

Technical Committee**TC/53/10****Fifty-Third Session
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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*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The purpose of this document is to report on developments in UPOV since the fifty-second session of the Technical Committee (TC) that are not presented under specific items on the agenda of the fifty-third session of the TC, including relevant matters discussed in the last sessions of the Administrative and Legal Committee (CAJ), the Consultative Committee and the Council.

2. The TC is invited to note:

(a) the developments in UPOV since its fifty-second session that are not presented under specific items on the agenda of its fifty-third session, including relevant matters discussed in the last sessions of the Administrative and Legal Committee (CAJ), the Consultative Committee and the Council as set out in paragraphs 4 to 47 of this document; and

(b) that a presentation summarizing the items in this document will be made at the fifty-third session of the TC, a copy of which (in English only) will be provided as an addendum to this document.

3. The structure of this document is as follows:

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MEMBERSHIP

Members of the Union

4. As of March 28, 2017, the 74 members of UPOV were:

African Intellectual Property Organization, Albania, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, European Union, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Mexico, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Oman, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan and Viet Nam.

Situation in relation to the various Acts of the Convention

5. Kenya, which was already a member of UPOV, deposited its instrument of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants on April 11, 2016. Kenya became bound by the 1991 Act on May 11, 2016.

6. As of March 28, 2017 (see <http://www.upov.int/members/en/>):

- 56 members were bound by the 1991 Act
- 17 members were bound by the 1978 Act
- one member was bound by the 1961 Convention as amended by the 1972 Act

STATISTICS ON PLANT VARIETY PROTECTION

List of the taxa protected by the members of the Union

(see document C/50/6 Corr. "List of the Taxa Protected by the Members of the Union")

7. A total of 61 members of the Union now offer protection to all plant genera and species (59 in 2015), with 13 members of the Union offering protection to a limited number of plant genera and species. Of those 13, five members (Brazil, China, Morocco, South Africa and Turkey) extended protection to additional plant genera and species in 2016.

Plant variety protection statistics

(see document C/50/7 "Plant variety protection statistics for the period 2011-2015")

8. In 2015, there was a 3.2 percent decrease in the number of applications for plant variety protection (15,017 in 2015; 15,511 in 2014), resulting from a 2.9 percent increase in the number of applications by residents (10,061 in 2015; 9,778 in 2014) and a 13.6 percent decrease in the number of applications by non-residents (4,956 in 2015; 5,733 in 2014). The number of titles granted increased from 11,566 in 2014 to 12,409 in 2015 (7.3 percent increase).

9. The total of 107,232 titles in force in 2015 represented a 0.6 percent increase on figures for 2014 (106,575).

10. The Consultative Committee noted that, in cases where there were significant differences between the data in the PLUTO database and in document C/50/7, the Office of the Union would consult relevant members of the Union.

11. The Consultative Committee noted that the Office of the Union would investigate the reason for the differences between years in relation to the completeness of data in the PLUTO database in terms of members of the Union providing data.

12. The Consultative Committee noted that the statistical analysis reported in document CC/92/12 would be provided in future versions of document C/[session]/7 "Plant variety protection statistics for the period [xxxx]-[xxxx]".

Cooperation in the examination of new plant varieties

13. In 2015, 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 2,031, compared to 2,002 in 2014.

ANNUAL REPORT OF THE SECRETARY-GENERAL FOR 2015; PERFORMANCE REPORT FOR THE 2014-2015 BIENNIUM

14. The Council noted the report of the Secretary-General on the activities of the Union in 2015 and the results and performance indicators for 2015, as provided in document C/50/2 "Annual report of the Secretary-General for 2015".

15. The Council noted the performance report for the 2014-2015 Biennium, as provided in document C/50/12 "Performance report for the 2014-2015 Biennium".

EVALUATION REPORT BY THE WIPO INTERNAL OVERSIGHT DIVISION (IOD)

16. At its ninety-second session, held in Geneva on October 27, 2016, the Consultative Committee considered the IOD Evaluation Report and a presentation by Mr. Tuncay Efendioglu, Acting Director, WIPO Internal Oversight Division (IOD).

17. The Consultative Committee noted that the IOD Evaluation Report would be published on the UPOV website after the fiftieth ordinary session of the Council.

18. In response to the recommendation of the IOD Evaluation Report, the Consultative Committee approved the proposal of the Office of the Union to prepare a draft Strategic Business Plan to be presented to the Consultative Committee in October/November 2017.

19. The Consultative Committee expressed its appreciation to the WIPO IOD for the Evaluation Report.

20. The Consultative Committee noted that the conclusions of the Consultative Committee concerning the IOD Evaluation Report would be reported to the Council, at its fiftieth ordinary session, to be held in Geneva on October 28, 2016.

UPOV BODIES AND SESSIONS

President and Vice-President of the UPOV Council

21. At its fiftieth ordinary session, the Council elected, in each case for a term of three years ending with the fifty-third ordinary session of the Council, in 2019:

- (a) Mr. Raimundo Lavignolle (Argentina), President of the Council;
- (b) Mr. Marien Valstar (Netherlands), Vice-President of the Council.

Chair and Vice-Chair of the Administrative and Legal Committee

22. At its fiftieth ordinary session, the Council elected, in each case for a term of three years ending with the fifty-third ordinary session of the Council, in 2019:

- (a) Mr. Anthony Parker (Canada), Chair of the Administrative and Legal Committee;
- (b) Mr. Patrick Ngwediagi (United Republic of Tanzania), Vice-Chair of the Administrative and Legal Committee

Chair and Vice-Chair of the Technical Committee

23. At its fiftieth ordinary session, the Council elected, in each case for a term of three years ending with the fifty-third ordinary session of the Council, in 2019:

- (a) Mr. Kees van Ettehoven (Netherlands), Chair of the Technical Committee;
- (b) Mr. Nik Hulse (Australia), Vice-Chair of the Technical Committee.

Calendar of meetings

24. Developments concerning the organization of UPOV sessions are reported in document TC/53/14 "Organization of the UPOV sessions".

The calendar of meetings for 2017 is as follows:

Council

C(Extr.)/34 April 6 (afternoon) (extraordinary session)
C/51 October 26

Consultative Committee

CC/93 April 6 (morning)
(Working Group on a Possible International System of Cooperation (WG-ISC/2):
April 5 (afternoon))
CC/94 October 25

Administrative and Legal Committee

CAJ/74 October 23 and 24
(Working Group on Variety Denominations (WG-DEN/3): April 7 (morning))
(Meeting on the Development of a Prototype Electronic Form (EAF/9): April 7 (afternoon))

Technical Committee

TC/53 April 3 to 5 (morning)
(Editorial Committee: (January 11 and 12), April 3 (evening), April 4 (evening))

Technical Working Party for Agricultural Crops (TWA)

TWA/46 June 19 to 23, Hannover, Germany
(Preparatory workshop on June 18)

Technical Working Party on Automation and Computer Programs (TWC)

TWC/35 November 14 to 17, Buenos Aires, Argentina
(Preparatory workshop on November 13)

Technical Working Party for Fruit Crops (TWF)

TWF/48 September 18 to 22, Kelowna, British Columbia, Canada
(Preparatory workshop on September 17)

Technical Working Party for Ornamental Plants and Forest Trees (TWO)

TWO/50 September 11 to 15, Victoria, British Columbia, Canada
(Preparatory workshop on September 10)

Technical Working Party for Vegetables (TWV)

TWV/51 July 3 to 7, Roelofarendsveen, Netherlands
(Preparatory workshop on July 2)

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)

BMT/16 November 7 to 10, La Rochelle, France
(Preparatory workshop on November 6)

UPOV COLLECTION
(see http://www.upov.int/upov_collection/en/)

Adoption of documents

25. The Council adopted the following revisions of documents at its fiftieth ordinary session:

(a) TGP documents:

TGP/7	Development of Test Guidelines
TGP/8	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability

(b) Information documents:

UPOV/INF/16	Exchangeable Software
UPOV/INF/22	Software and Equipment Used by Members of the Union

26. All adopted documents are published in the UPOV Collection (see http://www.upov.int/upov_collection/en/)

27. The following documents will be considered for adoption by the Council at its thirty-third extraordinary session, to be held on April 6, 2017:

UPOV/EXN/EDV/2	Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (document UPOV/EXN/EDV/2 Draft 8)
UPOV/EXN/PPM/1	Explanatory Notes on Propagating Material under the UPOV Convention (document UPOV/EXN/PPM/1 Draft 7)
UPOV/INF/6/5	Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (document C(Extr.)/34/2, Annex)
UPOV/INF-EXN/10	List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/10 Draft 1)

Matters to be considered by the Administrative and Legal Committee

28. The following matters will be considered by the Administrative and Legal Committee at its seventy-fourth session, to be held on October 23 and 24, 2017:

- (a) Possible revision of document UPOV/EXN/EDV/2 Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)
- (b) Possible revision of document UPOV/EXN/CAL/1 "Explanatory Notes on Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention"
- (c) Possible revision of document UPOV/EXN/PRP/2 "Explanatory Notes on Provisional Protection under the UPOV Convention"

29. At its seventy-third session, the Administrative and Legal Committee agreed to continue to defer the preparation of a draft revision of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette (Revision)" (document UPOV/INF/5/1 Draft 1), pending developments in relation to the development of a prototype electronic form (see document CAJ/73/4 "Electronic application form").

OBSERVERS IN UPOV BODIES

30. The Consultative Committee, at its ninety-second session, noted the *ad hoc* invitations issued to experts.

31. The Consultative Committee considered the information provided by the International Institute for IP Management (I³PM), at its ninety-second session, in relation to the I³PM request for the granting of observer status to the Council.

32. The Consultative Committee concluded that, at that stage, it was not possible to agree that I³PM had demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”.

33. In relation to the request of the European Law Students’ Association (ELSA) for the granting of observer status to the Council and to the CAJ, the Consultative Committee concluded that, at that stage, it was not possible to agree that ELSA had demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”.

34. The Consultative Committee requested that the Office of the Union, when informing I³PM and ELSA of the outcome, offer to explore possibilities to provide information on the UPOV system of plant variety protection to their members.

COMMUNICATION STRATEGY

New UPOV Logo and updated website

35. On November 8, 2016, UPOV launched its new logo, which was introduced on the UPOV website in conjunction with the introduction of the new stakeholder features for: breeders; farmers; policy-makers; and the general public and with the introduction of the UPOV YouTube channel.



FAQs

36. The Consultative Committee, at its ninety-second session, agreed that the proposed FAQ on how the UPOV system of plant variety protection contributes to the United Nations Sustainable Development Goals (SDGs), be circulated to the Consultative Committee with an invitation to make proposals to revise the text and to provide examples. On the basis of the inputs received, a new draft would be prepared for consideration by the Consultative Committee at its ninety-fourth session in October 2017.

Benefits of the UPOV System

37. The Consultative Committee agreed that it would not be feasible to prepare an updated version of the Impact Study in the current format and agreed that individual members of the Union should be encouraged to undertake their own studies and provide the resulting information to the Office of the Union. It also agreed that the Office of the Union should develop videos to illustrate various benefits of the UPOV system of plant variety protection.

Distance learning courses

38. Two sessions of each of the following UPOV Distance Learning Courses will be run in English, French, German and Spanish in 2017:

- DL-205 "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention"
- DL-305 "Examination of applications for plant breeders' rights"
- DL-305A "Administration of Plant Breeders' Rights" (Part A of DL-305)
- DL-305B "DUS Examination" (Part B of DL-305)

39. The timetable for all courses will be the following:

Session I - 2017

Registration: January 9 to February 10

Study period: March 6 to April 9

Final exam: April 3 to 9

Session II – 2017

Registration: August 7 to September 8

Study period: September 25 to October 29

Final exam: October 23 to 29

(see <http://www.upov.int/resource/en/training.html>)

UPOV EAF

40. Developments concerning the EAF are reported in document TC/53/7 "Electronic application form".

INTERNATIONAL SYSTEM OF COOPERATION (ISC)

41. The Consultative Committee agreed the draft mandate and terms of reference for a Working Group on a Possible International System of Cooperation (WG-ISC), as follows:

Purpose

1. To prepare proposals for consideration by the Consultative Committee concerning a possible ISC that would:
 - (a) not affect the responsibility of the members of the Union in relation to the grant and protection of breeders' rights, or other international obligations;
 - (b) be relevant for all members of the Union, irrespective of the Act of the UPOV Convention by which they are bound;
 - (c) would not affect the existing flexibility of members of the Union to formulate policy and to address their own specific needs and circumstances according to the relevant Act of the UPOV Convention;
 - (d) be based on voluntary participation by members of the Union according to their measures for participation;
 - (e) allow members of the Union to choose to participate in selected elements of an ISC;
 - (f) be based on voluntary cooperation between members of the Union;
 - (g) not affect cooperation with, and between, members of the Union that did not participate in an ISC;
 - (h) be based on filing of applications with individual members of the Union and not with the Office of the Union;
 - (i) not be based on examination of applications by the Office of the Union;
 - (j) not affect the determination and payment of fees by individual members of the Union;

- (k) not affect the right of each member of the Union to conduct its own examination for the granting of breeders' rights;
 - (l) be based as far as possible on existing UPOV initiatives and materials, including in particular: the GENIE database; the Electronic Application Form (EAF) project; the UPOV similarity search tool for variety denomination purposes; and UPOV information materials.
2. For the above proposals, to provide the Consultative Committee with an analysis of the:
- (a) the need for an ISC;
 - (b) advantages and disadvantages of the proposals, compared to existing arrangements;
 - (c) existence of a legal basis under the Acts of the UPOV Convention;
 - (d) impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members;
 - (e) potential advantages and disadvantages for:
 - (i) society in the members of the Union;
 - (ii) PVP Offices of members of the Union, including:
 - costs and income
 - number of applications and income received for applications;
 - (iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);
 - (iv) farmers; and
 - (v) UPOV.

Composition

- (a) to be composed of the following members of the Union:
 - Bolivia (Plurinational State of)
 - Brazil
 - Canada
 - Chile
 - Colombia
 - Ecuador
 - European Union (European Commission, Community Plant Variety Office of the European Union (CPVO), Estonia, France, Germany, Netherlands and United Kingdom)
 - Japan
 - Norway
 - United States of America
- (b) other members of the Union would be free to participate at any meeting of the WG-ISC and make comments, where so desired;
- (c) the WG-ISC would be restricted to members of the Union and the WG-ISC would revert back to the Consultative Committee if the WG-ISC recommends to invite observers or experts to any of its meetings;
- (d) meetings to be chaired by the Vice Secretary-General.

Modus operandi

- (a) to meet, as far as possible, in conjunction with the sessions of the Consultative Committee at a time and frequency to address the requests of the Consultative Committee;
- (b) in the first instance, to prepare a document presenting the issues for consideration according to the following structure:
 - (i) International system of administration
 - (ii) Preliminary observation on novelty and denomination
 - (iii) DUS examination
 - (iv) Examination by members of the Union using the ISC

- (c) to prepare a document containing proposals, analysis and information according to the purpose specified above, for consideration by the Consultative Committee, according to a timetable to be specified by the Consultative Committee;
- (d) to report on progress to the Consultative Committee after each meeting of the WG-ISC;
- (e) WG-ISC documents to be made available to the Consultative Committee.

42. The Consultative Committee approved that a meeting of the WG-ISC be held immediately following the ninety-second session of the Consultative Committee.

INTERRELATIONS WITH THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ITPGRFA)

43. The Consultative Committee, at its ninety-second session, received an oral report on the “Symposium on possible interrelations between the ITPGRFA and the UPOV Convention”, held at UPOV Headquarters in Geneva, on October 26, 2016, from Mr. Raimundo Lavignolle, Vice-President of the Council. It noted that the Symposium had been attended by 147 participants, and had been opened by Mr. Francis Gurry, Secretary-General, UPOV and Mr. Kent Nnadozie, Secretary *ad interim* of the ITPGRFA.

44. In their closing remarks, the Co-Moderators: Mr. Muhamad Sabran, Chairperson of the Seventh Session of the Governing Body, ITPGRFA and Mr. Raimundo Lavignolle, Vice-President of the Council of UPOV, had concluded that:

- We have seen the objectives and benefits of both treaties: UPOV Convention, ITPGRFA;
- It is important to interpret and implement the two treaties in a mutually supportive way in the context of each Contracting Party;
- In order to succeed in these objectives, it is important for the two organizations to work together and to provide the necessary support;
- The Symposium highlights the need to involve all stakeholders in this process.

45. The Consultative Committee agreed that members of the Union and observers be invited to provide suggestions on any possible further action concerning interrelations between the ITPGRFA and the UPOV Convention for the consideration by the Consultative Committee at its ninety-third session.

46. The Consultative Committee noted the developments concerning the ITPGRFA Platform for the Co-Development and Transfer of Technologies.

SEMINAR ON PROPAGATING AND HARVESTED MATERIAL

47. On October 24, 2016, UPOV organized a “Seminar on Propagating and Harvested Material in the Context of the UPOV Convention”. The Seminar was attended by 151 participants (see http://www.upov.int/meetings/en/details.jsp?meeting_id=39124).

48. *The TC is invited to note:*

(a) the developments in UPOV since its fifty-second session that are not presented under specific items on the agenda of its fifty-third session, including relevant matters discussed in the last sessions of the Administrative and Legal Committee (CAJ), the Consultative Committee and the Council as set out in paragraphs 4 to 47 of this document; and

(b) that a presentation summarizing the items in this document will be made at the fifty-third session of the TC, a copy of which (in English only) will be provided as an addendum to this document.

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