

The European Union's demand for UPOV 1991 in EPA trade negotiations with African ESA countries undermines the right to food

Open letter, June 2025

To the European Commissioner for Trade, the European Commissioner for Agriculture and Rural Development and the European Commissioner for International Partnerships, and to EU Member States.

To the Trade and Agriculture Ministers of Zimbabwe, Madagascar, Seychelles, Comoros and Mauritius

We are writing to express our concerns regarding the damaging intellectual property (IP) provision on plant variety protection in the Economic Partnership Agreement (EPA) between the European Union and Comoros, Madagascar, Mauritius, the Seychelles and Zimbabwe.

We urge the European Commission and the agriculture and trade ministers of the African countries concerned to remove the requirement to adopt 1991 UPOV rules from the draft agreement and to ensure that farmers and their organisations are able to meaningfully participate in this key decision-making process.

Regarding Plant Variety Protection, the EU proposal on IP at the beginning of the EPA negotiations included the following wording: “*Each Party shall protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991.*”¹ During the latest round of negotiations, held in Brussels from 3 to 7 March 2025, most of the chapter concerning substantive intellectual property rights and their enforcement has been provisionally closed². According to the European Commission, this includes the provisions on plant variety protection, where the European Commission proposal was accepted³.

None of the ESA countries are signatories to the UPOV Convention. The European Commission proposal would therefore initiate substantial legislative changes within their legal framework, with the exception of the Comoros, which protects new varieties through the OAPI Agreement. UPOV 1991 grants extensive protection to industrial breeders at the expense of farmers’ rights and their freedom to operate. Implementing UPOV 1991 means restricting or prohibiting many of the valuable practices that smallholder farmers have freely practiced such as using, saving, exchanging and selling farm-saved seeds/propagating materials as well as breeding using techniques such as “selection” (such as adapting existing varieties to diverse and evolving conditions of the environment or on your farm).

¹ European Union's (EU) proposal for a legal text on Intellectual Property Rights in the EU-ESA5, 6.6.2021; <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/21e92e69-ca78-4221-a07e-95cff9b76ce5/details>

² EC Report on the 15th round of negotiations: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/3cbb4936-bcb4-46d0-bfeb-5a097c5cc7cf/details?download=true>

³ Personal communication with the EU Trade Commission, 11.3.2025

The undersigned NGOs from Africa and Europe including from Zimbabwe, Madagascar and the European Union are urging their governments to remove this provision which goes beyond the requirements of the World Trade Organization (WTO) rules contained in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) – known as TRIPS+ – that are hampering farmers’ rights and the right to food.

UPOV 1991 restricts farmers’ freedom to operate including their right to save, use, exchange and sell farm-saved seeds/propagating materials.

Michael Fakhri, the UN Special Rapporteur on the right to food, in a report to the UN Human Rights Council, recommended that “[b]eing a party to that [UPOV 1991] Convention should no longer be required as part of bilateral or regional agreements. Member States are strongly encouraged to remove such requirements from current agreements”⁴.

In his letter to the European Union in December 2023 concerning the free trade agreement between the EU and Indonesia, the Special Rapporteur already pointed out that the obligation to comply with UPOV 1991 rules could be a significant obstacle to the realization of the right to food: “[...] I would like to express my serious concern regarding the fact that the EU Indonesia CEPA negotiations, to the extent that they require compliance with UPOV1991, may present adverse implications by restricting Indonesian farmers’ rights-especially to freely use, exchange and sell farm-saved seeds and propagating materials. The EU, despite acknowledging smallholder farmers’ concerns about the impact of new plant variety provisions, regretfully continues to favour a more coercive approach, demanding Indonesia’s compliance with UPOV1991, which will create considerable obstacles towards the full realisation of the right to food by Indonesia.”⁵ It is obvious that these concerns also apply to countries such as Madagascar and Zimbabwe, where they would also have a negative impact on food security and agrobiodiversity.

UPOV 1991 is an inflexible PVP system, completely inappropriate for Sub-Saharan Africa

The “one size fits all” UPOV system is widely known for its extremely rigid, inflexible approach. Being forced to adopt UPOV 1991 standards means that countries will no longer be able to exploit the flexible policy space offered by Article 27.3(b) of TRIPS to implement a unique PVP system that meets the needs of their seed system, its farmers and its people, i.e. by designing a new system or adapting the existing one. The policy space offered by the TRIPS agreement also includes the fact that least developed countries (such as Madagascar) are not required to introduce plant variety rights at this stage.

One of the main recommendations in a study published by the German GIZ was that “*Developing countries that have not yet joined UPOV should consider opting for alternative sui generis systems of PVP that allow for more flexibility in meeting the obligations of different treaties, for balancing*

⁴ Seeds, right to life and farmers’ rights; Report of the Special Rapporteur on the right to food, Michael Fakhri <https://www.ohchr.org/en/documents/thematic-reports/ahrc4943-seeds-right-life-and-farmers-rights-report-special-rapporteur>

⁵ Mandate of the Special Rapporteur on the right to food, 4 December 2023, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28647>

the interests of diverse actors, and for protecting and promoting Farmers' Rights, compared with the UPOV system.”⁶

This is precisely what Zimbabwe has done by developing its own system. Their plant variety protection law meets their requirements and circumstances. So, in this case, too, it is completely incomprehensible why the country should be subject to a law based on European preferences.

The Comoros, a member of OAPI, shows that the introduction of UPOV 1991 does not bring any positive benefits for breeding innovation or the import of seeds. OAPI has had a plant variety protection system that meets the requirements of UPOV 1991 since 2006 and has been a member of UPOV since 2014. However, by the end of 2023, OAPI had only protected 19 varieties, despite covering 17 African countries. The promised boost to innovation has never materialised, and the system can only be described as a failure. Nevertheless, the EU now intends to export this failing system to other African countries.

EU and African countries should uphold Farmers' Right to participate in decision-making processes

The right of farmers to participate in decision-making processes is a right recognized by Article 9 of the ITPGRFA and a well-established right within the human rights framework⁷ (e.g. Article 19(1)(c) of UNDROP). It is therefore unacceptable that no farmer organisations are at the negotiating table for the EU-ESA agreement, and that they have not been consulted in the partner countries about these negotiations. This severely undermines the farmers' right to participate, as enshrined in international law.

The EU and the African negotiating parties have chosen to ignore the voice of farmers. De facto, this top-down approach demanding ESA countries to comply with UPOV 1991, with devastating consequences for human rights including the right to food and biodiversity.

⁶ 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.researchgate.net/publication/280234837_The_UPOV_Convention_Farmers'_Rights_and_Human_Rights_An_Integrated_Assessment_of_Potentially_Conflicting_Legal_Frameworks.

⁷ See “Farmers' Right to Participate in Decision-making – implementing Article 9.2 (c) of the International Treaty on Plant Genetic Resources for Food and Agriculture, Working Paper, September 2016, available at https://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf

SIGNATORIES:

Africa and Europe:

Act Alliance EU

African Centre for Biodiversity (ACB)

Alliance for Food Sovereignty in Africa (AFSA)

Association for Plant Breeding for the Benefit of Society (APBREBES)

Biowatch South Africa

Both ENDS

Carolina Eco Green Economy

CIDSE

Convergence Globale des Luites pour la Terre et l'Eau Ouest Africaine (CGLTE OA)

DanChurchAid

Future Ready Foundation SA (FRFSA)

GRAIN

HEKS/EPER Swiss Church Aid

Living Earth (Namibia)

LVC Southern and Eastern Africa

Oxfam

Participatory Ecological Land Use Management (PELUM) Association

Polo de competência em Agroecologia-Guiné-Bissau (PCAE-GB)

Southern African Faith Communities Environment Institute (SAFCEI)

SWISSAID

The Eastern and Southern Africa small-scale Farmers Forum (ESAFF)

The Seed and Knowledge Initiative (SKI)

West African Committee for Peasant Seeds (COASP)

ZAAB (Zambia alliance for agroecology and biodiversity)

Zimbabwe

Women and Land in Zimbabwe

Women and Land in Africa

Community Technology Development Organisation (CTDO)

Participatory Ecological Land Use Management (PELUM) - Zimbabwe

Participatory Organic Research Extension and Training (PORET)

The Zimbabwe Smallholder Organic Farmers Forum (ZIMSOFF)

Towards Sustainable Use of Resources Organization (TSURO) Trust, Zimbabwe

ZIP-Fambidzanai Permaculture Centre, (FPC), Zimbabwe

African Renaissance Sustainable Development (ARSD)

Qunu Community Advice Centre (South Africa) QUCAC

Madagascar

Centre de Recherches et d'Appui pour les Alternatives de Développement - Océan Indien (CRAAD-OI)

Femmes en Action Rurale de Madagascar (FARM)

Réseau des Jeunes pour le Développement Durable (RJDD)

Collectif pour la défense des terres malgaches - TANY