

The Netherlands' Promotion of UPOV 1991: Jeopardising Farmers' Rights, the Right to Self-Determination and the Right to Food under the ICESCR

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A: THE NETHERLANDS' EXTRATERRITORIAL OBLIGATIONS IN RELATION TO ARTICLES 1, 11 AND 15 OF THE ICESCR

1. This report focuses specifically on the breaches of the Netherlands' extraterritorial obligations under Articles 1 (right to self-determination), 11 (the right to food) and 15 (the right to take part in cultural life and enjoy the benefits of scientific progress) of the ICESCR, particularly in supporting and promoting the regressive and highly controversial intellectual property regime on plant breeders rights known as UPOV 1991. We also refer to General Comments (GC) No.12 on the right to adequate food, No.24 on State obligations under the ICESCR in relation to business activities and No. 25 on science and economic, social and cultural rights.

2. The **right to food** extends beyond mere sustenance. It is of crucial importance for the enjoyment of all rights and deeply tied to life, culture, and people's connection to land and waterways.

(i) Article 11 recognizes everyone's right to an adequate standard of living, including adequate food, clothing, and housing, as well as ongoing improvements in living conditions. The Committee on Economic, Social and Cultural Rights (CESCR) further explains that the right to adequate food requires food to be available in sufficient quantity and quality, culturally acceptable, free from harmful substances, and accessible in sustainable ways that respect other human rights (CESCR, 1999, para. 8).

(ii) Para 15 GC12 on the obligations to respect, protect and to fulfil the right to adequate food: the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.

(iii) **Self-determination** (which underpins all rights within the ICESCR), requires that people have power and agency over their food systems. Empowering individuals with control over their food systems is essential to autonomy and dignity. Governments have a responsibility to ensure all people can access nutritious, affordable food with respect and fairness, both now and in the future. For local and small-scale producers, such as peasants, food sovereignty means having the right to determine their agricultural practices, participate in decision and policy-making and produce healthy food through sustainable, culturally respectful methods. Regarding indigenous peoples, States must engage in good-faith

consultations, securing free, prior and informed consent through their own representative institutions before enacting policies affecting them. For consumers, food sovereignty guarantees the right to choose foods in line with cultural, religious and individual needs, supported by transparent and accessible information on nutritional and health impacts, especially concerning processed foods. This holistic approach promotes equity, sustainability, and respect for diverse food systems. (CESCR, 1999, paras. 1, 7 & 25; Fakhri, 2025)

3. States have the duty not only to ensure the rights under the ICESCR within their own jurisdiction but also extraterritorially. This means that the Netherlands should respect the enjoyment of the right to food in other countries, protect it from violations, including through development aid, fair trade practices, and promoting sustainable agriculture globally (CESCR, 1999, paras. 19 & 25).

4. Further, the obligation to protect necessitates that the Netherlands must regulate and hold accountable Dutch businesses operating abroad to avoid violations of the right to food and farmers' rights. This involves due diligence and protecting people's rights in the context of corporate operations (CESCR, 1999, paras. 15, 19 & 20).

5. Paragraph 24 of the CESCR General Comment emphasizes that States must design intellectual property frameworks that align with human rights principles. This includes ensuring that IP rights do not restrict access to essential medicines, seeds, or other resources vital for health and food rights. It also calls for the protection of indigenous peoples' rights over their cultural heritage and traditional knowledge (CESCR, 1999, para. 24).

6. The UN Special Rapporteur on the Right to Food, Michael Fakhri, put it succinctly, stating that practical implementation of Article 11 requires international cooperation, improving food production and conservation, knowledge, reforming agrarian systems and equitable trade. The UN Special Rapporteur has thus called for transformation of food systems (a) from industrial agriculture to agroecology, (b) from giving priority to global markets to supporting territorial markets, (c) from a reliance on corporations to more support for social and solidarity economy entities and (d) from a multilateralism based on multi-stakeholderism to one based on solidarity and food sovereignty (Fakhri, 2025, Chapter 4).

7. The above rights also find their expression in various UN instruments (other than the ICESCR), such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA, Article 9), the Convention on Biological Diversity (CBD) and its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).¹

B: SEED SYSTEMS AND FARMERS' RIGHTS

8. The UN Special Rapporteur also discusses the controversy that is UPOV 1991 in his report. As seeds are so central to people's cultures and food systems, to control seeds is to control life (Fakhri, 2021). Broadly, there are two different types of seed systems: farmers' seed systems (known more popularly as "the informal seed system") and commodity seed systems (known more popularly as "the formal seed system", that distinguishes itself with a seed supply chain composed of plant breeding, seed production, conditioning, and distribution). The right to food is inherently tied to farmers' seed systems and farmers' seed systems depend on the right of farmers to freely save and use seeds from harvests, exchange, sell or buy seeds locally.

9. Farmers' seed systems sustain the developing world, provide important genetic material for the activities of commodity systems and also make food systems more resilient against climate change, pests and pathogens. The data below confirms this statement:

¹ For a discussion of relevant international legal instruments related to plant genetic resources and farmers' rights, see Muhammad (2023), 12–18.

- (i) Small-scale producers feed the equivalent of 70% of the world's people with less than 30% of the world's land (ETC Group, 2022a; ETC Group, 2022b);
 - (ii) In much of the developing world, 70%-90% of seeds used in crop production come from farmers' seed systems, with only 10-30% supplied by the commodity seed system. The vast diversity of food crops and their variations today largely result from farmers' increasingly sophisticated management of these seed systems (Manalo & Ignacio, 2021).
 - (iii) A collection of 21 case studies from 10 countries by the Alliance for Food Sovereignty in Africa showed that: (a) farmers seed varieties are in many cases more productive and more nutritious than the so-called improved varieties; (b) farmers have strong and various protocols to establish quality seeds standards; (c) women farmers play a crucial role in selecting seeds that define our food systems; and (d) communities play a key role in biodiversity preservation and should be first partners of gene banks, either locally, nationally or at international levels (AFSA, 2024).
10. The contributions of farmers over the generations in conserving, improving and making available plant genetic resources for food and agriculture are undeniable and form the basis of farmers' rights, which Article 9 and the preamble of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) sets out to include:
- (i) The Protection of Traditional Knowledge: Safeguarding farmers' knowledge related to plant genetic resources;
 - (ii) Equitable Benefit Sharing: Ensuring farmers benefit from the utilization of plant genetic resources they have conserved or developed;
 - (iii) Participation in Decision-Making: Guaranteeing farmers' participation in decisions related to plant genetic resources; and
 - (iv) Right to Save, Use, Exchange, and Sell Seed: This right, subject to national laws, is a cornerstone of Farmers' Rights, allowing farmers to continue using and sharing farm-saved seeds (FAO, n.d.).
- Today there is growing recognition that farmers' rights are human rights: The UNDROP reaffirms farmers' rights, recognizing them as inalienable human rights and making explicit the rights of rural people to maintain, control, protect and develop their own seeds and traditional knowledge. There must be "the full realization of farmers' rights, combined with recognition that such realization does not threaten intellectual property rights. And since farmers' rights are human rights, States must ensure that all seed systems must comply with human rights standards" (Fakhri, 2021, para. 41). This is further reflected in target 2.5 of the Sustainable Development Goals.
12. There is an important interaction between the formal and informal sectors whereby seeds from the formal sector are integrated into the informal sector by seed saving, exchange and sale of farm-saved seeds. Small-scale farmers also use "improved" varieties, which in some cases are protected by plant breeders' rights. From a human rights perspective, therefore, it will be essential to ensure access to seeds, including improved seeds, through the informal seed system and its interlinkage with the formal seed system. However, with industrial agriculture's growth, plants and genetic resources are increasingly being commodified and privatized through intellectual property (IP) and seed certification/quality laws, reducing farmers' agency and control over seeds. IP law (e.g. UPOV 1991) restrictions on the use, exchange and sale of farm-saved plant variety protected seeds will make it harder for resource-poor farmers to access improved seeds, depriving them of the right to enjoy the benefits of scientific progress. This could negatively impact on the functioning of the informal seed system, because if implemented and enforced, these laws would sever the beneficial interlinkages between the formal and informal seed systems, jeopardising rights under Articles 1, 11 and 15 of the ICESCR.
11. When countries buttress commodity seed systems and do not adequately protect and support farmers' seed systems and rights, they destabilize ecosystems and violate people's human rights. Further, with its focus on production for profits and the breeding of homogenous commodity crops, planted over vast tracts of land, industrial farming has led to land dispossession, the destruction of livelihoods, and made communities vulnerable to harm caused by ecological degradation and pesticides. Global South communities are disproportionately impacted, especially smallholder farmers/peasants, indigenous peoples, women, children and agricultural workers.

C: PLANT BREEDING, PLANT VARIETY PROTECTION AND UPOV 1991

13. **Plant variety protection (PVP) consists of monopoly rights conferred to the plant breeder for a specific duration (also sometimes known as plant breeders' rights (PBR)) in relation to the development of new plant varieties.** Farmers are the original plant breeders and have practiced plant breeding since the dawn of agriculture, altering the genetic makeup of the crops they grow for millennia. Through selection, early farmers saved the best looking plants for planting the following year (ISAAA, 2025). Scientific breeding emerging around 1900 brought new understanding of genetics to traditional techniques of self- and cross-pollination but should coexist, not replace, farmer breeding. National policies must support farmer-managed seed systems with training, combining traditional knowledge and research. Farmers must be included in decision-making to shape development. Strong policies emphasizing land reforms, poverty alleviation, conservation, financial support, infrastructure, and extension services can foster transformative agricultural progress through inclusive participation and government backing (Fakhri, 2025).

14. The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), globalized and harmonized intellectual property (IP) standards. Concerning PBR over new plant varieties, **Article 27.3(b) of WTO-TRIPS Agreement** provides that: "Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof." Least Developed Countries (LDCs) are exempted (except from articles 3, 4 and 5 of TRIPS) until July 2034. TRIPS as such does not specify what criteria/scope/duration should be applied when granting plant variety protection. Therefore, as examples, several countries in Asia (Malaysia in 2004, India in 2001, Philippines in 2002 and Thailand in 1999) have opted for *sui generis* laws according to their countries' needs, conditions and agricultural policies.

15. However, developed nations have consistently pressured developing countries to adopt the **rigid and restrictive instrument on PBR, known as UPOV 1991**. The 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 1991) has become a major subject of criticism due to its restrictive provisions, negative impacts on farmers in developing countries and contradictions with human rights and environmental norms.

D: UPOV 1991: AN UNBALANCED REGIME THREATENING FOOD SECURITY, FARMERS' RIGHTS AND DEVELOPING COUNTRIES

16. **Origins and Push for UPOV 1991:** UPOV was originally adopted in 1961 by 12 European governments, lobbied by commercial seed breeders and intellectual property groups in the Global North (Correa et al, 2015).² Over the years, it has been revised (in 1972, 1978 and 1991)³ – each time becoming more stringent, culminating in the 1991 Act. UPOV 1991 was negotiated by only 19 industrialised countries and the apartheid government of South Africa. As the Global South was not at the negotiating table, their circumstances and needs have not been taken into account (APBEBES, 2024). Nevertheless, industrialized nations have aggressively pushed developing countries to adopt the rigid structure of UPOV 1991 through **bilateral trade agreements** and regional platforms such as the **East Asia Plant Variety Forum (EAPVP)**.

17. Unlike the 1978 version, UPOV 1991 broadens and strengthens breeders' rights in multiple ways (Peschard, 2021; Muhammad, 2023; Christinck & Tvedt, 2015; UPOV, 2009):

- **Protection for All Plant Genera/Species:** It covers all types of plants, not just select crops.
- **Longer Protection Periods:** Extends minimum protection to 20 years (25 for trees/vines), often longer than the technological relevance of a variety.

² The International Association for the Protection of Intellectual Property (AIPPI), comprising IP lawyers for industry, the International Association of Plant Breeders (ASSINEL), and the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) were instrumental in its formation. See Correa et al. (2015) and APBEBES (2024).

³ After 1998, countries no longer have the option of joining under previous Acts (1972 or 1978) of UPOV and must accede to UPOV 1991 if joining the same, but they still have the option of developing *sui generis* PVP legislation.

- **Wider Scope of Rights:** Includes exclusive control over harvested material and, optionally, processed products (e.g., flour made from protected wheat).
- **Essentially Derived Varieties (EDVs):** If a new variety is primarily based on a protected one, authorization from the original breeder is compulsory.

18. UPOV requires countries to submit their national laws for examination before they can officially ratify or accede to UPOV 1991, to ensure that a country's laws align with the convention's provisions. Malaysia's submission of its *sui generis* law, the Protection of New Plant Varieties Act 2004 showed that:

- (i) UPOV 1991 does not permit PVP laws that explicitly recognize farmers' rights to freely save, use, exchange and sell seeds – even for smallholder farmers. Farmers' Rights are severely restricted under UPOV 1991. Under the optional "farmers' exception", the saving of seeds can be allowed if within reasonable limits and subject to safeguarding the legitimate interests of the breeder; it is limited to specific crops and may be subject to payment of royalties and must be replanted in the farmer's own holding. The exchange and sale of farm-saved seed/propagating materials are not allowed even among smallholder farmers (UPOV, 2009).
- (ii) UPOV 1991 rejects national legal provisions that protect local seed systems, farming communities, or agricultural sovereignty by prohibiting laws that require applicants for Plant Variety Protection (PVP) to disclose the source of genetic material or parental lines, obtain prior informed consent from local communities, or prove compliance with access and benefit-sharing or biosafety laws, reducing transparency and accountability;
- (iii) UPOV 1991 rejects national legal provisions that give governments the discretion to prohibit the grant of PVP to varieties that may affect public order or morality or negatively impact the environment.

19. These rigid requirements expose UPOV's inflexibility (Muhammad, 2023). An impact study carried out by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Cooperation and Development in 2015 (Christinck & Tvedt, 2015) concluded that provisions of the 1991 Act of the UPOV Convention, along with the required process of revision by UPOV, limit the discretion of countries to enact *sui generis* plant variety protection legislation, thereby impacting the possibilities for developing countries to implement farmers' rights in their national PVP laws. Therefore, the implementation of UPOV 1991 can hinder the protection and fulfilment of farmers' and human rights and be in contravention of the ICESCR.

20. **UPOV 1991 undermines farmers' rights and breaches human rights norms. Joining UPOV 1991 would be catastrophic, as it could lead to the criminalisation of farmers for simply engaging in their daily practices, such as saving, breeding, and distributing seeds** (GRAIN, 2019). Further, other than impacting the crucial linkage between the formal and informal seed systems that assist farmers in accessing improved varieties, restrictions on the use, exchange, and sale of protected seeds can limit access and increase costs as farmers become increasingly dependent on the formal seed sector. Improved varieties also often require more inputs compared to local farmers' varieties, pushing up production costs. Furthermore, selling seeds is a vital source of income for many farmers. From a human rights perspective, these factors can pose a risk for cash-strapped farmers as they affect the stability of their household budget and compete with other essential household expenditures, including food, healthcare and education.

21. Traditional knowledge is related to seed conservation and management. Traditional knowledge is applied by farmers in the selection, preservation and storage of seeds. It is the basis of local innovation and *in situ* seed conservation. Women's knowledge is of particular relevance to local seed and food systems, as clearly evident in the Andean region. However, the wealth of practices that farmers use and develop at the local level goes largely unnoticed and unacknowledged by government institutions. From a human rights perspective, restrictions on traditional practices and seed management systems adversely impact farmers' rights, cultural rights, minority rights, indigenous peoples' rights, women's rights, as well as biodiversity and the right to food (Braunschweig et al., 2014).

22. **Food Security and Biodiversity Risks – Genetic Uniformity and Monoculture:** UPOV 1991's definition of a "protectable" variety relies on novelty, distinctness, uniformity and stability, favoring a narrow range of commercial crops. The shift toward commercially driven breeding under UPOV 1991 risks reducing crop diversity and shrinking a country's genetic resources. By

prioritizing commercially viable, uniform varieties, traditional and less marketable crops are neglected. Japan's experience shows modernization causing a decline in plant genetic diversity, which limits breeders' ability to create new varieties (FAO, 2009). Globally, of the 6,000 plant species cultivated for agriculture, just nine crops—sugarcane, maize, rice, wheat, potatoes, soybeans, oil palm fruit, sugar beet, and cassava—accounted for over 60% of global crop production in recent years (IPES-Food, 2025). Diverse plant genetic resources are vital for food and nutrition security, enabling a varied diet and providing better resilience against pests, diseases, and environmental stresses like drought and soil erosion. These resources also sustain traditional farming and cultural practices, particularly among smallholders and Indigenous Peoples, helping maintain resilient and sustainable agricultural systems (Ignacio, 2025; IPES-Food, 2025; Mammana, 2014).

23. Increased Input Dependence and Environmental and Health Impacts: Commercially protected seeds are often hybrids that require farmers to repurchase them annually and rely heavily on chemical inputs like fertilizers and pesticides. Other than increasing costs, the use of agrochemicals leads to environmental degradation. IPES-Food (2025) highlights the deep dependence of global food systems on fossil fuels—accounting for 15% of fossil fuel use and 40% of petrochemicals, mainly through synthetic fertilizers, pesticides, and plastic packaging. The widespread use of fossil fuel-based pesticides severely harms the environment and human health. Pesticide production, application, and environmental interactions contribute significantly to greenhouse gas emissions, making pesticides a major driver of biodiversity loss. Health impacts are severe, with over 385 million unintentional pesticide poisonings and 11,000 deaths annually, affecting nearly 44% of farmers worldwide. Chronic exposure is linked to cancer, reproductive damage, and neurological disorders, disproportionately harming agricultural workers, rural, and fenceline communities, exacerbating vulnerabilities and social injustices. It is telling that some of the top seed companies are also the top pesticide companies globally: 4 firms, Bayer (Germany), BASF (Germany), Corteva (USA) and Syngenta Group (China) control half of the world's commercial seeds and also 62% of the world's pesticide market (ETC Group, 2022b).

24. Socioeconomic Impacts on Developing Countries

(i) Loss of Seed Sovereignty & Market Control

Developing countries have voiced significant opposition to UPOV 1991, as it imposes a "one-size-fits-all" approach regardless of national needs, food cultures, or stage of agricultural development. Governments lose the ability to:

- Protect local varieties through flexible PVP or other approaches;
- Exclude varieties that have detrimental effects from benefitting from the PVP system, e.g., varieties that contain "genetic use restriction technology" or a "terminator gene" that prevents germination of seeds;
- Prevent misappropriation or biopiracy of local genetic resources by multinational corporations.

(ii) Impacts on Local Innovation

By banning seed exchange and sale among smallholders and requiring payment of royalties, the dramatic increase in seed costs in Vietnam caused by UPOV 1991 (an average protected seed price increase of 115% after joining UPOV 1991) has relegated farmers to consumer roles, losing agency over seed supply. Local seed companies and public-sector research struggle to compete, leading to the collapse of national breeding programs (Manalo & Ignacio, 2021).

(iii) Market Concentration

UPOV 1991 reinforces global seed market concentration, benefitting a handful of seed multinationals from developed countries. A study commissioned by the Greens/EFA Group in the European Parliament (Mammana, 2014) considered concentration in the seed breeding sector – tracked through the requests of companies for plant breeder rights in Europe – and found that between 2000–2011 just five companies applied for 83% of the PVP for tomato varieties (the most profitable vegetable species) in the Netherlands. The study found that in the EU, the top five companies held 91% of seed intellectual property rights, with Monsanto and Syngenta responsible for 57% of tomato PBR applications in 2011, up from 12% in 2000. It concluded that strong IPR protection fuels market concentration (Mammana, 2014).

23. Evidence From Country Cases

Several cases demonstrate how UPOV 1991's rigidity has prompted resistance (Peschard, 2021):

- Norway: Following public consultations, the government dropped a bill to amend the PVP legislation and decided to remain a party to UPOV 1978 because it offers a better balance

- between PBRs and farmers' rights. Likewise, China and Argentina are both members of UPOV 1978 and have not acceded to UPOV 1991 (Fakhri, 2021; Mammanna, 2014; MBIE, 2020).
- New Zealand: In New Zealand, the Māori Indigenous people have spent three decades defending their kaitiaki (guardian) relationship to Indigenous flora and fauna and their traditional knowledge. This led the government to negotiate a derogation from the obligation to adhere to UPOV 91 under the CPTPP regional trade agreement, with a stipulation that they will remain a party to the 1978 Act to protect the rights of the Māori (Indigenous Peoples of Aotearoa New Zealand) (MBIE, 2020).
 - Colombia: The Constitutional Court has declared the law ratifying Colombia's accession to UPOV 91 to be unenforceable because it violated the fundamental rights of Indigenous and Afro-Colombian communities, and because the latter ought to have been consulted prior to its adoption.
 - Honduras: The Supreme Court declared its UPOV-compliant PVP law unconstitutional because it violated the Constitution and various international treaties and conventions ratified by Honduras. The ruling explicitly referred to Honduras's obligations to ensure the right to food of its population, and the right to seeds for peasants and indigenous peoples, which is enshrined in the ITPGRFA and UNDROP (Peschard, 2021).

E: THE ROLE OF THE NETHERLANDS IN THE PROMOTION OF UPOV 1991

24. **UPOV:** The Netherlands is a substantial member of UPOV, providing major funding, expert personnel seconded to UPOV, and participates and leads in policy (UPOV, 2023), legal, and technical committees, enabling substantive contributions to shaping UPOV's work (GEVES, 2025). The Netherlands also advances UPOV through engagement of government officials in UPOV external events and policy discussions (ISF, 2025)⁴.

25. Further, supported by the UPOV Secretariat and entities representing dominant players in the global seed industry, developed countries, including the EU, which the Netherlands is a part of, have deployed a range of strategies to pressure developing nations into joining UPOV 1991, including through free trade agreements and regional initiatives. For example, in South East Asia (SEA), proponents of UPOV 1991 are intensifying efforts through the East Asia Plant Variety Protection Forum (EAPVP Forum)⁵ and IP Key Southeast Asia (an EU project launched in 2018).⁶ In parallel, IP Key Latin America also carries out activities dedicated to the promotion of plant variety protection under the UPOV 1991 Act (Batur, Meienberg & Ilge, 2021).

26. **Free Trade Agreements:** the EU heavily promotes UPOV 1991 in its external trade policy: as many as 10 Free Trade Agreements (FTAs) and 3 Association Agreements signed by the EU and its trading partners require PVP under the terms of UPOV 1991, while 15 Association Agreements formally require accession to UPOV 1991 (APBRES, 2024).⁷ Although final outcomes can vary, the Netherlands and the EU should refrain from making such demands in its trade negotiations. UNSR on the Right to Food 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" (Fakhri, 2021)⁸. Free trade and economic partnership agreements with strong UPOV protection provisions raise concerns, as non-compliance can trigger enforcement actions, including arbitration, dispute resolution, and sanctions like trade penalties or tariff hikes, pressuring countries to adhere strictly to UPOV terms. Concerned stakeholders and civil society

⁴ The participation officials from the Dutch Ministry of Agriculture have engaged with UPOV activities in events like the Western Balkans Plant Breeders' Rights Conference. See https://www.instagram.com/p/DCllg-ZMrRy/?img_index=1

⁵ At present, only Vietnam and Singapore are UPOV 1991 members following the signing of free trade agreements with the United States.

⁶ More information about EU IP key Southeast Asia can be found on <https://ipkey.eu/en/south-east-asia>

⁷ APBRES (2024).

⁸ Also, the GIZ study recommended that developing countries that have not yet joined UPOV "consider opting for an alternative sui generis system of PVP that allows for more flexibility". The study concluded that "[t]he 'one size fits all' approach of UPOV appears ... problematic if the highly diverse conditions and needs of developing countries are to be addressed", and that "UPOV 91-based PVP laws were found to not advance the realization of Farmers' Rights; rather they are effective in the opposite direction" (Christinck & Tved, 2021).

organisations have protested current EU trade negotiations wherein the EU is actively demanding UPOV 1991 compliance, like the [EU-Indonesia](#), [EU-India](#), [EU-Thailand](#) and the [EU-African](#) Economic Partnership Agreements.

27. **East Asia Plant Variety (EAPVP) Forum:** Although presented as a vehicle for cooperation, this is a forum hosted and largely funded by Japan and heavily driven by Japan, the UPOV Secretariat, and governments like the Netherlands, Germany, France and the United States, along with their seed industries, as a key platform for pressuring SEA countries to join, and harmonize PVP systems in accordance with UPOV 1991. National agricultural needs and local voices advocating for context-appropriate approaches that safeguard farmers' rights and national interests are sidelined (Shashikant, 2025).

28. The composition of guests regularly invited to the EAPVP Forum Annual Meetings reveals a consistent pattern: the presence of foreign entities that are either state institutions closely aligned with commercial seed interests or regional and international seed associations. Year after year, the Forum has hosted representatives from Naktuinbouw (Netherlands), a key player in the enforcement of Dutch PVP rights abroad; the US Patent and Trademark Office (USPTO) and the US Department of Agriculture (USDA), both central to the promotion of UPOV-compliant systems; and the Community Plant Variety Office (CPVO) of the European Union, which oversees PVP rights across EU Member States. In addition, seed industry associations such as the Asia and Pacific Seed Association and the Asia and Pacific Seed Alliance have had a recurring presence (Shashikant, 2025, p. 9).

29. The dominant role of the Netherlands is striking, though unsurprising, given its substantial economic interests in seed exports. In both 2020 and 2022, it accounted for 20% of the total global seed export value. Remarkably, this single country's share is nearly as large as that of all other EU countries combined (26%) (Shashikant, 2025, p. 10).

30. The majority of non-resident PVP applications originate from a handful of countries, with the Netherlands, Germany, and France leading among EU Member States, and the United States standing out globally. Collectively, these four, along with Japan, have comprised approximately 67% of total applications in each of the past three years, underscoring their dominant role as the chief users and beneficiaries of the UPOV system, while developing countries' participation is negligible (Shashikant, 2025, p. 12).

31. Aside from the problems with UPOV 1991 detailed above, the manner in which the EAPVP Forum acts raises concerns:

(i) In each SEA country (except for Vietnam and Singapore), there are non-UPOV systems with national oppositions against UPOV, yet governments are participating in a system that goes against national laws and policies. There is a potential loss of national sovereignty as decision-making on PVP-related matters is harmonized based on UPOV and over time the regional system takes over. The discussion on whether to accede to UPOV or not, needs to happen at the national level before it happens at the regional level. Currently, the EAPVP Forum process excludes crucial national stakeholders, especially smallholder farmers and their organizations, as well as civil society organizations.

(ii) The Forum, driven largely by UPOV and its proponents, excludes discussions on alternative *sui generis* approaches to plant variety protection (PVP) and sidelines critical perspectives, especially those of smallholder farmers in Southeast Asia. It manipulates facts and disseminates biased information to promote UPOV interests. For example, the participating guests in the Forum often claim that Vietnam's sweet potato and maize productivity increased significantly after joining UPOV in 2006, citing a UPOV-funded study. However, this study has been heavily criticized for flaws and baseless claims. Independent research shows no PVP applications for sweet potato in Vietnam from 2006 to 2016 (Manalo & Ignacio, 2021), with crop yields having already improved substantially before UPOV membership, including a 30% maize yield increase between 1995-2000 (Thanh Ha et al., 2004). Moreover, high cassava yields were recorded without any PVP applications. Despite this, UPOV and the EAPVP Forum continue to present Vietnam as proof of UPOV's benefits in the region (Manalo & Ignacio, 2021).

31. Other Involvement of the Dutch government/its organisations in the promotion of UPOV 1991 which reflects the Netherlands' sustained, well-resourced campaign to globally advance the UPOV 1991 system, often in ways contested by farmers' rights advocates include (APBRES, 2024):

- Naktuinbouw's active promotion of the UPOV System in IP Key seminars in Asia, and activities in Francophone Africa.
- The Collaborative Seed Programme (CSP) under the Nigeria-Netherlands Seed Partnership, supported by the Dutch Ministry of Foreign Affairs (budget approx. €3.5 million). One topic of the Programme is to facilitate the implementation and wide adoption of the PVP Act, and build country PVP capacity and develop an operational PVP system in accordance with the UPOV System. CSP operates under the umbrella of the SeedNL Partnership, which is a public-private partnership with several other activities pushing for the implementation of UPOV 91.
- Indeed, Naktuinbouw's toolbox has an extensive range of tools, such as awareness missions in the Netherlands for groups of decision-makers, help in the establishment of an Office for Plant Breeders' Rights in a country, internships at Naktuinbouw, tailor-made training in a country or awareness programs for farmers and traders, contingent however on the adoption of UPOV-aligned frameworks. Naktuinbouw's collaborators in the implementation of the toolbox include the Ministry of Agriculture, Nature and Food Quality, the Board of Plant Varieties, and other Dutch and international seed sector experts and organisations, including the CPVO (Community Plant Variety Office of the European Union) and UPOV. Training courses and seminars aimed at promoting plant breeders' rights under UPOV have been held in countries like Ethiopia, Mexico, Kazakhstan, and the Philippines (Naktuinbouw, n.d.).
- Hence, among various countries, the Netherlands, especially, has developed programmes and activities to implement UPOV in the countries of the South, thereby weakening farmers' rights in these countries.

F: TRIPS ARTICLE 27.3(b), ARTICLE 15 OF THE ICESCR AND GENERAL COMMENT 25 OF THE ICESCR

32. As explained before, the global system of IP protection for plant varieties began with Article 27.3(b) of TRIPS, which opened the door to the imposition of private, monopolistic rights over biological resources. Art. 27.3(b) is fundamentally at odds with both the letter and spirit of Article 15 of the ICESCR, as clarified in General Comment 25. Instead of promoting equitable, inclusive access to scientific progress, Article 27.3(b) entrenches unequal power dynamics, facilitates misappropriation of traditional and indigenous resources, and prioritizes private profit over global public goods. The implementation of TRIPS, including Article 27.3(b), has resulted in:

- **Biopiracy and Misappropriation:** Article 27.3(b) allows for the patenting of life forms and certain biological processes, enabling corporations (especially from the Global North) to claim ownership over genetic resources and traditional knowledge originating in the Global South.
- **Impact on Farmers and Indigenous Communities:** Threats to the livelihoods of farmers, reduces food security and sovereignty, and undermines the rights of indigenous peoples. By allowing patents or mandatory sui generis regimes on plant varieties, communities are losing traditional control over seeds and agricultural practices
- **Corporate Monopolies, Developmental Barriers and Resource Extraction:** Corporate monopolies on essential technologies, seeds, and genes hinder economic and social development in developing countries, undermining public interest objectives such as food sovereignty and biodiversity preservation. Meanwhile, the TRIPS agreement, intended to support technology transfer from developed to developing nations, has instead allowed knowledge and resource extraction without fair compensation. This results in higher consumer prices, especially for essential medicines, limiting access and harming welfare. High royalties and restricted technology use further impede firms in developing countries from modernizing and achieving economic growth

33. Paragraph 62 of the General Comment emphasizes that intellectual property should be understood as a social construct with a social function. Therefore, States have an obligation to ensure that high costs associated with essential goods—such as medicines, seeds, food production tools, and educational materials—do not undermine

people's rights to health, food, and education (Committee on Economic, Social and Cultural Rights, General Comment No. 17, 2006, para. 62).

34. The duties highlighted in GC25—particularly in paragraphs 16, 17, 39, 52, 62, 63, 74, 75, 83, and 84—demand state action that is currently lacking. For a human rights-compliant IP system, reform or removal of provisions enabling life-form patents and stronger protection for traditional knowledge are both necessary and urgent.

G: RECOMMENDATIONS SOUGHT

35. Based on the facts presented above, we respectfully request that the CESCR Committee recommend that the Netherlands, in accordance with its extraterritorial obligations:

- (a) Must not in any way pressure other States to join UPOV 1991 .
- (b) The Netherlands must insist on the removal of any proposals or text in current or future trade agreements or economic partnership agreements of the EU with developing countries that require implementation of any aspect of UPOV 1991 and/or ratification of UPOV 1991. Nothing in those agreements should limit the policy space of any developing country to implement any aspect of Farmers' Rights, including those contained in UNDROP;
- (c) Must not participate in the EAPVP Forum or in any other forum or activity that undermines Farmers' Rights, is not transparent, presents disinformation, excludes diverse perspectives that are supportive of non-UPOV PVP systems, excludes participation of smallholder farmers and their organizations, as well as those of civil society organizations;
- (d) Must not provide or promote technical assistance that in any way undermines Farmers' rights including as set out in UNDROP and especially their right to freely save, use, exchange and sell farm-saved seeds, to participate in national decision making on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture and the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture.
- (e) Ensure that preventing misappropriation of the resources of farmers and their right to equitably participate in fair and equitable benefit sharing is at the core of all negotiations around global governance for digital sequence information.
- (f) Cooperating to transition to agroecology and gradually phase out pesticides, starting with the phasing out and banning of highly hazardous pesticides.
- (g) Take all necessary measures to ensure that nonstate actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, international organizations such as UPOV, respect and strengthen farmers' rights and their right to seeds and thus human rights. In that light, the Netherlands must also seek to remove any provisions in relation to ISDS (Investor-State Dispute Settlement) from current agreements or negotiations of free trade or economic partnership agreements that it is involved in;
- (h) Ratify the Optional Protocol to the CESCR. It is noted that at present, the Netherlands has signed the Optional Protocol to the CESCR, but has not ratified the same (NJCM, 2023).

36. Further, we respectfully request the CESCR Committee to consider commencing a process of elaborating a General Comment on the need to remove monopolistic IP regimes from food and agricultural systems building on its own existing analysis as well as the analysis of various UN agencies.

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