

# OPEN LETTER

## to the European Commission

### concerning plant variety rights in the Free Trade Agreement with Indonesia

Executive Vice-President Mr. Valdis Dombrovskis

Executive Vice-President Mr. Frans Timmermans

Commissioner Mr. Virginijus Sinkevičius

Commissioner Ms. Jutta Urpilainen

**The undersigned organisations demand that the European Commission does not impose on Indonesia any request in the EU-Indonesia Free Trade Agreements to implement the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 1991) or to impose any other requirements on Indonesia in relation to plant variety protection. The required introduction of UPOV 91 would jeopardise the Farmer managed seed system and thus food sovereignty, food security and agrobiodiversity.**

We are raising this concern as The EU proposal on the IPR Chapter<sup>1</sup>, published 19 December 2016 and tabled for discussion with Indonesia is indeed very far-reaching, especially considering the fact that Indonesia is not a signatory to any UPOV Convention: “*SUB-SECTION 7 Plant Varieties Article X.46 The Parties shall protect plant variety rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as lastly revised in Geneva on 19 March 1991 (1991 UPOV ACT), including the exceptions to the breeder’s right as referred to in Article 15(2) of that Convention.*”

According to the Report of the 10th round of negotiations for a Free Trade Agreement between the European Union and Indonesia 22 February to 5 March 2021<sup>2</sup>, plant variety protection is still an open issue and no agreement has been reached on this subject so far.

In Indonesia most of the seed supply is provided by the diverse farmer-managed seed systems. A central pillar of these systems is the farmer’s right to freely save, use, exchange and sell farm-saved seeds. However, the 1991 Act of the UPOV Conven-

tion (UPOV 91) deprives farmers of the right to exchange and sell protected seeds or propagating material. Even saving seeds and replanting on their own fields is prohibited for most plant species and restricted for others. In this way, UPOV 91 not only jeopardizes the right to food and food sovereignty, but is also a threat to agrobiodiversity. The diversity of varieties stored in gene banks and cultivated in fields and gardens across the world, which is an indispensable resource for breeding new crops, relies on functioning farmers seed systems. If we destroy these systems, we harm humanity as a whole. The dangers of inappropriate plant variety protection laws have been highlighted by many different reports and studies in recent years<sup>3</sup>. The main arguments are also summarised in a briefing paper<sup>4</sup> accompanying this open letter.

Excluding any requirement concerning plant variety protection in the FTA would echo the concerns raised by stakeholders in the Sustainability Impact Assessment (SIA)<sup>5</sup> carried out by consultants for the European Commission. The SIA did highlight that the right to seeds and the protection of new plant varieties were contentious issues in stakeholder consultations, where “*small-hold farmers have expressed the view that they could be negatively impacted by new plant varieties provisions in the prospective FTA, [urging] negotiators to take into account the needs of small-hold farmers in Indonesia*”.

A Renunciation of Claims for Plant Variety Rights under UPOV 91 would also be coherent with the European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU’s recovery and resilience<sup>6</sup>, where the Parliament “*calls for the EU to support IPRs regimes that enhance the development of locally adapted seed varieties and farm-saved seeds, in line with the*

*provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and Article 19 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas;*"

Our demand that the EU does not require UPOV 91 in its trade agreements is also in line with the demands of the Special Rapporteur on the Right to Food, Michael Fakhri, in its last report "Seeds, right to life and farmers' rights" where he recommends that UN "Member States should consider: Not pressuring other Member States to join the International Convention for the Protection of New Varieties of Plants in any way. Being a party to that 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;"

Attempting to impose a law on Indonesia that was drafted without its participation runs counter to the country's interests. Indonesia has the right and the duty to develop laws and poli-

cies related to seeds that best suit its agricultural system and the needs of its people, always taking into account the right of farmers to participate in decision-making processes. It is disturbing to see how the EU is jeopardising Indonesia's ability to develop tailor-made laws and to use the space provided by the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

For all these reasons, we call on you to withdraw the demand for a UPOV 91-compliant plant variety protection law and to refrain from any request concerning plant variety protection rights in the FTA with Indonesia. This would be an important step towards more justice, the implementation of the United Nations Declaration on the Rights of Farmers and Other People Working in Rural Areas" (UNDROP) and an important contribution to the achievement of the United Nations Sustainable Development Goals (SDGs).

Signatories:

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#### ENDNOTES

- 1 [https://trade.ec.europa.eu/doclib/docs/2017/february/tradoc\\_155281.pdf](https://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155281.pdf)
- 2 [https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc\\_159484.pdf](https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159484.pdf)
- 3 [www.apbrebes.org/node/297](http://www.apbrebes.org/node/297) and [www.apbrebes.org/sites/default/files/2020-12/APBREBES\\_UPOV-LitRev\\_EN\\_12-20\\_fin.pdf](http://www.apbrebes.org/sites/default/files/2020-12/APBREBES_UPOV-LitRev_EN_12-20_fin.pdf)
- 4 [www.apbrebes.org/why\\_Indonesia\\_should\\_not\\_join\\_UPOV](http://www.apbrebes.org/why_Indonesia_should_not_join_UPOV)
- 5 [https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc\\_158901.pdf](https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158901.pdf)
- 6 [www.europarl.europa.eu/doceo/document/TA-9-2021-0453\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-9-2021-0453_EN.html)