



CAJ/62/3

ORIGINAL: English

DATE: September 7, 2010

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Second Session
October 19, 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. WORK PROGRAM OF THE CAJ-AG AT ITS FIFTH SESSION

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

(i) *Objectives of the possible development of a document on the exhaustion of the breeder's right under the 1991 Act of the UPOV Convention;*

(ii) *Objectives of the possible development of a document on the notion of "own holdings" under Article 15(2) of the 1991 Act of the UPOV Convention; and*

(iii) *Matters arising after the grant of a breeder's right.*

(b) Explanatory Notes to be considered by the CAJ-AG at its fifth session

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

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

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

II. INFORMATION MATERIALS FOR CONSIDERATION AT THE SIXTY-SECOND SESSION OF THE CAJ

UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV Draft 5)

III. INFORMATION MATERIALS CONSIDERED BY THE CAJ BY CORRESPONDENCE

UPOV/INF/15/1: Guidance for Members of UPOV on Ongoing Obligations and Related Notifications

IV. PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS

Work program for the development of information materials for the sixth session of the CAJ AG, to be held in Geneva on October 21, 2011, and for the sixty-third session of the CAJ, to be held in Geneva on April 7, 2011

I. WORK PROGRAM OF THE CAJ-AG AT ITS FIFTH SESSION

5. The CAJ, at its sixty-first session, held in Geneva on March 25, 2010, anticipated that one day would be sufficient for the program of its sixty-second session, which it agreed should be held in Geneva on October 19, 2010. On that basis, the CAJ agreed to hold the fifth session of the CAJ-AG in Geneva on October 18, 2010, instead of October 22, 2010.

6. The draft agenda of the fifth session of the CAJ-AG (document CAJ-AG/10/5/1) is provided in the CAJ-AG section of the UPOV website. The CAJ-AG working documents will be also published on that section and notified to the CAJ. A report on the conclusions of the CAJ-AG at its fifth session will be provided to the CAJ at its sixty-second session.

7. The terms of reference of the CAJ-AG provide 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 [its] work” (see document CAJ/52/4, paragraph 14, and document CAJ/52/5 “Report”, paragraph 67). The CAJ-AG decided by correspondence on September 6, 2010, to invite the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and the International Seed Federation (ISF) to the relevant part of the fifth session of the CAJ-AG, in order to enable them to continue the presentation of their views on relevant matters.

8. The following matters will be considered by the CAJ-AG at its fifth session:

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

(i) *Objectives of the possible development of a document on the exhaustion of the breeder’s right under the 1991 Act of the UPOV Convention*

9. The CAJ, at its sixty-first session, agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the Exhaustion of the Breeder’s Right under the 1991 Act of the UPOV Convention (see document CAJ/61/11 “Report on the Conclusions”, paragraph 32).

10. The CAJ-AG at its fifth session will consider document CAJ-AG/10/5/4 “Objectives of the possible development of a document on the exhaustion of the breeder’s right under the 1991 Act of the UPOV Convention”.

(ii) *Objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention*

11. The CAJ, at its sixty-first session, agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention (see document CAJ/61/11 “Report on the Conclusions”, paragraph 33).

12. The CAJ-AG at its fifth session will consider document CAJ-AG/10/5/5 “Objectives of the possible development of a document on the notion of ‘own holdings’ under Article 15(2) of the 1991 Act of the UPOV Convention”.

(iii) *Matters arising after the grant of a breeder's right*

13. The CAJ, at its sixty-first session, considered documents CAJ/61/8 “Matters arising after the grant of a breeder's right” and CAJ/61/8 Add. (see document CAJ/61/11 “Report on the Conclusions”, paragraphs 64 to 66).

14. The CAJ, at its sixty-first session, noted the contributions contained in documents CAJ/61/8 and CAJ/61/8 Add. and requested the Office of the Union to prepare a document for consideration by the CAJ-AG, at its fifth session, on possible ways to proceed with matters raised in those contributions.

15. In response to the intervention of the Delegation of Japan concerning essentially derived varieties, the Vice Secretary-General, at the sixty-first session of the CAJ, made reference to document CAJ/46/7 “The Notion of Essentially Derived Varieties in the Breeding of Ornamental Varieties” and Annex III to document CAJ/47/8 “Report” and suggested that those documents be considered by the CAJ-AG at its fifth session.

16. The CAJ-AG at its fifth session will consider document CAJ-AG/10/5/6 “Matters arising after the grant of a breeder's right”.

17. The CAJ is invited to consider the conclusions of the CAJ-AG, at its fifth session, on:

(a) objectives of the possible development of a document on the exhaustion of the breeder's right under the 1991 Act of the UPOV Convention;

(b) objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention; and

(c) matters arising after the grant of a breeder's right.

(b) Explanatory Notes to be considered by the CAJ-AG at its fifth session

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

18. The CAJ-AG, at its fifth session, will consider documents CAJ-AG/10/5/2 “Explanatory Notes” and UPOV/EXN/BRD Draft 3 “Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention”.

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

19. The CAJ-AG, at its fifth session, will consider documents CAJ-AG/10/5/2 “Explanatory Notes” and UPOV/EXN/HRV Draft 5 “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention”.

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

20. The CAJ-AG, at its fifth session, will consider document CAJ-AG/10/5/3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)”.

21. The CAJ is invited to consider the conclusions of the CAJ-AG at its fifth session, on documents UPOV/EXN/BRD Draft 3 “Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention”, UPOV/EXN/HRV Draft 5 “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” and CAJ-AG/10/5/3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)”.

II. INFORMATION MATERIALS FOR CONSIDERATION AT THE SIXTY-SECOND SESSION OF THE CAJ

UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV Draft 5)

22. The CAJ-AG at its fourth session held in Geneva on October 23, 2009, considered document UPOV/EXN/HRV Draft 4. The CAJ-AG agreed that, based on the conclusions of the CAJ-AG at its fourth session, 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 document CAJ/61/3, paragraph 17, and document CAJ/61/11 “Report on the Conclusions”, paragraph 35).

23. Following the fourth session of the CAJ-AG, the Office of the Union received comments from the Russian Federation and CIOPORA, which have been posted on the webpage of the fourth session of the CAJ-AG. On the basis of those comments, it was concluded that it would not be appropriate to seek approval of document UPOV/EXN/HRV Draft 5 by correspondence. Furthermore, the CAJ-AG will meet before the sixty-second session of the CAJ, which provides an opportunity for the CAJ-AG to consider document UPOV/EXN/HRV Draft 5, at its fifth session, and to report its conclusions to the CAJ at its sixty-second session.

24. At its sixty-second session, the CAJ will be invited to consider document UPOV/EXN/HRV Draft 5 in conjunction with the conclusions of the CAJ-AG on that

document. If the approval of the CAJ-AG, at its fifth session, and the CAJ, at its sixty-second session, is obtained on the basis of document UPOV/EXN/HRV Draft 5, a draft of document UPOV/EXN/HRV will be prepared for adoption of document UPOV/EXN/HRV by the Council, at its twenty-eighth extraordinary session to be held in Geneva on April 8, 2011.

25. *The CAJ is invited to:*

(a) *consider document UPOV/EXN/HRV Draft 5 in conjunction with the conclusions of the CAJ-AG at its fifth session on that document; and*

(b) *if appropriate, consider a program for the adoption of document UPOV/EXN/HRV.*

III. INFORMATION MATERIALS CONSIDERED BY THE CAJ BY CORRESPONDENCE

UPOV/INF/15/1: Guidance for Members of UPOV on Ongoing Obligations and Related Notifications

26. The CAJ, at its sixty-first session, approved the procedure for the consideration of document UPOV/INF/15/1 Draft 1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” by correspondence, as the basis for adoption of document UPOV/INF/15/1 by the Council (see paragraph 34 of document CAJ/61/11 “Report on the conclusions”).

27. Document UPOV/INF/15/1 Draft 1 was posted on the first restricted area of the UPOV website on July 19, 2010 and the CAJ members and observers were notified accordingly (Circular E-1348). No comments were received by August 19, 2010, therefore a draft of document UPOV/INF/15/1 has been prepared for adoption by the Council at its forty-fourth ordinary session, on the basis of document UPOV/INF/15/1 Draft 1 (document UPOV/INF/15/1 Draft 2).

28. *The CAJ is invited to note that document UPOV/INF/15/1 Draft 1 was approved by the CAJ by correspondence and that the Council will be invited to adopt document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010, on the basis of document UPOV/INF/15/1 Draft 2.*

IV. PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS

Work program for the development of information materials for the sixth session of the CAJ-AG, to be held in Geneva on October 21, 2011, and for the sixty-third session of the CAJ, to be held in Geneva on April 7, 2011

29. Based on the conclusions of the CAJ-AG at its fifth session and the conclusions of the CAJ at its sixty-second session, the CAJ will be invited to consider a program for the development of information materials for the sixth session of the CAJ-AG, to be held in Geneva on October 21, 2011, and for the sixty-third session of the CAJ, to be held in Geneva on April 7, 2011.

30. The CAJ is invited to approve the work program for the development of information materials for the sixth session of the CAJ-AG and for the sixty-third session of the CAJ.

[Annex follows]

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 5	Definition of Variety under the 1991 Act of the UPOV Convention	For adoption by the Council in October 2010
UPOV/EXN/CAL Draft 3	Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention	For adoption by the Council in October 2010
UPOV/EXN/HRV Draft 5	Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention	For the CAJ-AG/CAJ sessions in October 2010
UPOV/EXN/BRD Draft 3	Definition of Breeder under the 1991 Act of the UPOV Convention	For the CAJ-AG session in October 2010
CAJ-AG/10/5/3	Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)	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 2	Guidance for Members of UPOV on Ongoing Obligations and Related Notifications	For adoption by the Council in October 2010

[End of Annex and of document]