



C/49/14

ORIGINAL: English

DATE: September 14, 2015

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Forty-Ninth Ordinary Session
Geneva, October 29, 2015**

ADOPTION OF DOCUMENTS

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

1. The purpose of this document is to provide information concerning the following documents that the Council will be invited to adopt at its forty-ninth ordinary session:

TGP documents:

TGP/5 Experience and Cooperation in DUS Testing (Revisions) (document C/49/14, Annex I):

Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights

Section 8: Cooperation in Examination

Section 9: List of Species in Which Practical Knowledge has Been Acquired or for Which National Test Guidelines Have Been Established

TGP/9 Examining Distinctness (Revision) (document TGP/9/2 Draft 1)

TGP/14 Glossary of Terms Used in UPOV Documents (Revision) (document C/49/14, Annex II)

TGP/0 List of TGP documents and latest issue dates (Revision) (document TGP/0/8 Draft 1)

Explanatory notes:

UPOV/EXN/CAN Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/CAN/2 Draft 4)

UPOV/EXN/NUL Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/NUL/2 Draft 4)

UPOV/EXN/PRP Explanatory Notes on Provisional Protection under the UPOV Convention (Revision) (document UPOV/EXN/PRP/2 Draft 4)

Information documents:

UPOV/INF/6 Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (document C/49/14, Annex IV)

UPOV/INF/12	Explanatory Notes on Variety Denominations under the UPOV Convention (Revision) (document C/49/14, Annex III)
UPOV/INF/16	Exchangeable Software (Revision) (document UPOV/INF/16/5 Draft 1)
UPOV/INF/22	Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/2 Draft 1)
UPOV/INF-EXN:	List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/8 Draft 1)

TGP DOCUMENTS

TGP/5: Experience and Cooperation in DUS Testing (Revisions) (document C/49/14, Annex I)

2. The Technical Committee (TC), at its fifty-first session, held in Geneva from March 23 to 25, 2015, and the Administrative and Legal Committee (CAJ), at its seventy-first session, held in Geneva on March 26, 2015, agreed the proposals to revise document TGP/5 "Experience and Cooperation in DUS Testing", Section 3: "Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights", Section 8: "Cooperation in Examination" and Section 9: "List of Species in Which Practical Knowledge has Been Acquired or for Which National Test Guidelines Have Been Established", as presented in Annex I to this document (see documents TC/51/39 "Report", paragraphs 163 to 165, and CAJ/71/10 "Report on the Conclusions", paragraphs 74 to 76).

3. On the above basis, the TC and the CAJ agreed that the revision of document TGP/5, Sections 3, 8 and 9 should be put forward for adoption by the Council at its forty-ninth ordinary session.

4. The Council is invited to adopt a revision of document TGP/5 "Experience and Cooperation in DUS Testing":

(a) Section 3: "Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights",

*(b) Section 8: "Cooperation in Examination",
and*

(c) Section 9: "List of Species in Which Practical Knowledge has Been Acquired or for Which National Test Guidelines Have Been Established",

on the basis of the amendments proposed in Annex I to this document.

TGP/9: Examining Distinctness (Revision) (document TGP/9/2 Draft 1)

5. The TC, at its fifty-first session, and the CAJ, at its seventy-first session, agreed the proposals to revise the text of document TGP/9/1 "Examining Distinctness" and agreed that a revised version of that document (document TGP/9/2 Draft 1) should be put forward for adoption by the Council at its forty-ninth ordinary session (see documents TC/51/39 "Report", paragraphs 114 to 121, and CAJ/71/10 "Report on the Conclusions", paragraphs 64 to 69).

6. The TC and the CAJ noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission of the draft of document TGP/9/2 to the Council. Document TGP/9/2 Draft 1 incorporates the amendments agreed by the TC and the CAJ, as set out in paragraphs 5 and 6, and the editorial changes proposed by the relevant members of the Editorial Committee.

7. The Council is invited to adopt a revision of document TGP/9/1 "Examining Distinctness" (document TGP/9/2), on the basis of document TGP/9/2 Draft 1.

TGP/14: Glossary of Terms Used in UPOV Documents (Revision) (document C/49/14, Annex II)

8. The TC, at its fifty-first session, and the CAJ, at its seventy-first session, agreed the proposals to revise document TGP/14/2 "Glossary of Terms Used in UPOV Documents", Section 2.4 "Apex/tip shape characteristics", as presented in Annex II to this document (see documents TC/51/39 "Report", paragraphs 122 to 125, and CAJ/71/10 "Report on the Conclusions", paragraphs 70 to 72).

9. On the above basis, the TC and the CAJ agreed that the revision of document TGP/14/2, Section 2.4, should be put forward for adoption by the Council at its forty-ninth ordinary session.

10. The TC and the CAJ noted that the French, German and Spanish translations of the original English text would be checked by the relevant members of the Editorial Committee prior to submission for adoption to the Council. Annex II to this document incorporates the amendments agreed by the TC and the CAJ, as set out in paragraphs 9 and 10, and the editorial changes proposed by the relevant members of the Editorial Committee.

11. The Council is invited to adopt a revision of document TGP/14/2 "Glossary of Terms Used in UPOV Documents", Section 2.4 "Apex/tip shape characteristics", on the basis of the amendments proposed in Annex II to this document.

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/8 Draft 1)

12. In conjunction with the adoption of the revised TGP documents at the forty-ninth ordinary session of the Council, it is proposed to adopt a revision of document TGP/0/7 on the basis of document TGP/0/8 Draft 1 (see documents TC/51/39 "Report", paragraph 113, and CAJ/71/10 "Report on the Conclusions", paragraph 77).

13. The Council is invited to adopt a revision of document TGP/0/7 "List of TGP documents and latest issue dates" (document TGP/0/8), on the basis of document TGP/0/8 Draft 1.

EXPLANATORY NOTES

UPOV/EXN/CAN: Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/CAN/2 Draft 4)

14. The CAJ, at its seventy-first session, approved document UPOV/EXN/CAN/2 Draft 3 as the basis for a revision of document UPOV/EXN/CAN/1 "Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention" and agreed that a draft of document UPOV/EXN/CAN/2 should be put forward for adoption by the Council, at its forty-ninth ordinary session (see document CAJ/71/10 "Report on the Conclusions", paragraph 17).

15. The Council is invited to adopt a revision of document UPOV/EXN/CAN/1 "Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention" (document UPOV/EXN/CAN/2), on the basis of document UPOV/EXN/CAN/2 Draft 4.

UPOV/EXN/NUL: Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/NUL/2 Draft 4)

16. The CAJ, at its seventy-first session, approved document UPOV/EXN/NUL/2 Draft 3 as the basis for a revision of document UPOV/EXN/NUL/1 "Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention" and agreed that a draft of document UPOV/EXN/NUL/2 should be put forward for adoption by the Council, at its forty-ninth ordinary session (see document CAJ/71/10 "Report on the Conclusions", paragraph 19).

17. The Council is invited to adopt a revision of document UPOV/EXN/NUL/1 "Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention" (document UPOV/EXN/NUL/2), on the basis of document UPOV/EXN/NUL/2 Draft 4.

UPOV/EXN/PRP: Explanatory Notes on Provisional Protection under the UPOV Convention (Revision) (document UPOV/EXN/PRP/2 Draft 4)

18. The CAJ, at its seventy-first session, approved document UPOV/EXN/PRP/2 Draft 3 as the basis for a revision of document UPOV/EXN/PRP/1 "Explanatory Notes on Provisional Protection under the UPOV Convention", and agreed that a draft of document UPOV/EXN/PRP/2 should be put forward for adoption by the Council, at its forty-ninth ordinary session (see document CAJ/71/10 "Report on the Conclusions", paragraph 20).

19. The Council is invited to adopt a revision of document UPOV/EXN/PRP/1 "Explanatory Notes on Provisional Protection under the UPOV Convention" (document UPOV/EXN/PRP/2), on the basis of document UPOV/EXN/PRP/2 Draft 4.

INFORMATION DOCUMENTS

UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (document C/49/14, Annex IV)

20. Document UPOV/INF/6, Part II "Notes based on information materials concerning certain Articles of the 1991 Act of the UPOV Convention" includes extracts from explanatory notes.

21. The CAJ, at its seventy-first session, noted that the Council would be invited to adopt a revision of document UPOV/INF/6/3 (document UPOV/INF/6/4), in conjunction with the explanatory notes that the Council would be invited to adopt at its forty-ninth ordinary session (see section "EXPLANATORY NOTES", paragraphs 15 to 20, and section "UPOV/INF/12: Explanatory Notes on Variety Denominations under the UPOV Convention (Revision)", paragraphs 23 to 25 of this document).

22. The Council is invited to adopt a revision of document UPOV/INF/6 "Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention" (document UPOV/INF/6/4), on the basis of the proposed amendments to document UPOV/INF/6/3, as presented in Annex IV to this document.

UPOV/INF/12: Explanatory Notes on Variety Denominations under the UPOV Convention (Revision) (document C/49/14, Annex III)

23. The TC, at its fifty-first session, and the CAJ, at its seventy-first session, agreed the proposals to revise document UPOV/INF/12/4 "Explanatory Notes on Variety Denominations under the UPOV Convention", as presented in Annex III to this document (see documents TC/51/39 "Report", paragraph 184, and CAJ/71/10 "Report on the Conclusions", paragraph 34).

24. On the above basis, the TC and the CAJ agreed that the revision of document UPOV/INF/12/4 (document UPOV/INF/12/5) should be put forward for adoption by the Council at its forty-ninth ordinary session.

25. The Council is invited to adopt a revision of document UPOV/INF/12/4 "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/INF/12/5), on the basis of the amendments proposed in Annex III to this document.

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/5 Draft 1)

26. The TC, at its fifty-first session, and the CAJ, at its seventy-first session, agreed the proposals to revise the text of document UPOV/INF/16/4 "Exchangeable Software" and agreed that a revised version of that document (document UPOV/INF/16/5 Draft 1) should be put forward for adoption by the Council at its forty-ninth ordinary session (see documents TC/51/39 "Report", paragraphs 206 and 207, and CAJ/71/10 "Report on the Conclusions", paragraphs 58 and 59).

27. The Council is invited to adopt a revision of document UPOV/INF/16/4 "Exchangeable Software" (document UPOV/INF/16/5), on the basis of document UPOV/INF/16/5 Draft 1.

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/2 Draft 1)

28. The TC, at its fifty-first session, and the CAJ, at its seventy-first session, agreed the proposals to revise the text of document UPOV/INF/22/1 "Software and equipment used by members of the Union", subject to corrections to be provided by Germany and to checking of the data provided by Uruguay.

29. On that basis, the TC and the CAJ agreed that a draft of document UPOV/INF/22/2 should be put forward for adoption by the Council at its forty-ninth ordinary session (see documents TC/51/39 "Report", paragraphs 209 and 210, and CAJ/71/10 "Report on the Conclusions", paragraphs 61 and 62).

30. The Council is invited to adopt a revision of document UPOV/INF/22/1 "Software and equipment used by members of the Union" (document UPOV/INF/22/2), on the basis of document UPOV/INF/22/2 Draft 1.

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/8 Draft 1)

31. In conjunction with the information documents that the Council will be invited to adopt at its forty-ninth ordinary session, it is proposed to adopt a revision of document UPOV/INF-EXN/7 "List of UPOV/INF-EXN Documents and Latest Issue Dates" on the basis of document UPOV/INF-EXN/8 Draft 1.

32. The Council is invited to adopt a revision of document UPOV/INF-EXN/7 "List of INF-EXN Documents and Latest Issue Dates" (document UPOV/INF-EXN/8) on the basis of document UPOV/INF-EXN/8 Draft 1.

[Annexes follow]

ANNEX I

PROPOSED AMENDMENTS TO
DOCUMENT TGP/5 “EXPERIENCE AND COOPERATION IN DUS TESTING”

- (i) *Revision of document TGP/5: Section 3: Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders’ Rights*

Document TGP/5: Section 3 should read as follows:

“A model Technical Questionnaire is provided in document TGP/7 ‘Development of Test Guidelines’: Annex 1: TG Template: Chapter 10. The UPOV Test Guidelines (http://www.upov.int/edocs/tgpdocs/en/tgp_7.pdf) contain, in Chapter 10, a specific Technical Questionnaire for varieties covered by those Test Guidelines.”

- (ii) *Revision of document TGP/5: Section 8: Cooperation in Examination*

Document TGP/5: Section 8 should read as follows:

“A synopsis of cooperation in examination between authorities is provided in the form of a Council document:

“C/[session]/5 (e.g. C/49/5) (http://www.upov.int/meetings/en/topic.jsp?group_id=251).”

- (iii) *Revision of document TGP/5: Section 9: List of Species in Which Practical Knowledge has Been Acquired or for Which National Test Guidelines Have Been Established*

Document TGP/5: Section 9 should read as follows:

“A list of genera and species in which practical knowledge has been acquired or for which national test guidelines have been established is provided in the Technical Committee document:

“TC/[session]/4 (e.g. TC/51/4) (http://www.upov.int/meetings/en/topic.jsp?group_id=254).”

[Annex II follows]

ANNEX II

PROPOSED AMENDMENTS TO
DOCUMENT TGP/14/1 "GLOSSARY OF TERMS USED IN UPOV DOCUMENTS"

(i) *Section 2.4: "Apex/tip shape characteristics"*

1. The wording of document TGP/14 Section 2.4 should read as follows:

"2.4 Apex/Tip Shape Characteristics

"2.4.1 The APEX (apical or distal part) of an organ or plant part is the end furthest from the point of attachment. In some cases, the distal extremity of the apex may be differentiated into a 'TIP'.

"2.4.2 In considering the approach to describe the apex, the size of the organ and the number of apex shapes should be taken into account. Apex characteristics can be described in simple terms and if a differentiated tip is present it could be further described as a separate characteristic. Generally, it is not necessary to separate the apex shape characteristic into differentiated tip and apex characteristics.

"2.4.3 In cases where it is appropriate to separate into differentiated tip and apex characteristics, the shape of the apex is taken as the general shape, excluding any differentiated tip (if present) and the separation of tip and apex should be indicated in the explanation of the characteristic. For example:

[...]"

(ii) *Subsection 3: "Color"*

2. The French translation of the color group "dark purple red" should read "rouge-pourpre foncé".

[Annex III follows]

ANNEX III

PROPOSED AMENDMENTS TO
DOCUMENT UPOV/INF/12/4 "EXPLANATORY NOTES ON VARIETY DENOMINATIONS
UNDER THE UPOV CONVENTION"

To insert new paragraph 7.2 under section "Explanatory Note – Paragraph (7)", as follows:

Paragraph 7

[Obligation to use the denomination] Any person who, within the territory of one of the members of the Union, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

Explanatory Note – Paragraph (7)

7.1 If it is found that prior rights of a third party prevent the use of the registered variety denomination, the authority shall require the breeder to submit another denomination. Article 22(1)(b)(iii) of the 1991 Act provides that the breeder's right may be cancelled if "the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination."

7.2 The following items provide guidance in relation to changes of registered variety denominations:

(a) The UPOV Convention requires a change of the registered denomination where the denomination of the variety is cancelled after the grant of the right. The competent authority should cancel a variety denomination if:

(i) by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it (see paragraph (4) "Prior rights of third persons");

(ii) the denomination is unsuitable because it is contrary to the provisions in paragraph (2) "Characteristics of the denomination";

(b) In cases where the registered denomination is subsequently refused in another member of the Union because it is unsuitable in that territory (e.g. prior right), at the request of the breeder, the authority may consider it appropriate to change the denomination to the denomination registered in the said other member of the Union (see provisions in paragraph (5) "Same denomination in all Contracting Parties"); and

(c) In general, subject to (a) and (b) above, it would not be appropriate for the authority to change a registered denomination following a request by the breeder.

[Annex IV follows]

ANNEX IV

PROPOSED AMENDMENTS TO
DOCUMENT UPOV/INF/6/3 "GUIDANCE FOR THE PREPARATION OF LAWS
BASED ON THE 1991 ACT OF THE UPOV CONVENTION" (DOCUMENT UPOV/INF/6/4)

NOTES ON ARTICLE 13 PROVISIONAL PROTECTION

Subject to approval by the Council, at its forty-ninth ordinary session, of the revision of document UPOV/EXN/PRP/1 "Explanatory Notes on Provisional Protection under the UPOV Convention" (presented in document UPOV/EXN/PRP/2 Draft 4), to replace the text of "NOTES ON ARTICLE 13" with the new text of document UPOV/EXN/PRP/2.

NOTES ON ARTICLE 20 VARIETY DENOMINATION

Subject to approval by the Council, at its forty-ninth ordinary session, of the revision of document UPOV/INF/12/4 "Explanatory Notes on Variety Denominations under the UPOV Convention" (presented in Annex III to this document), to insert new paragraph 7.2 under "NOTES ON ARTICLE 20", Article 20(7).

NOTES ON ARTICLE 21 NULLITY OF THE BREEDER'S RIGHT

Subject to approval by the Council, at its forty-ninth ordinary session, of the revision of document UPOV/EXN/NUL/1 "Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention" (presented in document UPOV/EXN/NUL/2 Draft 4), to replace the text of "NOTES ON ARTICLE 21" with the new text of document UPOV/EXN/NUL/2.

NOTES ON ARTICLE 22 CANCELLATION OF THE BREEDER'S RIGHT

Subject to approval by the Council, at its forty-ninth ordinary session, of the revision of document UPOV/EXN/CAN/1 "Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention" (presented in document UPOV/EXN/CAN/2 Draft 4), to replace the text of "NOTES ON ARTICLE 22" with the new text of document UPOV/EXN/CAN/2.

[End of Annex IV and of document]