

Administrative and Legal Committee**CAJ/79/11****Seventy-Ninth Session
Geneva, October 26, 2022****Original:** English
Date: October 26, 2022

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-ninth session in Geneva on October 26, 2022, under the chairmanship of Mr. Patrick Ngwediagi (United Republic of Tanzania).
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 that Ghana had deposited its instrument of accession to the 1991 Act of the UPOV Convention on November 3, 2021, and on December 3, 2021, had become bound by the 1991 Act, becoming the 78th member of the Union.
4. The Chair reported the granting of observer status to Guyana in the CAJ.
5. The Chair reported that an expert of the International Association for the Protection of Intellectual Property (AIPPI) has been issued with an ad hoc invitation to attend the seventy-ninth session of the CAJ.

Adoption of the agenda

6. The CAJ adopted the draft agenda, as proposed in document CAJ/79/1 Rev., with the inclusion of document CAJ/79/7 Add. under agenda item 12.

Report by the Vice Secretary-General on developments in UPOV

7. The CAJ noted that a video presentation in English, with subtitles in English, French, German and Spanish, had been made available on the CAJ/79 webpage in advance of the CAJ session. A copy of the presentation was provided in document CAJ/79/INF/2.
8. The Vice Secretary-General reported that Mr. Kees van Ettehoven, a national of the Netherlands, had started working for UPOV as Technical Expert in October 2022 and that Ms. Laurianne Nicolo had started working at UPOV under an agency contract in February 2022.

Report on developments in the Technical Committee

9. The CAJ noted the information in document CAJ/79/2 and in the oral report made by Mr. Nik Hulse, Chair of the Technical Committee (TC).

Development of guidance and information materials (document CAJ/79/3)

10. The CAJ considered document CAJ/79/3.

Information Materials

Document UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/11 Draft 1)

11. The CAJ considered document UPOV/INF/16/11 Draft 1.

12. The CAJ noted that, the TC, at its fifty-eighth session, held on October 24 and 25, 2022, had approved the inclusion of the PATHOSTAT application in document UPOV/INF/16 (see document CAJ/79/2 “Report on developments in the Technical Committee”, paragraphs 7 and 8).

(d) DUS trial design and data analysis

Date added	Program name	Programming language	Function (brief summary)	Source & contact details	Condition for supply	UPOV member(s) using the software	Application by user(s)
	PATHOSTAT	Excel	Decision support tool to integrate statistics for the analysis of pest resistance test results for vegetable species	France: Ms. Sophie Perrot e-mail: sophie.perrot@geves.fr and PATHOSTAT (geves.fr)	Available as a web service / not for download	FR	Vegetable species

13. The CAJ approved the proposed revision of document UPOV/INF/16 “Exchangeable Software” on the basis of document UPOV/INF/16/11 Draft 1, with the inclusion of the PATHOSTAT application.

14. The CAJ agreed that the Council be invited to adopt, at its fifty-sixth ordinary session, the proposed revisions to document UPOV/INF/16 “Exchangeable Software” as presented in document UPOV/INF/16/11 Draft 1, with the inclusion of the PATHOSTAT application.

Document UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/9 Draft 1)

15. The CAJ considered document UPOV/INF/22/9 Draft 1.

16. The CAJ approved the proposed revision of document UPOV/INF/22 “Software and Equipment Used by Members of the Union” on the basis of document UPOV/INF/22/9 Draft 1.

17. The CAJ agreed that the Council be invited to consider the proposed revisions to document UPOV/INF/22 “Software and Equipment Used by Members of the Union” as presented in document UPOV/INF/22/9 Draft 1 for adoption at its fifty-sixth ordinary session.

Explanatory Notes:

Document UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention

18. The CAJ considered document UPOV/EXN/DEN as presented in Annex I to document CAJ/79/3.

19. The CAJ approved the proposed revision of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention”, as presented in document CAJ/79/3, Annex I.

20. The CAJ agreed that the Council be invited to consider the proposed revision of document UPOV/EXN/DEN/1, as presented in Annex I to document CAJ/79/3, for adoption at its fifty-sixth ordinary session.

Explanatory Notes on Examination of the Application under the UPOV Convention

21. The CAJ noted that matters concerning the development of “Explanatory Notes on Examination of the Application under the UPOV Convention” were considered in document CAJ/79/7 “Measures to enhance cooperation in examination”.

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 6/4 Draft 1)

22. The CAJ considered document TGP/5: Section 6/4 Draft 1.

23. The CAJ approved the proposed revision of document TGP/5 “Experience and Cooperation in DUS Testing”, Section 6/3 “UPOV Report on Technical Examination and UPOV Variety Description”, on the basis of document TGP/5: Section 6/4 Draft 1.

24. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/5 “Experience and Cooperation in DUS Testing”, Section 6/3 “UPOV Report on Technical Examination and UPOV Variety Description” as presented in document TGP/5: Section 6/4 Draft 1 for adoption at its fifty-sixth ordinary session.

Document TGP/8 Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision) (document CAJ/79/3, Annex II)

25. The CAJ considered document CAJ/79/3.

26. The CAJ approved the proposed revision of document TGP/8/4 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”, as presented in Annex II to document CAJ/79/3.

27. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/8/4, as presented in Annex II to document CAJ/79/3, for adoption at its fifty-sixth ordinary session.

Document TGP/12 Guidance on Certain Physiological Characteristics (Revision) (document CAJ/79/3, Annex III)

28. The CAJ considered document CAJ/79/3.

29. The CAJ approved the proposed revision of document TGP/12/2 “Guidance on certain physiological characteristics”, as presented in Annex III.

30. The CAJ agreed that the Council be invited to consider the proposed revisions to document TGP/12/2 “Guidance on certain physiological characteristics” as presented in Annex II to document CAJ/79/3, for adoption at its fifty-sixth ordinary session.

31. The CAJ noted the intervention by Mr. Edgar Krieger, Secretary-General of the International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), on behalf of the breeding sector, concerning developments in the revision process of the Explanatory Notes on Essentially Derived Varieties. The Chair of the CAJ explained that the matter would be considered by the Consultative Committee, at its ninety-ninth session, to be held on October 27, 2022, and that the recommendations by the Consultative Committee would be reported to the Council, at its fifty-sixth ordinary session, to be held on October 28, 2022, in document C/56/13 “Report by the President on the work of the ninety-ninth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”.

Report on the Working Group on Harvested Material and Unauthorized use of Propagating Material (WG-HRV) (document CAJ/79/8)

32. The CAJ considered document CAJ/79/8.

33. The Delegation of Japan recalled the use of different words “use” and “act” within Article 14 of the 1991 Act of the UPOV Convention and emphasized that the matter be considered at the WG-HRV. It referred to the Diplomatic Conference and noted that the current explanatory notes did not reflect the conclusions at the Diplomatic Conference and made it hard to exercise the breeder’s right in relation to harvested material.

34. The Delegation of the European Union, speaking on behalf of the European Union and its Member States expressed solidarity with Ukraine and condemned the Russian aggression.

35. The Delegation of the United Kingdom expressed its support to the intervention by the Delegation of the European Union and expressed its concerns on the ongoing situation in Ukraine.
36. The Delegation of the Russian Federation observed that UPOV was not an appropriate place for political discussions and emphasized the need to respect the mandate of the CAJ.
37. The CAJ expressed support for the ongoing work of the WG-HRV, which included the need for clarification on the notions of propagating and harvested materials and exhaustion of the breeder's right, the scope of provisional protection, the notion of "unauthorized use" and "reasonable opportunity" under Article 14(2) and the role of contracts and plant breeders' rights, including that the authorization of the breeder might be subject to conditions and limitations.
38. The CAJ noted the report on the Working Group on Harvested Material and Unauthorized use of Propagating Material (WG-HRV).

Revision of the "Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention" (document CAJ/79/9)

39. The CAJ considered document CAJ/79/9.
40. The CAJ noted the developments on possible guidance concerning smallholder farmers in relation to private and non-commercial use, as reported in document CAJ/79/9.
41. The Delegation of Japan considered that "selling" was outside the scope of the exceptions to the breeder's right.
42. The representative of Seed Association of the Americas (SAA) expressed its support for the intervention by the Delegation of Japan and considered that "exchange" was also outside the scope of the exceptions to the breeder's right.
43. The CAJ noted that the Consultative Committee would consider at its ninety-ninth session to be held on October 27, 2022, the next steps for the Working Group to develop guidance concerning smallholder farmers in relation to private and non-commercial use (WG-SHF). The CAJ also noted that the conclusions of the Consultative Committee concerning WG-SHF would be reported to the Council, at its fifty-sixth ordinary session, to be held on October 28, 2022, under item "Report by the President on the work of the ninety-ninth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee (document C/56/13)".

Novelty of parent lines with regard to the exploitation of the hybrid variety (document CAJ/79/4)

44. The CAJ considered document CAJ/79/4 and the joint presentation made by the International Seed Federation (ISF), CropLife International, SAA, Asia and Pacific Seed Association (APSA), African Seed Trade Association (AFSTA) and Euroseeds on the novelty of parent lines with regard to the exploitation of the hybrid variety.
45. The CAJ agreed with the proposal for ISF, CropLife International, SAA, APSA, AFSTA and Euroseeds to conduct a survey on commercial practices relating to the impact of commercial exploitation of the hybrid on the novelty of parent lines and to provide to the Office of the Union the results of the survey two months in advance of the eightieth session of the CAJ.
46. The CAJ agreed to include an item on "Novelty of parent lines with regard to the exploitation of the hybrid variety", at its eightieth session, to consider the results of the survey and any next steps for the development of possible guidance on the novelty of parent lines with regard to the exploitation of the hybrid variety.

Meetings on the Development of an Electronic Application Form (EAF) (UPOV PRISMA) (document CAJ/79/10)

47. The CAJ considered document CAJ/79/10.

48. The CAJ noted the developments concerning UPOV PRISMA.

49. The CAJ approved the proposal to expand the scope of the EAF meetings to cover the reporting of e-PVP developments and to change the name of the meetings to "Meeting on Electronic Applications".

PLUTO Plant Variety Database (document CAJ/79/5)

50. The CAJ considered document CAJ/79/5.

51. The CAJ noted the use of the PLUTO database (Version 2.0).

52. The CAJ noted the summary of contributions to the PLUTO database from 2017 to 2022, as set out in Annex II to document CAJ/79/5.

53. The CAJ noted the information concerning the development of PLUTO Version 2.1, which was planned to be deployed by December 2022.

UPOV denomination similarity search tool (documents CAJ/79/6)

54. The CAJ considered document CAJ/79/6.

55. The CAJ noted that there have been no developments concerning a UPOV denomination similarity search functionality.

56. The CAJ noted any future developments starting from 2023 concerning a UPOV denomination similarity search tool would be included in the document reporting on developments concerning the PLUTO database.

Measures to enhance cooperation in examination (documents CAJ/79/7 and CAJ/79/7 Add.)

57. The CAJ considered documents CAJ/79/7 and CAJ/79/7 Add..

58. The CAJ approved the proposed questions for the survey of members of the Union for information on their policies or legal barriers that could prevent international cooperation in DUS examination, with the following additional question at the end: "Are there developments that would increase the acceptance of DUS reports in the future?"

59. The CAJ noted the replies to the request for breeders' organizations to clarify the issues concerning the wish of breeders to use, or not to use, existing DUS reports, as provided in document CAJ/79/7 Add. and agreed to integrate relevant matters with the information from the survey of members of the Union for consideration by the CAJ, at its eightieth session.

60. The CAJ agreed to the postponement of the development of explanatory notes of Article 12 of the UPOV Convention ("Examination of the Application") until information from the survey of members of the Union and from breeders' organizations was available and considered by the CAJ.

Matters for information:

61. The CAJ noted the following documents under item 13 "Matters for information":

(a) UPOV information databases (document CAJ/79/INF/3)

(b) Molecular techniques (document CAJ/79/INF/4)

Program for the eightieth session

62. The CAJ agreed the following program for its eightieth session to be held on October 25, 2023:
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
 - (c) TGP documents
 6. Report on the Working Group on Harvested Material and Unauthorized use of Propagating Material (WG-HRV)
 7. Revision of the “Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention”
 8. Novelty of parent lines with regard to the exploitation of the hybrid variety
 9. Meetings on Electronic Applications
 10. PLUTO Plant Variety Database
 11. Measures to enhance cooperation in examination
 12. Matters for information:
 - (a) UPOV information databases
 - (b) Molecular techniques
 13. Program for the eighty-first session
 14. Adoption of the report (if time permits)
 15. Closing of the session

UPOV Medal

63. In recognition of his contribution as Chair of the Administrative and Legal Committee (CAJ), the Vice-Secretary-General awarded a UPOV Silver Medal to Mr. Patrick Ngwediagi (United Republic of Tanzania).

64. This report was adopted by the CAJ at the close of its session, on October 26, 2022.

[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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