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| INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS | | |
| Geneva | | |

Technical Committee

Fiftieth Session  
Geneva, April 7 to 9, 2014

Report on developments in UPOV including relevant matters discussed   
in the last sessions of the Administrative and Legal Committee,   
the Consultative Committee and the Council

prepared by the Office of the Union  
  
Disclaimer: this document does not represent UPOV policies or guidance

The purpose of this document is to report on developments in UPOV since the forty-ninth session of the Technical Committee that are not presented under specific items on the agenda of the fiftieth session of the Technical Committee, including relevant matters discussed in the last sessions of the Administrative and Legal Committee, the Consultative Committee and the Council.

This document also contains matters for consideration by the Technical Committee in relation to: guidance on variety descriptions; matters raised by the International Seed Federation (ISF); and the development of the web-based TG Template.

A presentation summarizing the items in this document will be presented to the Technical Committee at its fiftieth session, a copy of which (in English only) is attached as the Annex to this document.

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# **I. Matters for Information**

# Membership

## Members of the Union

On January 31, 2014, the situation of the members of the Union (total 71) in relation to the Convention and its various Acts was as follows:

(a) Belgium was bound by the 1961 Convention as amended by the 1972 Act;

(b) 19 members were bound by the 1978 Act, namely: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Ecuador, Italy, Kenya, Mexico, New Zealand, Nicaragua, Norway, Paraguay, Portugal, South Africa, Trinidad and Tobago and Uruguay;

(c) 51 members were bound by the 1991 Act, namely: Albania, Australia, Austria, Azerbaijan, Belarus, Bulgaria, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Estonia, European Union, France, Finland, Georgia, Germany, Hungary, Iceland, Ireland, Israel, Japan, Jordan, Kyrgyzstan, Latvia, Lithuania, Morocco, Netherlands, Oman, Panama, Peru, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uzbekistan and Viet Nam.

## Examination of Laws

### Zanzibar

At its thirtieth extraordinary session held in Geneva on March 22, 2013, the Council examined the conformity of the Plant Breeders’ Rights Bill for Zanzibar with the 1991 Act of the UPOV Convention. The Council decided, subject to the incorporation in the Plant Breeders’ Rights Bill for Zanzibar of certain modifications and with no additional changes, to take a positive decision on the conformity of the Plant Breeders’ Rights Bill for Zanzibar with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants. The Council also decided to inform the Government of the United Republic of Tanzania that, subject to the modifications recommended by the Council being incorporated in the Plant Breeders’ Rights Bill for Zanzibar and the adoption of the Bill with no additional changes, the instrument of accession of the United Republic of Tanzania could be deposited (see document C(Extr.)/30/8 “Report”, paragraph 13).

### Bosnia and Herzegovina

At its forty-seventh ordinary session, held in Geneva on October 24, 2013, the Council took a positive decision on the conformity of the Law for the Protection of New Varieties of Plants of Bosnia and Herzegovina with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Bosnia and Herzegovina to deposit its instrument of accession to the 1991 Act (see document C/47/19 “Report on the Decisions”, paragraphs 8 to 11).

# Statistics on Plant Variety Protection

## List of the taxa protected by the members of the Union

(see document C/47/6 “List of the Taxa Protected by the Members of the Union”)

As of October 16, 2013, a total of 56 members of the Union offered protection to all plant genera and species (53 in 2012), with 15 members of the Union offering protection to a limited number of plant genera and species.

## Plant variety protection statistics

(see document C/47/7 “Plant variety protection statistics for the period 2008-2012”)

In 2012, there was a 1.1 percent increase in the number of applications for plant variety protection (13,867 in 2012; 13,714 in 2011), representing a 0.7 percent decrease in the number of applications by residents (8,751 in 2012; 8,813 in 2011) and a 4.4 percent increase in the number of applications by non­residents (5,116 in 2012; 4,901 in 2011).

The number of titles granted decreased by 2.4 percent from 10,065 in 2011, to 9,822 in 2012.

A new record number of titles in force – 99,409 – was recorded in 2012, representing a 4.6 percent increase on figures for 2011 (95,041).

The Office of the Union will explore the possibility of providing information on statistics by crop type (e.g. agriculture, fruit, ornamental, vegetable and forest trees) in future versions of document C/xx/7.

## Cooperation in the examination of new plant varieties

(see document C/47/5 “Cooperation in examination”)

In 2012, the number of plant genera and species for which there were agreements between members of the Union for cooperation in the examination of distinctness, uniformity and stability totaled 1,997, compared to 1,991 in 2011.

At its forty-seventh ordinary session, the Council agreed to copy the circular concerning cooperation in examination, e.g. see C/xx/5, to the Technical Committee (TC) designated persons in order to ensure that the maximum amount of information could be collected (see document C/47/19 “Report on the Decisions”, paragraph 20).

# Financial situation

## Program and Budget of the Union for the 2014-2015 Biennium

At its forty-seventh ordinary session, held in Geneva on October 24, 2013, the Council approved the Program and Budget for the 2014-2015 Biennium, as presented in the Annex to document C/47/4 Rev “Program and Budget for the 2014-2015 Biennium” (see document C/47/19 “Report on the Decisions”, paragraphs 33 and 34).

The maximum ceiling of expenditure in the regular budget for the 2014-2015 Biennium is 6,794,000 Swiss francs (6,798,000 Swiss francs for the 2012-2013 Biennium) and is based on no change to the value of the contribution unit (53,641 Swiss francs) and no change to the total number of posts (11) for the Office of the Union.

## Reserve Fund

Regulation 4.6 of document UPOV/INF/4/3 “Financial Regulations and Rules” states that: “[…] If after the closure of the financial period, the amount of the reserve fund exceeds 15 percent of the total income for the financial period, the amount in excess shall be reimbursed to the members of UPOV, unless otherwise decided by the Council. Any member of UPOV may request that the reimbursement attributed to it be deposited in a special account or trust fund specified by it.”

The Consultative Committee, at its eighty-sixth session, held in Geneva on October 23 and 24, 2013, recommended the creation of a special UPOV account that would be used to finance extra-budgetary projects agreed by the Council in a situation where the amount of the reserve fund exceeds 15 percent of the total income for the 2012­2013 Biennium. It was agreed that the account should be used for projects that would, in particular:

(i) support members of the Union, and in particular new members, in the operation of their plant variety protection systems;

(ii) extend over more than one biennium;

(iii) provide long-term benefits to members of the Union; and

(iv) be advanced more rapidly by extra-budgetary funds.

It was further agreed that projects to be considered under a special UPOV account would be presented for consideration by the Consultative Committee prior to submission to the Council for approval. In that regard, it was agreed that the Consultative Committee would have flexibility to recommend projects that took into account factors other than those identified in (i) to (iv) above.

# Chair of UPOV Bodies

At its forty-seventh ordinary session, held in Geneva on October 24, 2013, the Council elected, in each case for a term of three years ending with the fiftieth ordinary session of the Council, in 2016 (see document C/47/19 “Report on the Decisions”, paragraph 53):

(a) Mr. Martin Ekvad (European Union), Chair of the Administrative and Legal Committee;

(b) Mr. James M. Onsando (Kenya), Vice-Chair of the Administrative and Legal Committee;

(c) Mr. Alejandro F. Barrientos-Priego (Mexico), Chair of the Technical Committee; and

(d) Mr. Kees van Ettekoven (Netherlands), Vice-Chair of the Technical Committee.

# UPOV Collection

The following documents in the UPOV Collection have been adopted since the forty-ninth session of the Technical Committee, held in Geneva from March 18 to March 20, 2013:

## New adopted documents

### UPOV/INF document series

| **Document reference** | **Issue** | **Title** | **Issue date** |
| --- | --- | --- | --- |
| UPOV/INF-EXN | /5 | List of UPOV/INF-EXN Documents and Latest Issue Dates | October 24, 2013 |
| UPOV/INF/4 | /3 | Financial Regulations and Rules of UPOV | March 22, 2013 |
| UPOV/INF/6 | /3 | Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention | October 24, 2013 |
| UPOV/INF/15 | /2 | Guidance for members of UPOV on ongoing obligations and related notifications and on the provision of information to facilitate cooperation | March 22, 2013 |
| UPOV/INF/16 | /3 | Exchangeable Software | October 24, 2013 |

### Explanatory notes on the UPOV Convention

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| --- | --- | --- | --- |
| **Document reference** | **Issue** | **Title** | **Issue date** |
| UPOV/EXN/BRD | /1 | Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention | October 24, 2013 |
| UPOV/EXN/HRV | /1 | Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention | October 24, 2013 |

### TGP documents

| **Document reference** | **Issue** | **Title** | **Issue date** |
| --- | --- | --- | --- |
| TGP/0 | /6 | List of TGP Documents and Latest Issue Dates | October 24, 2013 |
| TGP/14 | /2 | Glossary of Terms Used in UPOV Documents | October 24, 2013 |
| Supplementary document to TGP/14 “Glossary of Terms Used in UPOV Documents” |
| TGP/15 | /1 | Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) | October 24, 2013 |

## Program for Development of Explanatory notes on the UPOV Convention

Subject to approval by the Administrative and Legal Committee (CAJ) at its sixty-ninth session, to be held on April 10, 2014, the CAJ-AG plans to consider the following items at its ninth session, to be held in October 2014:

* Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)
* Explanatory Notes on Propagation and Propagating Material under the UPOV Convention
* Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (Revision)
* Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (Revision)
* Explanatory Notes on Nullity of the Breeder's Right under the UPOV Convention (Revision)
* Explanatory Notes on Variety Denominations under the UPOV Convention (Revision)
* Explanatory Notes on Provisional Protection under the UPOV Convention (Revision)
* Matters concerning variety descriptions
* Possible alternative dispute settlement mechanisms for essentially derived varieties

## UPOV Lex

UPOV Lex contains the legislation of members of the Union that has been notified in accordance with the UPOV Convention, the UPOV Convention notifications concerning individual members of the Union (e.g. accessions, ratifications) and the text of the UPOV Convention and its Acts. UPOV Lex has been modified in order to include notifications by members of the Union on the plant genera and species for which plant variety protection is applicable in their territories (see document C/47/15 Rev. “Report by the President on the work of the eighty-sixth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”, paragraph 30).

# PUBLICATIONS, activities & training

## Communication strategy

The Consultative Committee approved a communication strategy, including answers to frequently asked questions (FAQs) that will be made available on the UPOV website (see also document TC/50/13 “Molecular techniques”, paragraphs 24 to 26).

## Trilogy Publication

The “Trilogy” is a publication combining the proceedings of the “UPOV Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership”, the “Symposium on Plant Breeding for the Future” and the “Symposium on the benefits of plant variety protection for farmers and growers”. An Executive Summary has also been produced.

The Trilogy is available at <http://www.upov.int/about/en/benefits_upov_system.html> and box sets of paper copies are available at the WIPO Information Center and on request.

## Seminar on Essentially Derived Varieties (EDVs)

On October 22, 2013, UPOV organized a seminar to consider technical and legal views on EDVs and the possible impact on breeding and agriculture, existing experience in relation to EDVs, and the possible role of future UPOV guidance on EDVs in cases before the courts.

A copy of the presentations and a video of the Seminar are available on the UPOV website at <http://www.upov.int/meetings/en/details.jsp?meeting_id=29782>.

## Distance Learning Courses

A first session of the DL­305 course “Examination of Applications for Plant Breeders’ Rights” (DL-305) in English will take place as follows:

Course dates:  March 31 to May 11, 2014

Final exam:  May 5 to 11, 2014

The first session of the DL-305 course has been made available only to officials of members of the Union that have successfully completed the DL-205 course “Introduction to the UPOV System of Plant Variety Protection Under the UPOV Convention” (DL-205) with an explanation that consideration will be given to the splitting of DL-305 into two separate courses in the future.

On the basis of the comments received during a trial run of the DL-305 course, the Consultative Committee at its eighty-seventh session, to be held in Geneva on April 11, 2014, will be invited to consider splitting the DL-305 course into two separate courses in the future. The aim of the split would be to enable participants to study the courses at different times, according to their expertise and experience, and would also provide courses with a similar study time to the DL­205 course (36 hours), instead of the 70 hours indicated for the single course. One course would cover the administration of plant breeders’ rights and the examination of novelty and denomination; the other course would cover the examination of distinctness, uniformity and stability (“DUS”). It would be possible to study one or both courses and the two courses would be run consecutively to allow those students wishing to follow both to do so; one immediately after the other.

The successful operation of UPOV distance learning courses relies on experts from members of the Union acting as tutors for students in Category 1: Officials of members of the Union. Therefore, an important factor for the frequency of distance learning courses is the availability of such tutors. In that regard, it is anticipated that the same tutors will be used for the DL-205 and DL-305 courses. Currently, the DL-205 course is run twice per year. In order to have sufficient tutoring capacity, at least in the first instance, it is proposed to replace one of the sessions of the DL-205 course with the DL-305 course(s). On that basis, the following program is proposed for distance learning courses in 2014-2015:

March 31 to May 11, 2014 DL-305 single course (English only)

May 5 to June 8, 2014 DL-205 (E, F, G, S)

October 6 to November 9, 2014 DL-205 (E, F, G, S)

February/March 2015 DL-305 single course (E, F, S) or DL-305-1 (E, F, S)

April/May 2015 DL-305-2 (E, F, S)

October/November 2015 DL-205 (E, F, G, S)

The German version of DL-305 would be launched in 2016.

# Developments of relevance to UPOV in other international fora

## International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

### ITPGRFA Platform for the Co­Development and Transfer of Technologies

In 2012, members of the Union approved the participation of the Office of the Union in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) Platform for the Co­Development and Transfer of Technologies (see document C/46/19 “Report”, Annex III “Press Release”).

### Public-Private Partnerships in Pre-breeding

Following a request from the Plant Genetic Resources and Seeds Team of the Food and Agriculture Organization of the United Nations (FAO) and a number of other functional units, especially the International Treaty on Plant Genetic Resources for Food and Agriculture, UPOV members agreed to the UPOV Office working as part of a multi-stakeholder team on the “definition of mechanisms for enhancing public-private partnerships in pre-breeding” (see document C(Extr.)/30/8 “Report”, Annex III “Press Release”).

### Interrelations between ITPGRFA, UPOV and WIPO

The fifth session of the Governing Body of the ITPGRFA (GB), held in Muscat, Oman, from September 24 to 28, 2013, adopted the following resolution under the item “Implementation of Article 9, Farmers’ Rights”:

*“Resolution: Implementation of Article 9, Farmers’ Rights*

“3. Requests the Secretary to invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments;”

(see document C/47/15 Rev. “Report by the President on the work of the eighty-sixth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”, paragraph 54).

The TC is invited to note the developments in UPOV including relevant matters discussed in the last sessions of the Administrative and Legal Committee, the Consultative Committee and the Council, as set out in paragraphs 4 to 35 of this document.

# **II. Matters for consideration by the Technical Committee**

# variety descriptions

At its seventh session, held in Geneva on October 29 and 30, 2012, the Administrative and Legal Committee Advisory Group (CAJ-AG) considered that it would be appropriate to develop further guidance on variety descriptions (see CAJ­AG/12/7/7 “Report”, paragraph 90).

The Administrative and Legal Committee Advisory Group (CAJ-AG), at its eighth session, held in Geneva on October 25, 2013, agreed that the following matters in document CAJ-AG/13/8/7 “Matters concerning Variety Descriptions”, paragraph 4, should be considered by the CAJ-AG in the first instance:

“(a) the purpose(s) of the variety description developed at the time of grant of the right (original variety description);

“(b) the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for the purposes of:

“[…]

“(iii) the enforcement of the right.”

The CAJ-AG agreed to the development of guidance on the following, which it proposed that the CAJ should invite the Technical Committee (TC) to consider in the first instance:

(a) use of information, documents or material provided by the breeder for verifying the maintenance of the variety, as set out in paragraph 15 of document CAJ-AG/13/8/4 “Matters concerning cancellation of the breeder's right”, with an explanation that the information, documents or material could be maintained in a different country; and

(b) use of Test Guidelines for verifying the maintenance of the variety that were different from the Test Guidelines used for the examination of Distinctness, Uniformity and Stability (“DUS”).

The CAJ-AG agreed to propose to the CAJ that the following matters in document CAJ-AG/13/8/7, paragraph 4, should be considered by the TC in the first instance:

“[…]

“(b) the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for the purposes of:

“(i) verifying the maintenance of the variety (Article 22 of the 1991 Act, Article 10 of the 1978 Act);

“(ii) the examination of distinctness, uniformity and stability (“DUS”) of candidate varieties; and

“[…]

“(c) the status of a modified variety description in relation to (a) and (b) above produced, for example, as a result of:

“(i) a recalibration of the scale in the Test Guidelines (particularly for non‑asterisked characteristics[[1]](#footnote-2));

“(ii) variation due to the environmental conditions of the years of testing for characteristics that are influenced by the environment;

“(iii) variation due to observation by different experts; or

“(iv) the use of different versions of scales (e.g. different versions of the RHS Color Chart).

“(d) situations where an error is subsequently discovered in the initial variety description.”

The CAJ will consider the proposal of the CAJ-AG at its sixty-ninth session, to be held in Geneva on April 10, 2014.

The TC is invited to note that the CAJ, at its sixty-ninth session, will consider the proposal of the CAJ-AG to invite the TC to develop further guidance on certain matters concerning variety descriptions, as set out in paragraphs 37 to 41.

# Matters raised by the International Seed Federation (ISF)

*(see document C/47/15 Rev. “Report by the President on the work of the eighty-sixth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”, paragraphs 62 to 66)*

The Consultative Committee, at its eighty-sixth session, held in Geneva on October 23 and 24, 2013, discussed the letter of the International Seed Federation (ISF) of January 21, 2013, on the subject “Application, examination and granting aspects of PBR applications” and invited ISF to present its views at the relevant part of that item.

The Consultative Committee agreed to the development 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” into an umbrella document that would identify key issues for the operation of a plant variety protection system and which would provide links to detailed information materials.

## Matters which the TC is invited to consider

The Consultative Committee agreed to invite the CAJ and TC to consider the ISF recommendations in relation to existing and possible future information materials, in parallel with the development of document UPOV/INF/15 into an umbrella document.

The following were matters raised by ISF that the Consultative Committee agreed to invite the TC to consider:

### (a) Photographs

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| [Extract from ISF letter – (English)]  “Photograph: In certain countries examination office require a detailed photograph, in some other countries the comparison varieties need to be in the picture as well, and in yet other countries photographs are required and made in the country itself. This is a problem when the time of the PBR application is not during the growing season of the variety, thereby precluding obtaining the photograph. Therefore, having to provide pictures can delay the application. Also it should be stated that different environments can lead to different morphologies and so the resultant photographs can be misleading. In general photographs should not be necessary for agricultural, forage or cross-pollinating species. In other crops photographs should only be necessary where it is considered relevant, in other words: where they add something useful to information that is already provided in the Technical Questionnaire (TQ). In addition, it should not be necessary to provide a photograph of the comparative variety.” |
| *Relevant UPOV Materials:*   * *TGP/9 “Examining Distinctness”, Section 2.5 “Photographs”* * *TGP/7 “Development of Test Guidelines”*   *The TC has agreed to the new Additional Standard Wording (ASW) and Guidance Note (GN) for “providing photographs with the Technical Questionnaire”, on the basis of the Annex to document TC/49/20, for inclusion in a future revision of document TGP/7. The TC has also agreed that the “Guidance for Providing Photographs with the Technical Questionnaire” should be provided to members of the Union by means of a link to the relevant part of the UPOV website (see document TC/49/41 “Report on the Conclusions”, paragraphs 45 to 47).* |

### (b) Minimum sample size

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| [Extract from ISF letter]  “Minimum sample size: In most countries there is a minimum seed sample size or number of plants required. However, in some countries the requested sample sizes can be exceptionally high. It is especially the case for parent-lines where high requirements can be problematic. Seed quantities should be reasonable, and optimally as low as possible. PBR authorities are encouraged to only request what seed that is actually needed and those amounts should be harmonized worldwide. In general it is better to request seeds by the criterion of number rather than by weight.” |
| *Relevant UPOV Materials:*   * *TGP/7, Section 4 “Development of Individual Authorities’ Test Guidelines”* |

### (c) Reference collections

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| [Extract from ISF letter]  “Reference collections: In certain countries it is known that the examining office is not using the proper comparison varieties, and this is often due to an incomplete reference collection.  “ISF members feel that an insufficient reference collection weakens protection as varieties which are too similar receive protection. The reference collection needs to be as complete as possible.  “Another problem is that in several countries the applicant has to provide seeds of the most similar comparison varieties even if these are of a competitor variety.  “Luckily the above problems are recognized by PBR offices in several countries and they are working with the seed industry to overcome these problems.  “As a general point ISF would like the quality of examinations to be brought to a higher level, and in this respect would like to propose UPOV to consider a quality assurance program for PBR offices with an audit system, similar to those performed by the ISTA. ISF would be happy to further discuss the possible benefits of this proposal. Alternatively, UPOV could consider providing guidelines to PBR examination offices on best practices for conducting their examinations. The UPOV Distance Learning Course on DUS testing and calibration books are already excellent examples of good progress in this area. The seed industry has a keen interest in having good quality variety descriptions and consequently, a high quality PBR certificate.” |
| *Relevant UPOV Materials:*   * *TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” and TGP documents* * *Future information material: Distance Learning Course DL-305*   *The Consultative Committee will consider any matters concerning a UPOV quality assurance program (see paragraph 46 below).* |

### (d) Length of examination

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| [Extract from ISF letter]  “Length of examination: Differences in efficiency between examination offices are large. Whereas in one country a PBR grant is provided in two growing seasons, in another country the granting process can easily take four years, and there are extreme examples of countries where examination took 10 to 12 years. ISF would like to submit that, as enforcement of pending applications is more difficult and sometimes only possible after granting, the examination process for regular applications should be as fast as possible and harmonized; a maximum period of two years should be prescribed. In some countries the examination process is completed in one year, with two cycles per year, which is very efficient.  “In the case of difficult to score characteristics, (e.g. disease or insect resistance) multilateral cooperative agreements could be considered where certain countries carry out tests for other countries.  “Also, take-over of the DUS reports from another country should be stimulated as much as possible, but only if examinations are based on quality and a system of quality assurance is in place.  “In cases where DUS examination has been paid for national listing, there should be no further examination costs for a PBR application of the same variety.” |
| *Relevant UPOV Materials:*   * *TGP/5 “Experience and Cooperation in DUS Testing”, Introduction* * *TGP/7 “Development of Test Guidelines”, Annex 1: TG Template, Chapter 3.1 “Number of Growing Cycles”* * *TGP/8 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”, Part I: 1. DUS Trial Design, Section 1.3.1.1 (a) “Minimizing the overall testing period”* |

### (e) Variety description of most similar variety

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| [Extract from ISF letter]  “Variety description of most similar variety: In some countries the applicant is requested to provide the full variety description of the most similar variety(ies), whereas in the spirit of UPOV only the differences between the candidate variety and the most similar variety need to be provided. ISF members in general feel that providing a full description of the candidate and the comparison varieties is overly burdensome for the applicant. It is time consuming and causes delays in the application process. In most cases a special observational trial has to be set up to make such variety descriptions. In case of a priority claim this can be a big disadvantage for the applicant. Providing a full variety description of the most similar varieties is an even larger problem if these are competitor varieties.  “The applicant should only be requested to provide the differences between the candidate and the most similar varieties. In other words only the TQ as set up by UPOV should have to be filled out.  “Breeding techniques change fast and so do varieties. New characteristics are being added to the current list all the time. So there is a need for timely introduction of new characteristics into TQ's and variety descriptions, to ensure enough distinguishing power between varieties.” |
| *Relevant UPOV Materials:*   * *TGP/7, Section 4 “Development of Individual Authorities’ Test Guidelines”* * *TGP/7 “Development of Test Guidelines”, Section 2 “Procedure for the Introduction and Revision of UPOV Test Guidelines”* |

### (f) Variety description by applicant

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| [Extract from ISF letter]  “Variety description by applicant: In certain countries varieties are described entirely by the applicant. This means that the same variety as a result of different influential factors (sowing period, growth environment and applicant-examiner) may be described entirely differently. In those cases where the applicant makes the variety description there need to be more harmonized rules and supervision by the PBR authorities. Proper calibration according to UPOV standards is a way to overcome the problems. As a general rule it can be stated that having a central testing office allows for a better and more complete reference collection and provides for a better examination of the candidate varieties.  “Creating a variety description including statistical data is a heavy burden on the applicant which is a reason for seed companies not to apply for PBR in that country. Example: the same corn varieties have been described in so many different ways that a number of characteristics can no longer be used to distinguish the varieties.” |
| *Relevant UPOV Materials:*   * *TGP/6 “Arrangements for DUS Testing”, Section 3 “Declaration on the Conditions for the Examination of a Variety Based Upon Trials Carried out by or on Behalf of the Breeder”* |

### (g) Variety description databases

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| [Extract from ISF letter]  “Variety description database: A variety description database including the TQ information should be available to all interested parties. This would improve the management of reference collections and would allow for a better basis of selection of the comparison varieties.” |
| *see below* |

The Consultative Committee requested the Office of the Union and ISF to elaborate the problems faced and possible solutions in relation to ISF’s ideas concerning: an international filing system; a UPOV quality assurance program; and a central examination system for variety denominations, for consideration by the Consultative Committee at its eighty-seventh session.

As a first step to considering the issues referred to the TC by the Consultative Committee in items (a) to (f) above, the TC may wish to invite ISF to consider the indicated relevant UPOV materials and to explain where it considers that further guidance might be developed.

In relation to a request by ISF to develop a variety description database including the TQ information that would be available to all interested parties (see (g) above), the Consultative Committee agreed to invite ISF to express its views to the TC with regard to databases of variety descriptions and the criteria identified by the TC for the publication of variety descriptions, as set out in document TC/45/9 “Publication of Variety Descriptions”. Document TC/45/9 states the following:

“1. It is recalled that the aim of the project to consider the publication of variety descriptions (see document TC/38/10, Annex) was:

“(a) to increase the availability of variety description information to interested parties (i.e. DUS examiners, breeders and maintainers of varieties of common knowledge) and thereby to maximize the effectiveness of the examination of distinctness; and

“(b) to use appropriate elements of the variety description, in the process of examining distinctness, to eliminate varieties which do not require further comparison and to identify those varieties against which a further comparison is required,

“2. At its meeting in Geneva, on March 31, 2004, the *Ad hoc* Working Group on the Publication of Variety Descriptions (WG-PVD) clarified that, with respect to the UPOV Plant Variety Database, the intention was not to develop an “on-line” DUS examination.

“3. At its forty third session, held in Geneva, from March 26 to 28, 2007, the Technical Committee (TC) agreed the list of criteria for consideration by the Technical Working Parties (TWPs) for the use of descriptions obtained from different locations and sources as follows:

“(a) to consider the species for which they see a real interest in creating an international database with variety descriptions;

“(b) to specify the aim and benefits expected;

“(c) to select the characteristics for which descriptions should be published;

“(d) to specify for each characteristic the degree of harmonization already achieved or aimed at (in the latter case, to specify if actions should be planned in order to improve the level of harmonization: ring tests, revision of the description of the way of observation in the guideline, …);

“(e) to study the pertinence of a “regional approach”, rather than an “international approach” (to consider groups of countries and to compare descriptions within those groups only);

“(f) to propose minimum distances when making comparisons of data, for the relevant characteristics;

“(g) to list the countries which would contribute to the publication;

“(h) to consider the type of access (free or restricted to the contributors); and

“(i) to consider the cost of any project.

“4. The TC agreed that no further meeting of the WG-PVD should be arranged unless or until specific proposals were developed for the consideration of the WG-PVD by the TC or by a TWP.

[…]”

The TC is invited to:

(a) note that the Consultative Committee has agreed to the development 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” into an umbrella document that would identify key issues for the operation of a plant variety protection system, as set out in paragraphs 44 and 45;

(b) in relation to the matters in items (a) to (f) in paragraph 45, invite ISF to consider the indicated relevant UPOV materials and to explain where   
it considers that further guidance might be developed; and

(c) note that ISF has been invited to express its views to the TC with regard to databases of variety descriptions and the criteria identified by the TC for the publication of variety descriptions, as set out in document TC/45/9 “Publication of Variety Descriptions”.

# Web-based TG Template

The TC, at its forty-ninth session, held in Geneva from March 18 to March 20, 2013, received a presentation on the project for the development of a web-based TG Template by the Office of the Union and an expert from Australia and noted that a copy of the presentation would be provided in an addendum to document TC/49/3 “Matters arising from the Technical Working Parties”. The Vice Secretary‑General reported that it was planned to develop a prototype for testing by interested experts by the end of 2013.

The TC expressed its support for the project, noting that the template would provide sufficient flexibility for drafters of Test Guidelines to introduce proposals that were not covered by existing standard wording. It noted the comments of the TWPs at their sessions in 2012 on the project and noted the need to retain flexibility in the structure for further development of Test Guidelines by UPOV members (see document TC/49/41 “Report on the Conclusions”, paragraphs 13 and 14).

The web-based TG Template will be developed in two separate phases in the form of Versions 1 and 2.

## Version 1

Version 1 of the web-based TG Template will be fully functional for the development of UPOV Test Guidelines by Leading Experts and will enable Interested Experts to provide comments. Version 1 of the web-based TG Template will be completed in early 2014 and a demonstration will be made at the fiftieth session of the TC.

### Features

The main features of Version 1 are as follows:

* Draft Test Guidelines will be prepared by Leading Experts online via the web-based TG Template
* Fixed template containing all universal standard wording which is appropriate for all Test Guidelines (see document TGP/7/3 “Development of Test Guidelines”, Section 3.1 “The TG Template”)
* Options to add Additional Standard Wording (ASW) (see document TGP/7/3, Section 3.2 “Additional Standard Wording (ASW) for the TG Template”)
* Links to Guidance Notes (GN) (see document TGP/7/3, Section 3.3 “Guidance Notes (GN) for the TG Template”)
* A database of characteristics (in English, French, German and Spanish) from Test Guidelines adopted after the adoption of document TGP/7/1 “Development of Test Guidelines” the Collection of Approved Characteristics (adopted in 2004) (see document TGP/7/3, Annex 4 “Collection of Approved Characteristics”).

*The database will contain all information from the Table of Characteristics, including states of expression, notes, example varieties, etc. The database can be searched for relevant characteristics and a relevant characteristic uploaded into draft Test Guidelines with subsequent modification as required.*

* Comments boxes for Interested Experts to complete online with a facility to view all comments
* Options to produce output in HTML, PDF or Word format.
* English only version
* Translators’ facility for the Table of Characteristics (Chapter 7)

*Characteristics uploaded, unchanged, from the database comprising the collection of approved characteristics will be indicated as not requiring translation. For other characteristics, translators will be able to search the database comprising the collection of approved characteristics and input the required translations. The translation of the other chapters of the Test Guidelines will be provided separately for Version 1.*

### Implementation

The timetable for the preparation of Test Guidelines for the Technical Working Party sessions in 2014 is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Technical Working Party for: | Subgroup draft | Interested Experts’ comments | Technical Working Party draft | Technical Working Party session |
| Ornamental Plants and Forest Trees (TWO) | February 8 | March 8 | April 5 | May 19-23 |
| Fruit Crops (TWF) | February 14 | March 14 | April 11 | May 26-30 |
| Vegetables (TWV) | March 14 | April 11 | May 9 | June 23-27 |
| Agricultural Crops (TWA) | August 8 | September 15 | October 3 | November 17-21 |

A mock-up of Version 1 of the web-based TG Template was developed and tested at the end of 2013, in conjunction with experts from Australia and the Netherlands, and the fully-functioning software will be tested by the same experts in March 2014. The Office of the Union will inform all Leading Experts of the development of the web-based TG Template and invite volunteers to test it for the development of Test Guidelines in 2014. In the case of the Technical Working Party for Agricultural Crops (TWA), the web-based TG Template can be used to prepare the Subgroup drafts.

In order to achieve the benefits of the web-based TG Template, it will be necessary for all Leading Experts and Interested Experts to use the web-based TG Template exclusively for the preparation of Test Guidelines for the Technical Working Parties. Therefore, the use of the web-based TG Template will be required for the preparation of all Test Guidelines from 2015. Training on the use of the web-based TG Template will initially be provided at the Technical Working Party sessions in 2014 and by means of e‑workshops (see document TC/50/3 “Matters arising from the Technical Working Parties”).

## Version 2

Version 2 of the web-based TG Template will provide the two following additional features:

### Concurrent translation

In version 2 of the web-based TG Template, the French, German and Spanish language versions of the Test Guidelines will be automatically developed concurrently with the English draft for the standard wording, Additional Standard Wording (ASW) and characteristics uploaded, unchanged, from the database comprising the collection of approved characteristics. Text that has not been automatically translated will be indicated for translation in the language concerned.

### Individual authorities’ test guidelines

Version 1 of the web-based TG Template has been designed for the development of Test Guidelines for UPOV. However, it has also been designed such that Version 2 will enable members of the Union to use:

(a) adopted UPOV Test Guidelines as a basis for the development of individual authorities’ test guidelines;

(b) the web-based TG Template and database of characteristics to develop individual authorities’ test guidelines for which there are no UPOV Test Guidelines; and

(c) use individual authorities’ test guidelines, developed using the web-based TG Template, as the basis for draft UPOV Test Guidelines.

Version 2 will have a feature for individual authorities to modify the template wording, within the same structure, to act as a template for their own test guidelines and a feature to allow individual authorities to convert UPOV Test Guidelines into individual authorities’ test guidelines, with necessary modifications.

Subject to successful implementation of Version 1 of the web-based TG Template in 2014, the development of Version 2 is planned for 2015.

The TC is invited to:

(a) note the features of Version 1 of the web‑based TG Template, as set out in paragraph 55;

(b) approve the plans for the implementation of web-based TG Template, including the need for exclusive use of the web-based TG Template for the development of all Test Guidelines from 2015, as set out in paragraphs 56 to 58;

(c) note the features and timetable for development of Version 2 of the web-based TG Template, as set out in paragraphs 59 to 63.

[Annex follows]

TC/50/10

ANNEX

(in English only)

[see pdf version of document]

[End of Annex and of document]

1. “[I]f a characteristic is important for the international harmonization of variety descriptions (asterisked characteristics) and is influenced by the environment (most quantitative and pseudo‑qualitative characteristics) […..] it is necessary to provide example varieties” in the Test Guidelines (see document TGP/7, Annex 3, Guidance Note GN 28 “Example varieties”, section 3.3 (iii)).

   “1.2.3 Example varieties are important to adjust the description of the characteristics for the year and location effects, as far as possible. […] ” (see document TGP/7, Annex 3, Guidance Note GN 28 “Example varieties”, section 1.2.3) [↑](#footnote-ref-2)