

**The UPOV Convention Is Not Suitable For Malaysia, Denies Farmers' Rights,
Encourages Biopiracy And Threatens Agrobiodiversity**

Farmers in Malaysia obtain seed supplies from various sources, namely from government agencies such as the Department of Agriculture (DOA), the private sector through seed wholesalers and retailers, and from friends and family members. Based on legislation, seeds can be divided into protected varieties and non-protected varieties.

Protected varieties are registered under the plant variety protection mechanism. Plant variety protection (PVP) consists of monopoly rights (also known as plant breeders' rights) conferred to the plant breeder for a specific duration in relation to the development of new plant varieties. Currently, Malaysia adopted the Protection of New Plant Varieties Act 2004 (PNPV Act 2004) which aims to balance the different interests operating within the national agricultural system while reflecting Malaysia's rights and commitments under various international instruments such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), Convention on Biological Diversity (CBD) and Nagoya Protocol.

Some of the important characteristics of the PNPV Act 2004 are;

- I. Recognition and protection of contributions made by local farmers and indigenous peoples to the development of new varieties of plants by using different registration criteria for commercial breeders and local farmers.
- II. Measures that are aimed at operationalizing the rights of Malaysia under the CBD to prevent biopiracy, facilitate fair and equitable sharing of benefits, and support implementation of biosafety legislation such as declaration of the source of the genetic material of the plant and prior written consent of the authority representing the local community or the indigenous people if the plant variety is developed from traditional varieties.
- III. Restrictions on plant breeders' rights so as to not affect non-commercial uses and small farmers' practices of cultivating their own land with farm-saved seeds/propagating materials, allowing also the exchange of reasonable amounts of seeds/propagating materials among small farmers.

There is another set of PVP laws that are being lobbied by certain parties to be used in Malaysia called the International Union for the Protection of New Varieties of Plants Act of 1991 (UPOV 1991). The UPOV Convention was essentially set up as a small club of countries dedicated to creating commercial plant breeders' rights. It was designed to suit the farming system of developed countries, especially European countries that are heavily dependent on commercial breeders for seed supply.

UPOV 1991 provides extensive protection of plant varieties to breeders, with a minimum of 20 years (25 years for trees and vines) of monopoly rights. This monopoly disregards the innovations made by farmers over the centuries by severely limiting the rights of farmers to freely save, use, exchange and sell farm-saved seeds and propagating material. Farmers apply their traditional knowledge in the selection, preservation and storing of seeds as the basis of local innovation and in situ seed conservation.

UPOV claims that there are exceptions whereby the breeders' right shall not extend to acts done privately and for non-commercial purposes but it provides a narrow interpretation of the exception. Selling or exchanging seeds/propagating materials with nearby farmers or in local markets, or even the sharing of seeds or consuming the product of the harvest with family members not living on the same holding, would be outside the scope of the exception.

Under UPOV, the key criteria for a new plant variety to be protected are: novelty (the variety cannot have previously been available within a specific time frame), distinctness (distinguishable from any other variety), uniformity (sufficiently uniform in its relevant characteristics) and stability (relevant characteristics must remain

unchanged after repeated propagation). With these strict criteria, UPOV already excludes farmers' varieties or land races from being given similar protection since farmers usually will produce more heterogeneous and variable varieties which respond to the diverse genetic resources. This is crucial for crop biodiversity.

On biopiracy, UPOV 1991 act states that the breeder's right has to be independent of any measure concerning the production, certification, marketing, importing or exporting of the material, thus rejecting any kind of disclosure of country of origin or legal provenance of genetic resources as a condition for grant of plant variety protection. This is against Malaysia's obligations in the CBD and the Nagoya Protocol.

The author of "The Potential Impact of UPOV 1991 on the Malaysian Seed Sector, Farmers and Their Practices", a report published by the Third World Network and APBREBES conducted surveys and interviews to better understand what is happening on the ground and the potential implications of UPOV 1991 and its restrictions on paddy farmers as well as farmers planting vegetables, fruits and industrial crops in Peninsular Malaysia, Sabah and Sarawak.

In Peninsular Malaysia, a survey conducted among 200 paddy farmers found that 50.4% of seeds that the respondents use are of the protected MR220 CL2 variety, followed by the protected SIRAJ MR297 variety (26.4%). The survey found that 33.50% of the farmers save seeds from their own farms. 83.58% do it because they believe that the quality of the seeds is guaranteed and they are satisfied with the seeds that they processed themselves. The other 16.41% want to save costs by saving seeds. The amount of the seeds that they save is 10% to 20% of their harvest and they also share and sell the farm-saved seeds. Almost 99% of the survey respondents were opposed to restrictions on the exchange and sale of seeds for reasons such as: wanting freedom to choose whatever seed they prefer; wanting to control their own farm-saved seed; no guarantee that the seed in the market will always maintain its quality; worries that the seed price will increase; and worries that they cannot save costs when needed.

In Sabah and Sarawak, a series of in-depth interviews conducted among 40 paddy farmers revealed seed saving and exchange to be a common practice among farmers using traditional or government-subsidized paddy seeds. In the latter case, seed saving is considered necessary due to constant delays in seed distribution by the government. There is also concern about the misappropriation of local genetic resources in light of increased interest in commercializing traditional varieties.

Free trade agreements are often used to force a country to join UPOV 1991. In the case of Malaysia, its surprise ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in October 2022 is a concern, for the agreement requires Malaysia to join UPOV 1991 within four years. However, there are countries that have not ratified UPOV 1991 even when required by a trade agreement, due to the potential negative effects of UPOV 1991 on national agriculture systems and public opposition.

Independent experts reporting to the United Nations have also strongly argued against using trade agreements to impose UPOV 1991 on developing countries such as Malaysia. We object to any effort by the Ministry of Agriculture to amend the 2004 PNVP Act to join the UPOV Convention.

Read more: <https://consumer.org.my/wp-content/uploads/2023/07/20-July-2023-Executive-Summary.pdf>

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