



# Persatuan Pengguna Pulau Pinang Consumers Association of Penang

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## Media Statement

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### **CAP calls on Government not to join UPOV that does not safeguard rights of small farmers**

The Consumers' Association of Penang (CAP) strongly calls on the Malaysian Government not to join the International Convention for the Protection of New Varieties of Plants of 1991 (UPOV 1991).

CAP has learnt that the Malaysian government has been under increasing pressure to agree to such a move, and we are most worried and fear that the government will give way and join UPOV, which will be against the interests of our small farmers, local researchers and the protection of our biodiversity.

The UPOV 1991 establishes an intellectual property system of "plant breeders' rights" that favour developed countries' corporate plant breeders and institutional researchers, at the expense of biodiversity, the rights and interests of small farmers and local researchers of developing countries such as Malaysia.

For years, the Malaysian Government had correctly decided against joining UPOV 1991. This continues to be appropriate given our current stage of research and development in agriculture, where domestic public research institutions predominantly do formal plant breeding research.

Malaysia already has the Protection of New Plant Varieties Act 2004 (PNPV Act) which fully meets our obligations under the World Trade Organization's intellectual property agreement that requires protection of new plant varieties. There is no requirement for WTO members to join UPOV 1991. Joining UPOV 1991 would mean that the PNPV Act would have to be drastically changed in such a way as to strike at the heart of what makes the Malaysian law unique to meet the needs of our country.

The parts in the PNPV Act that would be deleted in order to join UPOV 1991 include provisions that can protect against biopiracy of Malaysia's agricultural biodiversity; provisions that ensure coherence among national laws such as biosafety regulations; provision that recognizes government's right to refuse the grant of breeder's right in the interest public; a safeguard that allows small farmers to replant any commercial seed they have saved on their own farms without paying royalties; provisions allowing farmers to exchange and sell farm saved seed themselves.

Studies have shown that UPOV 1991 adversely affect farmers who are dependent on farmer-managed seed systems (the informal seed sector) and their customary practices of freely saving, using, exchanging and selling farm-saved seeds. These fundamental Farmers' Rights are recognized in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Malaysian government has the responsibility to implement them.

In the case of Malaysia, the native communities of Sabah and Sarawak, among whom are many small farmers who have important local seed varieties, will be displaced and threatened.

There are reports from the United Nations and agriculture experts showing that farmer-managed seed systems allow farmers to limit the cost of production by preserving independence from the commercial seed sector while the free exchange of seeds contributes to the development of crop diversity and locally appropriate seeds that are more resilient to climate change, pests and diseases. Such systems have therefore contributed greatly to conserving, improving and making available agricultural biodiversity, which is the basis of food security. UPOV 1991 does not recognize farmer-managed seed systems and in fact, its implementation adversely impacts them.

Moreover joining UPOV 1991, will undermine Malaysia's effective implementation of the Convention on Biological Diversity as Malaysia will not be able to implement safeguards such as disclosure of origin and evidence of compliance with access and benefit sharing rules that are necessary to combat biopiracy.

There are also potential adverse implications for Malaysia's domestic public plant breeding research. The monopolistic breeders' rights that UPOV 1991 create can put public researchers in Malaysia at a serious disadvantage compared to foreign plant breeders. At the same time, our local seeds and plants researched by foreigners would end up being claimed by them at the expense of the nation.

We are unaware of any effort by the Government to consult our farmers on these important issues affecting their rights, livelihoods and food security.

The Government is a party to the ITPGRFA and must live up to its international commitment to implement Farmers' Rights including their right to participate in making decisions, at the national level, on matters related to plant genetic resources. CAP therefore strongly calls on the Government to immediately halt all processes to join UPOV 1991.

This is in line with the recommendations of a number of independent expert studies that developing countries should not join UPOV 1991 as it offers a rigid legal framework unsuitable for the agricultural systems prevailing in developing countries.<sup>1</sup>

**S. M. Mohamed Idris**  
**President**  
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<sup>1</sup> For example, The UPOV Convention, Farmers' Rights and Human Rights - An integrated assessment of potentially conflicting legal frameworks" published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Cooperation and Development" (June 2015) available at <https://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf> ; UNDP (2008) "Towards a Balanced Sui Generis Plant Variety Regime", available at <http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/toward-a-balanced-sui-generis-plant-variety-regime.html>;