

**Administrative and Legal Committee**

CAJ/75/14

**Seventy-Fifth Session  
Geneva, October 31, 2018****Original:** English  
**Date:** October 31, 2018

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**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 seventy-fifth session in Geneva on October 31, 2018, under the chairmanship of Mr. Anthony Parker (Canada).
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 the granting of observer status to Afghanistan and Nigeria in the CAJ.

Adoption of the agenda

4. The CAJ adopted the draft agenda, as proposed in document CAJ/75/1 Rev.

Report on developments in the Technical Committee

5. The CAJ considered document CAJ/75/13 and the presentation made by the Chair of the Technical Committee (TC).
6. The CAJ noted the report on developments in the TC at its fifty-fourth session, held in Geneva on October 29 and 30, 2018. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were contained in document CAJ/75/13 and would be considered under the relevant items of the CAJ agenda. It further noted that the report of the TC was available in document TC/54/31 "Report".

TGP documents

7. The CAJ considered documents CAJ/75/2 and CAJ/75/13.

*Documents to be considered by the CAJ**TGP/5: Experience and Cooperation in DUS Testing (Revision) (document TGP/5: Section 1/3 Draft 2)*

8. The CAJ approved the proposed revisions to document TGP/5 "Experience and Cooperation in DUS Testing", Section 1/2 "Model Administrative Agreement for International Cooperation in the Testing of Varieties", as presented in document TGP/5: Section 1/3 Draft 2, in conjunction with the conclusions of the TC at its fifty-fourth session as presented in document CAJ/75/13.
9. The CAJ noted that the Council would be invited to consider the proposed revisions to document TGP/5 "Experience and Cooperation in DUS Testing", Section 1/2 "Model Administrative Agreement for International Cooperation in the Testing of Varieties", as presented in document TGP/5: Section 1/3 Draft 2 for adoption at its fifty-second ordinary session.

*TGP/7: Development of Test Guidelines (Revision) (document TGP/7/6 Draft 2)*

10. The CAJ approved the proposed revisions to document TGP/7/5 “Development of Test Guidelines”, as presented in document TGP/7/6 Draft 2, in conjunction with the conclusions of the TC at its fifty-fourth session as presented in document CAJ/75/13.

11. The CAJ noted that the Council would be invited to consider the proposed revisions to document TGP/7/5 “Development of Test Guidelines”, as presented in document TGP/7/6 Draft 2 for adoption at its fifty-second ordinary session.

*TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/10 Draft 1)*

12. The CAJ noted that the Council at its fifty-second ordinary session would be invited to adopt a revision of document TGP/0/10 “List of TGP documents and latest issue dates” as presented in document TGP/0/10 Draft 1, in conjunction with the adoption of the revised TGP documents above.

*Program for the development of TGP documents*

13. The CAJ approved the program for the development of TGP documents, as set out in the Appendix of the Annex to document CAJ/75/13, as approved by the TC at its at its fifty-fourth session.

Presentations on essentially derived varieties

14. The CAJ considered document CAJ/75/3 and the presentations made by the United States of America, the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOFORA), the European Seed Association (ESA) and the International Seed Federation (ISF) on essentially derived varieties.

15. The CAJ agreed to propose to the Council to organize a “Seminar on the impact of policy on essentially derived varieties (EDVs) on breeding strategy”, to be held on the morning of October 30, 2019.

16. The CAJ agreed that the seminar should include presentations by breeders, judges, academics and UPOV member authorities to provide a range of perspectives on the subject. The Office of the Union would invite members and observers to submit questions and issues which they would wish to be addressed in the seminar. The Office of the Union, in consultation with the Chair of the CAJ, would then prepare a draft program for comment by the CAJ by correspondence. On the basis of comments received, the Chair of the CAJ in conjunction with the Office of the Union would finalize the program. The CAJ agreed that the seminar should be open to the public, with the recording of the seminar being made available on the UPOV website after a suitable broadcast delay.

17. The CAJ agreed that the consideration of the revision of the Explanatory Notes would be included in the agenda for the seventy-sixth session of the CAJ, and the outcome of the seminar would be a basis to that consideration.

Presentations on conditions and limitations concerning the breeder’s authorization in respect of propagating material

18. The CAJ considered document CAJ/75/4 and the presentations made by ESA and ISF on conditions and limitations concerning the breeder’s authorization in respect of propagating material.

19. The CAJ agreed that it was not necessary to revise the current guidance on the conditions and limitations concerning the breeder’s authorization in respect of propagating material for the time being.

Presentations on provisional protection

20. The CAJ considered document CAJ/75/5 and the presentations made by ESA and ISF on provisional protection.

21. The CAJ agreed that it was not necessary to revise the current guidance on provisional protection for the time being.

Joint presentation by CIOPORA and AIPH on minimum distance

22. The CAJ considered documents CAJ/75/12 and CAJ/75/13 and the joint presentation made by the CIOPORA and the International Association of Horticultural Producers (AIPH) on minimum distance.

23. The CAJ requested the TC to report to the CAJ its considerations concerning the discussions on minimum distances between varieties and the follow-up project based on field trials with the participation of breeders of protected varieties.

Development of information materials concerning the UPOV Convention

24. The CAJ considered document CAJ/75/6.

25. The CAJ noted that information on the presentations on essentially derived varieties, conditions and limitations concerning the breeder's authorization in respect of propagating material and scope of provisional protection, had been provided in documents CAJ/75/3, CAJ/75/4 and CAJ/75/5, respectively.

26. The CAJ noted that there had been no developments concerning a possible meeting of the Office of the Union with CIOPORA, ISF and WIPO in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters. The CAJ noted that any developments with regard to a meeting would be reported at future sessions of the CAJ.

UPOV Model Plant Breeders' Rights Gazette (Revision)

27. The CAJ approved the proposed revision to document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette", as presented in document UPOV/INF/5/2 Draft 1 "UPOV Model Plant Breeders' Rights Publication (Revision)". The CAJ agreed to present the revision of document UPOV/INF/5, on the basis of document UPOV/INF/5/2 Draft 1, for adoption by the Council in 2019.

Tentative Program for the Development of Information Materials

28. The CAJ agreed to consider the program for the development of information materials in conjunction with the discussions under the item "Program for the seventy-sixth session".

Variety denominations

29. The CAJ considered documents CAJ/75/7 and CAJ/75/7 Add. and the oral report on developments at the fifth meeting of the Working Group on Variety Denominations (WG-DEN), held in Geneva, on October 30, 2018, summarized in the following paragraphs.

30. The WG-DEN considered the revision of document UPOV/INF/12/5 "Explanatory Notes on Variety Denominations under the UPOV Convention" (documents UPOV/WG-DEN/5/2 and UPOV/EXN/DEN/1 Draft1).

31. The CAJ noted that the WG-DEN was still considering matters concerning section 2.3.3 "Identity of the variety", and section 2.3.4 "Identity of the breeder".

32. In relation to the denomination classes in document UPOV/INF/12/5, the WG-DEN received the following proposals for changes to the denomination classes and requested the CAJ to transmit those proposals to the TC for consideration by the TC, and if applicable, by the relevant TWPs at their forthcoming sessions:

(a) Proposal to split the current class 205 (*Cichorium* and *Lactuca*) into two new classes:

- Classe : *Lactuca* – *Cichorium endivia* (frisée et scarole), *Cichorium intybus* var. *foliosum* (endive/witloof et les chicorées italiennes)
- Classe : *C. intybus* var. *sativum* (chicorée industrielle)

(b) Proposal for genus *Epichloe* (formerly *Neotyphodium*) be added to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*.)

33. The WG-DEN had agreed to redraft section 2.6 “UPOV denomination similarity search tool”.
34. In relation to paragraph 5 “Same denomination in all members of the Union”, the WG-DEN had agreed to provide guidance in the case of synonyms.
35. The WG-DEN had agreed that a new draft of relevant sections only of document UPOV/EXN/DEN would be circulated for comments by correspondence to the WG-DEN.
36. The WG-DEN had agreed that UPOV/EXN/DEN/1 Draft 2 should be presented to WG-DEN/6 and CAJ/76 in October 2019.
37. In relation to item 4 “UPOV denomination similarity search tool” the WG-DEN had agreed to restart work in conjunction with Community Plant Variety Office of the European Union (CPVO).
38. The WG-DEN, in relation to item 5 of its agenda “PLUTO database” had agreed the following:
- (a) accept accents and special characters in denominations in the PLUTO database while noting that the denomination search tool on the PLUTO database would only use the character set ASCII representation, as defined in ISO Standard 646;
  - (b) revise the “Program for Improvements to the Plant Variety Database”, Section 3.1.3 in order to change the acceptable character set to ISO/IEC Standard 8859 1: 1998;
  - (c) invite members of the Union to check whether they have relevant variety data that is no longer included in the PLUTO database but was submitted to the PLUTO database previously;
  - (d) Office of the Union is to explore possibilities to introduce a unique identifier for variety records in the PLUTO database in order that new data submissions would add to the existing data rather than replacing it;
  - (e) additional data should not be included in PLUTO but accessible via a search platform for independent databases; and
  - (f) Office of the Union to issue a circular to invite members of the Union to propose data that they would wish to include in the PLUTO database or accessible via a search platform for independent databases.
39. The WG-DEN, in relation to item 6 of its agenda “Non-acceptable terms”, had agreed not to pursue the matter further.
40. The WG-DEN had agreed the proposed date for the next meeting, as follows: Tuesday, October 29 (evening).
41. The CAJ noted the oral report on developments at the fifth meeting of the WG-DEN made at the seventy-fifth session of the CAJ, as reported in paragraphs 30 to 40, above.
42. The CAJ noted, in particular, that the proposed revisions by the WG-DEN on document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”, would be presented to the CAJ at its seventy-sixth session in conjunction with the comments of the WG-DEN at its sixth meeting.
43. The CAJ agreed to request the TC to consider the following proposals received by the WG-DEN to revise the list of classes in document UPOV/INF/12/5:
- (a) Proposal to split the current class 205 (*Cichorium* and *Lactuca*) into two new classes:
    - Classe : *Lactuca* – *Cichorium endivia* (frisée et scarole), *Cichorium intybus* var. *foliosum* (endive/witloof et les chicorées italiennes)
    - Classe : *C. intybus* var. *sativum* (chicorée industrielle)
  - (b) Proposal for genus *Epichloe* (formerly *Neotyphodium*) be added to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*.)

44. The CAJ noted the developments concerning the process for the revision of the ninth edition of the ICNCP, as set out in paragraphs 3 to 6 of document CAJ/75/7 Add..

45. The CAJ agreed that the Office of the Union contribute to the revision of the ninth edition of the ICNCP on the basis of document UPOV/INF/12/5 “Explanatory notes on variety denominations under the UPOV Convention” and the work of the WG-DEN.

#### Information and databases

##### *Electronic application form*

46. The CAJ considered documents CAJ/75/8 and CAJ/75/13 and the presentation made by the Office of the Union, which would be provided as document CAJ/75/8 Add.

47. The CAJ noted that the TC, at its fifty-fourth session, had agreed that it would be helpful for the Office of the Union, upon request, to generate a report for participating authorities to UPOV PRISMA on the extent to which their application forms were harmonized with the application forms of other members of the Union and the UPOV model application form. The CAJ noted that TC had noted that that was a matter that should be reported to the CAJ (see document CAJ/75/13, paragraph 17).

48. The CAJ noted the developments concerning UPOV PRISMA as set out in document CAJ/75/8 and the presentation made by the Office of the Union.

49. The CAJ noted that proposals concerning financial aspects of UPOV PRISMA would be considered by the Consultative Committee at its ninety-fifth session and, if appropriate, by the Council at its fifty-second ordinary session.

##### *UPOV information databases*

50. The CAJ considered documents CAJ/75/9 and CAJ/75/13.

##### *UPOV Code System*

51. The CAJ noted that 440 new UPOV codes were created in 2017 and a total of 8,589 UPOV codes are included in the GENIE database.

52. The CAJ noted that the Office of the Union introduced new UPOV codes for 191 forest tree species requested by DG SANTE, in GENIE by September 2017, as set out in paragraph 7 of document CAJ/75/9.

53. The CAJ endorsed the changes agreed by the TC, at its fifty-fourth session, concerning UPOV Code System, as reported in document CAJ/75/13, paragraphs 21 to 27.

##### *PLUTO database*

54. The CAJ noted the summary of contributions to the PLUTO database from 2014 to 2017 and the current situation of members of the Union on data contribution, as presented in the Annex to document CAJ/75/9.

##### *Exchange and use of software and equipment*

55. The CAJ considered documents CAJ/75/10, CAJ/75/13, UPOV/INF/16/8 Draft 1 and UPOV/INF/22/5 Draft 1.

56. The CAJ noted that the Council, at its fifty-first ordinary session, had adopted the revision of document UPOV/INF/16 “Exchangeable Software” (document UPOV/INF/16/7) and document UPOV/INF/22 “Software and Equipment Used by Members of the Union” (document UPOV/INF/22/4).

57. The CAJ noted the report on the conclusions of the TC at its fifty-fourth session concerning the proposals to revise document UPOV/INF/16/7 and document UPOV/INF/22/4 and on the approach to make documents UPOV/INF/16 and UPOV/INF/22 available in a searchable form on the UPOV website as presented in document CAJ/75/13.

58. The CAJ approved the proposed revisions to document UPOV/INF/16, as presented in document UPOV/INF/16/8 Draft 1, and in document UPOV/INF/22, as presented UPOV/INF/22/5 Draft 1, in conjunction with the conclusions of the TC at its fifty-fourth session as presented in document CAJ/75/13.

59. The CAJ noted that the Council would be invited to consider the proposed revisions to documents UPOV/INF/16 and UPOV/INF/22, as presented in documents UPOV/INF/16/8 Draft 1 and UPOV/INF/22/5 Draft 1, respectively, for adoption at its fifty-second ordinary session.

#### Molecular techniques

60. The CAJ considered documents CAJ/75/11 and CAJ/75/13.

61. The CAJ noted that the TC, at its fifty-fourth session, had agreed that the Model “Combining Phenotypic and Molecular Distances in the Management of Variety Collections” of document TGP/15 “Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)”, Section 2.2, be revised at a later stage once an additional threshold level has been implemented in France, as set out in paragraph 18 of document CAJ/75/11.

62. The CAJ noted that the TC, at its fifty-fourth session, had agreed with the inclusion of a new model “Genetic selection of similar varieties for the first growing cycle” and the “example French Bean” in document TGP/15 on the basis of document TGP/15/2 Draft 1, amended by the TC, as set out in paragraph 28 of document CAJ/75/11. The CAJ noted that the proposed revision of document TGP/15 would be presented for approval by the CAJ and adoption by the Council in 2019.

63. The CAJ noted that the TC, at its fifty-fourth session, had requested the European Union, France and the Netherlands to prepare a new draft of document UPOV/INF/17 “Guidelines for DNA-profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)” for consideration at the eighteenth session of the BMT, as set out in document CAJ/75/13, Annex, paragraph 42.

64. The CAJ noted that the TC had noted that ISTA was not in a position to agree to the proposed joint activities with UPOV and OECD at the seventeenth session of the BMT, as set out in document CAJ/75/13, Annex, paragraph 45, and that the TC had agreed to invite ISTA to join the initiatives when in a position to do so.

65. The CAJ noted that the TC had agreed that UPOV and OECD make progress on matters previously agreed by the TC, as set out in document CAJ/75/13, Annex, paragraph 46.

66. The CAJ noted that the TC had agreed to invite the BMT and the TWPs to develop an inventory on the use of molecular marker techniques, by crop, with a view to developing a joint OECD/UPOV/ISTA document containing that information, in a similar format to UPOV document UPOV/INF/16 “Exchangeable Software, as set out in document CAJ/75/13, Annex, paragraph 47.

67. The CAJ noted that the TC had agreed to request the BMT to develop a joint document explaining the principal features of the systems of the OECD, UPOV and ISTA, as set out in document CAJ/75/13, Annex, paragraph 48.

68. The CAJ noted that the TC had noted the information provided by the representative of OECD that a joint ISTA/UPOV/OECD workshop was anticipated to be organized in conjunction with the ISTA Seed Congress to be held in India in 2019, as set out in document CAJ/75/13, Annex, paragraph 49.

69. The CAJ noted that at the sixteenth and seventeenth sessions of the BMT, discussion groups were formed for BMT participants to exchange information on their work and explore areas for cooperation, in conjunction with the conclusions of the TC, as set out in paragraphs 46 and 48 of document CAJ/75/11.

70. The CAJ noted that the BMT plans to discuss, at its eighteenth session, issues concerning cooperation between partners and service providers, including confidentiality, access to data and material, authorization for work to be performed and availability of results and information to partners, as set out in paragraph 49 of document CAJ/75/11.

71. The CAJ noted that the TC, at its fifty fourth session, had agreed that the results of the coordination session in the BMT be reported to the other TWPs and that the TWPs be invited to undertake a similar session

to build on the BMT outcomes and feed into the future work of the BMT, as set out in paragraph 50 of document CAJ/75/11.

72. The CAJ noted that the TC, at its fifty-fourth session, had agreed with the proposal by the BMT to include an explanation in document TGP/15 that it would be the responsibility of the respective TWP and the TC to assess whether the reliability of the link between the gene and the expression of the characteristic was satisfied in order to include a method in the Test Guidelines, as set out in document CAJ/75/13, Annex, paragraph 51.

73. The CAJ noted that the TC had agreed with the proposal by the BMT that a new example be added to document TGP/15 to illustrate a situation where the characteristic-specific marker did not provide complete information on the state of expression of a characteristic, on the basis of the proposal by the Netherlands presented in document BMT/17/21. The TC had agreed to invite the experts from the Netherlands to prepare a proposal to be presented to the TWPs and BMT and agreed that the resultant proposal should be presented to the TC, at its fifty-fifth session, as set out in document CAJ/75/13, Annex, paragraph 53.

#### Program for the seventy-sixth session

74. The CAJ agreed the following program for its seventy-sixth session to be held on the afternoon of October 30, 2019:

1. Opening of the session
2. Adoption of the agenda
3. Report on developments in the Technical Committee
4. Essentially Derived Varieties
5. Development of information materials concerning the UPOV Convention
- 6 TGP documents
7. Variety denominations
8. Information and databases
  - (a) UPOV PRISMA
  - (b) UPOV information databases
  - (c) Exchange and use of software and equipment
9. Molecular techniques
10. Minimum distances
11. Program for the seventy-seventh session
12. Adoption of the report (if time permits)
13. Closing of the session

*75. This report was adopted at the close of its session, on October 31, 2018.*

[Annex follows]

## ANNEXE / ANNEX / ANLAGE / ANEXO

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

(dans l'ordre alphabétique des noms français des membres / in the alphabetical order of the French names 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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