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

**ADMINISTRATIVE AND LEGAL COMMITTEE**

**Sixty-First Session**  
**March 25, 2010**

**DEVELOPMENT OF INFORMATION MATERIALS  
CONCERNING THE UPOV CONVENTION**

*Document prepared by the Office of the Union*

Introduction

1. The Administrative and Legal Committee (CAJ), at its fifty-second session, held in Geneva on October 24, 2005, agreed an approach for the preparation of information materials concerning the UPOV Convention, as explained in paragraphs 8 to 10 of document CAJ/52/4. It also agreed to the establishment of an advisory group to the CAJ ("CAJ-AG") to assist in the preparation of documents concerning such materials, as proposed in paragraphs 11 to 14 of document CAJ/52/4 (see paragraph 67 of document CAJ/52/5, Report).
2. The agreed approach is summarized as follows: the Office of the Union will develop certain draft materials which it considers covers aspects of a straightforward nature and will circulate these to the CAJ for comments within a specified time. In other cases, where it is considered that there are difficult issues, where discussions at a CAJ session would be important for the development of suitable information materials, and also in cases where the drafts on seemingly straightforward materials provoke unexpected concerns when circulated for comments, it was agreed that the assistance of the CAJ-AG would be sought prior to the CAJ being invited to discuss those matters at its sessions.
3. An overview of the development of the information materials is provided in the Annex to this document.

4. The structure of this document is as follows:

I. REPORT OF THE WORK OF THE CAJ-AG AT ITS FOURTH SESSION, HELD IN GENEVA ON OCTOBER 23, 2009 (see document CAJ-AG/09/4/4 “Report”)

(a) Matters referred to the CAJ-AG by the CAJ at its sixtieth session;

(b) Documents considered by the CAJ-AG at its fourth session;

II. INFORMATION MATERIALS FOR CONSIDERATION AT THE SIXTY-FIRST SESSION OF THE CAJ TO BE HELD IN GENEVA ON MARCH 25, 2010

(a) Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR Draft 4);

(b) Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention (document UPOV/EXN/CAL Draft 2);

III. PROPOSAL CONCERNING THE DEVELOPMENT OF EXPLANATORY NOTES ON THE EXHAUSTION OF THE BREEDER’S RIGHT

IV. PROPOSED PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS CONCERNING THE UPOV CONVENTION

(a) document for consideration by the CAJ by correspondence; and

(b) the work program for the fifth session of the CAJ-AG, to be held in Geneva on October 22, 2010;

I. REPORT OF THE WORK OF THE CAJ-AG AT ITS FOURTH SESSION, HELD IN GENEVA ON OCTOBER 23, 2009

5. The report on the work of the CAJ-AG at its fourth session, held in Geneva on October 23, 2009, is contained in document CAJ-AG/09/4/4 “Report”. This Part contains a summary of (a) Matters referred to the CAJ-AG by the CAJ at its sixtieth session held in Geneva on October 19, 2009 and (b) Documents considered by the CAJ-AG at its fourth session.

(a) Matters referred to the CAJ-AG by the CAJ at its sixtieth session

6. The CAJ, at its sixtieth session, referred matters to the CAJ-AG concerning the “Participation of CIOPORA and the ISF in the work of the CAJ-AG” and “Matters arising after the grant of the breeder’s right”. The conclusions of the CAJ-AG, at its fourth session, on those matters are contained in the following paragraphs (paragraphs 26 to 29 of document CAJ-AG/09/4/4 “Report”).

- (i) *Participation of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and the International Seed Federation (ISF) in the work of the CAJ-AG*

7. The Chair of the CAJ-AG reported the following:

(a) the CAJ, at its sixtieth session held in Geneva on October 19, 2009, had recalled that the terms of reference of the CAJ-AG provided that “[o]bserver organizations, in particular those representing the interests of breeders, might be invited by the CAJ-AG to present their views on a particular provision of the 1991 Act to assist in their work. Where appropriate, those presentations might be made in conjunction with a CAJ session” (see paragraph 14 of document CAJ/52/4 and paragraph 67 of document CAJ/52/5, “Report”);

(b) with regard to the request of CIOPORA and ISF for a more institutionalized cooperation with the CAJ-AG, the CAJ, at its sixtieth session, had agreed that, in the first instance, that matter should be considered by the CAJ-AG at its fourth session, with the recommendations from the CAJ-AG being reported for consideration by the CAJ at its sixty-first session to be held in Geneva on March 25, 2010 (paragraphs 21 and 22 of document CAJ/60/10 “Report on the Conclusions”).

8. The CAJ-AG, at its fourth session, concluded that the terms of reference of the CAJ-AG as set out in documents CAJ/52/4 and CAJ/52/5, paragraphs 14 and 67 respectively (reproduced in paragraph 7 above), provided an effective basis for the work of the CAJ-AG. In particular it agreed that those terms of reference enabled breeders to present their views on any relevant matter.

*9. The CAJ is invited to consider the conclusion of the CAJ-AG, at its fourth session, on the “Participation of CIOPORA and the ISF in the work of the CAJ-AG”, that the terms of reference of the CAJ-AG as set out in documents CAJ/52/4 and CAJ/52/5, paragraphs 14 and 67 respectively (reproduced in paragraph 7 above), provide an effective basis for the work of the CAJ-AG.*

- (ii) *Matters arising after the grant of the breeder’s right*

10. The Chair of the CAJ-AG recalled that the CAJ, at its sixtieth session, held in Geneva on October 19, 2009, had considered document CAJ/60/8 “Matters arising after the grant of the breeder’s right”, and had expressed its support for the development of a document concerning such matters. The CAJ had agreed that the Office of the Union should issue a circular inviting members of the Union to provide examples of matters that might be covered by the document. In the meantime, the CAJ had agreed that the CAJ-AG should be invited to have a first exchange of views on the possible structure and content of such a document, at its fourth session. A report on the responses to the circular and the consideration by the CAJ-AG would be reported to the CAJ at its sixty-first session, to be held in Geneva on March 25, 2010, in order to determine how best to proceed with the development of a document (see paragraphs 47 and 48 of document CAJ/60/10 “Report on the Conclusions”).

11. The CAJ-AG, at its fourth session, concluded that the document on matters arising after the grant of the breeder's right should cover nullity, cancellation, denomination and exhaustion of the breeder's right.

12. The CAJ is invited to consider the conclusions of the CAJ-AG, at its fourth session, on "Matters arising after the grant of the breeder's right", as set out in paragraph 11 above, in conjunction with the consideration by the CAJ, at sixty-first session, of document CAJ/61/8 under agenda item 10 "Matters arising after the grant of a breeder's right". The CAJ is invited to note that a proposal on the possible development of explanatory notes on the exhaustion of the breeder's right is contained in Part III of this document (see paragraphs 31 to 33, below).

13. *The CAJ is invited to note that*

*(a) the conclusions of the CAJ-AG, at its fourth session, on "Matters arising after the grant of the breeder's right", as set out in paragraphs 11 and 12 above, will be considered under agenda item 10 "Matters arising after the grant of a breeder's right"; and*

*(b) the proposal on the possible development of explanatory notes on the exhaustion of the breeder's right will be considered in Part III of this document.*

(b) Documents considered by the CAJ-AG at its fourth session

14. The conclusions of the CAJ-AG, at its fourth session, on the documents "Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention" (document UPOV/EXN/VAR Draft 4) and "Explanatory Notes on Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention" (document UPOV/EXN/CAL Draft 2) are considered below under Part II of this document.

(i) *Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention*

15. The CAJ-AG considered documents CAJ-AG/09/4/2 and UPOV/EXN/BRD Draft 2 and agreed that the Office of the Union should prepare a revised version of those Explanatory Notes (document UPOV/EXN/BRD Draft 3) for consideration by the CAJ-AG at its fifth session, to be held in Geneva on October 22, 2010 (see paragraphs 5 to 7 of document CAJ-AG/09/4/4 "Report").

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

16. The CAJ-AG considered documents CAJ-AG/09/4/2 and UPOV/EXN/HRV Draft 4, the comments received from ISF of October 9, 2009, which had been posted on the CAJ-AG

section of the UPOV website, and the comments of CIOPORA and ISF at the fourth session of the CAJ-AG (see paragraphs 11 to 17 of document CAJ-AG/09/4/4 “Report”).

17. The CAJ-AG agreed that the Office of the Union should prepare a revised version of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/HRV Draft 5) for circulation to the CAJ-AG and, in the absence of substantial concerns, a draft of the Explanatory Notes on Acts in Respect of Harvested Material would be submitted to the CAJ at its sixty-second session, to be held in Geneva on October 18 and 19, 2010. In the case of substantial concerns, the Explanatory Notes on Acts in Respect of Harvested Material would be re-discussed by the CAJ-AG at its fifth session (see paragraph 18 of document CAJ-AG/09/4/4 “Report”).

*(iii) Explanatory Notes on Essentially Derived Varieties under the UPOV Convention (revision)*

18. The CAJ-AG considered document CAJ-AG/09/4/3 and the comments of CIOPORA at its fourth session (see paragraphs 22 and 23 of document CAJ-AG/09/4/4 “Report”).

19. The CAJ-AG concluded that the information presented in document CAJ-AG/09/4/3, paragraph 12, provided a suitable basis for the inclusion of a variety “D” in figures 3 and 4 of document UPOV/EXN/EDV, and agreed that the Office of the Union should develop a proposal for discussion at the fifth session of the CAJ-AG (see paragraph 25 of document CAJ-AG/09/4/4 “Report”).

20. The CAJ-AG requested the Office of the Union to develop a draft explanation on the relationship between the provisions of Article 14(5)(b)(i) and (iii) of the 1991 Act, for consideration at the fifth session of the CAJ-AG (see paragraph 24 of document CAJ-AG/09/4/4 “Report”).

21. The program for the fifth session of the CAJ-AG will be considered below under Part IV of this document “Proposed Program for the Development of Information Materials concerning the UPOV Convention”.

*22. The CAJ is invited to note the conclusions of the CAJ-AG at its fourth session, as set out in paragraphs 5 to 21, in relation to the proposed program for the fifth session of the CAJ-AG, contained in Part IV of this document “Proposed Program for the Development of Information Materials concerning the UPOV Convention”.*

II. INFORMATION MATERIALS FOR CONSIDERATION AT THE SIXTY-FIRST SESSION OF THE CAJ TO BE HELD IN GENEVA ON MARCH 25, 2010

(a) Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR Draft 4)

23. The CAJ-AG agreed that, based on the comments of the CAJ-AG at its fourth session, the Office of the Union should prepare a revised version of the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention” (document UPOV/EXN/VAR Draft 3), for circulation to the CAJ-AG and, in the absence of substantial concerns, a draft of the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention” would be submitted to the CAJ at its sixty-first session, to be held in Geneva on March 25, 2010 (see paragraphs 8 to 10 of document CAJ-AG/09/4/4 “Report”).

24. On January 12, 2010 (see UPOV Circular E-1180), the posting of document UPOV/EXN/VAR Draft 3 was notified to the CAJ-AG, with a copy to the CAJ (members and observers) with a request for comments before February 8, 2010.

25. No comments were received on document UPOV/EXN/VAR Draft 3 by February 8, 2010. Therefore the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention”, with relevant changes in the cover page (document UPOV/EXN/VAR Draft 4), is submitted for consideration by the CAJ at its sixty-first session. Subject to the approval by the CAJ of document UPOV/EXN/VAR Draft 4, it is proposed that a draft of document UPOV/EXN/VAR be presented for adoption by the Council at its forty-fourth ordinary session to be held in Geneva on October 21, 2010.

*26. The CAJ is invited to approve document UPOV/EXN/VAR Draft 4, as the basis for adoption of document UPOV/EXN/VAR/1 by the Council, as set out in paragraphs 23 to 25.*

(b) Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention (document UPOV/EXN/CAL Draft 2)

27. The CAJ-AG, at its fourth session, considered the “Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention” (document UPOV/EXN/CAL Draft 1) and agreed the following (see paragraph 20 of document CAJ-AG/09/4/4 “Report”):

General	The CAJ-AG agreed that document UPOV/EXN/CAL “Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention” should not elaborate on matters concerning exhaustion, and
	To propose to the CAJ the development of a separate document on exhaustion of the breeder’s right. The CAJ-AG agreed that one of the aspects to be considered was whether the breeder’s right is exhausted if the conditions and limitations on which the breeder’s authorization was granted were not met

Section (b)	CIOPORA and ISF to provide comments and propose additional examples by November 6, 2009
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28. No comments were received from CIOPORA and ISF by November 6, 2009. Consequently, document UPOV/EXN/CAL Draft 1, with relevant changes to the cover page (document UPOV/EXN/CAL Draft 2), will be considered by the CAJ at its sixty-first session (see paragraph 21 of document CAJ-AG/09/4/4 “Report”). Subject to the approval by the CAJ of document UPOV/EXN/CAL Draft 2, it is proposed that a draft of document UPOV/EXN/CAL be presented for adoption by the Council at its forty-fourth ordinary session to be held in Geneva on October 21, 2010.

29. In relation to the possible development of a document on exhaustion of the breeder’s right (see paragraph 20 of document CAJ-AG/09/4/4 “Report”, reproduced in paragraph 27 of this document), the CAJ is invited to note that a proposal will be considered under Part III of this document (paragraphs 31 to 33, below).

30. *The CAJ is invited to:*

*(a) approve document UPOV/EXN/CAL Draft 2, as the basis for adoption of document UPOV/EXN/CAL/1 by the Council, as set out in paragraph 28; and*

*(b) note that a proposal on the possible development of explanatory notes on the exhaustion of the breeder’s right will be considered under Part III of this document.*

### III. PROPOSAL CONCERNING THE DEVELOPMENT OF EXPLANATORY NOTES ON THE EXHAUSTION OF THE BREEDER’S RIGHT

31. The CAJ-AG, at its fourth session, during the consideration of the “Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention” (document UPOV/EXN/CAL Draft 1), agreed to propose to the CAJ, at its sixty-first session, the development of a separate document on exhaustion of the breeder’s right. The CAJ-AG agreed that one of the aspects to be considered was whether the breeder’s right would be exhausted if the conditions and limitations on which the breeder’s authorization was granted were not met (see paragraph 27 of this document and paragraph 20 of document CAJ-AG/09/4/4 “Report”).

32. Based on the considerations by the CAJ-AG, at its fourth session (see paragraph 31 of this document), and subsequent reflection by the Office of the Union with the Chair of the CAJ, it is proposed to develop “Explanatory Notes on the Exhaustion of the Breeder’s Right under the 1991 Act of the UPOV Convention” (document UPOV/EXN/EXH Draft 1). Subject to the endorsement of the CAJ, at its sixty-first session, it is proposed that document UPOV/EXN/EXH Draft 1 be presented for consideration by the CAJ-AG at its fifth session.

*33. The CAJ is invited to consider the proposal to develop “Explanatory Notes on the Exhaustion of the Breeder’s Right under the 1991 Act of the UPOV Convention” (document UPOV/EXN/EXH Draft 1), as set out in paragraph 32.*

#### IV. PROPOSED PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS CONCERNING THE UPOV CONVENTION

(a) Document to be considered by the CAJ by correspondence

34. The CAJ, at its sixtieth session, agreed to the preparation of an information document for consideration by the CAJ, by correspondence, on ongoing obligations of members of the Union and related notifications (document UPOV/INF/15/1) in order to provide guidance on the following:

(a) notifications concerning changes in legislation governing breeders’ rights and if appropriate, any extension of the application of the legislation to additional plant genera and species;

(b) notifications concerning changes of representatives and alternates to the Council and designated persons to the relevant UPOV bodies;

(c) reports to the Council on the situation in the legislative, administrative and technical fields, including matters relevant for cooperation in examination and plant variety protection statistics;

(d) financial obligations concerning the payment of contributions  
(see paragraph 19 of document CAJ/60/10 “Report on the Conclusions” and paragraphs 14 and 15 of document CAJ/60/3).

35. Document UPOV/INF/15/1 Draft 1 will be posted in the UPOV languages on the first restricted area of the UPOV website in May/June 2010 and the CAJ members and observers will be notified accordingly. In the absence of major concerns with document UPOV/INF/15/1 Draft 1, it is proposed that a draft of document UPOV/INF/15 be presented for adoption by the Council at its forty-fourth ordinary session to be held in Geneva on October 21, 2010. A report on any comments received on document UPOV/INF/15/1 Draft 1 will be made at the sixty-second session of the CAJ on October 18 and 19, 2010.

*36. The CAJ is invited to consider the procedure for the consideration of document UPOV/INF/15/1 Draft 1 by correspondence, as the basis for adoption of document UPOV/INF/15/1 by the Council, as set out in paragraphs 34 and 35.*



(b) Work program for the fifth session of the CAJ-AG

37. The proposed program for the fifth session of the CAJ-AG to be held in Geneva on October 22, 2010, is as follows:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes
  - (a) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention
  - [(b) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention]<sup>1</sup>
  - [(c) UPOV/EXN/EXH: Explanatory Notes on the Exhaustion of the Breeder's Right under the 1991 Act of the UPOV Convention]<sup>2</sup>
4. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)
5. Matters referred to the CAJ-AG by the CAJ
6. Date and program for the sixth session
7. Closing of the session

*38. The CAJ is invited to approve the work program for the fifth session of the CAJ-AG, as set out in paragraph 37 of this document.*

[Annex follows]

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<sup>1</sup> If document UPOV/EXN/HRV Draft 5 is approved by the CAJ-AG by correspondence, document UPOV/EXN/HRV Draft 6 will be submitted to the CAJ at its sixty-second session, to be held in Geneva on October 18 and 19, 2010 (see paragraph 17 of this document).

<sup>2</sup> Subject to the endorsement of the CAJ, at its sixty-first session, it is proposed that document UPOV/EXN/EXH Draft 1 be presented for consideration by the CAJ-AG at its fifth session (see paragraph 33 of this document).

## OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

Latest reference	Explanatory Notes on:	Status
UPOV/EXN/GEN/1	Genera and Species to be Protected under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/NAT/1	National Treatment under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/NOV/1	Novelty under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/PRI/1	Right of Priority under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/PRP/1	Provisional Protection under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/EDV/1	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/EXC/1	Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/NUL/1	Nullity of the Breeder's Right under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/CAN/1	Cancellation of the Breeder's Right under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/ENF/1	Enforcement of Breeders' Rights under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/VAR Draft 4	Definition of Variety under the 1991 Act of the UPOV Convention	For the CAJ session in March 2010
UPOV/EXN/CAL Draft 2	Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention	For the CAJ session in March 2010
UPOV/EXN/HRV Draft [.]	Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention	For the CAJ session or the CAJ-AG session in October 2010
UPOV/EXN/BRD Draft [.]	Definition of Breeder under the 1991 Act of the UPOV Convention	For the CAJ-AG session in October 2010
UPOV/EXN/EDV/2 Draft 1	Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)	For the CAJ-AG session in October 2010
[UPOV/EXN/EXH/1 Draft 1	Exhaustion of the Breeder's Right under the 1991 Act of the UPOV Convention	For the CAJ-AG session in October 2010
Latest reference	INF documents	Status
UPOV/INF/6/1	Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/INF/13/1	Guidance on How to Become a Member of UPOV	Adopted by the Council in October 2009
UPOV/INF/14/1	Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/INF/15/1 Draft 1	Guidance for Members of UPOV on Ongoing Obligations and Related Notifications	Under preparation for CAJ circulation by correspondence May/June 2010