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**MALAYSIA'S UN PERMANENT REPRESENTATIVE RESPONSE TO THE COMMUNICATION SUBMITTED BY THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD ON FARMERS' RIGHTS DOES NOT REPRESENT THE REAL SITUATION ON THE GROUND**

We refer to the response of the Government of Malaysia<sup>1</sup> to the communication document issued by Michael Fakhri<sup>2</sup>, the Special Rapporteur on The Right to Food regarding the proposal for Malaysia to join the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 1991) as part of the trade agreement negotiations between the European Free Trade Association (EFTA - comprised of Iceland, Liechtenstein, Norway, and Switzerland) and Malaysia. We share the same concerns with the Special Rapporteur, particularly on the following:

1. UPOV 1991 a plant variety protection (PVP) system that is biased in favor of commercial plant breeders. UPOV 91 categorically protects commercial breeders' rights and limits the traditional rights and activities of smallholder farmers. The standard for protection under UPOV 1991 excludes or ignores important practices such as local seed exchange and sharing within and between communities. Its guidance on "subsistence farming" neglects the customary practices of subsistence farmers.
2. Seed saving, an optional exception in UPOV 1991, is limited to a farmer's holding (often small in developing countries) and subject to conditions. It focuses on crops with a tradition of saving harvested material, excluding certain varieties/species from such practices. This leads to further restrictions on varieties, holding/crop size, etc., prohibiting the exchange or sale of seeds among farmers.

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<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=38430>

<sup>2</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28896>

3. Smallholder farmers face restrictions in adapting seeds to local needs through the "selection" method, crucial for climate change adaptation when a variety is protected under PVP laws that are based on UPOV 1991.

4. UPOV 1991 imposes intellectual property rights over plant varieties, enabling corporations to monopolize and claim ownership over them. This can seriously disadvantage smallholder farmers.

In addition to the above, we are particularly concerned with the response of Malaysia's UN Permanent Representative on the use of the term "farmer's privileges" instead of 'farmer's rights' throughout the response document. It is alarmingly disturbing to note the lack of acknowledgment and recognition of farmers in Malaysia, whose rights (not privileges) have been explicitly recognized in various international instruments, including ITPGRFA and the UN Declaration on the Rights of Peasants (UNDROP). We are concerned with the technical and legal implications of using the term 'privileges' instead of 'rights', implying an intentional undermining of the legal rights of smallholder farmers in relation to access to seeds.

In its response, the Permanent Representative of Malaysia said farmers in Peninsular Malaysia, in interviews, expressed that they prefer to buy a new batch of seeds for each new crop as the storage and maintenance of seeds require skill and suitable weather conditions to ensure quality germination and freedom from pests and diseases. We question the sampling selection criteria of the farmers interviewed, as these might be a representation of farmers in the granary areas who are already dependent on government support (such as seed subsidies) or large commercial scales, and not reflective of farmers not in the granary areas, including indigenous farming communities throughout Malaysia.

Our report titled "The Potential Impact of UPOV 1991 on The Malaysian Seed Sectors, Farmers and Their Practices"<sup>3</sup> published in 2023 shows that 33.5% of paddy farmers in the Peninsular states of Kedah and Perak save seeds from their farms. Among those who saved their seeds, 83.58% do it because they believe that the quality of the seeds is guaranteed, and they are satisfied with seeds that they processed themselves. The other 16.42% save seeds to save costs. From this seed saving practice, they were able to save 10% to 20% of their harvest and have the option of reusing, sharing and selling their farm-saved seeds.

Meanwhile in the East Malaysia states of Sabah and Sarawak, a series of interviews conducted among 40 paddy farmers revealed seed saving and exchange to be a common

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<sup>3</sup> [https://www.apbrebes.org/report\\_Malaysia](https://www.apbrebes.org/report_Malaysia)

practice among farmers using traditional or government-subsidized paddy seeds (some of which are PVP protected) 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 considering the increased interest in commercializing traditional varieties. On such biopiracy, the UPOV 1991 Act states that breeder's rights have to be independent of any measure concerning the production, certification, marketing, importing or exporting of the variety, 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 creates a major challenge for Malaysia with respect to operationalizing its rights under the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access and Benefit Sharing. In particular, it will create a huge loophole with regard to legal compliance with Act 795.

The practice of saving, using, exchanging and selling seeds is also employed by small-scale vegetable and fruit farmers. We conducted interviews with 10 vegetable and fruit farmers in Peninsular and East Malaysia. We found that, apart from planting traditional variety plants or landraces such as cekur manis, sambung nyawa, kaduk, gajus, serai kayu and ulam raja, they also plant modern varieties such as chilli, eggplant, luffa, ladyfingers, guava, water pumpkin, mung bean, tomato, papaya, basil and marigold.

This year, in conjunction with International Seed Day, celebrated on April 26 every year, a total of 200 local and international seed savers gathered at an International Agroecology Conference and Exhibition on Community Seed Systems held in Bangi. Contrary to the popular belief that the community of seed savers is small and insignificant, this conference proved the opposite when the Community Seed Reserve Initiative Project (IRBK) has so far recorded the stories of 90 seed savers from Malaysia, namely 59 individuals and 31 organizations.

UPOV 1991 redefines farmers' rights to save, use, and exchange protected seeds or propagating materials. It presents these rights as an optional privilege that member states can choose to implement. It also sets strict limits. For instance, under UPOV 91, saving seeds is only possible for certain crops and must be "within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder". This means that the rights of the breeders are prioritized over the traditional practices of the farmers.

UPOV 1991 goes on to prohibit seed exchange and selling that is explicitly recognized in the International Treaty of Plant Genetic Resources for Food and Agriculture (ITPGRFA) and UNDRIP. As a party to ITPGRFA and taking into account the UNDRIP, Malaysia has the right to implement Farmers' Rights that include the right to save, use, exchange and sell farm-saved seeds/propagating materials.

As mentioned in the response, we are aware that in 2005, the Malaysian Department of Agriculture requested an examination of the PNPV Act 2004 for conformity with UPOV 1991. UPOV responded to this request by identifying amendments to at least 13 sections of the Act to bring it into conformity with UPOV 1991. Hence joining UPOV will mean a major revision of the PNPV Act 2004 that entails the deletion of provisions that reflect the diversity of Malaysia's agricultural system, safeguard farmers' and indigenous peoples' rights to freely save, use, exchange and sell farm-saved seeds/ propagating materials, prevent misappropriation of local genetic resources, and ensure timely availability of adequate seeds at affordable prices.

To justify Malaysia joining the UPOV 1991, its supporters and multinational agricultural companies claim it will provide easier access to improved varieties of crops and plant genetic resources, enable further breeding locally, increase the number and diversity of local breeders, facilitate access to the global market and enhance competitiveness. Such claims are, however, not based on evidence, as many studies around the world, have shown that robust seed systems are not dependent on UPOV 1991. Studies also point out that UPOV-type PVP systems create concentrated seed markets and reduce agricultural innovation and biodiversity while risking food security and sustainability.

Globally there is huge opposition to UPOV 1991, with many experts pointing out that it is unfit for agricultural systems prevailing in developing countries and for realizing Farmers' Rights and other related human rights such as the right to food.

Copying the UPOV system into the proposed new PNPV Act will be a denial of farmers' and indigenous peoples' right to the practice of saving, sharing and selling farm-saved seeds. It will promote monopolies, facilitate monocultures and lead to more loss of local farming knowledge and wisdom. The UPOV system will adversely affect the socio-cultural practices and socioeconomic status of farmers as well as the diversity and security of national food production. The government must not ignore the importance of agricultural biodiversity, food security, farmers' rights and access to good, nutritious and affordable food for all Malaysians.

We strongly call on the Malaysian Government to follow the lead of Indonesia which has informed the Special Rapporteur on the Right to Food that it will not join UPOV 1991 for many of the reasons that we have highlighted above.

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This statement is endorsed by:

1. BioHydro
2. Consumer Association of Penang (CAP)
3. Damai Farm ville
4. Ecocentric Transitions
5. Fitrah Farm
6. GRASS Malaysia
7. IDRIS Association
8. Jaringan Ekologi dan Iklim (JEDI)
9. Jungle family
10. Justlife Workers Co-Op
11. KebunBandar
12. Klima Action Malaysia (KAMY)
13. Komuniti Pondok Sukun (KomPoS)
14. Koperasi Kongsi Selangor Berhad
15. Malaysia Demeter Association
16. Merryganic Farm
17. Min House Camp
18. Natural Farming Association of Malaysia (NFAM)
19. Nubex Sdn Bhd
20. Persatuan Agroekologi Malaysia (SRI-Mas)
21. Persatuan Aktivis Sahabat Alam - KUASA
22. Persatuan Pertanian Alami Kelantan (ALAMI)
23. Persatuan Usahawan Tani Cinta Alam Kelantan (PUNCAK)
24. Pertubuhan Lestari Alam Selangor (Alam Selangor)
25. Pertubuhan Persaudaraan Pesawah Malaysia (PeSAWAH)
26. Pertubuhan Rangkaian Pembangunan Kesyinambungan Malaysia (SUSDEN Malaysia)
27. Post Ark
28. Rasa Sayang Permaculture Estate
29. Rishi Organix
30. Sahabat Alam Malaysia (SAM)
31. Semaian Rimba Forestry
32. The Lord's Garden
33. Taman Sara (Kebun Komuniti Masjid al-Rasyidin)
34. Third World Network (TWN)