

**Administrative and Legal Committee**

CAJ/77/10.

**Seventy-Seventh Session  
Geneva, October 28, 2020****Original:** English  
**Date:** October 28, 2020

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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-seventh session via electronic means on October 28, 2020. The list of participants is reproduced in the Annex to this report.
2. The session was opened by Mr. Patrick Ngwediagi (United Republic of Tanzania), Chair of the CAJ, who joined the meeting by electronic means. The Chair welcomed the participants and the new Secretary-General, Mr. Daren Tang.
3. In order to ensure the smooth running of the CAJ in relation to any connectivity or technical issues, and in accordance with Rule 7(5) of the Rules of Procedure, Mr. Ngwediagi proposed that the CAJ elect an *Ad Hoc* Chair, who would be in a position to chair the CAJ session from Geneva.
4. The CAJ agreed to elect Mr. Martin Ekvad (European Union) as *Ad Hoc* Chair.
5. Mr. Daren Tang, Secretary-General of UPOV, welcomed the participants to the first virtual meeting of the CAJ and thanked participants for their cooperation and support in the approach taken for the UPOV sessions in 2020, namely virtual meetings, combined with consideration of documents by correspondence. He noted that the UPOV Convention was the basis for the internationally harmonized plant variety protection system that had delivered enormous benefits for members of the Union. The Secretary-General recognized that an important part of that success was the work that has been done in the CAJ and he was grateful for the CAJ's expertise and commitment. He highlighted the following important issues before the CAJ. He noted that the concept of Essentially Derived Varieties (EDVs) was introduced in the 1991 Act of the UPOV Convention with the aim of providing an effective incentive for plant breeding that would maximize progress in the development of new, improved varieties for the benefit of society. In particular, he highlighted the importance of deciding to establish a Working Group on Essentially Derived Varieties in order to respond to the issues that have been raised about the current guidance in UPOV. The Secretary-General took that opportunity to wish success to the Working Group, which would hold its first meeting by virtual means on December 8, 2020. He recalled that the scope of the plant breeder's right was an essential aspect of the UPOV system and the scope of the right in relation to harvested material was a particularly important element. He welcomed the interest from members of the Union and observers for an exchange of information on matters concerning harvested material and unauthorized use of propagating material. He looked forward to future work in relation to that important topic for the exercise and enforcement of breeders' rights. In relation to variety denominations, the Secretary-General acknowledged that the aim of UPOV guidance was to help to ensure that, as far as possible, protected varieties were designated in all members of the Union by the same variety denomination – that being a key objective of the UPOV Convention. He understood that important progress had been made and there just remained one aspect where further work was needed to achieve an agreed document. He hoped that it would be possible to make progress on that aspect in the coming months so that the CAJ would be able to agree a document in 2021. The Secretary-General noted that the CAJ was considering the issue of novelty specifically in relation to parent lines and the commercialization of hybrids. It was always challenging to agree on common guidance where different members of the Union have different perspectives on a concept but he was sure that the Office of the Union would explore all avenues to achieve a positive outcome. The Secretary-General concluded by wishing the CAJ good deliberations and good progress on the work program of the CAJ. He conveyed special thanks to the Chair of the CAJ and also to the *Ad Hoc* Chair for their combined efforts to ensure the smooth running of the CAJ session.

Adoption of the agenda

6. The CAJ adopted the draft agenda, as proposed in document CAJ/77/1 Rev..

Outcome of the consideration of documents by correspondence (document CAJ/77/9)

7. The CAJ considered document CAJ/77/9.

8. The CAJ noted the information on outcome of the procedure for consideration of documents by correspondence, as reported in document CAJ/77/9.

Report by the Vice Secretary-General on developments in UPOV (document CAJ/77/INF/2 and video)

9. The CAJ noted that a pre-recorded video presentation in English, with subtitles in English, French, German and Spanish, had been made available on the CAJ/77 webpage. A copy of the presentation was provided in document CAJ/77/INF/2.

10. The CAJ also noted that, since the posting of the video presentation, Mr. Amit Sharma had been appointed as IT Support Officer on a temporary appointment, starting on November 1, 2020.

Report on developments in the Technical Committee (document CAJ/77/2)

11. The CAJ noted the information in document CAJ/77/2 and in the oral report by Mr. Nik Hulse, Chair of the Technical Committee (TC).

12. The CAJ noted that the TC, at its fifty-fifth session, had endorsed the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1.

13. The CAJ noted the measures agreed by TC to overcome barriers that prevented international cooperation in DUS examination.

14. In response to the request of the TC, the CAJ requested the Office of the Union to prepare a document for consideration, at its seventy-eighth session, concerning the following policy or legal barriers that the TC had identified as preventing international cooperation in DUS examination and possible measures to address those barriers:

- (i) Requirement of formal agreement for cooperation;
- (ii) Obligation for DUS examination to be conducted by the authority granting the rights;
- (iii) Non-acceptance of breeder-based DUS test reports;
- (iv) Wish from breeders to use (or not) existing DUS reports;

15. In response to the request of the TC, the CAJ further requested the Office of the Union to prepare a document for consideration, at its seventy-eighth session, with proposals for developing guidance to encourage members of the Union, on a voluntary basis, to take-over DUS test reports when the applicants could not submit plant material due to phytosanitary or other related issues where acceptable to the members of the Union concerned.

Development of information materials concerning the UPOV Convention (documents CAJ/77/3 Rev. and CAJ/77/9)

16. The CAJ noted that document CAJ/77/3 Rev. had been considered by correspondence.

17. The CAJ noted that the decisions in document CAJ/77/3 Rev. had been taken and the following documents had been approved by the CAJ by correspondence, as provided in document CAJ/77/9, paragraphs 14 to 33.

*Information Materials*

Document UPOV/INF/16:	Exchangeable Software (Revision) (document UPOV/INF/16/9 Draft 2)
Document UPOV/INF/22:	Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/7 Draft 1)
Document UPOV/INF/23:	Guide to the UPOV Code System (document UPOV/INF/23/1 Draft 1)

*TGP Documents*

Document TGP/5:	Experience and Cooperation in DUS Testing, Section 6: UPOV Report on Technical Examination and UPOV Variety Description (Revision) (document TGP/5: Section 6/3 Draft 1)
Document TGP/7:	Development of Test Guidelines (Revision) (document TGP/7/8 Draft 1)
Document TGP/14:	Glossary of Terms Used in UPOV Documents (Revision) (document TGP/14/5 Draft 1)
Document TGP/15:	Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) (Revision) (document TGP/15/3 Draft 1)

18. The CAJ noted the report from the Office of the Union that the information materials and TGP documents above had been adopted by the Council on October 25, 2020, in the procedure by correspondence (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 16 to 24).

*Explanatory Notes*

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (documents CAJ/77/3 Rev., CAJ/77/9 and UPOV/EXN/DEN/1 Draft 4)

19. The CAJ considered documents CAJ/77/3 Rev., CAJ/77/9 "Outcome of consideration of documents by correspondence" and document UPOV/EXN/DEN/1 Draft 4.

20. The CAJ noted the replies received from members of the Union in response to Circular E-20/017, reproduced in Annex I to document CAJ/77/3 Rev..

21. The CAJ agreed with the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1 (see paragraph 25 of document CAJ/77/3 Rev.).

22. The CAJ noted the comments received on document UPOV/EXN/DEN/1 Draft 4 in response to Circular E 20/120 of August 21, 2020, as presented in Annex I to document CAJ/77/9.

23. The CAJ, on the basis of the comments in Annex I to document CAJ/77/9 and the expressions of support at its seventy-seventh session, invited the Office of the Union to prepare a draft of document UPOV/EXN/DEN "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/EXN/DEN/1 Draft 5), for comments by the CAJ by correspondence; and based on the comments received, the Office of the Union to prepare a new draft of document UPOV/EXN/DEN for consideration at the seventy-eighth session of the CAJ, to be held in 2021.

Essentially Derived Varieties (documents CAJ/77/4 Rev. and CAJ/77/9)

24. The CAJ noted that document CAJ/77/4 Rev. had been considered by correspondence.

25. The CAJ noted that the decisions in document CAJ/77/4 Rev. had been taken by the CAJ, as provided in document CAJ/77/9, paragraphs 36 to 40.

Harvested Material (documents CAJ/77/5 and CAJ/77/9)

26. The CAJ noted that document CAJ/77/5 had been considered by correspondence.
27. The CAJ noted that the decisions in document CAJ/77/5 had been taken by the CAJ by correspondence, as provided in document CAJ/77/9, paragraphs 41 to 43.

*Proposals for next steps*

28. The CAJ considered document CAJ/77/9.
29. The CAJ noted the comments provided by Japan, Euroseeds and the joint comments of the International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOFORA) and the International Seed Federation (ISF) in response to Circular E-20/120, of August 21, 2020, as reported in document CAJ/77/9, paragraphs 44 to 47.
30. The CAJ agreed to propose to the Council to organize a seminar in the first half of 2021, to exchange information on matters concerning harvested material and unauthorized use of propagating material.

Novelty of parent lines with regard to the exploitation of the hybrid variety (documents CAJ/77/6 and CAJ/77/9)

31. The CAJ considered documents CAJ/77/6 and CAJ/77/9.
32. The CAJ noted the replies to the survey to explore the status of the novelty of parent lines in relation to exploitation of the hybrid in members of the Union, as presented in document CAJ/77/6 and its Annexes.
33. The CAJ invited members of the Union, Euroseeds, ISF, AFSTA, APSA and SAA to make presentations on the novelty of parent lines with regard to the exploitation of the hybrid variety at the seventy-eighth session of the CAJ, with a view to inviting the Office of the Union to seek to prepare common guidance on that matter for consideration by the CAJ at its seventy-ninth session, on the basis of the presentations and discussions at the seventy-eighth session of the CAJ.

PLUTO Plant Variety Database (document CAJ/77/8)

34. The CAJ considered document CAJ/77/8.
35. The Delegation of the European Union recalled the importance of data quality in the PLUTO database and offered to provide support in ensuring that the data in PLUTO was of high quality. The Office of the Union explained that it was putting in place data quality checks to improve the quality of data in PLUTO, while acknowledging that it would be an ongoing process with the data contributors to reach the best results. It welcomed the offer of support by the European Union and expressed its thanks to the Community Plant Variety Office of the European Union (CPVO) for the support that it had already provided and had offered to provide for the future.
36. The CAJ noted that a webinar (in English) was held on June 30, 2020, to provide an overview of changes to the PLUTO database and to provide users with an opportunity to provide feedback on the proposed design and new features.
37. The CAJ noted that the new design of the PLUTO database would be based on the feedback received from the June 30 webinar and subsequent survey.
38. The CAJ noted that the premium service was planned to be made available for a limited time after the launch of the new PLUTO design in order to test the new PLUTO design and to provide an opportunity for users to assess whether to use the free service or premium service.
39. The CAJ noted that webinars would be organized to demonstrate the new PLUTO design and features.
40. The CAJ noted the plans to improve the quality of data through new data quality checks and by providing assistance that would enable members of the Union to start to provide data for the first time or to provide data more frequently.

41. The CAJ noted the series of webinars and individual virtual meetings, as required, with data contributors on the new arrangements for data contributors.
42. The CAJ noted the summary of contributions to the PLUTO database from 2015 to 2020, as presented in Annex II of document CAJ/77/8.
43. The CAJ noted the presentation on the new PLUTO database design and features and the planned timetable for its launch, a copy of which would be provided in document CAJ/77/8.Add. "Addendum to PLUTO Plant Variety Database".

UPOV denomination similarity search tool (documents CAJ/77/7 and CAJ/77/9)

44. The CAJ noted that document CAJ/77/7 had been considered by correspondence. The CAJ noted that decisions on document CAJ/77/7 had been taken by the CAJ, as provided in document CAJ/77/9, paragraphs 51 to 55.

Matters for information:

45. The Chair informed the CAJ of the following documents under item 12 "Matters for information", which were posted as documents for information on the CAJ/77 webpage:

"(a) UPOV information databases (document CAJ/77/INF/3)

"(b) UPOV PRISMA (document CAJ/77/INF/4)

"(c) Molecular techniques (document CAJ/77/INF/5)"

Program for the seventy-eighth session

46. The CAJ agreed the following program for its seventy-eighth session to be held on October 27, 2021:
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. Development of guidance and information materials
    - (a) Information documents
    - (b) Explanatory Notes
      - UPOV/EXN/DEN Explanatory Notes on Variety Denominations under the UPOV Convention
    - (c) TGP documents
  6. Essentially Derived Varieties
  7. Harvested Material
  8. Novelty of parent lines with regard to the exploitation of the hybrid variety
  9. PLUTO Plant Variety Database
  10. UPOV denomination similarity search tool
  11. Measures to enhance cooperation in examination

12. Possible guidance on take-over of DUS reports when the applicants cannot submit plant material
13. Matters for information\*:
  - (a) UPOV information databases
  - (b) UPOV PRISMA
  - (c) Molecular techniques
14. Program for the seventy-ninth session
15. Adoption of the report (if time permits)
16. Closing of the session

*47. This report was adopted at the close of its session, on October 28, 2020.*

[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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