

ARGENTINA

Contribution received in reply to UPOV Circular E-23/116, of July 6, 2023

[EN]

UPOV Circular E-23/116

July 6, 2023

ANNEX I

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

“Options to address matters discussed at the first and second meetings of the WG SHF”]

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); **I Would add “patent or other intellectual property rights legislation; the examples are not exhaustive”.**
- (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 (**I would change the word brand and I would use ...or the rights holder authorization”** it would (**I would use the word “could” not “would”, could gives the feeling of possibility between yes or no instead would presumes in a positive sense.** be a *de facto* permission for “brown bagging” and illegal seed marketing;
- (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;
- (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); **I would add**

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reference of practical activities with other international bodies such as seminars, results of surveys conducted by tirfaa or other international fora.

(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;

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

It will be important to mention that exception of breeders rights has no cross-sectional relationship with art. 9 of TIRFAA 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.

(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; and

(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.

(9) To complement and illustrate, I would add some examples of how countries deal with small farmers' rights without affecting breeder's rights at the end of the FAQs.