

Seed Freedom! A last chance to thwart the great African seed grab

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Nineteen African nations meet today in Arusha, Tanzania, to finalise a 'plant protection' protocol that would open up the continent's seeds to corporate interests, taking away farmers' rights to grow, improve, sell and exchange their traditional seeds, while allowing commercial breeders to make free use of the biodiversity they embody, to sell them back to farmers in 'improved' form.

This IPR grab has potential to be one of the largest resource thefts in human history. Seed diversity would disappear and African farmers would be forced to buy back their own seeds every planting season.

This is a crucial week for millions of African farmers - the week in which, under the guise of 'plant protection', they may lose the right to use their ancient seed heritage to grow the food crops on which the continent depends.

The policy is being driven through an opaque, little known body, the African Regional Intellectual Property Association (ARIPO), whose Diplomatic Conference opens today at the plush Mount Meru Hotel in Arusha, Tanzania.

In meetings taking place over the coming week, ARIPO plans to adopt the highly contested draft [ARIPO Plant Variety Protection Protocol](#) (ARIPO PVP Protocol), which guarantees the rights of commercial seed breeders while cancelling farmers traditional rights to save seed, grow crops from traditional seed varieties developed by our ancestors over countless generations, and sell or exchange such seeds.

In addition to severely restricting [farmers rights to saving, sharing, selling, and planting seeds](#) and propagating material, the Protocol facilitates biopiracy. The seed industry can take the seed DNA from ARIPO member African countries, manipulate it in a laboratory, and then claim intellectual property rights to DNA developed over centuries by African farmers.

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Forcing Africa open to seed exploitation

The PVP Protocol is based on the [1991 Convention of UPOV](#), the *Union internationale pour la protection des obtentions végétales* or International Union for the Protection of New Varieties of Plants, which provides for "*breeders rights*" to seeds and other germplasm based on conditions of novelty, distinctiveness, uniformity and stability, providing the essential legal foundation for the commercialization of the seed sector, including the introduction of GMO crops.

The first three days of the meeting will be dedicated to technical matters involved with the final drafting of the PVP Protocol among representatives from the 19 ARIPO member states. Then on Thursday ministers will gather to conclude the political discussions.

But that's about all that African civil society has been told. We do not know which ministers will represent their countries. In the absence of any consultations in the ARIPO member states, we have no idea what they are going to say on our behalf. And we can only wonder - why is this whole thing shrouded in such secrecy?

The answer is, surely, to exclude public participation and limit opportunities for civil society to

organise against the PVP Protocol. African farmers have rejected moves to adopt UPOV-inspired measure in national legislation, for example in Ghana where the controversial Plant Breeders' Bill was overwhelmingly rejected!

By adopting these measures at a transnational level, we believe governments are trying to evade their democratic accountability and impose these measures as a fait accompli. If ARIPO passes the UPOV PVP Protocol, it enters into force after being ratified by four member states.

Being presented as a 'take it or leave it' package it precludes discussion, debate and amendment in national parliaments circumventing the normal democratic processes that would apply to legislation in the member states.

Shining light on a murky, unaccountable process

But the very fact that a conference whose decisions have such far-reaching consequences is taking place almost in the dark, means that its very exposure can scuttle the attempts. That is why it is important to talk about this and raise the murmurs into a thunder!

Fortunately, thanks to [Alliance for Food Sovereignty in Africa \(AFSA\)](#), [Association for Plant Breeding for the Benefit of Society \(APBREBES\)](#), [African Centre for Biodiversity \(ACBio\)](#), and various farmers' associations, the word is spreading fast.

For more than 50 years UPOV has strengthened the rights of the seed industry internationally at the expense of farmers rights, particularly through its 1991 Convention. It has ignored the needs of developing countries, putting the right to food at risk.

Like many recent trade agreements it is more about protecting and consolidating corporate profits than it is about trade or development. It has systematically excluded farmers from its deliberations.

The [19 ARIPO member states](#) are Botswana, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Sierra Leone, Liberia, Rwanda, São Tomé and Príncipe, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe, where the secretariat is based. Among them are some of Africa's least developed countries.

Three of the ARIPO states, including Ghana, are being pushed to spearhead the process because they are already at some stages of passing a PVP on their own, or have already passed it. Ghana could make a powerful difference by opposing the Protocol. [Zambia too is feeling strong pressure](#) to oppose it.

The unlawfulness of ARIPO seed grab exposed

In its haste to hand over Africa's seeds to commercial interests, ARIPO has circumvented or ignored numerous international conventions and legal instruments, as has been revealed by AFSA - exposing the fraudulent nature of the process:

- ARIPO has failed to comply with Article V of the 1976 Lusaka Agreement establishing the ARIPO (Lusaka Agreement), which requires ARIPO to consult with the AU and UNECA. Such failure to consult raises serious questions about the validity of the draft PVP Protocol.
- The process adopted by ARIPO is flawed in that there has been inadequate consultation with relevant stakeholders, including organisations representing farmers and the general civil society, as required by international law, particularly that outlined in the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the International Treaty on Plant Genetic Resources for Food and Agriculture.
- ARIPO has furnished incorrect information to ARIPO Member States, and that Member States did not give a mandate that the UPOV Council should examine the draft ARIPO PVP.
- ARIPO furnished incorrect information to ARIPO member states about adequate consultation with relevant stakeholders.
- The provision of incorrect information by ARIPO constitutes gross negligence on the part of ARIPO, in the light of the UN International Law Commission's 2011 Articles on the responsibility of international organisations and the International Law Association's 2004 Final Report on Accountability of International Organisations.
- ARIPO has not adequately facilitated a process whereby the right to food for all is fully

taken into account. In an African context, where such a high proportion of farmers depend on farm-saved seeds, and where the legislation and institutions for curbing anti-competitive practices might differ between countries, this is an unforgivable and unwarranted omission.

- ARIPO's adoption of the least flexible approach in the realm of plant breeders' rights, as set out in the draft ARIPO PVP Protocol, represents a protection regime that goes further than UPOV 1991, hence it is correct to describe it as 'UPOV 1991+'. This is disconcerting, given that currently no sub-Saharan African State is bound by UPOV 1991.

These are our demands!

More and more organisations are becoming aware and are adding their voices to the call by AFSA's demands:

1. The draft ARIPO PVP Protocol should be immediately revised in order to comply with the more flexible effective *sui generis* requirement of [TRIPS Article 27.3\(b\)](#), as well as including provisions that recognise farmers' rights and facilitate the right to food. This revision should be based on a much broader consultation process and by making use of experts from outside of the plant breeders' rights sector.
2. The ARIPO Secretariat should review the information that was provided during the presentation of the draft ARIPO PVP to its member states, and correct any information that is found to not have been adequately substantiated or adequately clear in its content.
3. The governments of Ghana and Tanzania, both of whom are in the process of adopting legislation based on UPOV 1991, should commission an independent sustainability impact assessment of the draft plant breeders' rights, where the social impact is understood as encompassing human rights impacts.ⁱ The assessment should be presented to the respective national parliaments.
4. ARIPO should request the African Union and the [United Nations Economic Commission for Africa](#) to undertake an assessment in order to identify how the many recent initiatives for enhancing the productivity in the African agriculture can foster publicly initiated participatory breeding and strengthen public extension services.
5. ARIPO should consider how the many studies on effective *sui generis* systems for plant varieties can be made available to its member states.

We must now put all possible pressure on our governments to hear the voice of Africa's people, and in particular the small scale farmers across the continent on whom we depend for our daily food.

Ali-Masmadi Jehu-Appiah is Chairperson of [Food Sovereignty Ghana](#). He contributed this article in his personal capacity.

Twitter: [#PlantBreedersBill](#) [#ARIPO](#) [#PVP](#) [#UPOV](#)

More information

- APBEBES [Updates on Plant Variety Protection](#), Issue #15, 26 June 2015: <http://www.apbrebes.org/.../newsletter-apbrebes-updates-plant...>
- APREBES [Newsletter, June 2015](#).
- Zambia: '[Government urged NOT to sign Protocol on Protection of new Plant Varieties](#)'.
- '[The ARIPO PVP Protocol Is A Tool For The Foreign Takeover Of Ghana's Agriculture](#)'.