

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

WG-SHF/5/2 Rev.

**Fifth Meeting
Geneva, March 22, 2024****Original:** English
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PROPOSALS BY MEMBERS OF THE WG-SHF ON QUESTIONS TO COLLECT INFORMATION FOR THE WG-SHF*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-24/005 of January 19, 2024, to assist the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF) in providing a basis for developing guidance.
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-24/005 of January 19, 2024, as set out in the Annex; and
 - (c) provide guidance on the criteria and priorities to be applied when selecting the questions and addressees for a questionnaire.

BACKGROUND

3. The WG-SHF, at its fourth meeting, held in Geneva on October 25, 2023, considered document WG-SHF/4/2 "Possible revision of the FAQs". The WG-SHF noted the compilation of replies to UPOV Circular E-23/116 of July 6, 2023, as set out in document WG-SHF/4/2 and in its Annexes II and III. The WG-SHF agreed, at that stage not to consider the specific suggestions and comments made by the members of the WG-SHF on the matters raised in Circular E-23/116.
4. The WG-SHF agreed that gathering information would be useful to provide the basis for developing guidance concerning smallholder farmers in relation to private and non-commercial use.
5. The WG-SHF agreed that the Office of the Union should issue a circular to the members of the WG-SHF with a request to identify questions and to whom they should be addressed, in order to collect information for the WG-SHF to continue its work. Based on the replies to the Circular, the Office of the Union would prepare a questionnaire for consideration by the WG-SHF at its next meeting (see document WG-SHF/4/3 "Report", paragraph 12).

UPOV CIRCULAR E-24/005 OF JANUARY 19, 2024

6. The Office of the Union issued UPOV Circular E-24/005 of January 19, 2024, inviting the WG-SHF to identify questions and to whom they should be addressed.

7. In reply to UPOV Circular E-24/005, contributions were received from:

Members: Argentina, Canada, European Union and Switzerland.

Observers: Association for Plant Breeding for the Benefit of Society (APBREBES) and International Seed Federation (ISF).

8. The Annex to this document provides for a compilation of the responses to UPOV Circular E-24/005.

9. In the responses received, the contributors propose to address a high number of different addressees and the questions relate to a wide range of subjects.

10. In order to ensure that the work to collect information is done in an effective manner and focused on the purposes of the WG-SHF, as laid down in the terms of reference, it may be appropriate to limit the number of the proposed questions and addressees. In this context, account must also be taken to the fact that the work to collect information and then process the data received must be in proportion to the resources of the Office of the Union.

11. On the above basis, the WG-SHF is invited, at its fifth meeting, to provide guidance on the criteria and priorities to be applied when selecting the questions and addressees, before further work by the Office of the Union on the preparation of the questionnaire can be implemented.

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

(a) note the information provided in this document;

(b) consider the compilation of replies to UPOV circular E-24/005 of January 19, 2024, as set out in the Annex; and

(c) provide guidance on the criteria and priorities to be applied when selecting the questions and addressees for a questionnaire.

[Annex follows]

ANNEX

COMPILATION OF RESPONSES RECEIVED IN REPLY TO
UPOV CIRCULAR E-24/005 OF JANUARY 19, 2024

Responses in reply to Circular E-24/005 of January 19, 2024, for developing guidance concerning smallholder farmers in relation to private and non-commercial use are provided below.

ARGENTINA

“Questions regarding smallholder farmers and non-commercial use.”

1. To Whom: Small farmers, national authorities, NGO's, breeders organizations, farmers organizations

Question: Do (you) small farmers use protected seeds? Is it a common practice to use protected seeds or the use landraces or native seeds instead?

2. To Whom: national authorities:

Question: Has your country ratified both (ITPGRFA) Treaty and UPOV Treaty, has your country implemented measures for farmers and plant breeder's rights, do you find any conflict in the application of both treaties regarding the use of seeds and plant breeder's rights?

3. To Whom: Small farmers, breeders

Question: Do you consider the possibility of working together farmers and breeders for accession to breeders seeds in programs, and different uses of protected seeds?

4. To Whom: national authorities, breeders organizations.

Question: Do you know if there are any judicial cases from breeders against small farmers for PVP rights?"

CANADA

"Canada is proud of its seed systems and how it balances its obligations under the UPOV 91 convention and the International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty). When approached regarding its stance on the paper entitled "*Can the exchange or sale of self-produced seed be allowed under UPOV 91?*", Canada enthusiastically embraced the opportunity for dialogue and collaboration. Central to Canada's perspective is the recognition that a robust seed system hinges on striking a delicate balance between the objectives of the UPOV 91 convention and the Plant Treaty, as well as recognition that domestic decisions related to plant genetic resources rests with our national government. In other words, Canada is invested in the Plant Treaty being implemented in a mutually supportive manner with the UPOV 91 Convention, and vice versa. In light of this, Canada would ask the following questions:

1. Question for Farmers or Farmers' Organizations:

- a. Does the current scope of the UPOV private and non-commercial use exception hinder farmers' access to new seed varieties? If so, explain why?

2. Questions for UPOV members:

- a. Is the term smallholder farmer a commonly used term in your country?
 - i. If so, how is it defined?
 - ii. Are there any specific policies to uniquely support smallholder farmers? If so, please explain those policies.
- b. Is the current scope of the UPOV private and non-commercial exception problematic in your country? If so, please explain the reasons why?

3. General question for all:

- a. Are continued discussions regarding the scope of the private and non-commercial use exception helpful to facilitate new member countries' acceding to UPOV 91?"
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EUROPEAN UNION

“We also suggest to invite some UPOV member countries, which have first-hand experience on small holder farmers to give presentations about the issue at hand.

1. Non-UPOV member countries [e.g. ?; maybe the secretariat could identify]

- a. Your country has not presented an application for UPOV membership. Does any of your reasons for this relate to small-holder farmers and their possible existential need to sell surplus seed of protected varieties?

2. Non-UPOV member country that has applied for UPOV membership but not joined UPOV (e.g. Zambia)

- a. Your country has applied for UPOV membership, however, you did not join UPOV. Does any of the reasons for this relate to small-holder farmers and their possible existential need to sell surplus seed of protected varieties?

3. UPOV countries, breeders (ISF, Euroseeds), farmer organisations (WFO) and NGOs (ABREBES):

- a. Do you think that there is practical problem with the UPOV rules in relation to small-holder farmers?
- b. If yes, what is the practical problem:
 - i. Small-holder farmers have access problems in accessing propagating material of protected varieties and if so why?
 - ii. Small-holder farmers occasionally sell surplus of seed of protected varieties?
- c. Do you think that UPOV 's reputation is suffering due to perceptions in relation to the issue on small-holder farmers?
 - i. If yes, what potential measures could be taken to mitigate this issue?
- d. Does your national legislation on plant variety protection address small-holder farmers and allow e.g. small-holder farmers to occasionally sell surplus seed of protected varieties?

4. Breeders (ISF, Euroseeds):

- a. How could you support the access of new improved varieties to small-holder farmers?
- b. Would you consider it a problem if small-holder farmers would occasionally sell surplus seed of protected varieties?
- c. Do you see any obstacles to make protected plant varieties accessible for small-holder farmers?
- d. Are there any support mechanisms or partnerships to assist small-holder farmers in obtaining better access for protected plant varieties?
- e. How can plant breeders collaborate with agricultural extension services to enhance the awareness of and use of protected plant varieties among small-holder farmers?

5. Farmers organisations (WFO)

- a. How could you support and facilitate the access of propagating material of new improved varieties to small-holder farmers?
- b. Is there a need to allow small-holder farmers to occasionally sell surplus seed of protected varieties?

6. Questions addressed to small-holder farmers:

- a. Do you have problems in accessing propagating material of new improved varieties that are protected.
 - i. If yes, what are the obstacles and what measure could be taken?
 - b. Is there an existential need to sell surplus seed (of protected varieties)?”
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SWITZERLAND

1. “Question related to Farmer Managed Seed Systems (FMSS)

Farmer Managed Seed Systems (FMSS) are widely in use in some parts of the world and especially in Africa. Currently the African Seed and Biotechnology Program (ASBP) under the responsibility of the African Union Commission is mandating a continental assessment to establish the importance and role of such FMSS in Africa. In our opinion, it would be useful if the results of this assessment would be integrated in the UPOV WG SHF, especially if UPOV protected varieties are produced and disseminated via the FMSS.

2. Assessment of Justice Cases in Africa

During the discussions in the WG SHF it has been mentioned various times that for the moment no court case against small scale farmers by holders of plant breeders right are know so far. It would be interesting however to know if this is really the case. For this an overall assessment in Africa would be necessary. Such an analysis could be done global civil society organizations.”

APBREBES

1. “We propose the following questions to Via Campesina:

Why is it important for smallholder farmers and peasant seed systems to save, use, exchange and sell their own seeds (where they do not claim a denomination protected by a plant variety protection)?
Can La Via Campesina propose a general framework enabling each country to adopt a definition of smallholder farmers and peasant seed systems that is adapted to its socio-economic context?

2. We propose the following questions to the UN -Special Rapporteur on the right to food, Michael Fakhri

How relevant is it for food security and the right to food that smallholder farmers can save, reproduce, exchange and sell seeds (including seeds protected by PVP)?
How do you estimate the effect if UPOV were to adapt the Explanatory Notes as proposed in the flowchart by Plantum, Euroseeds and Oxfam? What is the impact if nothing changes?

3. We propose the following questions to the Alliance Bioversity & CIAT

How important is it for the Farmer Managed and the Integrated Seed Systems in the global south that smallholder farmers can save, reproduce, exchange and sell seed (including seeds protected by PVP)?
Are there any figures about smallholders who save, exchange and sell seeds?
How do you estimate the effect if UPOV were to adapt the Explanatory Notes according to the proposal made by Plantum, Euroseeds and Oxfam (the flowchart)?”

ISF

“Before outlining the questions, we would like to provide some background to our proposals. Paragraph 11 of the Report of the last meeting of the WG SHF states that “the WG-SHF concluded that gathering information would be useful to provide the basis for developing guidance concerning smallholder farmers in relation to private and non-commercial use.” We understand that this exercise of gathering more information is aimed at broadening the knowledge of the members of the WG SHF and also more generally the knowledge of UPOV members, as well as to provide support for the UPOV system globally with regard to the issues farmers encounter on the ground to improve their own livelihoods and to collect some real examples from the different countries.

There is already good data available on farm sizes and structures globally, as well as on their productivity. Some of these data sources are available here:

<https://www.sciencedirect.com/science/article/pii/S235234091830708X?via%3Dihub>
<https://ourworldindata.org/farm-size>

ISF is of the view that one of the main issues that farmers encounter on the ground, is the scarce access to good quality planting material and improved varieties. We therefore believe that also in the context of this WG, a key matter UPOV members and observes should be concerned about is farmers’ access to and use of good quality seeds and improved varieties, which can be helped through various measures, including supportive policies or direct support programs. Hence, our proposed questions are intended to explore this matter in the various UPOV member countries. Beyond UPOV members we recommend that it would be useful to ask the proposed questions also to non-UPOV countries, in particular those that are considering UPOV membership.

A meaningful outcome of this exercise could be the recognition that farmers’ access to good quality seeds and improved varieties is a key issue where the UPOV system could have a role to help smallholders to improve their own livelihoods in the first place and to enhance their vital contributions to global food production and ensuring food security.

Our proposed questions to be asked to countries:

- 1. Describe the different types of farmers in your country? Please provide a definition or interpretation of those types of farmers used at national level? What is their respective contribution to the national economy?**
- 2. Regarding farmers’ access to good quality seeds (i.e.: seeds representing high genetic diversity, having good germination, tested and adapted to the area, meeting standards for seed health, etc.), improved varieties and other inputs which help them improving their livelihoods and supporting food security:**
 - a. How are the farmers you identified in question 1 sourcing their seeds?
 - b. Do they have access to a wide choice of good quality seeds? How is this evident?
 - c. Please describe any supportive policies for farmers to access good quality seeds? (e.g.: policies supporting seed infrastructure that enables an active seed industry or direct support programs or operational initiatives for farmers)
 - d. Please list any impediments for farmers to have access to and use of good quality seeds?
- 3. Please describe how plant breeders and seed companies interact with farmers, in particular the ones you identified in question 1?**
 - a. Breeders provide information to farmers (e.g.: product placement (is variety X adapted to a given market), variety trials (VCU or farmers’ trials), agronomic and management support during the growing year, market demonstrations, working with progressive farmers etc.). Describe how well these systems work?
 - b. Farmers provide information to breeders on what traits they want and need in varieties. How well does this mechanism work?

- c. Do breeders help farmers be more successful next year? Are they working together in cooperation to improve year by year?
- d. Please describe any other actors involved that support the interaction between breeders and farmers? (e.g.: advisors, academia, NGOs)."

[End of Annex and of document]