

**Working Group on Guidance Concerning Smallholder Farmers in
Relation to Private and Non-Commercial Use** **WG-SHF/6/4****Sixth Meeting
Geneva, October 23, 2024****Original: English
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REPORT

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

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OPENING OF THE MEETING

1. The Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF) held its sixth meeting in Geneva, on October 23, 2024, in hybrid format, chaired by Mr. Yehan Cui, President of the Council.
2. The Chair opened the meeting, welcoming the participants.
3. The list of participants is provided in the Annex to this report.

ADOPTION OF THE AGENDA

4. The WG-SHF adopted the draft agenda as proposed in document WG-SHF/6/1.

COMPILATION OF RESPONSES TO THE QUESTIONS CONCERNING THE EXCEPTION "ACTS DONE PRIVATELY AND FOR NON COMMERCIAL PURPOSES"

5. The WG-SHF considered document WG-SHF/6/2.
6. The Office of the Union presented a summary of the responses received to the questions concerning the exception of acts done privately and for non-commercial purposes. It was noted that a total of 38 responses were received, both from UPOV members bound by the 1991 and 1978 Acts. The responses indicated that while the exception was implemented across most jurisdictions, members had in general not adopted specific legal definitions for the term "private" and "non-commercial use".
7. The main considerations by the WG-SHF are summarized below:
 - Some members raised the concern that there was a limited participation in the survey from developing countries and countries outside UPOV membership, leading to gaps in understanding challenges in these regions.
 - Proposals for calls for additional data collection to bridge knowledge gaps, including the recommendation to host a seminar were made.
 - There were suggestions to revisit explanatory notes for Article 15.1 of the UPOV Convention to clarify terms and their implications for smallholder farmers.
 - A majority of members agreed on the value of a seminar to gather diverse perspectives, including those from non-UPOV members and stakeholders in developing regions.

- There was an acknowledgment of the need to carefully define the scope and questions for the seminar to avoid redundant discussions.
- Some delegations expressed urgency in advancing the Working Group's mandate, considering the lack of progress since the Working Group was established in 2021, while others advocated for a more deliberate approach, emphasizing the need for robust preparatory work.
- There was a consensus on knowledge gaps on the understanding that more information was needed to address the issues comprehensively, particularly from underrepresented groups.
- A careful approach was recommended to ensure the WG-SHF remains aligned with its mandate.

SUMMARY OF THE INTERVENTIONS BY MEMBERS OF THE WG-SHF DURING THE FIFTH MEETING ON THE POSSIBLE ORGANIZATION OF A SEMINAR

8. The WG-SHF considered document WG-SHF/6/3.

9. The WG-SHF discussed the potential organization of a seminar focused on smallholder farmers' access to plant varieties and the role of the UPOV system. Several delegations expressed support for holding a seminar, recognizing the importance of clarifying misconceptions and exploring the benefits of the UPOV system for smallholder farmers.

10. A summary of the main interventions is provided below:

- The Delegation of Canada emphasized the need for a seminar to focus not only on identifying challenges but also on highlighting opportunities for smallholder farmers to access improved plant varieties through the UPOV system. Canada suggested that the seminar be scheduled for 2026 to allow for comprehensive preparation and engagement with relevant stakeholders, particularly from developing countries.
- The Delegation of the European Union supported the organization of the seminar, proposing that it should take place in 2025. The European Union highlighted the importance of involving smallholder farmers and breeders from developing countries to better understand their perspectives and needs. The Delegation of the European Union also suggested that the seminar could serve as a platform to address misconceptions about the UPOV system and its impact on farmers' rights.
- The Delegation of Japan echoed the proposal from the Delegation of the European Union, emphasizing that the seminar should showcase the positive contributions of the UPOV system, particularly in enhancing farmers' access to high-quality varieties. The Delegation of Japan expressed readiness to support the seminar.
- The Delegation of South Africa noted that organizing a seminar would be valuable in addressing the complexities and challenges faced by smallholder farmers, particularly in relation to the exception of acts done privately and for non-commercial purposes. The Delegation of South Africa emphasized that the seminar should provide clarity on the practical implementation of the UPOV system to benefit smallholder farmers.
- The Delegation of Switzerland pointed out that while a seminar would be beneficial, it should not diverge from the original mandate of the WG-SHF. The seminar should focus on the specific issues related to Article 15.1 of the UPOV 1991 Act and how it intersects with the needs of smallholder farmers. It should address their needs for more guidance as expressed by the Delegation of South Africa.
- The Delegation of Norway explained that if a seminar is organized beyond the mandate of the Working Group, it is important to show the relative contribution of UPOV in plant breeding, where protection of plant varieties is not a sufficient tool to incentivize plant breeding for neglected and underutilized species (NUS), heterogeneous material, varieties suitable for a small market or a market where farmers have low purchasing power. The Delegation of Norway also stressed that UPOV would be much more credible in its communication if UPOV showed that it understood the concerns raised in public debate. In addition, access to plant genetic resources is a fundamental prerequisite for any plant breeding.

11. The WG-SHF agreed to recommend to the Consultative Committee the organization of a seminar for October 2026. The proposed seminar would aim to foster dialogue among UPOV members, smallholder farmers, and other stakeholders to explore the role of plant variety protection in supporting sustainable agricultural development.

12. The WG-SHF emphasized the need for a clear agenda and objectives for the seminar to ensure that it would address both the challenges and opportunities related to plant variety protection and smallholder farmers.

13. The WG-SHF agreed that there were still significant gaps in information, particularly concerning the perspectives of smallholder farmers from developing countries. The Delegation of Norway expressed its disappointment on the lack of work concerning the development of guidance by the WG-SHF for a revision of the Explanatory Notes on Exceptions to the Breeders' Rights and suggested that members of the WG-SHF be invited to provide inputs for possible revisions. The Delegation of Switzerland also expressed its concerns about the lack of progress made in answering the need for more guidance expressed by several members of UPOV. Several delegations, including Canada, and Japan, expressed concerns about proceeding with considerations on further guidance or revisions on matters under the current ToRs of the WG-SHF without a clearer understanding of the challenges and needs of smallholder farmers.

CONCLUSIONS BY THE CHAIR OF THE WG-SHF

14. The Chair of the WG-SHF noted that, as announced in document CC/102/10 "Report on the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF)", he would make a report to the Consultative Committee, on October 24, 2024 and that an Addendum to document CC/102/10 would be produced reflecting his main conclusions of the meeting of the WG-SHF as follows:

- (a) The WG-SHF noted that during the six meetings of the WG-SHF, important discussions had taken place, and information was collected in different ways, including two surveys, to get a better understanding of the opportunities and challenges at hand.
- (b) The WG-SHF also noted the importance of facilitating access to improved plant varieties by all farmers, including small/subsistence farmers.
- (c) The WG-SHF noted that it was important for UPOV to communicate on the benefits that the UPOV system provides for farmers in a balanced manner. It was also noted that gathering further information could be beneficial for future discussions. In that context, the organization of a seminar could be a way to obtain additional information.
- (d) The WG-SHF noted that proposals made at its sixth meeting would go beyond the terms of reference of the WG-SHF. For this reason, the WG-SHF agreed to recommend to the Consultative Committee that a seminar be organized, and that a tentative timing for such a seminar could be in the year 2026.
- (e) Towards the end of the meeting, the WG-SHF initiated discussions on the scope of such a seminar. One delegation requested that the scope of the seminar be focused on the terms of reference of the WG-SHF and another delegation was of the view that the seminar should focus on access to new varieties. Due to time constraints, there was no agreement on a recommendation by the WG-SHF to the Consultative Committee in that respect.

[Annex follows]

(dans l'ordre alphabétique des noms français des membres /
in the alphabetical order of the French names of the members /
por orden alfabético de los nombres en francés de los miembros)

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