

ARIPO sells out African Farmers, seals Secret Deal on Plant Variety Protection

Statement issued by the Alliance for Food Sovereignty in Africa (AFSA)

8 July 2015

On 06 July 2015, in Arusha, Tanzania, a Diplomatic Conference held under the auspices of the African Regional Intellectual Property Organisation (ARIPO) adopted a harmonised regional legal framework for the protection of plant breeders' rights—the **Arusha Protocol for the Protection of New Varieties of Plants** (the 'Arusha PVP Protocol').

The Arusha PVP Protocol is a slightly revised version of a previous Draft ARIPO Protocol for the Protection of New Varieties of Plants (the 'ARIPO PVP Protocol'). The previous Draft has come under consistent and severe attack by the Alliance for Food Sovereignty in Africa (AFSA) because it is based on a Convention known as UPOV 1991—a restrictive and inflexible international legal precept, totally unsuitable for Africa. Crucially, the ARIPO PVP Protocol proposed extremely strong intellectual property rights to breeders while restricting the age-old practices of African farmers freely to save, use, share and sell seeds and/or propagating material. These practices are the backbone of agricultural systems in Sub-Saharan Africa; they have ensured the production and maintenance of a diverse pool of genetic resources by farmers themselves, and have safe-guarded food and nutrition for tens of millions of Africans in the ARIPO region.

The Arusha PVP Protocol is part of the broader thrust in Africa to ensure regionally seamless and expedited trade in commercially bred seed varieties for the benefit, mainly, of the foreign seed industry. Multinational seed companies intend to lay claim to seed varieties as their private possessions and to prevent others from using these varieties without the payment of royalties.

Germplasm developed by farming households over centuries is increasingly under threat of privatisation; and ecologically embedded farming practices risk being destabilised and dislodged. The broader modernisation thrust of which the Arusha PVP Protocol is an intrinsic part, is designed to facilitate the transformation of African agriculture from peasant-based production to inherently inequitable, inappropriate and ecologically damaging Green Revolution/industrial agriculture. Such a transformation will lead to many farming households being threatened with marginalisation or extinction, without alternative options for survival. It is worthwhile to note that a 2002 Food and Agriculture Organisation and World Bank study, the International Assessment of Knowledge, Science and Technology (IAASTD), strongly recommended a complete shift away from the Green Revolution's industrial agriculture to agroecology.

Exclusion of African Civil Society

Despite AFSA's well-established track record of constructive engagement with ARIPO on the Draft ARIPO PVP Protocol, and despite it being a Pan African network of African regional farmers and NGOs, working with millions of African farmers and consumers, AFSA was purposely excluded from the Arusha deliberations. This restriction stands in sharp contrast to inclusion in the deliberations of the UPOV Secretariat, and other foreign entities, including the

United States Patent and Trademark Office (USPTO), the World Intellectual Property Organisation (WIPO) the European Community Plant Variety Office (CPVO) and the French National Seed and Seedling Association (GNIS). The commercial seed industry (e.g. the African Seed Trade Association (AFSTA)) was particularly well represented.

The Arusha PVP Protocol has major implications for national decision-making. AFSA's exclusion is a violation of the right of farmers to participate in decision-making on matters related to plant genetic resources for food and agriculture (Article 9.2(c) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

Least Developed Countries and *sui generis* options

Upon adoption, the Arusha PVP Protocol was immediately signed by representatives of the governments of Ghana, Mozambique, Sao Tome and Principe, and the Gambia. Ironically, Mozambique, the Gambia and Sao Tome and Principe are defined as Least Developed Countries (LDCs), along with a further 10 of the 19 members of ARIPO—some of the poorest countries in the world. LDCs are currently not under any international obligation to provide any form of plant variety protection until 2021, let alone one based on UPOV 1991! In any event, all countries have an option to develop *sui generis* (i.e. unique) plant variety protection systems that cater for their specific conditions. Acceptance of the Arusha PVP Protocol will eliminate this option. Smaller countries are bullied into accepting their subordination to regional bodies that are dominated by more powerful foreign countries and multinational corporate interests.

National sovereignty and slight changes

During the deliberations in Arusha, several delegations raised serious concerns that the Draft ARIPO PVP Protocol eroded national sovereignty because of the extensive decision-making powers vested in the ARIPO Plant Breeders Rights Office (PBRO), which operates at a regional level. The government of Malawi, in particular, said that this would “have a demeaning and nullifying effect”. Consequently, after long hours of negotiation, changes were made that now give Contracting States an explicit right to object to any Plant Breeders' Right (PBR)—as granted by the ARIPO PBRO, regionally—in which event the PBR will not be awarded national protection. Further, Contracting States and not the ARIPO PBRO will have the right to issue compulsory licenses in the public interest. Notwithstanding these changes, a centralised regional PVP approval system will be established and the ARIPO PBRO will have full authority to grant and administer breeders' rights on behalf of all Contracting States (e.g. to decide whether or not to grant protection, nullify or cancel PBRs, etc.). These regionally granted PBRs will have a uniform effect in all Contracting States. Expediently, Contracting States will be required to put scarce public resources at the disposal of breeders to enforce breeders' rights at the national level.

Ratifications and joining UPOV 1991—shirking the (ITPGRFA)

The Arusha PVP Protocol will come into force when four member states of ARIPO ratify it. In April 2014 the UPOV Council, at the cost of breaking its own rules, verified that the Draft ARIPO PVP Protocol conformed to the 1991 Act of the UPOV Convention, allowing ARIPO itself as well as ARIPO Members that ratify the Protocol, to become a Party to the 1991 UPOV Convention. With the new changes, to become a member of UPOV 1991, ARIPO will have to re-submit the Arusha PVP Protocol to the UPOV Council, to reassess its conformity with the 1991 Act.

AFSA calls on UPOV members to reject the Arusha PVP Protocol. On numerous occasions AFSA has challenged the legitimacy of the whole process—leading up to and culminating in the adoption of the Arusha PVP Protocol.

AFSA has also indicated, in many public statements during discussions on the Protocol, that UPOV 1991 restricts farmers' rights to save, exchange and sell farm-saved-seed and/or the propagating material of protected varieties in their possession. Farmers' rights are recognised in the ITPGRFA yet this has been ignored by the fourteen member states of ARIPO that are also Parties to the ITPGRFA. By adopting the Arusha PVP Protocol these countries have placed the rights of plant breeders ahead of farmers' rights.

AFSA vows to continue struggle for seed sovereignty

AFSA is vehemently opposed to the Arusha PVP Protocol. This Protocol's underlying imperatives are to increase corporate seed imports, reduce breeding activity at the national level, and facilitate the monopoly by foreign companies of local seed systems and the disruption of traditional farming systems. AFSA remains committed to ensuring that farmers, as breeders and users, remain at the centre of localised seed production systems and continue to exercise their rights freely to save, use, exchange, replant, improve, distribute and sell all the seed in their seed systems.

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Notes to Editor:

1. Eighteen Member States of the Organization were represented at the Diplomatic Conference namely; Botswana, The Gambia, Ghana, Kenya, Liberia, Lesotho, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, Swaziland, United Republic of Tanzania, Uganda Zambia and Zimbabwe.
2. International Union for the Protection of New Varieties of Plants (**UPOV**).
3. For more information on AFSA's detailed position on the Draft ARIPO PVP Protocol, please see <http://acbio.org.za/wp-content/uploads/2015/02/AFSA-ARIPO-Statement.pdf>.
4. UPOV breaking its own rules to tie-in African countries <http://www.apbrebes.org/press-release/upov-breaking-its-own-rules-tie-african-countries>.