



## **ALLIANCE FOR FOOD SOVEREIGNTY IN AFRICA**

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### **OPEN LETTER TO MEMBERS OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)**

28<sup>th</sup> of January, 2016

#### **AFSA's RESPONSE TO ARIPO's STATEMENT TO THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)**

The Alliance for Food Sovereignty in Africa (AFSA) is a Pan African platform representing small holder farmers, pastoralists, hunter/gatherers, indigenous peoples, citizens and environmentalists from Africa who possess a strong voice that shapes policy on the continent in the area of community rights, family farming, promotion of traditional knowledge and knowledge systems, the environment and natural resource management.<sup>1</sup>

We understand that at the 49<sup>th</sup> session of the UPOV Council, Mr. Emmanuel Sackey representing the African Regional Intellectual Property Office (ARIPO) suggested that civil society organizations had been able to participate in the whole process of developing the Arusha Protocol for the Protection of New Varieties of Plants (Arusha Protocol) that was adopted on 6<sup>th</sup> July 2015.

We would like to place on record that this statement of Mr. Sackey from ARIPO is less than honest. In fact we are outraged because African civil society and representatives of smallholder farmers were expressly and deliberately excluded from the Diplomatic Conference for the adoption of the abovementioned Protocol that took place on 6<sup>th</sup> July and the Experts Committee Session and the Ninth Extra-ordinary Session of the Administrative Council that took place from June 29 to July 1, 2015 and July 2 to 3, 2015, respectively. Our numerous requests to the ARIPO Director General directly, to Mr Emmanuel Sackey and even to the Tanzanian government, the host of the Diplomatic Conference to allow AFSA to participate, were pointedly ignored. This despite our consistent engagement with the Draft ARIPO PVP Protocol process for several years.

In this regard, we would like to place on record the following as illustrations of this consistent engagement:

1. In a letter dated 6<sup>th</sup> November 2012, organizations from sub-Saharan Africa including civil society and entities representing smallholder farmers and peasants from sub-Saharan Africa wrote to the Director

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<sup>1</sup> Members of AFSA include networks and farmer organisations working in Africa including the African Biodiversity Network (ABN), Coalition for the Protection of African Genetic Heritage (COPAGEN), Comparing and Supporting Endogenous Development (COMPAS) Africa, Friends of the Earth- Africa, Indigenous Peoples of Africa Coordinating Committee (IPACC), Participatory Ecological Land Use Management (PELUM) Association, Eastern and Southern African Small Scale Farmers' Forum (ESAFF), La Via Campesina Africa, FAHAMU, World Neighbours, Network of Farmers' and Agricultural Producers' Organizations of West Africa (ROPPA), Fellowship of Christian Councils and Churches in West Africa (FECCIWA), African Centre for Biosafety, Rural Women Forum, Ground Swell Africa, Tanzanian Biodiversity Organizations, ANORAF Togo and Plate forme Sous Régionale des Organisations Paysannes d'Afrique Centrale (PROPAC).



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General of ARIPO raising detailed concerns<sup>2</sup> with the ARIPO Draft Regional Policy and Legal Framework for Plant Variety Protection contained in documents ARIPO/CM/XII/8 and ARIPO/AC/XXXVI/9.

2. On 16<sup>th</sup> July 2013, six days before a Regional workshop in Malawi was to take place 22<sup>nd</sup> to 25<sup>th</sup> July 2013, on AFSA's insistence, ARIPO invited the participation of only one person from civil society, though the costs had to be borne by the participant.

3. During ARIPO's Administrative Council and Ministerial meetings held in Uganda in November 2013, a document, ARIPO-CM-XIV-8-ANNEX I was officially presented. This document was a response to the detailed comments raised by organizations from the sub-Saharan region. That document (ARIPO-CM-XIV-8-ANNEX I) had apparently also been provided at the Malawi Regional Workshop but this written response was never officially communicated to the civil society, farmer and other groups that raised the detailed concerns mentioned above.

4. In a letter dated 12<sup>th</sup> March 2014, AFSA wrote to the Director General of ARIPO with a detailed reply to ARIPO's response<sup>3</sup>.

5. In addition, in a letter dated 2<sup>nd</sup> July 2014, AFSA appealed to the African Union, United Nations Economic Commission for Africa (UNECA) and member states of ARIPO requesting urgent intervention in respect of the Draft ARIPO Protocol on the Protection of New Varieties of Plants and subsequent regulations to be made in terms of the draft Protocol. This letter once again, contained detailed concerns and submissions relating to ARIPO's and the draft PVP Protocol's non-compliance with international law.

6. AFSA became aware that ARIPO was to hold a Regional Workshop on the Draft ARIPO Protocol for the Protection of New Varieties of Plants in Zimbabwe in October 29<sup>th</sup>-31<sup>st</sup> 2014 and requested that at least 4 AFSA members be allowed to participate in the workshop. After repeated emails and numerous calls and visits to the ARIPO Secretariat, ARIPO said it could not entertain that request and agreed only to the participation of one AFSA member with the costs again to be borne by the participant.

7. Ahead of the Diplomatic Conference, in another letter dated 4<sup>th</sup> May 2015 addressed to the Director General of ARIPO, Dr. F Dos Santos, AFSA requested that it be allowed to participate as an observer with regard to the Draft ARIPO PVP Protocol, at its own costs. However AFSA received no response to this letter. AFSA also sent many email reminders to Mr. Emmanuel Sackey and to the general email address of the ARIPO Secretariat, however AFSA got no response.

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<sup>2</sup> See <http://acbio.org.za/wp-content/uploads/2015/02/CSOconcernsonARIPO-PVPframework1.pdf>

<sup>3</sup> See <http://acbio.org.za/wp-content/uploads/2015/02/AFSA-letter-ARIPO-March2014-.pdf>



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8. On 25<sup>th</sup> June 2014, AFSA wrote an email to a senior official in the Tanzanian government, Mr. Patrick Ngwediagi, on behalf of the hosting country of the Diplomatic Conference appealing for its intervention to facilitate the participation of AFSA. Again AFSA got no response to its appeal. As a result, no civil society or farmer representatives from the ARIPO region were able to participate in the meetings of the Diplomatic Conference.

At the same time, the ARIPO Secretariat facilitated the participation of representatives of foreign entities and the seed industry, including the World Intellectual Property Organization (WIPO), the EU Community Plant Variety Office (CPVO), the French National Seeds and Seedlings Association (GNIS), the United States Patent and Trademark Office (USPTO) and the International Union for the protection of New Varieties of Plants (UPOV).

We would like to point out that we have constantly raised concerns, in the aforementioned letters and submissions addressed to the ARIPO Secretariat about the lack of adequate involvement of smallholder farmers and civil society organizations from the ARIPO region in discussions concerning the development of an ARIPO legal framework on plant variety protection. In fact the ARIPO Secretariat has never bothered to make the process transparent, open or inclusive and neither has it shared any information concerning the process. We have also highlighted concerns that the process for developing this legal framework is driven by foreign entities with vested interests and not by the needs and interests of the people in the region.

Even at earlier workshops convened in regard to the development of the draft PVP Protocol in July 2011 in Accra, Ghana and in June 2012 in Zimbabwe, African farmer and civil society groups were completely left out of the deliberations while the abovementioned foreign entities were included in the discussions. Since AFSA became aware of the process, as evidenced above it has tried to engage in the process giving constructive inputs and ideas to safeguard the genetic resources of Africa from misappropriation and to safeguard farmers' rights and sovereignty. We would like to point out that in the two meetings we were allowed to participate in, representation allowed was meager considering that ARIPO has 19 members, we have been unfairly censored and sometimes shouted down when we raise our concerns.

The actions of ARIPO are in violation of Farmers' Rights as provided for in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). The Arusha Protocol has major implications at the national level for the ARIPO members that are also members of ITPGRFA. And yet no effort was made to operationalize Article 9.2(c) of ITPGRFA, which is about Farmers' Rights to participate in decision-making on matters, related to the conservation and sustainable use of plant genetic resources for food and agriculture. It is also worth noting that the lack of effective public consultation may also be inconsistent with the constitution of several ARIPO countries, which require prior public consultation

Even worse is that international organizations such as UPOV and WIPO have intentionally enabled the



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non-fulfillment of Article 9.2(c) of the ITPGRFA and the undermining of farmers' rights as these organizations have supported this flawed and illegitimate ARIPO process. We are also extremely disappointed with role CPVO has played in supporting this process, considering members of the European Union are also members of the ITPGRFA.

It is our view that matters (even if formulated at the regional level) that affects society socially and economically has to undergo an inclusive, transparent and rigorous consultation process. Given this, we reiterate our stance that the whole process leading up to the adoption of the Arusha PVP Protocol is fundamentally flawed and lacking in credibility and legitimacy.

We will continue to demand transparency, participation and access to information particularly with regard to the draft Regulations and continue to demand for the necessary changes in the Arusha PVP Protocol, which is presently an inequitable, inappropriate legal framework that undermines sovereignty and the interests and needs of smallholder farmers in Africa.

cc. International Treaty Plant Genetic Resources for Food and Agriculture  
Ministries of Agriculture and Intellectual Property Offices of Member States of ARIPO

Yours sincerely,

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