



CAJ/70/11

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

Geneva

**ADMINISTRATIVE AND LEGAL COMMITTEE****Seventieth Session  
Geneva, October 13, 2014**

## REPORT

*adopted by the Administrative and Legal Committee**Disclaimer: this document does not represent UPOV policies or guidance*Opening of the session

- \*1. The Administrative and Legal Committee (CAJ) held its seventieth session in Geneva on October 13, 2014, under the chairmanship of Mr. Martin Ekvad (European Union).
- \*2. The session was opened by the Chair, who welcomed the participants. The list of participants is reproduced in the Annex to this report.
- \*3. The Chair reported that the African Intellectual Property Organization (OAPI) had deposited its instrument of accession to the 1991 Act of the UPOV Convention on June 10, 2014, becoming the 72<sup>nd</sup> member of the Union on July 10, 2014, and the second intergovernmental organization to join UPOV. The Chair noted that the number of States to which the UPOV Convention applied was now 91.
- \*4. The Secretary-General introduced Ms. Hend Madhour, a database modeler who was working on the Electronic Application System project and Ms. Wegahatbrhan Sereke, an intern who was working on the Electronic Application System project and the UPOV Lex database.
- \*5. The Chair confirmed that the report of the sixty-ninth session of the CAJ held in Geneva on April 10, 2014 (document CAJ/69/13), has been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

- \*6. The CAJ adopted the draft agenda, as proposed in document CAJ/70/1 Rev.

Development of information materials concerning the UPOV Convention

- \*7. The CAJ considered document CAJ/70/2.
- \*8. The CAJ noted that new drafts of explanatory notes concerning propagation and propagating material, harvested material, essentially derived varieties, cancellation, nullity, variety denominations and provisional

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\* An asterisk next to the paragraph number indicates that the text is reproduced from the Report on the Conclusions (document CAJ/70/10).

protection had been circulated in May 2014, and that comments had been received by CAJ members and observers, as set out in document CAJ/70/2, paragraphs 9 to 16.

\*9. The CAJ noted that, on the basis of comments received, new drafts of relevant explanatory notes had been posted on September 10, 2014, and would be considered by the CAJ-AG, at its ninth session, to be held on October 14 and 17, 2014.

\*10. The CAJ noted that a further review of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention” might be necessary in relation to the development of a UPOV similarity search tool (see document CAJ/70/4).

\*11. The CAJ noted that the report on the work of the CAJ-AG at its ninth session would be presented to the CAJ, at its seventy-first session, to be held in March 2015.

12. In relation to the CAJ-AG, the Chair recalled that the CAJ-AG had been established as a small group of experts of members of the Union to facilitate the preparation of documents addressing complex issues for the CAJ and highlighted the important work accomplished by the CAJ-AG in that regard. He observed that the work of the CAJ-AG in clarifying the issues had been so effective that there was relatively little discussion in the CAJ. However, he also observed that there had been important developments since the first meeting of the CAJ-AG, almost ten years previously. Firstly, the participation in the CAJ-AG had increased substantially and regularly comprised almost all the members of the Union that attended the CAJ. Secondly, the importance of considering the views of observers had created the need for a complex mechanism for them to present their views to the CAJ-AG, while also allowing the CAJ-AG to hold discussions in the absence of observers. He welcomed the increased involvement of members and observers in the CAJ-AG, but wondered if it was the time to reflect on whether all matters should be considered by the CAJ directly, where all members of the Union and observers were present. He suggested that this would be an approach to combine openness and efficiency in the work of the CAJ. Subject to endorsement by the CAJ, he proposed that all the items currently under consideration by the CAJ-AG be brought to the CAJ and that the CAJ-AG would only be convened, on an *ad hoc* basis, as considered appropriate by the CAJ. He suggested considering that proposal under item 9 of the agenda “Program for the seventy-first session”.

\*13. The CAJ agreed to consider the program for the development of information materials and, in particular the work of the CAJ-AG, under item 9 “Program for the seventy-first session”.

\*14. The CAJ noted that the developments concerning the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” were provided in document CAJ/70/3.

\*15. The CAJ noted that the developments concerning the revision of document UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation” were provided in document CAJ/70/5.

\*16. The CAJ noted that the Spanish, French and German versions of the proceedings of the “Seminar on essentially derived varieties”, (UPOV Publication No. 358) held in Geneva on October 22, 2013, had been posted on the UPOV website at [http://www.upov.int/meetings/en/details.jsp?meeting\\_id=29782](http://www.upov.int/meetings/en/details.jsp?meeting_id=29782).

\*17. With regard to the format and style of CAJ documents, and their presentation at CAJ sessions, the CAJ agreed, as appropriate, to:

- include an executive summary;
- make reference to previous documents in footnotes;
- combine decision paragraphs relating to matters for information; and
- present a summary of the main points of the document in the form of a PowerPoint presentation at the CAJ session.

#### Revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette”

\*18. The CAJ considered document CAJ/70/3.

\*19. The CAJ noted the developments relevant for the updating of document UPOV/INF/5 concerning the development a prototype electronic form, essentially derived varieties, frequency of data submission and completeness of databases and the distance learning course “Examination of Applications for Plant Breeders’ Rights” (DL-305), reported in document CAJ/70/3.

\*20. The CAJ agreed that the Office of the Union should prepare a draft revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” (document UPOV/INF/5/1 Draft 1) for consideration by the CAJ at its seventy-second session, to be held in October 2015, subject to its consideration of the program for the development of information materials.

Guidance for members of UPOV on ongoing obligations and related notifications and on the provision of information to facilitate cooperation (Revision)

\*21. The CAJ considered documents CAJ/70/5 and UPOV/INF/15/3 Draft 1.

\*22. The CAJ approved the revision of document UPOV/INF/15 as presented in document UPOV/INF/15/3 Draft 1, subject to the following changes:

“45. Prior to receiving applications for plant breeders’ rights, the PBR Office needs to develop relevant forms and be ready to assign a filing date and time and, if appropriate, an application reference.  
[...]

46. Legal provisions in some UPOV members allow for the filing of applications in paper only. The use of electronic application forms to substitute or to complement paper applications, facilitates the use of databases and information management. In order to accept applications in electronic format, UPOV members may need to have auxiliary systems in place, such as for the recognition of digital signatures, electronic payment and security matters.

[...]

[...]

In relation to electronic publication, and including searchable databases, the completeness and correctness of the information is of particular importance. In particular, it is important to include information concerning applications for and grants of breeders’ rights, and proposed and approved denominations.

\*23. On the above basis, the CAJ agreed that a draft of document UPOV/INF/15/3 be presented for adoption by the Council at its thirty-second extraordinary session, to be held on March 27, 2015.

Molecular techniques

\*24. The CAJ considered document CAJ/70/6.

\*25. The CAJ noted that the Consultative Committee had requested the Office of the Union to prepare 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, on the basis of contributions from the members of the Union.

Variety denominations

\*26. The CAJ considered documents CAJ/70/4 and CAJ/70/4 Add.

\*27. The CAJ received a report from the Vice Secretary-General on the first meeting of the Working Group for the Development of a UPOV Denomination Similarity Search Tool (WG-DST), which was held in Geneva on September 3, 2014. The CAJ noted that presentations had been made on the search tools available on the PLUTO database and that the WG-DST members had agreed to share their search tools and procedures with the WG-DST.

28. The Delegation of the European Union questioned whether the Office of the Union intended to compare all information on trademarks in the WIPO database, or whether to restrict consideration to trademarks in an agricultural category, which would be most relevant.

29. The Vice Secretary-General explained that the rationale was to use a computer program to derive an algorithm for efficiently selecting similar denominations. He noted that for the approach to work it needed very large numbers of denominations that relevant experts considered to be similar to “test” denominations and it was not relevant whether those denominations had ever been used for plant varieties or not. He noted

that a large number of participants was also necessary in order to cover the different ways that denominations might be considered similar across different UPOV members.

30. The Delegation of Argentina recalled previous situations when data was not available and had to be created. It pointed out that it would be necessary to see the initial results and to assess if the tool needed to be amended to get the desired results. The Delegation explained the experience of the Technical Working Party on Automation and Computer Programs (TWC) with artificially generated data.

31. The Vice Secretary-General thanked the Delegation of Argentina for its suggestion. He noted that the data from the WIPO Global Brand Database would probably be sufficient but, if it was not the case, it might be feasible to generate a data set.

32. The Delegation of the European Union agreed that the broadest and widest possible data set was needed for the study. It explained that, the approach of the Community Plant Variety Office of the European Union (CPVO) was to work with a smaller data set, for example, with trademarks in class 31 of the Nice Classification rather than all trademarks because the CPVO wanted to do more than just to draw comparisons. The Delegation noted that, if there was too much data, the work could become too complicated.

33. The Vice Secretary-General noted that it was crucial to have enough data but agreed that it was important also not to have too much data. He noted that the PLUTO data would not be sufficient and hoped that the approach outlined in documents CAJ/70/4 and CAJ/70/4 Add. would form the basis of a viable work plan and hoped that as many UPOV members as possible would participate in order to get the best results.

\*34. The CAJ noted that the WG-DST had agreed that the function of a UPOV similarity search tool would be to identify those denominations that were similar to existing denominations to the extent that they would require further, individual consideration before deciding if the denomination was (sufficiently) different from existing denominations. In that regard, the WG-DST had agreed to organize a test study to develop an effective denomination search tool, an overview of which was presented to the CAJ.

\*35. The CAJ agreed that the WG-DST should agree the details of the test study before participants were invited to start the study.

\*36. The CAJ agreed that the possibility to participate in the test study to develop an effective denomination search tool should be offered to all members of the Union.

\*37. The CAJ noted that the latest developments concerning the revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention", which would be considered by the CAJ-AG, at its ninth session on October 14 and 17, 2014, were reported in document CAJ/70/2 "Development of information materials concerning the UPOV Convention".

#### Information and databases

##### *(a) Electronic application systems*

\*38. The CAJ considered document CAJ/70/7.

\*39. The CAJ noted the confirmation of the Delegations of France, Germany and the Netherlands that they wished to participate in the meetings on the development of a prototype electronic form.

\*40. The CAJ noted the developments concerning the development of a prototype electronic form as set out in document CAJ/70/7 and that a report of the meeting on the development of a prototype electronic form, to be held in Geneva on October 14, 2014, would be made to the CAJ at its seventy-first session in March 2015.

##### *(b) UPOV information databases*

\*41. The CAJ considered document CAJ/70/8.

\*42. The CAJ noted the plan to provide information on type of crop for UPOV codes, as set out in document CAJ/70/8, paragraph 6.

(c) *Exchangeable software*

\*43. The CAJ considered document CAJ/70/9.

\*44. The CAJ noted that the Technical Committee (TC), at its fifty-first session, to be held in Geneva, from March 23 to 25, 2015, would consider the discussions on the inclusion of the SISNAVA software in document UPOV/INF/16.

Program for the seventy-first session

\*45. The CAJ agreed that all matters under consideration by the CAJ-AG at its ninth session should, following the ninth session of the CAJ-AG, be considered by the CAJ and that the CAJ-AG should only be convened, on an *ad hoc* basis, as considered appropriate by the CAJ.

\*46. On that basis, the CAJ requested the CAJ-AG, at its ninth session, to advise the CAJ those documents to be considered at the seventy-first session of the CAJ, in March 2015.

\*47. The CAJ noted 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. The CAJ noted that this interest would be reported to the Consultative Committee and the Council.

\*48. The following program was agreed for the seventy-first session of the CAJ:

1. Opening of the session
2. Adoption of the agenda
3. Report on developments in the Technical Committee
4. Development of information materials concerning the UPOV Convention
5. TGP documents
6. Molecular techniques
7. Variety denominations
8. Information and databases
  - (a) Electronic application systems
  - (b) UPOV information databases
  - (c) Exchangeable software
9. Program for the seventy-second session
10. Adoption of the report on the conclusions (if time permits)
11. Closing of the session

49. *This report was adopted by correspondence.*

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /  
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms en français des membres/  
in the alphabetical order of the names in French of the members/  
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/  
por orden alfabético de los nombres en francés de los miembros)

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