

Administrative and Legal Committee**CAJ/76/9****Seventy-Sixth Session
Geneva, October 30, 2019****Original:** English
Date: October 30, 2019

REPORT

adopted by the Administrative and Legal Committee

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Opening of the session

1. The Administrative and Legal Committee (CAJ) held its seventy-sixth session in Geneva on October 30, 2019, under the chairmanship of Mr. Anthony Parker (Canada).
2. The session was opened by the Chair, who welcomed the participants. The draft list of participants is reproduced in the Annex to this report.
3. The Chair reported the granting of observer status to Lao People's Democratic Republic in the CAJ.
4. The Vice Secretary-General introduced Ms. Wen Wen, who had joined UPOV under a one-year Fellowship from the Development Center of Science and Technology (DCST), China, starting in September 2019, Ms. Sarra Berich, who had joined UPOV under a 9 months Fellowship, starting in March 2019, for IT related projects and Ms. Trang Thi Thu Tran, who had joined UPOV under an ICS contract, starting in September 2019, as an EAPVP Forum Pilot Project Officer.

Adoption of the agenda

5. The CAJ adopted the draft agenda, as proposed in document CAJ/76/1 Rev.2 with the addition of CAJ/76/6 Add "Addendum to Variety denominations" under agenda item 7.

Report by the Vice Secretary-General on developments in UPOV

6. The CAJ considered the presentation made by the Vice Secretary-General of UPOV. A copy of the presentation will be published as document CAJ/76/INF/5.

Report on developments in the Technical Committee

7. The CAJ considered document CAJ/76/2 and the presentation made by the Chair of the Technical Committee (TC).
8. The CAJ noted the report on developments in the TC at its fifty-fifth session, held in Geneva on October 28 and 29, 2019. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were contained in document CAJ/76/2 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/55/25 "Report".

Essentially Derived Varieties

9. The CAJ considered document CAJ/76/3.

10. The CAJ noted the background information and developments concerning EDVs, including relevant matters on the “Seminar on the impact of policy on essentially derived varieties (EDVs) on breeding strategy”, as set out in paragraphs 4 to 15 of document CAJ/76/3.

11. The CAJ noted the information on the presentations and noted the following oral summary by the Chair of the CAJ concerning the outcome of the “Seminar on the impact of policy on essentially derived varieties (EDVs) on breeding strategy”, held on the morning of October 30, 2019:

- “Evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties
- “Evolution of breeding technologies has created new opportunities/incentives for predominantly deriving varieties from initial varieties, more rapidly and at a lower cost
- “Clear indication from presentations and discussions that the understanding and implementation of the EDV concept influences breeding strategy – therefore, it is important that UPOV guidance is tuned to maximize benefits to society in terms of maximizing progress in breeding.”

12. On the basis of the outcome of the EDV Seminar, the CAJ agreed to open up the “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” (document UPOV/EXN/EDV/2) for revision. As a first step, the Office of the Union would:

- (a) invite members and observers to make contributions by correspondence on policy issues;
- (b) invite breeders to provide information on customs and practices on EDV ; and
- (c) based on the replies to (a) and (b), prepare a preliminary analysis on the EDVs issues and practices and draft terms of references for a working group on EDV, for comments by the CAJ by correspondence.

13. On the basis above, the Office of the Union would prepare a document for the consideration at the seventy-seventh session of the CAJ, to be held on October 28, 2020.

14. The CAJ noted that there had been no developments concerning a possible meeting of the Office of the Union with the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA), the International Seed Federation (ISF) and the World Intellectual Property Organization (WIPO) in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning EDVs, including the provision of experts on EDV matters, and noted that the Office of the Union would not pursue this matter further unless there is a change of circumstances.

Development of information materials concerning the UPOV Convention (document CAJ/76/4)

15. The CAJ considered document CAJ/76/4.

Information Materials

16. The CAJ noted that matters concerning essentially derived varieties were considered in document CAJ/76/3.

17. The CAJ noted that matters concerning variety denominations were considered in documents CAJ/76/6 and CAJ/76/6 Add. “Variety denominations”.

Tentative Program for the Development of Information Materials

18. The CAJ noted the suggestion by Japan to develop guidance on the term “unauthorized use of propagating material”, in Article 14(2) of the 1991 Act of the UPOV Convention.

19. The CAJ agreed to include an item in the agenda for the seventy-seventh session of the CAJ to be held on October 28, 2020, to consider a document with information and proposals from CAJ members and observers concerning the term “unauthorized use of propagating material”, in relation to trees, in Article 14(2) of the 1991 Act of the UPOV Convention.

20. The CAJ agreed that the Office of the Union should invite members and observers to provide information and make proposals by correspondence on the term “unauthorized use of propagating material”, in relation to trees, in Article 14(2) of the 1991 Act of the UPOV Convention. Based on the proposals received by correspondence, the Office of the Union would prepare a document identifying substantive matters with proposals for consideration at the seventy-seventh session of the CAJ, to be held on October 28, 2020.

TGP documents

21. The CAJ considered documents CAJ/76/5 and CAJ/76/2.

Documents to be considered by the CAJ

TGP/7: Development of Test Guidelines (Revision) (document TGP/7/7 Draft 1 Rev.)

22. The CAJ noted that no changes to TGP/7/7 Draft 1 had been introduced by the TC at its fifty-fifth session, as provided in document CAJ/76/2. The CAJ approved the proposed revisions to document TGP/7/6 “Development of Test Guidelines”, as presented in document TGP/7/7 Draft 1.

23. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/7/6 “Development of Test Guidelines”, as presented in document TGP/7/7 Draft 1 for adoption at its fifty-third ordinary session.

TGP/8: Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision) (document TGP/8/4 Draft 1)

24. The CAJ noted that no changes to TGP/8/4 Draft 1 had been introduced by the TC at its fifty-fifth session, as provided in document CAJ/76/2. The CAJ approved the proposed revisions to document TGP/8/3 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”, as presented in document TGP/8/4 Draft 1.

25. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/8/3 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”, as presented in document TGP/8/4 Draft 1 for adoption at its fifty-third ordinary session.

TGP/10: Examining Uniformity (Revision) (document TGP/10/2 Draft 1)

26. The CAJ noted that no changes to TGP/10/2 Draft 1 had been introduced by the TC at its fifty-fifth session, as provided in document CAJ/76/2. The CAJ approved the proposed revisions to document TGP/10/1 “Examining Uniformity”, as presented in document TGP/10/2 Draft 1.

27. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/10/1 “Examining Uniformity”, as presented in document TGP/10/2 Draft 1 for adoption at its fifty-third ordinary session.

TGP/14: Glossary of Terms Used in UPOV Documents (Revision) (document TGP/14/4 Draft 1)

28. The CAJ noted that no changes to TGP/14/4 Draft 1 had been introduced by the TC at its fifty-fifth session, as provided in document CAJ/76/2. The CAJ approved the proposed revisions to document TGP/14/3 “Glossary of Terms Used in UPOV Documents”, as presented in document TGP/14/4 Draft 1.

29. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/14/3 “Glossary of Terms Used in UPOV Documents”, as presented in document TGP/14/4 Draft 1 for adoption at its fifty-third ordinary session.

TGP/15: Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) (Revision) (document TGP/15/2 Draft 2)

30. The CAJ noted that no changes to TGP/15/2 Draft 2 had been introduced by the TC at its fifty-fifth session, as provided in document CAJ/76/2. The CAJ approved the proposed revisions to document TGP/15/1 “Guidance on the use of Biochemical and Molecular Markers in the examination of Distinctness, Uniformity and Stability (DUS)”, as presented in document TGP/15/2 Draft 2.

31. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/15/1 “Guidance on the use of Biochemical and Molecular Markers in the examination of Distinctness, Uniformity and Stability (DUS)”, as presented in document TGP/15/2 Draft 2 for adoption at its fifty-third ordinary session.

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/11 Draft 1)

32. The CAJ agreed that the Council at its fifty-third ordinary session be invited to adopt a revision of document TGP/0/11 “List of TGP documents and latest issue dates” as presented in document TGP/0/11 Draft 1, in conjunction with the adoption of the revised TGP documents above.

Program for the development of TGP documents

33. The CAJ approved the program for the development of TGP documents, as set out in the Appendix of the Annex to document CAJ/76/2.

Variety denominations

34. The CAJ considered documents CAJ/76/6 and CAJ/76/6 Add. The CAJ noted that document CAJ/76/6 Add. contained the conclusions at the sixth meeting of the Working Group on Variety Denominations (WG-DEN), held in Geneva, on October 29, 2019.

35. The CAJ noted the modifications to document UPOV/INF/12/4, as presented in document UPOV/EXN/DEN/1 Draft 2 “Explanatory Notes on Variety Denominations under the UPOV Convention” with the following amendments:

“Section 2.3.1 (d): to delete the following example of suitable denomination:

‘Prunus ‘Sato-zakura’ (‘Zakura’ is the Japanese word for flowering cherries, rather than a name for the whole genus);

“Section 2.3.3 (a): to read as follows:

‘A difference of only one letter or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety. However, the following cases are examples of only one letter or one number difference that may be considered not to be liable to mislead or cause confusion: [...];

“Section 2.3.3 (d): to amend the text in Spanish from ‘puede’ to ‘podría’;

“Section 2.3.4 (b): to read as follows:

‘A word format, pattern or combination may become associated with a breeder by custom and practice. However, to become associated with a breeder, it would be necessary to include a common word, prefix or suffix. In such cases, the authority may consider that the use of that word format, pattern or combination for denominations of varieties by another breeder may mislead or cause confusion concerning the identity of the breeder;

‘Examples of unsuitable denominations: ‘ABC red’ proposed by a breeder (Breeder 2) when ‘ABC velvet’, ‘ABC star’ and ‘ABC green’ are registered by another breeder (Breeder 1).’

“Section 4 (a): to amend the text in Spanish from ‘se insta’ to ‘se alienta’”.

36. The CAJ noted that the WG-DEN had requested the Office of the Union to clarify the following wording:

“Section 5.3 (a):

‘it does not conform to the provisions in paragraphs (2) (for example, the proposed denomination is not different from the denomination of an existing variety of the same plant species or of a closely related species in its territory) and (4) (for example, the proposed denomination is identical to a trademark registered for identical goods);’

37. The CAJ noted the request of the Delegation of the European Union to consider a change in Section 2.3.3.(a) (i) of the “visual and phonetic” to “visual or phonetic” and to introduce an additional component for “concept”. The Office of the Union reported that those proposals had been considered by the WG-DEN and had not been retained and that the proposals would result in inconsistencies without other amendments.

38. The CAJ agreed that the Office of the Union should invite members and observers to make written comments by correspondence on document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” concerning the matters in paragraphs 36 and 37. The Office of the Union, based on the written comments received by correspondence, would prepare a draft of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” for consideration at the seventy-seventh session of the CAJ, to be held on October 28, 2020.

39. The CAJ noted that the CAJ at its seventy-seventh session, and the Council, at its fifty-fourth ordinary session, to be held on October 30, 2020, would be invited to consider a revision of document UPOV/EXN/DEN/1 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as provided in paragraph 37.

40. The CAJ noted the developments reported in document CAJ/76/6 Add. concerning “UPOV denomination similarity search tool”, “Expansion of the content of the PLUTO database”, and plans for the introduction of a unique identifier for variety records in the PLUTO database.

41. With regard to the inclusion of other varieties (new data) in the PLUTO database, the CAJ noted the proposals for additional data to be included in the PLUTO database and agreed with the proposal to add common names in other languages to the PLUTO database.

42. The CAJ noted that the TC was considering how to address matters concerning variety types for DUS testing purposes and agreed that developments in the TC should be reported to the CAJ.

43. The CAJ noted that there was no need for further meetings of the WG-DEN.

UPOV information databases

UPOV information databases

44. The CAJ considered the relevant items of document CAJ/76/2 and documents CAJ/76/7 and CAJ/76/7 Add.

UPOV Code System

45. The CAJ noted that 171 new UPOV codes had been created in 2019, to August 6, 2019, and a total of 9,012 UPOV codes are included in the GENIE database.

PLUTO database

46. The CAJ approved the revision of Section 3.1.3 of the “Program for improvements to the PLUTO database” concerning the character set for data, as provided in Annex I to document CAJ/76/7.

47. The CAJ noted the summary of contributions to the PLUTO database from 2015 to 2019 and the current situation of members of the Union on data contribution, as presented in Annex II to document CAJ/76/7.

48. The CAJ noted that the Consultative Committee, at its ninety-sixth session, to be held in Geneva on October 31, 2019, would be invited to agree to discontinue the arrangement between UPOV and WIPO concerning the UPOV Plant Variety Database (UPOV-WIPO arrangement) as soon as the knowledge transfer and rationalization of the PLUTO database data management has been completed to the satisfaction of the Office of the Union.

Exchange and use of software and equipment

49. The CAJ considered documents CAJ/76/8 and UPOV/INF/22/6 Draft 1.

50. The CAJ noted that no new information had been received from members of the Union in response to Circular E 19/045 inviting them to provide or update information regarding the use of the software included in document UPOV/INF/16.

51. The CAJ noted that the information in documents UPOV/INF/16 and UPOV/INF/22 had been made available in a searchable format on the UPOV website.

52. The CAJ noted that there were no changes to UPOV/INF/22/6 Draft 1 introduced by the TC at its fifty-fifth session, as provided in document CAJ/76/2. The CAJ approved the revision of document UPOV/INF/22/5 concerning software and equipment used by members of the Union, as presented in document UPOV/INF/22/6 Draft 1.

53. The CAJ noted that the Council, at its fifty-third ordinary session, to be held on November 1, 2019, would be invited to consider document UPOV/INF/22/6 Draft 1 concerning software and equipment used by members of the Union.

Matters for information:

54. The Chair informed the CAJ of the following documents under item 11 “Matters for information”, which were posted as documents for information on the CAJ/76 webpage:

- “(a) UPOV PRISMA (document CAJ/76/INF/2)
- “(b) Molecular techniques (document CAJ/76/INF/3)
- “(c) Minimum distances (document CAJ/76/INF/4)”

Program for the seventy-seventh session

55. The CAJ noted that the Office of the Union had received a number of requests for clarification concerning the novelty of parent lines in relation to exploitation of the hybrid. The CAJ agreed that the Office of the Union should send a survey to explore the status of that matter in members of the Union. Based on the replies to the survey, the Office of the Union would prepare a document providing information from the survey and, if appropriate, proposals to explore the development of guidance on that topic.

56. The CAJ agreed that the Office of the Union should identify UPOV information material where references to UPOV PRISMA would be relevant (e.g. document TGP/5 Section 2 “UPOV Model Form for the Application for Plant Breeders’ Rights” and corresponding update of document UPOV/INF/6 “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention”) and make proposals for revision accordingly.

57. The CAJ agreed the following program for its seventy-seventh session to be held on October 28, 2020:

1. Opening of the session
2. Adoption of the agenda
3. Report by the Vice Secretary-General on developments in UPOV
4. Report on developments in the Technical Committee
5. TGP documents
6. Development of information materials concerning the UPOV Convention
7. Essentially Derived Varieties
8. Harvested Material
9. Novelty of parent lines with regard to the exploitation of the hybrid variety

10. Reference to UPOV PRISMA in relevant UPOV guidance
11. Variety denominations
12. UPOV information databases
13. Exchange and use of software and equipment
14. Matters for information:
 - (a) UPOV PRISMA
 - (b) Molecular techniques
15. Program for the seventy-eighth session
16. Adoption of the report on the conclusions (if time permits)
17. Closing of the session

UPOV Medal

58. In recognition of his contribution as Chair of the Administrative and Legal Committee of UPOV, the Secretary-General awarded a UPOV Silver Medal to Mr. Parker (CA).

59. *This report was adopted at the close of its session, on October 30, 2019.*

[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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