable Software", on the basis of document UPOV/INF/16/12 Draft 1.

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision)
(document UPOV/INF/22/10 Draft 1)

7. The Consultative Committee recommended to the Council to adopt the proposed revisions to document UPOV/INF/22/9 "Software and equipment used by members of the Union", on the basis of document UPOV/INF/22/10 Draft 1.

UPOV/INF/23: UPOV Code System (Revision) (document UPOV/INF/23/2 Draft 1)

8. The Consultative Committee recommended to the Council to adopt the proposed revisions to document UPOV/INF/23/1 "Guide to the UPOV Code System", on the basis of document UPOV/INF/23/2 Draft 1.

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision)
(document UPOV/INF-EXN/17 Draft 1)

9. The Consultative Committee recommended to the Council to adopt the proposed revisions to document UPOV/INF-EXN: "List of UPOV/INF-EXN Documents and Latest Issue Dates", on the basis of document UPOV/INF-EXN/17 Draft 1.

Explanatory Notes:

UPOV/EXN/EDV: Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (documents SESSIONS/2023/2 and UPOV/EXN/EDV/3 Draft 4)

10. The Consultative Committee recommended to the Council to adopt the proposed revision to document UPOV/EXN/EDV/2 "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention", on the basis of document UPOV/EXN/EDV/3 Draft 4.

11. The Consultative Committee agreed to propose to the Council to add, as a standing item on the CAJ agenda, "Updates from UPOV members and observers relating to the implementation of the concept of essentially derived varieties". Based on relevant updates, the Consultative Committee noted that the CAJ would advise on whether it would be appropriate to develop further guidance on essentially derived varieties.

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (Revision) (Annex I to document SESSIONS/2023/2)

12. The Consultative Committee noted that the TC, at its fifty-ninth session, had not approved the proposal for *Prunus*, which would be considered by the Technical Working Parties (TWPs), at their sessions in 2024.

13. The Consultative Committee recommended to the Council to adopt the proposed revisions to document UPOV/EXN/DEN/1 "Explanatory Notes on Variety Denominations under the UPOV Convention", on the basis of the proposed amendments presented in Annex I to document SESSIONS/2023/2, Proposals 1 (*Allium*) and 3 (*Beta*).

TGP Documents

TGP/7: Development of Test Guidelines (Revision)

*Converting standard Test Guidelines wording into optional wording
(Annex II to document SESSION/2023/2)*

14. The Consultative Committee recommended to the Council to adopt a revision of document TGP/7 "Development of Test Guidelines", on the basis of the proposed amendments presented in Annex II to document SESSION/2023/2.

*Disease resistance characteristics: addition of state of expression and placement of non-asterisked disease resistance characteristics in Section 5 of the Technical Questionnaire
(Annex II to document SESSIONS/2023/2)*

15. The Consultative Committee recommended to the Council to adopt the proposed revisions to document TGP/7 "Development of Test Guidelines", GN 13, paragraph 3.6, on the basis of the proposed amendments set out in Annex II to document SESSIONS/2023/2.

TGP/12: Guidance on Certain Physiological Characteristics (Revision):

Example disease resistance characteristic (Annex IV to document SESSIONS/2023/2)

16. The Consultative Committee recommended to the Council to adopt the proposed revisions to document TGP/12 "Guidance on certain physiological characteristics", Section 2.3.2, as presented in Annex IV, paragraph 3, to document SESSIONS/2023/2.

TGP/14: Glossary of Terms Used in UPOV Documents (Revision)
(document SESSIONS/2023/2):

17. The Consultative Committee recommended to the Council to adopt the proposed revisions to document TGP/14 "Glossary of Terms Used in UPOV Documents", on the basis of the correction as presented in paragraph 30 of document SESSION/2023/2.

Financial statements for 2022

18. The Consultative Committee recommended to the Council to approve the Financial Statements for 2022.

UPOV Performance Report 2022

19. The Consultative Committee noted the UPOV Performance Report 2022.

Report of the External Auditor

20. The Consultative Committee noted the Report of the External Auditor contained in document C/57/10.

Appointment of the External Auditor

21. The Consultative Committee noted the developments concerning the consultations by the Office of the Union with the United Kingdom and Switzerland, in accordance with the decision of the Council of 2022, concerning the procedure for the appointment of the External Auditor of UPOV.

22. The Consultative Committee noted the intervention by the Delegation of Switzerland that, as a result of those consultations, the Auditor General of Switzerland has agreed to be designated by the Council, as External Auditor of UPOV, for one year, starting from January 2024 to December 2024.

23. The Consultative Committee noted the intervention by the Russian Federation and the explanation provided by the Office of the Union that all members of the Union would be part of the consultations for a proposal for the appointment of the External Auditor for UPOV.

24. The Consultative Committee recommended to the Council to designate Switzerland as External Auditor of UPOV, for one year, starting from January 2024 to December 2024.

Arrears in contributions as of September 30, 2023

25. The Consultative Committee noted the status of payment of contributions as of September 30, 2023, and noted that due to recent payments, Jordan and Viet Nam had no arrears.

Preparation of the Program and Budget for the 2024-2025 Biennium

26. The Consultative Committee approved the Draft Program and Budget of the Union for the 2024-2025 Biennium, as presented in the Annex to document C/57/4, including:

- (i) the amount of contributions from members of the Union;
- (ii) the proposed maximum ceiling of expenditure in the regular budget being 7,901,307 Swiss francs or the income received in the biennium, whichever is the lower; and
- (iii) the total number of posts.

UPOV PRISMA financing

27. The Consultative Committee:

- (a) noted the information provided in document CC/101/2 concerning:
 - (i) latest revenue and costs relating to UPOV PRISMA;
 - (ii) funding sources other than the regular budget;
 - (iii) latest and projected coverage of UPOV PRISMA (capacity);
 - (iv) projected revenue and costs of UPOV PRISMA;
 - (v) anticipated funding sources other than the regular budget;
 - (vi) incentives by members of the Union for the use of UPOV PRISMA;

(b) noted that revenue from UPOV PRISMA covered the cost of operating the service in 2022;

(c) noted that, from 2025, revenue from UPOV PRISMA was projected to generate a positive balance beyond the operating and development costs of the service.

Financing of long-term employee benefits

28. The Consultative Committee noted the developments with regard to financing of long-term employee benefits.

29. The Consultative Committee endorsed for UPOV, at the appropriate time, the alternative for the creation of a separate entity under IPSAS 39 adopted by WIPO (i.e. the Multi-employer plan or the Joint Foundation) for the financing of long-term employee benefits.

UPOV alignment with the Staff Regulations and Staff Rules of WIPO

30. The Consultative Committee noted the information provided and agreed, for cost efficiency purposes, to continue the alignment of UPOV with the full provisions of the Staff Regulations and Staff Rules of WIPO and the associated UN common system entitlements.

Communication strategy

31. The Consultative Committee noted:

(a) the developments reported with regard to the communication strategy;

(b) that a report on developments concerning the redesign of the UPOV website would be made at the one hundred and second session of the Consultative Committee; and

(c) that results related to the Communication Strategy were presented in the Performance Report for 2022 (document C/57/2).

Policy on translation

32. The Consultative Committee validated the policy for the use of machine translation adopted by the Council on October 29, 2021, with the following changes:

(a) the Office of the Union to decide which documents were suitable to be translated with machine translation and which of them would need or not light post editing;

(b) to use machine translation for other information and materials that do not require high precision; and

(c) report in two years to the Consultative Committee on the experience and new opportunities of using machine translation to increase the impact of UPOV activities.

Program for the use of the Russian language in UPOV

33. The Consultative Committee noted the developments with regard to the program for the use of the Russian language in UPOV and the analysis on the impact on resources and benefits of the program.

34. The Delegation of the Russian Federation requested to modify paragraph 8 of the document, to read as follows: "8. The feasibility and modalities of sending a Russian-speaking specialist to the Office of the Union are being explored." A corrigendum of document CC/101/7 would be posted on the CC/101 webpage accordingly.

Program for the use of the Chinese language in UPOV

35. The Consultative Committee noted the developments with regard to the program for the use of the Chinese language in UPOV and the analysis on the impact on resources and benefits of the program.

New developments in members of the Union

36. The Consultative Committee noted the presentations from Belarus and Canada on new developments.

37. The Consultative Committee agreed to invite members of the Union to present new developments at the one hundred and second session of the Consultative Committee.

Report on the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF)

38. The Consultative Committee noted the developments on possible guidance concerning smallholder farmers in relation to private and non-commercial use and the following report of the Chair of the WG-SHF on the fourth meeting of the WG-SHF held in Geneva on October 25, 2023:

(a) the WG-SHF concluded that gathering information would be useful to provide the basis for developing guidance concerning smallholder farmers in relation to private and non-commercial use;

(b) the WG-SHF agreed that the Office of the Union should issue a circular to the members of the WG-SHF with a request to identify questions and to whom they should be addressed, in order to collect information for the WG-SHF to continue its work. Based on the replies to the Circular, the Office of the Union would prepare a questionnaire for consideration by the WG-SHF at its next meeting;

(c) the WG-SHF proposed to hold its next meeting by virtual means on March 22, 2024;

(d) the WG-SHF agreed to ask the Consultative Committee to welcome the proposal to gather further information and to invite the WG-SHF to finalize the work that it has been tasked to carry out.

39. The Consultative Committee welcomed the proposal of the WG-SHF to gather further information, as set out in paragraph 38 (a) and (b) above, and invited the WG-SHF to finalize its work in accordance with its terms of reference.

Request for extension of observer status from the International Association for the Protection of Intellectual Property (AIPPI)

40. The Consultative Committee granted observer status to the International Association for the Protection of Intellectual Property (AIPPI) in the Administrative and Legal Committee (CAJ).

Training and assistance strategy

41. The Consultative Committee noted the information with regard to the training and assistance strategy.
42. The Consultative Committee endorsed the implementation plan for the “UPOV International certificate on plant variety protection”.

Developments of relevance to UPOV in other international fora

43. The Consultative Committee noted the developments concerning the FAQ on CBD, ITPGRFA and UPOV.
44. The Consultative Committee recommended to the Council the approval of the following FAQ on CBD, ITPGRFA and UPOV:

Complementarity between the UPOV Convention, the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

Aims and objectives

Biological diversity or ‘biodiversity’ is the term used to describe the variety of all living organisms and includes diversity within species, between species and of ecosystems. Biodiversity underpins all human activity, notably including agriculture and, therefore, food security.

The Convention on Biological Diversity (CBD) has three objectives: the conservation of biodiversity, the sustainable use of the components of biodiversity and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. A supplementary agreement to the CBD, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization elaborates on the Convention’s provisions on access to genetic resources, traditional knowledge and benefit-sharing in order to contribute to the conservation and sustainable use of biodiversity.

The objectives of the International Treaty on Plant Genetic Resources for Food and Agriculture are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security. The International Treaty relates to plant genetic resources for food and agriculture.

The Treaty aims at: recognizing the enormous contributions of farmers to diversity of crops that feed the world; establishing a global system to provide farmers, plant breeders and scientists with access to plant genetic materials; ensuring that recipients share benefits they derive from the use of these genetic materials.

UPOV’s mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

Synergies between biodiversity, sustainable agriculture and plant breeding

Conservation of biodiversity depends on sustainable agriculture and a halt or reversal to the expansion of agricultural land, while there are parallel demands on agricultural land for food and energy production. This means that there is a need to produce more from existing agricultural land, in a sustainable way. Conversely, sustainable agriculture is dependent on the conservation and sustainable use of biodiversity, in particular by ensuring healthy soils and thriving populations of pollinators to achieve fertile crops, among other things.

By encouraging the development of new varieties of plants, the UPOV system encourages the sustainable use of biodiversity while creating new genetic diversity. New plant varieties with improved yield, more efficient use of nutrients, resistance to plant pests and diseases, salt and drought tolerance and better adaptation to climatic stress, according to the needs and preferences of farmers and consumers, can sustainably increase productivity and product quality in agriculture, horticulture and forestry. These attributes can reduce the pressure on the natural environment and biodiversity by reducing the need for inputs while reducing the area of land needed for agriculture. Plant breeding sustainably uses biological diversity and relies on the conservation of biodiversity to develop new varieties that deliver substantial benefits for farmers and society as a whole. The critical importance of biodiversity to agriculture is recognized in the CBD and the Nagoya Protocol acknowledges the importance of genetic resources for food and agriculture and their special role for food security. The recognition of the importance of crop and genetic diversity for sustainable agriculture and food security is central to the objectives of the ITPGRFA.

Benefits arising from the utilization of genetic resources

By encouraging plant breeding, the UPOV system incentivizes the generation of benefits arising out of the utilization of genetic resources. In addition, the “breeder’s exemption” in the UPOV Convention enables plant diversity in the form of protected plant varieties to be available for further breeding activities because acts done using such varieties for the purpose of breeding other varieties are not subject to any restriction by the breeder. This reflects the fact that access to protected varieties contributes to sustaining greatest progress in plant breeding and, thereby, to maximize the use of genetic resources for the benefit of society.

The CBD, Nagoya Protocol and ITPGRFA establish the requirements and mechanisms for the sharing of benefits arising out of the utilization of genetic resources. In relation to the breeder’s exemption, a recipient of material from the Multilateral System of the ITPGRFA who commercializes a product that is available without restriction to others for further research and breeding is not obliged but it is encouraged to contribute to the benefit sharing fund of the ITPGRFA.

Legislation in Contracting Parties

International cooperation, as well as coherence in the relevant legislative, administrative and policy measures concerning the CBD, ITPGRFA and the UPOV Convention, in the Contracting Parties concerned, is beneficial for achieving the desired outcomes of those treaties, notably in relation to sustainable agriculture and food security in the context of climate change and land degradation as well as the conservation of biodiversity, access to genetic resources and the sharing of benefits from their utilization.

45. The Consultative Committee requested the Office of the Union to transmit the text of the FAQ to the Secretariat of the CBD and the Secretary of the ITPGRFA, once approved by the Council.

46. The Consultative Committee agreed to consider the possible planning of a symposium on interrelations between the Convention on Biological Diversity (CBD), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention), at a later date.

Matters for information:

47. The Consultative Committee noted the following documents under item 22 “Matters for information”:

- (a) Internal oversight and the WIPO Independent Advisory Oversight Committee (IAOC) (document CC/101/INF/2)
- (b) 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 (document CC/101/INF/3)
- (c) Observers in UPOV bodies (document CC/101/INF/4)

Draft press release

48. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the Draft press release contained in document C/57/16 Prov.

49. The Council is invited to note the work of the Consultative Committee at its hundred and first session, as reported in this document.

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