

Working group on guidance concerning smallholder farmers in relation to private and non-commercial use

WG-SHF/4/2

**Fourth Meeting
Geneva, October 25, 2023**

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POSSIBLE REVISION OF THE FAQs

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 replies to UPOV Circular E-23/116 of July 6, 2023, to assist the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF) in providing the requested guidance for the revision of the FAQs on exceptions to the breeder’s right.
2. The WG-SHF is invited to:
 - (a) note the information provided in this document;
 - (b) consider the compilation of replies to UPOV Circular E-23/116 of July 6, 2023, as set out in this document and in its Annexes II and III; and
 - (c) note that the Chair of the WG SHF will make a report to the Consultative Committee on the work of the WG-SHF, with a request for the Consultative Committee to approve the work of the WG-SHF.

3. The structure of this document is as follows:

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BACKGROUND

4. The terms of reference (ToRs) for the WG-SHF, are reproduced in Annex I to this document.

Third meeting of the WG-SHF (March 24, 2023)

5. The WG-SHF, at its third meeting, held in Geneva on March 24, 2023, considered document WG-SHF/3/2. "Options to address matters discussed at the first and second meetings of the WG-SHF".

6. The documents and report of the third meeting of the WG-SHF are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=74772.

7. The report of the third meeting contains the following conclusions:

"39. The WG-SHF agreed that, as a basis to proceed with its work, the Office of the Union would send a circular inviting the WG-SHF to:¹

- (a) consider all existing FAQs that relate to smallholder farmers and subsistence farmers, which would be listed in the circular; and
- (b) consider whether the issues identified in document WG-SHF/3/2 and raised during the discussions in the WG-SHF were adequately covered in those FAQs and whether revisions and/or additional FAQ(s) would be required to address those issues.

"40. The WG-SHF further agreed that, for the purposes of clarity and transparency, the work of the WG-SHF would be reported to the Administrative and Legal Committee and the Consultative Committee, at its sessions in October, with a request that the Consultative Committee be invited to approve the work set out in paragraph 39, particularly in relation to enabling the WG-SHF to consider all existing FAQs that relate to smallholder farmers and subsistence farmers.²

"41. The WG-SHF requested the Office of the Union to compile the replies to the Circular for consideration by the WG-SHF, at its fourth meeting.

1. The Delegation of Norway had reservation to changing the ToR and stressed that the revisions of the FAQs should be within the ToR of the WG-SHF "concerning smallholder farmers in relation to private and non-commercial use".
2. The Delegation of Norway had reservation to this decision."

UPOV CIRCULAR E-23/116 OF JULY 6, 2023

8. The Office of the Union issued UPOV Circular E-23/116 on July 6, 2023, inviting the WG-SHF to:

- (a) consider all existing FAQs that relate to smallholder farmers and subsistence farmers (see Annex I of the Circular); and
- (b) consider whether the issues identified in document WG-SHF/3/2 and raised during the discussions in the WG-SHF are adequately covered in those FAQs and whether revisions and/or additional FAQ(s) are required to address those issues (see Annex II of the Circular [and Annex III to this document]).

9. In reply to UPOV Circular E-23/116 contributions were received from:

Members: Argentina, European Union, Netherlands and the United States of America.

Observer: Association for Plant Breeding for the Benefit of Society (APBREBES).

10. UPOV Circular E-23/116 and individual responses received are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=77810.

11. Annexes II and III of this document provide for a compilation of the responses to UPOV Circular E-23/116 in relation to FAQs relevant for smallholder farmers and subsistence farmers (Annex II of Circular E-23/116) and options for matters that could be considered in a revision of the FAQs on exceptions to the breeder's right" (Annex II of Circular E-23/116), respectively.

FOURTH MEETING OF THE WG-SHF (OCTOBER 25, 2023)

12. The fourth meeting of the WG-SHF will be held in hybrid format, on the evening of October 25, 2023.

HUNDRED AND FIRST SESSION OF THE CONSULTATIVE COMMITTEE (OCTOBER 26, 2023)

13. In accordance with the agreement of the WG-SHF, at its third meeting, for the purposes of clarity and transparency, the work of the WG-SHF would be reported to the Administrative and Legal Committee (see document CAJ/80/4 "Revision of the "Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention") and the Consultative Committee, at its sessions in October, with a request that the Consultative Committee be invited to approve the work set out in paragraph 39 (reproduced below), particularly in relation to enabling the WG-SHF to consider all existing FAQs that relate to smallholder farmers and subsistence farmers.

"39. The WG-SHF agreed that, as a basis to proceed with its work, the Office of the Union would send a circular inviting the WG-SHF to:¹

- (c) consider all existing FAQs that relate to smallholder farmers and subsistence farmers, which would be listed in the circular; and
- (d) consider whether the issues identified in document WG-SHF/3/2 and raised during the discussions in the WG-SHF were adequately covered in those FAQs and whether revisions and/or additional FAQ(s) would be required to address those issues."

- 1. The Delegation of Norway had reservation to changing the ToR and stressed that the revisions of the FAQs should be within the ToR of the WG-SHF "concerning smallholder farmers in relation to private and non-commercial use".

14. The Chair of the WG-SHF, Mr. Yehan Cui (China), President of the Council, will make a report on October 26, 2023, at the one hundred and first session of the Consultative Committee, on the fourth meeting of the WG-SHF, with a request for the Consultative Committee to approve the work of the WG-SHF, in accordance with the way forward provided in the above paragraph.

15. *The WG-SHF is invited to:*

(a) note the information provided in this document;

(b) consider the compilation of replies to UPOV Circular E-23/116 of July 6, 2023, as set out in this document and in its Annexes II and III; and

(c) note that the Chair of the WG-SHF will make a report to the Consultative Committee on the work of the WG-SHF, with a request for the Consultative Committee to approve the work of the WG-SHF.

[Annex I follows]

TERMS OF REFERENCE AND COMPOSITION OF THE WORKING GROUP ON GUIDANCE
CONCERNING SMALLHOLDER FARMERS IN RELATION TO PRIVATE AND NON-COMMERCIAL USE
(WG-SHF)

The Consultative Committee, at its ninety-eighth session, held via electronic means on October 28, 2021, decided to establish a Working Group to develop guidance concerning smallholder farmers in relation to private and non-commercial use (WG-SHF) and agreed that the terms of reference of the Working Group be approved by the Consultative Committee by correspondence (see document [C/55/18](#) "Report", paragraph 19). The Consultative Committee approved on December 19, 2021, by correspondence, the terms of reference (ToRs) for the WG-SHF (see "Terms of Reference" below).

The Consultative Committee, at its ninety-eighth session, agreed that the WG-SHF be composed of those members of the Union and observers to the Council that reply to a Circular expressing an interest to be part to the WG-SHF (see document [C/55/18](#) "Report", paragraph 19). Circular E-21/230 of November 19, 2021, invited members of the Union and observers in the Council to express an interest to be members of the WG-SHF by December 19, 2021 (see "Composition" below).

TERMS OF REFERENCE AND COMPOSITION OF THE WG-SHF

PURPOSE:

The purpose of the WG-SHF is to develop guidance concerning smallholder farmers in relation to private and non-commercial use, which would be the basis for a revision of the "Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention" (document UPOV/EXN/EXC) and a revision of the Frequently asked questions (FAQs) on exceptions to the breeder's right.

COMPOSITION:

(a) members of the Union and observers to the Council that expressed an interest to be part of the WG-SHF in reply to Circular E-21/230 of November 19, 2021:

Argentina, Austria, Belgium, Canada, Chile, Colombia, Czech Republic, European Union, France, Ghana, Japan, Mexico, Netherlands, Norway, Switzerland, Tunisia, United Kingdom, United States of America, Zimbabwe, South Centre, African Seed Trade Association (AFSTA), Asia and Pacific Seed Association (APSA), Association for Plant Breeding for the Benefit of Society (APBREBES), CropLife International, European Coordination Via Campesina (ECVC), Euroseeds, International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), International Seed Federation (ISF) and Seed Association of the Americas (SAA).

(b) other members of the Union would be free to participate at any meeting of the WG-SHF;

(c) the members of the Project "Options to interpret the notion of private and non-commercial use as included in Article 15. 1. I of the UPOV 1991 Convention" (Euroseeds, Plantum and Oxfam: "Project Team") would be invited to participate in the first meeting of the WG-SHF. Ad hoc invitations might be issued to the Project Team to attend other meetings of the WG-SHF, where considered appropriate by the WG-SHF; and

(d) meetings to be chaired by the President of the Council.

MODUS OPERANDI:

(a) the analysis of the contributions in the compendium with the replies to UPOV Circular E-20/246 and a report with suggestions prepared by the Project Team, in conjunction with the Office of the Union, will be used as the initial basis for the discussions on developing guidance concerning smallholder farmers in relation to private and non-commercial use;

(b) the WG-SHF to meet at a time and frequency to address its mandate, by physical and/or virtual means, as agreed by the WG-SHF;

(c) the WG-SHF to provide guidance for drafting the revision of document UPOV/EXN/EXC, to be prepared by the Administrative and Legal Committee, and the revision of the FAQs on exceptions to the breeder's right, to be prepared by the Office of the Union;

(d) the WG-SHF to report to the Consultative Committee on progress of its work and to seek further guidance from the Consultative Committee, as appropriate; and

(e) WG-SHF documents to be made available to members of the Union and observers to the Council.

[Annex II follows]

COMPILATION OF REPLIES RECEIVED IN REPLY TO UPOV CIRCULAR E-23/116 OF JULY 6, 2023,
CONCERNING THE "FAQS RELEVANT FOR SMALLHOLDER FARMERS AND SUBSISTENCE
FARMERS" (ANNEX II OF CIRCULAR E-23/116)

Comments in reply to Annex I of Circular E-23/116 of July 6, 2023, concerning existing FAQs that relate to smallholder farmers and subsistence farmers, are presented in green boxes under the relevant FAQs, as follows:

~~Strikethrough~~ indicates deletion from the text of the FAQ as reproduced in Annex I of Circular E-23/116;

Underlining indicates insertion to the text of the FAQ as reproduced in Annex I of Circular E-23/116.

What are the benefits of new varieties of plants for society?

Feeding the World

New, improved varieties of plants are an important and sustainable means of achieving food security in the context of population growth and climate change. New varieties that are adapted to the environment in which they are grown increase the choice of healthy, tasty and nutritious food while generating a viable income for farmers.

Improving lives in rural and urban areas and providing economic development

Innovation in agriculture and horticulture is important for economic development. Production of diverse, high quality varieties of fruit, vegetables, ornamentals and agricultural crops provides increased income for farmers and employment for millions of people around the world. New varieties can be the key to accessing global markets and improving international trade for developing countries. At the same time, new varieties can support the development of urban agriculture and the growing of ornamental plants, shrubs and trees that contribute to improving the lives of people in the expanding urban environment.

Respecting the natural environment

Increasing productivity whilst respecting the natural environment is a key challenge in the context of population growth and climate change. Breeding plant varieties with improved yield, more efficient use of nutrients, resistance to plant pests and diseases, salt and drought tolerance and better adaptation to climatic stress can sustainably increase productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment.

Why is plant variety protection necessary?

Successful breeding requires great skill and knowledge. In addition, large-scale breeding calls for significant investment in land, specialized equipment (for example, greenhouses, growth chambers and laboratories), and skilled, scientific manpower.

It takes a long time to develop a successful plant variety (10 to 15 years in the case of many plant species). Yet not all new plant varieties are successful and, even where the varieties show significant improvements, changes in market requirements may eliminate the possibility of a return on investment. This makes it necessary to balance the benefits with the return of the original high investment. Generally, however, plant breeding results in the availability of varieties with increased output and improved quality for the benefit of the society.

Sustained and long-term breeding efforts are only worthwhile if there is a chance to be rewarded for the investment made. To recover the costs of this research and development, the breeder may seek protection to obtain exclusive rights for the new variety.

At the same time, a new variety, once released, can often be easily reproduced by others. The original breeder is thus deprived of the fair opportunity to benefit from his or her investment. It is, therefore, critical to provide an effective system of plant variety protection, which encourages the development of new varieties of plants thereby benefiting the breeder and society at large.

- [Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership](#)
- [UPOV Report on the Impact of Plant Variety Protection](#)

In addition to making plant variety protection available, other measures to encourage plant breeding activities include increased public funding for plant breeding, facilitating access to genetic resources and encouraging public-private partnerships.

What are the benefits of plant variety protection and UPOV membership?

The [UPOV Report on the Impact of Plant Variety Protection](#) demonstrated that in order to enjoy the full benefits which plant variety protection is able to generate, both implementation of the UPOV Convention and membership of UPOV are important. The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with:

- (a) increased breeding activities,
- (b) greater availability of improved varieties,
- (c) increased number of new varieties,
- (d) diversification of types of breeders (e.g. private breeders, researchers),
- (e) increased number of foreign new varieties,
- (f) encouraging the development of a new industry competitiveness on foreign markets, and
- (g) improved access to foreign plant varieties and enhanced domestic breeding programs.

In order to become a UPOV member the advice of the UPOV Council in respect of the conformity of the law of a future member with the provisions of the UPOV Convention is required. This procedure leads, in itself, to a high degree of harmony in those laws, thus facilitating cooperation between members in the implementation of the system.

Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?

The aim of the UPOV system is encourage breeding of new plant varieties for all types of farmers. The "[Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership](#)" and the "[Symposium on the Benefits of Plant Variety Protection for Farmers and Growers](#)" demonstrated, for example, the way in which plant breeders' rights have been used by the public sector to transfer new varieties to both commercial and resource-poor farmers.

Does the UPOV system of plant variety protection only benefit large multinational corporations?

No. There are no restrictions on who can be considered to be a breeder under the UPOV system: a breeder might be an individual, a farmer, a farmers' cooperative, a researcher, a public institute, a small or large company. Breeders can be based locally, nationally, regionally or internationally.

The UPOV system was created to benefit society through the development of new plant varieties by supporting plant breeders. See "[What are the benefits of plant variety protection and UPOV membership?](#)".

The UPOV website provides information on the diversity of plant breeders that use the UPOV system to support their plant breeding for the benefit of society, including:

- [UPOV Report on the Impact of Plant Variety Protection](#)
- [Australia](#)
- [European Union](#)
- [Japan](#)
- [Kenya](#)

- [Mexico](#)
- [Viet Nam](#)

Additional information is available on how the UPOV system supports plant breeding by the public sector:

- [UPOV Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership](#)
- [Brazil](#)
- Canada:
 - https://www.upov.int/meetings/en/doc_details.jsp?meeting_id=64550&doc_id=552252
 - https://multimedia.wipo.int/upov/en/canada_cherry_short.mp4

The [Symposium on the Benefits of Plant Variety Protection for Farmers and Growers](#) demonstrated the role of PVP in Enabling Farmers and Growers to Become Breeders

Does the UPOV system make farmers dependent on high levels of inputs?

No, the UPOV system does not make farmers choose any particular varieties or farming method.

A study in Viet Nam, "[The socio-economic benefits of UPOV membership in Viet Nam; An ex post assessment on plant breeding and agricultural productivity after 10 years](#)"¹, noted that, in the 10 years following UPOV membership, arable farm yields increased while inputs decreased by 1.2% per annum. The author stated that this "marks an astonishing technological change following Viet Nam's UPOV membership".

The UPOV system encourages the development of new varieties that are adapted to the needs of farmers. If plant breeders develop varieties that do not meet the needs of farmers, farmers will not grow their varieties and the plant breeders will not receive an income.

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties ([Why do farmers and growers need new plant varieties?](#)).

¹(Corresponding author: Steffen Noleppa) by HFFA Research GmbH

Does the UPOV Convention regulate varieties that are not protected by plant breeders' rights?

The UPOV system does not regulate varieties that are not covered or no longer covered by plant variety protection. Therefore many plant varieties can be replanted by a farmer without any authorization of the breeder.

UPOV does not regulate any other system of intellectual property rights governing the protection of plants/plant varieties. It is necessary to consult the legislation in each UPOV Contracting Party in order to know the situation and the answer in that UPOV member.

Proposal from the United States of America:

FAQ "Does the UPOV Convention regulate varieties that are not protected by plant breeders' rights?" to be changed as follows:

The UPOV system Convention does not regulate varieties that are not covered or no longer covered by plant variety protection. Therefore, there are many plant varieties that are in the public domain that can be replanted by a farmer without any authorization of the breeder.

UPOV does not regulate any other national or regional system of intellectual property rights governing the protection of plants/plant varieties. It is necessary to consult the legislation in each UPOV Contracting Party in order to know the situation and the answer in that UPOV member.

Who can protect a plant variety?

Only the breeder of a new plant variety can protect that new plant variety. It is not permitted for someone other than the breeder to obtain protection of a variety.

There are no restrictions on who can be considered to be a breeder under the UPOV system: a breeder might be an individual, a farmer, a researcher, a public institute, a private company etc.

- [see document UPOV/EXN/BRD “Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention”](#)
- [Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership](#)

Does the UPOV system force farmers to grow protected varieties?

No, under the UPOV system, farmers have no obligation to grow protected varieties. The UPOV system encourages the development of new varieties, which provides farmers with new choices.

Does the UPOV system restrict access to the heritage/heirloom varieties?

No, the UPOV system does not regulate access to heritage or heirloom varieties (see also [“Does the UPOV Convention regulate varieties that are not protected by plant breeders’ rights?”](#)).

Only the breeder of a new plant variety can obtain plant variety protection under the UPOV system.

Does the UPOV system prevent farmers from using traditional varieties?

No, the UPOV system does not prevent farmers from using traditional varieties. Farmers can choose to grow protected or non-protected varieties. The UPOV system encourages the development of new varieties, which provides farmers with new choices.

Only the breeder of a new plant variety can obtain plant variety protection under the UPOV system. (see also [“Does the UPOV Convention regulate varieties that are not protected by plant breeders’ rights?”](#).)

Can breeders use a protected variety in their breeding programs?

Under the “breeder’s exemption” in the UPOV Convention, the authorization of the breeder for the use of protected varieties for breeding purposes is not required.

The relevant provisions of the 1978 Act and of the 1991 Act of the UPOV Convention are reproduced and explained as follows:

[1978 ACT](#)

Article 5: Rights Protected; Scope of Protection

“(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.”

[1991 ACT](#)

Article 15: Exceptions to the Breeder’s Right

“(1) [Compulsory exceptions] The breeder’s right shall not extend to [...]

“(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.”

Thus, with regard to the use of a protected variety for breeding “other” varieties, the authorization of the breeder of the protected variety is not required in either the 1978 Act (“Authorisation by the breeder shall not be required ... for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties...”) or the 1991 Act (“The breeder’s right shall not extend to ... acts done for the purpose of breeding other varieties”).

In addition, acts done with the “other” varieties (e.g. marketing), do not require the authorization of the breeder of the protected variety except for the circumstances specified in the 1978 Act and the 1991 Act. Article 5(3) of the 1978 Act (see above) specifies that the “authorisation shall be required ... when the repeated use of the variety is necessary for the commercial production of another variety”. The 1991 Act specifies that the authorization of the breeder is required, where the provisions of Article 14(5) (essentially derived and certain other varieties) apply, in respect of the acts for material covered under Article 14(1) to (4) (see <https://www.upov.int/overview/en/exceptions.html>).

How does the UPOV system contribute to the United Nations Sustainable Development Goals (SDGs)?

The vision of the 2030 Agenda for Sustainable Development (see <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>) includes a world where “food is sufficient, safe, affordable and nutritious”, there is “sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger” and one in “which development and the application of technology are climate-sensitive, respect biodiversity and are resilient”. The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. The benefits that the UPOV system provides to society will be an important component in realizing the vision of the 2030 Agenda for Sustainable Development.

UPOV's mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. In particular, new varieties of plants are an important means of responding to the challenges of a growing and increasingly urbanized population, climate change, parallel demands for food and energy production and evolving human needs.

The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties, together with improved farming practices, and future food security depend on them. There is also a need to further increase food production in the years leading up to 2030. World population is anticipated to grow until 2050, and urbanization will continue. Therefore, the need for increased productivity in sustainable agricultural production will continue for the foreseeable future. New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users’ needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties ([Why do farmers and growers need new plant varieties?](#)).

Diversity of breeders and breeding is needed to develop new varieties that are able to respond to such a wide range of challenges. The UPOV system of plant variety protection provides an effective mechanism for breeders in both the public and private sectors, and facilitates public-private partnerships. It is a system that is equally relevant for individual breeders, SMEs and larger breeding institutes/enterprises. Plant variety protection supports long-term investment in breeding and provides a framework for investment in the delivery of seed and other propagating material of varieties suited to farmers’ needs.

The UPOV system encourages the development of new varieties of plants, therefore adding to diversity. The “breeder’s exemption” in the UPOV Convention enables plant diversity to be available for further breeding activities because acts done for the purpose of breeding other varieties are not subject to any restriction by the breeder. This reflects the fact that access to protected varieties contributes to sustain greatest progress in plant breeding and, thereby, to maximize the use of genetic resources for the benefit of society ([Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?](#)).

The [UPOV Report on the Impact of Plant Variety Protection](#) (Impact Study) notes that membership of UPOV provide important technical assistance and facilitate opportunities for cooperation, which enables PVP to be extended to the widest range of plant genera and species in an efficient way thereby enabling the benefits to be maximized.

The UPOV system has particular relevance in relation to the following United Nations Sustainable Development Goals (SDGs):

- Goal 1 End poverty in all its forms everywhere (Targets 1.1, 1.4, 1.5, 1.a, 1.b)
- Goal 2 End hunger, achieve food security and improved nutrition and promote sustainable agriculture (Targets 2.1, 2.2, 2.3, 2.4, 2.5, 2.a)
- Goal 9 Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation (Target 9.5)
- Goal 12 Ensure sustainable consumption and production patterns (Targets 12.2, 12.3, 12.4, 12.a)
- Goal 15 Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss (Target 15.3)
- Goal 17 Strengthen the means of implementation and revitalize the global partnership for sustainable development: Systemic issues: Multi-stakeholder partnerships (Target 17.17)

How does the UPOV system support sustainable development?

The vision of the 2030 Agenda for Sustainable Development (see <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>) includes a world where “food is sufficient, safe, affordable and nutritious”, there is “sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger” and one in “which development and the application of technology are climate-sensitive, respect biodiversity and are resilient”.

World population is growing and urbanization increasing, which places greater demands on the quantity and quality of agricultural production. At the same time, conservation of biodiversity depends on sustainable agriculture and a halt or reversal to the expansion of agricultural land, while there are parallel demands on agricultural land for food and energy production. This means that there is a need to produce more from existing agricultural land, in a sustainable way.

The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties, combined with improved farming practices. Breeding plant varieties with improved yield, more efficient use of nutrients, resistance to plant pests and diseases, salt and drought tolerance and better adaptation to climate change can sustainably increase productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. At the same time, new varieties that are adapted to the environment in which they are grown increase the choice of healthy, tasty and nutritious food while generating a viable income for farmers.

The UPOV system of plant variety protection supports long-term investment in breeding and provides a framework for investment in the delivery of seed and other propagating material of varieties suited to farmers' needs. UPOV was created in 1961 for the development of agriculture and, since that time, has proven to be an effective system for supporting various types of breeders: individuals, farmers, SMEs and larger breeding institutes/enterprises, in the private and public sectors.

From the outset, the UPOV system was conceived to deliver greatest progress in plant breeding and, therefore, to sustain greatest advances in agriculture for the benefit of farmers and society as a whole. This concept is enshrined in the “breeder’s exemption”, a key feature of the UPOV system since its creation. This exemption enables protected plant varieties to be available for further breeding by all types of breeders, thus recognizing that access to genetic resources is a prerequisite for any type of breeding.

What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?

It is not the role of the UPOV system to regulate the marketplace. The UPOV Convention requires that the breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of the UPOV Convention. This clarification should not be taken to mean that UPOV believes that there should be a particular type or level of market regulation, but rather as a recognition that such regulation should be dealt with by an appropriate, dedicated and independent mechanism.

Proposal from the United States of America:

FAQ "What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?" to be changed as follows:

It is not the role of the UPOV system to regulate the marketplace. The UPOV Convention requires that the national law regarding protection of plant breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of the UPOV Convention. This clarification should not be taken to mean that UPOV believes that there should be a particular type or level of market regulation, but rather as a recognition that such regulation should be dealt with by an appropriate, dedicated and independent mechanism. Therefore, the acts permitted by plant breeders rights or exceptions under the UPOV system may be subject to other national or regional measures regulating commerce such as requirements for National List or Official Catalogue.

Why do farmers and growers need new plant varieties?

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties.

The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties, together with improved farming practices, and future food security depend on them.

- [Symposium on the Benefits of Plant Variety Protection for Farmers and Growers](#)

Does the UPOV system mean that farmers need the breeder's authorization to sell their harvested crop?

Farmers do not need the breeder's authorization to sell harvested crop of a protected variety if they have planted the crop using seed that was provided with the breeder's authorization, or if they have planted seed from the harvested crop within the exceptions to the plant breeders' rights provided in the legislation of the country concerned (see [Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention](#)).

Proposal from the Netherlands:

FAQ "Does the UPOV system mean that farmers need the breeder's authorization to sell their harvested crop?" to be changed as follows:

As long as farmers use seed that is from a legal source, farmers Farmers do not need the breeder's authorization to sell harvested crop of a protected variety. This is for example the case if the seeds that have been used were produced and marketed by the breeder or with his authorization, or ~~produced if they have planted the crop using seed that was provided with the breeder's authorization, or if they have planted seed from the harvested crop~~ within the exceptions to the plant breeders' rights provided in the legislation of the country concerned (see [Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention](#)).

Can a farmer sell seed of a protected variety without the authorization of the breeder?

The authorization of the breeder is required for the selling of seed of a protected variety by any person.

Under the [1978 Act](#) of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for "the offering for sale" and "the marketing" of the reproductive or vegetative propagating material, as such, of the variety.

Under the [1991 Act](#) of the UPOV Convention (see Article 14(1)) the "offering for sale" and "selling or other marketing" of the propagating material of the protected variety requires the authorization of the breeder.

[Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention](#)).

Proposal from the Netherlands:

FAQ "Can a farmer sell seed of a protected variety without the authorization of the breeder?" to be changed as follows:

As a general rule, the authorization of the breeder is required for the selling of seed of a protected variety by any person.

Under the 1978 Act of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for "the offering for sale" and "the marketing" of the reproductive or vegetative propagating material, as such, of the variety.

Under the 1991 Act of the UPOV Convention (see Article 14(1)) the "offering for sale" and "selling or other marketing" of the propagating material of the protected variety requires the authorization of the breeder.

In general, re-sales of seeds that were initially marketed by the breeder or with its consent, is not prohibited under UPOV.

Further, acts done privately and for non-commercial purposes do not require the authorization of the breeder. It depends on the applicable national law whether, and under what conditions, local sales of a surplus harvest from a protected variety by a subsistence/smallholder farmer, i.e. that part of the harvest that has not been consumed by such farmer's household, to other subsistence/smallholder farmers can be considered to be done privately and for non-commercial purposes.

[Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention](#)).

Can a farmer replant seed of a protected variety without the authorization of the breeder?

Commercial farmers

It is necessary to consult the legislation in each UPOV member to know the answer to this question.

Under the [1978 Act](#) of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. However, no specific mention is made of replanting seed of a protected variety by farmers. Therefore, it is necessary to consult the legislation in each UPOV member.

Under the [1991 Act](#) of the UPOV Convention (see Article 15(2)), there is an optional exception to the breeder's rights according to which UPOV members can decide to allow farmers to replant seed on their own farms without the authorization of the breeder, under certain circumstances. The wording of this optional exception is as follows:

“Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii).”

It is a matter for each UPOV member to decide if, and how, to incorporate this option in its legislation.

Subsistence farmers

Since the 1991 Act and 1978 Act give no definition of the words “commercial” and “subsistence farming”, it is necessary to consult the legislation in each UPOV member to know the answer to this question specific for that UPOV member.

Under the 1978 Act of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. The 1978 Act of the UPOV Convention is silent on the question of subsistence farmers, and therefore it totally depends on the national legislation.

Under the 1991 Act of the UPOV Convention (see Article 15(1)(i)), a compulsory exception sets out that the breeder's right does not extend to “acts done privately and for non-commercial purposes”. With subsistence farming, it is observed that the farmer produces barely enough food for their own consumption and that of their dependents. Thus, the propagation of a protected variety by a farmer exclusively for the production of a food crop to be consumed by that farmer and the dependents of the farmer, may be considered to fall within the meaning of acts done privately and for non-commercial purposes.

Proposal from the Netherlands:

FAQ “Can a farmer replant seed of a protected variety without the authorization of the breeder?” to be changed as follows:

Commercial farmers (scope of the optional exception, Article 15 (2))

It is necessary to consult the legislation in each UPOV member to know the answer to this question.

Under the [1978 Act](#) of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. However, no specific mention is made of replanting seed of a protected variety by farmers. Therefore, it is necessary to consult the legislation in each UPOV member.

Under the [1991 Act](#) of the UPOV Convention (see Article 15(2)), there is an optional exception to the breeder’s rights according to which UPOV members can decide to allow farmers to replant seed on their own farms without the authorization of the breeder, under certain circumstances. The wording of this optional exception is as follows:

“Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder’s right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii). ”

It is a matter for each UPOV member to decide if, and how, to incorporate this option in its legislation.

Subsistence/smallholder farmers ((scope of the obligatory exception, Article 15 (1))

~~Since the~~ The 1991 Act and 1978 Act give no definition of the words “commercial”, and “subsistence” or “smallholder farming”. This is, in particular, obvious for the terms “subsistence” and “smallholder” as these depend - amongst other elements - on local economic and societal circumstances. Therefore, it is necessary to consult the legislation in each UPOV member to know the answer to this question specific for that UPOV member.

Under the 1978 Act of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. The 1978 Act of the UPOV Convention is silent on the question of subsistence farmers, and therefore it totally depends on the national legislation.

Under the 1991 Act of the UPOV Convention (see Article 15(1)(i)), a compulsory exception sets out that the breeder’s right does not extend to “acts done privately and for non-commercial purposes”. ~~With subsistence farming, it is observed that the farmer~~ Farmers living at the edge of poverty often barely produce barely enough food for their own consumption and that of their dependents. Occasionally, these farmers may however produce more than for their own consumption needs and have some surplus production that they may sell or barter for other vital goods, locally to other such farmers. Thus, the propagation of a protected variety by a farmer exclusively for the production of a food crop substantially for home consumption to be consumed by that farmer and the dependents of the farmer, may be considered to normally should fall within the meaning of acts done privately and for non-commercial purposes.

Proposal from the United States of America:

FAQ “Can a farmer replant seed of a protected variety without the authorization of the breeder?” to be changed as follows:

Commercial farmers and Smallholder farmers

It is necessary to consult the legislation in each UPOV member to know the answer to this question. The UPOV Convention does not provide the definition for “commercial farmers” or “smallholder farmers.”

Under the [1978 Act](#) of the UPOV Convention (see Article 5), the prior authorization of the breeder is required for the production for purposes of commercial marketing of the reproductive or vegetative propagating material, as such, of the variety. However, no specific mention is made of replanting seed of a protected variety by farmers. Therefore, it is necessary to consult the legislation in each UPOV member.

Under the [1991 Act](#) of the UPOV Convention (see Article 15(2)), there is an optional exception to the breeder’s rights according to which UPOV members can decide to allow farmers to replant seed on their own farms without the authorization of the breeder, under certain circumstances. The wording of this optional exception is as follows:

“Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder’s right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii). ”

It is a matter for each UPOV member to decide if, and how, to incorporate this option in its legislation, with the goal of particularly supporting the “smallholder farmers” in the member country.

What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?

The UPOV Convention only offers protection to new varieties of plants. UPOV does not regulate varieties that are not covered by plant variety protection. Therefore, plant variety protection does not restrict the ability of farmers to grow and sell propagating material of non-protected varieties.

How do I know if a variety is protected?

It is necessary to consult the official publication concerning protected varieties for the UPOV member concerned.

The [UPOV Plant Variety Database \(PLUTO\)](#) is a compilation of data supplied by many of the competent authorities of the UPOV members. However, the information concerning plant breeders’ rights provided in PLUTO does not constitute the official publication of the authorities concerned. To consult the official publication, or to obtain details on the status and completeness of the information in PLUTO, please contact the relevant authority, contact details for which are provided at https://www.upov.int/members/en/pvp_offices.html.

All contributors to PLUTO are responsible for the correctness and completeness of the data they supply. Users are particularly requested to note that it is not obligatory for members of the Union to supply data for PLUTO and, for those members of the Union who supply data, it is not obligatory to supply data for all items.

Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?

Since the 1991 Act and 1978 Act do not specifically address or define subsistence farmers it is necessary to consult the legislation of each UPOV Contracting Party for the answer to this question specific to that UPOV member.

Within the scope of the breeder's right exceptions provided under the UPOV Conventions, UPOV Contracting Parties have the flexibility to consider, where the legitimate interests of the breeders are not significantly affected, in the occasional case of propagating material of protected varieties, allowing subsistence farmers to exchange this against other vital goods within the local community.

Proposal from the European Union:

The European Union provided the following comment with regard to FAQ "Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?":

"I note that there is already a FAQ on '*Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?*' This could be amended to cover occasional selling of small amounts of seeds by small holder/subsistence farmers under certain conditions."

Proposal from the Netherlands:

FAQ "Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?" to be changed as follows:

Is it possible for subsistence/smallholder farmers to exchange or sell propagating material of protected varieties ~~against other vital goods within the local community~~ locally, farmer to farmer?

Since the 1991 Act and 1978 Act do not specifically address or define subsistence/smallholder farmers it is necessary to consult the legislation of each UPOV Contracting Party for the answer to this question specific to that UPOV member.

Within the scope of the breeder's right exceptions provided under the UPOV Conventions, UPOV Contracting Parties ~~have the flexibility to consider,~~ can decide for themselves which farmer practices should fall within the scope of this exception, under specific conditions and where the legitimate interests of the breeders are not significantly affected, in the occasional case of or surplus production of their harvest of propagating material of protected varieties, allowing subsistence/smallholder farmers to exchange this ~~against other vital goods within the local community~~ surplus production locally, farmer to farmer.

Further, depending on the applicable national law, sale of surplus production by subsistence/smallholder farmers to other subsistence/smallholder farmers locally, could qualify as an act "done privately and for non-commercial purposes". In that case such acts would not require the authorization of the breeder.

Proposal from the Association for Plant Breeding for the Benefit of Society (APBREBES):

APBREBES proposed to delete FAQ "Is it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community?" and provided the following comments:

"Since the 1991 Act and 1978 Act do not specifically address or define subsistence farmers it is necessary to consult the legislation of each UPOV Contracting Party for the answer to this question specific to that UPOV member.

Within the scope of the breeder's right exceptions provided under the UPOV Conventions, UPOV Contracting Parties have the flexibility to consider, where the legitimate interests of the breeders are not significantly affected, in the occasional case of propagating material of protected varieties, allowing subsistence farmers to exchange this against other vital goods within the local community."

"Rationale: This FAQ, in particular the second para (Within the scope ...) makes no sense, as it has no basis in the Convention Text or in an existing Explanatory Note and it should therefore be deleted.

"In particular, it negligently confuses Art. 15.1 (i) and 15.2.: According to the UPOV Convention 'The legitimate interest of the breeders' must be taken into account in the implementation of Art. 15.2. But this optional exception in our view does not foresee the exchange between farmers. This is also explained in UPOV/EXN/EXC/1. Therefore, the exchange of propagating material between farmers should rather be envisaged under Art. 15.1 – but nothing in the Convention indicates that for the implementation of this article special regard should be given to the legitimate interests of the breeders (it is more likely that Member States will justify the implementation of this Article on a broader basis).

"There is therefore no basis to restrict the implementation of Art. 15.1 by wordings such as 'the legitimate interest of the breeder', 'in the occasional case' or 'exchange against other vital goods'."

Under the UPOV system, breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. Can farmers, for instance, be allowed to exchange seeds of protected varieties freely within the local community?

Article 14(1)(a) of UPOV 1991 and article 5(1) of UPOV 1978 define the acts in respect of the propagating material for which the breeder authorization shall be required; Article 14(1)(b) and respectively Article 5(2) state that the breeder may make his authorization subject to conditions and limitations.

Therefore any breeder may decide on the conditions and limitations under which he authorizes the exploitation of his/her protected variety. He may, for instance, allow the farmer to exchange seeds of protected varieties freely within the local community.

Proposal from the Netherlands:

FAQ "Under the UPOV system, breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. Can farmers, for instance, be allowed to exchange seeds of protected varieties freely within the local community?" to be changed as follows:

Under the UPOV system, breeders decide the conditions and limitations under which they authorize the exploitation of their protected varieties. Can subsistence/smallholder farmers, for instance, be allowed to exchange seeds of protected varieties freely within the local community?

Article 14(1)(a) of UPOV 1991 and article 5(1) of UPOV 1978 define the acts in respect of the propagating material for which the breeder authorization shall be required; Article 14(1)(b) and respectively Article 5(2) state that the breeder may make his authorization subject to conditions and limitations.

Therefore any breeder may decide on the conditions and limitations under which he authorizes the exploitation of his/her protected variety. He may, for instance, allow the farmer to exchange seeds of protected varieties freely within the local community.

A survey of UPOV members revealed that there have been no reported legal actions against subsistence/smallholder farmers for infringement of plant breeders' rights in UPOV member states: (Link to survey).

Proposal from the Association for Plant Breeding for the Benefit of Society (APBREBES):

APBREBES provided the following proposal for a new FAQ:

“How can the exception for ‘private and non-commercial use’ allow smallholder farmers to multiply, exchange or sell farm-saved seeds/propagating material?”

“Member countries are free to define the scope of the exception for private and non-commercial use. They may clarify that smallholder farmers are allowed to multiply, exchange or sell farm-saved seeds/propagating material at the local level.”

“Rationale: This Interpretation is based on the joint presentation and the flow-chart made by Oxfam, Plantum and Euroseeds (project team) in the working group that was supported by several Working Group members. It therefore makes sense to clarify in an FAQ that this can be a possible form of implementation. For the sake of consistency, relevant Explanatory Notes and Guidances must also be revised to reflect the same.”

[Annex III follows]

ANNEX III

COMPILATION OF REPLIES RECEIVED IN REPLY TO UPOV CIRCULAR E-23/116 OF JULY 6, 2023,
CONCERNING THE "OPTIONS FOR MATTERS THAT COULD BE CONSIDERED IN
A REVISION OF THE FAQs ON EXCEPTIONS TO THE BREEDER'S RIGHT"
(ANNEX II OF CIRCULAR E-23/116)

Comments in reply to Annex II of Circular E-23/116 of July 6, 2023, concerning "Options for matters that could be considered in a revision of the FAQs on exceptions to the breeder's right" [extract from document WG-SHF/3/2] are presented in green boxes under the relevant Options, as follows:

~~Strikethrough~~ indicates deletion from the text of Annex II of Circular E-23/116;

Underlining indicates insertion to the text of Annex II of Circular E-23/116.

Options for matters that could be considered in a revision of the FAQs on exceptions to the breeder's right

To explore possibilities to:

- (1) explain that acts permitted under the exceptions to the breeders' rights may still be restricted by other national or regional legislation (e.g. seed laws, phytosanitary, GMO biosafety or biosecurity legislation);

Proposal from Argentina:

Option 1 to be changed as follows:

(1) explain that acts permitted under the exceptions to the breeders' rights may still be restricted by other national or regional legislation (e.g. seed laws, phytosanitary, GMO biosafety or biosecurity legislation), patent or other intellectual property rights legislation; the examples are not exhaustive.

Proposal from the United States of America:

The United States of America provided the following proposal with regard to option 1:

"There is no need to provide an additional and separate FAQ to explain the exceptions to breeders' rights which may be restricted by other national or regional legislation. In addressing this issue, we propose amending the current FAQ "What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?"

(see proposed changes by the United States of America to the FAQ reproduced in Annex II of this document).

- (2) explain that if a surplus production of seed of protected varieties could be exchanged and/or sold without official labelling or the right holder's brand it would be a *de facto* permission for "brown bagging" and illegal seed marketing;

Proposal from Argentina:

Option 2 to be changed as follows:

(2) explain that if a surplus production of seed of protected varieties could be exchanged and/or sold without official labelling or the right holder's brand authorization it would could be a *de facto* permission for "brown bagging" and illegal seed marketing;"

Proposal from the United States of America:

The United States of America provided the following proposal regarding option 2:

“We support a new FAQ that explains the illegality of ‘brown bagging.’”

- (3) explain how to [deliver]/[provide access to] improved varieties to farmers, including smallholder farmers, when they fall into public domain after their period of protection;

Proposal from the United States of America:

The United States of America provided the following proposal regarding option 3:

“We support a new FAQ that explains how farmers may access the varieties that are in the public domain, alternatively a new paragraph on the access may be added to the FAQ in Option 1 above.”

- (4) explain how to improve the situation of subsistence farmers in areas within UPOV’s mandate while avoiding duplication of work in other international bodies, such as the Food and Agriculture Organization of the United Nations (FAO) and the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA);

Proposal from Argentina:

To add a paragraph at the end of option 4 with references to practical activities with other international bodies such as seminars, results of surveys conducted by ITPGRFA or other international fora.

Proposal from the United States of America:

The United States of America provided the following comment regarding option 4:

“This proposed option is not clear. UPOV does not provide the definition for ‘subsistence farmers.’ It is not certain what UPOV’s mandate is regarding subsistence farmers and how other international treaties relate to the said UPOV’s mandate. Without a clear proposal, we cannot support this option.”

- (5) explain that the survey of UPOV members had revealed that there have been no reported legal actions against smallholder farmers for infringement of plant breeders’ rights in UPOV members;

Proposal from the United States of America:

The United States of America provided the following comment regarding option 5:

“We do not support this proposed option. Since UPOV does not provide the definition of ‘smallholder farmers’, the proposed explanation raises several questions. Do breeders themselves define the term ‘smallholder farmers’ in their survey or do they follow the definition provided in each country legislation? Will the survey be conducted every year? Will the breeders consider any legal actions in the future? Will the proposed explanation give a wrong message that smallholder farmers can infringe the breeder’s rights, and the breeders will not take action, because they have not done so previously?”

- (6) explain that there would be a problem in trying to define the term “smallholder farmer”;

Proposal from Argentina:

Argentina provided the following proposal regarding option 6:

It will be important to mention that exception of breeders rights has no cross-sectional relationship with art. 9 of ITPGRFA but mentioning small farmers and cooperation with the UPOV system in the context of UPOV is a way of contributing to the realization of art. 9.

Proposal from the United States of America:

The United States of America provided the following proposal regarding option 6:

“We propose amending the current FAQ ‘Can a farmer replant seed of a protected variety without the authorization of the breeder?’”

(see proposed changes by the United States of America to the FAQ reproduced in Annex II of this document).

- (7) explain that all farmers needed access to good seeds and that it was important to improve the livelihood of farmers worldwide and facilitate access to quality seeds by smallholder farmers;

Proposal from the United States of America:

The United States of America provided the following proposal regarding option 7:

“We support a new FAQ that explains how smallholder farmers can access quality seeds. This section may be added to the existing FAQ below (in (8)).”

- (8) explain how the UPOV PVP system could provide assistance regarding access to, and choices of, protected varieties for all types of farmers, including smallholder farmers.

Proposal from the United States of America:

The United States of America provided the following comment regarding option 8:

“We do not support an additional FAQ for this issue. The existing FAQs sufficiently explain the importance/contribution of the UPOV system to all types of farmers, for example: FAQ: ‘Why do farmers and growers need new plant varieties?’”

(see the full FAQ reproduced in Annex II of this document).

Proposal from Argentina:

To add a new option 9, at the end of the FAQs, to complement and illustrate, by providing some examples of how countries deal with small farmers' rights without affecting breeders' rights.

Proposal from the European Union:

The European Union provided the following proposal: “As regards the list on options for matters to be considered in the revision of the FAQs, and raised in the last Working Group meeting, we would like to propose the following in relation to the derogations on ‘acts done privately and for non-commercial purposes’:

“Explain that the exception to breeder’s right in relation to acts done privately and for non-commercial purposes can cover seed of protected varieties that is exchanged or sold by small holder/ subsistence farmers within the local community, whether free of charge or not, for their own private use and outside their commercial activity.

“This would mean that if a small holder/subsistence farmer, who is not a seed producer (but a grain producer), would occasionally exchange or sell small amounts of seed of protected varieties to other farmers for their private use within the local community, would be covered by the ‘acts done privately and for non-commercial purposes’.

“It would be proportionate include this in the exceptions as this kind of transfer is usually limited to small holder/subsistence farmers, is taking place occasionally as this not their basic commercial activity, covers very small amounts, is taking place in the local community and is restricted to private use of the seed.”

[End of Annex III and of document]