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Clerk of Parliament, Mr Kennedy Mugove Chokuda

**RE: Concerning the Economic Partnership Agreement with the European Union and threats to Farmers’ Rights and Economic and Social Rights when amending the national Plant Breeders Rights Act.**

We are writing to express our serious concerns regarding the damaging Intellectual Property (IP) provision on Plant Variety Protection (PVP) in the Economic Partnership Agreement (EPA) between the European Union (EU) and Zimbabwe (including 4 other African States).

In addition, we express our serious concerns about the process for reviewing the Plant Breeders’ Rights Act of Zimbabwe and its alignment with UPOV 91.

We urge Zimbabwe to ensure the requirement to adopt 1991 UPOV rules from the draft agreement is removed, and that farmers and their organisations are able to meaningfully participate in decision-making processes when the Plant Breeders Rights Act is amended.

Having already expressed our concerns to the EU in a letter dated 3 July 2025, we wish to draw your attention to several significant recent developments that provide compelling grounds for withdrawing the proposed UPOV clause in the draft Partnership Agreement and rejecting the draft Bill aimed at bringing Zimbabwe's Plant Breeders' Rights Act into alignment with UPOV 1991.

## BACKGROUND

Regarding the EU EPA negotiations and Plant Variety Protection, the EU proposal on Intellectual Property at the beginning of the 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.*”<sup>1</sup> 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 closed<sup>2</sup>. According to the European Commission, this includes the provisions on plant variety protection, where the European Commission proposal was accepted<sup>3</sup>.

In a parallel process In August 2020, the UPOV Council adopted a positive decision on the conformity of Zimbabwe's draft legislation with the 1991 Act of the International Union for the Protection of New Varieties of Plants. Subsequently, on July 8, 2025, UPOV was invited to participate virtually in the “Plant Breeders' Rights Amendment Draft Bill Workshop” held in Zimbabwe. According to UPOV, the workshop included representatives from relevant government ministries and selected stakeholder organizations<sup>4</sup>.

However, it is of serious concern that representatives of smallholder farmers' organizations and key non-governmental organizations were not invited to participate in this process. Given that plant variety protection laws directly affect farmers' rights, seed sovereignty, and the functioning of informal seed systems, their exclusion undermines the legitimacy and inclusiveness of the policy development process.

We are deeply concerned as 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 one's farm).

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<sup>1</sup> 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>

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

<sup>3</sup> Personal communication with the EU Trade Commission, 11.3.2025

<sup>4</sup> *ibid*

With this letter, the undersigned farmer and civil society organisations request the Zimbabwe government to remove the UPOV provision from the Partnership Agreement, 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. In addition, we request to halt the current legislative process until an inclusive, transparent, and participatory consultation with smallholder farmers and civil society is conducted. WE also request to halt the accession process to UPOV 1991, and refrain from adopting legislation that restricts farmers’ rights

## **KEY CONCERNS**

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

### **Threat to smallholder farmers in Zimbabwe**

In Zimbabwe, compliance with UPOV 91 would require substantial amendments to the country’s existing plant variety protection law. Current legislation contains important exemptions allowing farmers working on communal land or resettlement land to save, reproduce, exchange and, under limited conditions, sell farm-saved seed. These provisions are particularly important for poor rural communities, where access to affordable seed is essential for survival.

Zimbabwe has already prepared, in cooperation with UPOV, a draft law intended to comply with UPOV 91 standards. The draft demonstrates that exactly those clauses protecting the rights of small-scale farmers would need to be removed in order to achieve compliance.

This could have serious consequences for food security. According to the World Bank, rural populations living on communal lands experience the highest poverty rates in Zimbabwe, and the proportion of the country’s extremely poor living in communal areas increased from two-thirds in 2012 to three-fourths in 2017. Farmers’ rights to save and exchange seed are therefore not merely traditional practices but essential mechanisms for ensuring affordable access to seed, lowering production costs for vulnerable households.

***UPOV 1991 conflicts with Economic and Social Rights and African food sovereignty***

In a judgment issued on 27 November 2025, the Machakos High Court in Kenya ruled that parts of the Seeds and Plant Varieties Act — including provisions of Kenya’s plant breeders’ rights legislation aligned with UPOV 1991 — were unconstitutional because they conflicted with the economic and social rights to be free from hunger and to have adequate food of acceptable quality<sup>5</sup>.

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<sup>5</sup> Further information on the ruling, with a particular focus on plant variety rights, can be found here: [https://www.apbrebes.org/ruling\\_kenya\\_high\\_court](https://www.apbrebes.org/ruling_kenya_high_court)

The court ruled that the provisions of the Seeds and Plant Varieties Act, defining the scope of breeder's rights in line with UPOV 91, "by granting exclusive reproduction, marketing and stocking control to the plant breeders, even of harvest by farmers from the use of protected varieties, create economic dependency on commercial breeders, further undermining Articles 21(2) and 43(1)(c) of the Constitution. The small-scale farmers' freedom to deal with their harvest and products is unreasonably extinguished."

The need for smallholder farmers to be able to freely propagate, exchange and sell seeds is even greater in Zimbabwe than it is in Kenya. But it is precisely these farmers' rights that would be abolished if Zimbabwe's plant variety protection law were brought into line with UPOV 91. The introduction of UPOV 1991-aligned provisions would therefore also risk undermining the right to food in Zimbabwe and should not be promoted through the Economic Partnership Agreement (EPA).

### ***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 the interests of diverse actors, and for protecting and promoting Farmers' Rights, compared with the UPOV system."*<sup>6</sup>

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

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<sup>6</sup> 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](https://www.researchgate.net/publication/280234837_The_UPOV_Convention_Farmers'_Rights_and_Human_Rights_An_Integrated_Assessment_of_Potentially_Conflicting_Legal_Frameworks).

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.

### **UPOV facilitates bio-piracy of genetic resources**

UPOV does not recognize the principles of the Convention on Biological Diversity (CBD) and the Nagoya Protocol that access to local genetic resources should be subject to fair and equitable benefit sharing. The UPOV system does not accept disclosure requirements in PVP applications to prevent misappropriation and/or facilitate compliance with access and benefit-sharing rules. Furthermore, UPOV incorporates a double standard and inequities within its system. New plant varieties developed from traditional varieties may be PVP protected and commercialised, without requiring the holder of a new variety to obtain a legal access and pay fair and equitable benefit sharing to farming communities that developed traditional varieties. However, if a local farmer were to use a PVP protected variety to develop a new variety that is considered to be an “essentially derived variety”, the local farmer would not be able to commercialise the new EDV variety without the consent of the PVP holder.

### ***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 framework<sup>7</sup> (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 process to amend the national law. This severely undermines the farmers’ right to participate, as enshrined in international law.

### **SIGNATORIES:**

1. Africa Unite
2. African Centre for Biodiversity (ACB)
3. African Renaissance Sustainable Development (ARSD)
4. Alliance for Food Sovereignty in Africa (AFSA)
5. Centre for Agriculture and Rural Development CARD
6. Community Technology Development Organisation (CTDO)
7. Eastern and Southern Africa small-scale Farmers Forum (ESAFF)
8. Fambidzanai Permaculture Centre (FPC), Zimbabwe

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<sup>7</sup> 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](https://www.apbrebes.org/files/seeds/files/PE_farmers%20right_9-16_def-high.pdf)

9. IFOAM Seeds Platform
10. Participatory Ecological Land Use Management (PELUM) Zimbabwe
11. Participatory Ecological Land Use Management (PELUM) Association
12. Participatory Organic Research Extension and Training (PORET)
13. Rural Women's Assembly
14. Rural Women's Assembly (Southern Africa)
15. Seed and Knowledge Initiative (SKI)
16. Seeds Institute of Research and Consultancy Africa
17. Southern African Faith Communities Environment Institute - Zimbabwe (SAFCEI)
18. Southern African Faith Communities Environment Institute (SAFCEI)
19. Towards Sustainable Use of Resources Organization (TSURO) Trust, Zimbabwe
20. Trust for Community Outreach and Education (TCOE)
21. Voices for Forests Alliance -AVAF
22. Women and Land in Africa
23. Women and Land in Zimbabwe
24. Zambia Alliance for Agroecology and Biodiversity (ZAAB)
25. Zimbabwe Smallholder Organic Farmers Forum (ZIMSOFF)