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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES

Ginebra

CONSEJO**Trigésima primera sesión extraordinaria
Ginebra, 11 de abril de 2014****EXAMEN DE LA CONFORMIDAD DEL PROYECTO DE PROTOCOLO
DE LA ARIPO PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV***Documento preparado por la Oficina de la Unión**Descargo de responsabilidad: el presente documento no constituye
un documento de política u orientación de la UPOV*

1. Mediante una carta de fecha 6 de marzo de 2014 dirigida al Secretario General de la UPOV, el Director General de la Organización Regional Africana de la Propiedad Intelectual (ARIPO), Sr. Fernando dos Santos, solicitó el examen del proyecto de Protocolo de la ARIPO para la protección de las obtenciones vegetales (denominado en adelante "proyecto de Protocolo") para determinar su conformidad con el Acta de 1991 del Convenio de la UPOV (denominada en adelante "Acta de 1991"). La carta antedicha se reproduce en el Anexo I del presente documento. En el Anexo II figura el proyecto de Protocolo en inglés.

ANTECEDENTES

2. En el artículo 34.3) del Acta de 1991 se dispone que "[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión".

3. El 27 de noviembre de 2009, el Consejo de Ministros de la ARIPO tomó una decisión acerca de la necesidad de elaborar un marco regional sobre la protección de las obtenciones vegetales para la ARIPO y sus Estados miembros, y pidió a la Secretaría de la ARIPO que ponga en práctica esa decisión lo antes posible (véase el párrafo 54 del documento ARIPO/CM/XII/6 "Report" (Informe)).

4. A petición de la Secretaría de la ARIPO, la Oficina de la Unión prestó asistencia en la redacción de un proyecto de marco jurídico para la protección de las obtenciones vegetales (proyecto de marco jurídico) basado en el documento UPOV/INF/6 "Orientaciones para la redacción de leyes basadas en el Acta de 1991 del Convenio de la UPOV".

5. En su decimotercera sesión, celebrada en Accra (Ghana) los días 1 y 2 de diciembre de 2011, el Consejo de Ministros de la ARIPO examinó el documento ARIPO/CM/XIII/8 titulado "Proyecto de marco jurídico para la región sobre la protección de las obtenciones vegetales" de 30 de septiembre de 2011.

6. En la labor preparatoria para la decimotercera sesión del Consejo de Ministros de la ARIPO, se solicitó una aclaración en relación con el Artículo 1)viii) y el Artículo 34.1) del Acta de 1991 del Convenio de la UPOV (que se citan a continuación como referencia).

Artículo 1

Definiciones

[...]

viii) se entenderá por 'territorio', en relación con una Parte Contratante, cuando sea un Estado, el territorio de ese Estado y, cuando sea una organización intergubernamental, el territorio en el que se aplique el tratado constitutivo de dicha organización intergubernamental; [...]

Artículo 34

Ratificación, aceptación o aprobación; adhesión

"1) [*Estados y ciertas organizaciones intergubernamentales*] a) De conformidad con lo dispuesto en el presente artículo, todo Estado podrá hacerse parte en el presente Convenio.

b) De conformidad con lo dispuesto en el presente artículo, toda organización intergubernamental podrá hacerse parte en el presente Convenio

i) si tiene competencia para cuestiones reguladas por el presente Convenio,

i) si posee su propia legislación que prevea la concesión y la protección de derechos de obtentor que obligue a todos sus Estados miembros, y

iii) si ha sido debidamente autorizada, de conformidad con sus procedimientos internos, a adherirse al presente Convenio. [...]

7. A continuación se exponen varias opciones de redacción sometidas al examen del Comité Consultivo en su octogésima segunda sesión, celebrada en Ginebra el 19 y el 20 de octubre de 2011, en relación con el Artículo 1)viii) y el Artículo 34.1) del Acta de 1991 del Convenio de la UPOV:

Opción basada en todos los Estados miembros de la ARIPO

a) por "territorio de la ARIPO" se entiende los territorios de los Estados miembros de la ARIPO en los que se aplique el [tratado constituyente de la ARIPO/Acuerdo de Lusaka];

b) las solicitudes presentadas ante la Oficina de la ARIPO en virtud del presente instrumento regional serán válidas en todos los Estados miembros de la ARIPO; y

c) de conformidad con [se insertará el artículo relativo a la presentación de solicitudes], los títulos otorgados por la Oficina de la ARIPO serán válidos en todos los Estados miembros de la ARIPO.

Opción basada en todos los Estados Contratantes del instrumento regional

a) a los fines del presente instrumento regional, se entenderá por "territorio de la ARIPO" los territorios de los Estados Contratantes en los que se aplique el presente instrumento regional;

b) las solicitudes presentadas ante la Oficina de la ARIPO en virtud del presente instrumento regional serán válidas en todos los Estados Contratantes; y

c) de conformidad con [se insertará el artículo relativo a la presentación de solicitudes], los títulos otorgados por la Oficina de la ARIPO serán válidos en todos los Estados Contratantes.

Opción basada en el Protocolo de Harare sobre patentes y dibujos y modelos industriales dentro del marco de la Organización Regional Africana de la Propiedad Intelectual (1982) (Protocolo de Harare)

a) una solicitud de derecho de obtentor designará los Estados Contratantes del instrumento regional respecto de los que se solicita la concesión del derecho de obtentor; y

b) con arreglo a determinadas razones, un Estado designado estará facultado para comunicar por escrito a la Oficina de la ARIPO que, si esta última otorga un derecho de obtentor, dicho derecho no tendrá efecto en su territorio.

8. El Comité Consultivo concluyó afirmando que, de forma preliminar, la “Opción basada en todos los Estados miembros de la ARIPO” y la “Opción basada en todos los Estados Contratantes del instrumento regional” parecen aceptables, pero señaló que la “Opción basada en todos los Estados Contratantes del instrumento regional” ofrece mayor flexibilidad. Asimismo, señaló que la “Opción basada en el Protocolo de Harare” no parecía corresponderse a las disposiciones pertinentes del Convenio de la UPOV.

9. En la decimocuarta sesión del Consejo de Ministros de la ARIPO, celebrada en Kampala (Uganda) el 28 y el 29 de noviembre de 2013, el Consejo de Ministros de la ARIPO aprobó el proyecto de marco jurídico revisado sobre la protección de las obtenciones vegetales, que servirá de base para la conclusión de un Protocolo en la Conferencia Diplomática que se celebrará en 2014. Con respecto a la noción de “territorio” el Consejo de Ministros de la ARIPO aprobó la “Opción basada en todos los Estados Contratantes del instrumento regional” (véase el párrafo 73 del documento ARIPO/CM/XIV/16 “*Report*” (Informe) y el párrafo 7 supra).

FUNDAMENTO DE LA PROTECCIÓN DE LOS DERECHOS DE LOS OBTENTORES DE LA ARIPO EN LOS ESTADOS CONTRATANTES

10. En los Estados Contratantes que se adhieran al Protocolo, la protección de los derechos de los obtentores de la ARIPO se regirá por el proyecto de Protocolo una vez que se adopte y entre en vigor. A ese respecto, en el artículo 41.3) del proyecto de Protocolo se dispone lo siguiente:

“3) Este Protocolo entrará en vigor tres meses después de que cuatro Estados hayan depositado sus instrumentos de ratificación o adhesión.”

11. A continuación se analizan las disposiciones del proyecto de Protocolo en el orden en el que figuran las disposiciones fundamentales del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

12. En el artículo 1 del proyecto de Protocolo figuran las definiciones de “obtentor” y “variedad” que están en conformidad con las definiciones del Artículo 1.iv) y vi) del Acta de 1991, respectivamente.

13. En relación con el Artículo 1.viii) y el Artículo 34.1) del Acta de 1991 del Convenio de la UPOV, en el artículo 4.1) y 4.2) y el artículo 37 del proyecto de Protocolo se dispone lo siguiente:

“Artículo 4 “Administración

“1) Los derechos de obtentor otorgados en virtud del presente Protocolo, a partir de una solicitud, serán válidos en todos los Estados Contratantes.

“2) La Oficina de la ARIPO está facultada para otorgar derechos de obtentor y administrar dichos derechos en nombre de los Estados Contratantes.

“[...]”

“Artículo 37 “Efecto uniforme de los derechos de obtentor regionales

“Los derechos de obtentor regionales tendrán un efecto uniforme en los territorios de los Estados Contratantes y no podrán otorgarse, transferirse o extinguirse en dichos territorios de un modo que no sea uniforme.”

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

14. En el artículo 2 del proyecto de Protocolo se dispone que “[e]l propósito de este Protocolo es conceder derechos de obtentor y protegerlos”, en correspondencia con la obligación básica dispuesta en el Artículo 2 del Acta de 1991.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

15. En el artículo 3 del proyecto de Protocolo se dispone que “[e]l presente Protocolo se aplicará a todos los géneros y especies vegetales, a partir de la fecha de su entrada en vigor”. Esta disposición guarda conformidad con el Artículo 3.2)ii) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

16. En el artículo 11 del proyecto de Protocolo se establecen las siguientes disposiciones sobre las “Personas facultadas para solicitar protección”:

“1) Puede presentar una solicitud todo obtentor que:

- a) resida en cualquiera de los Estados Contratantes; o
- b) no resida en un Estado Contratante.

“2) Una solicitud, presentada de conformidad con el párrafo 1) por un obtentor que no resida en alguno de los Estados Contratantes, se remitirá solamente por medio de un agente que resida en alguno de los Estados Contratantes o en el estado sede de la ARIPO.”

17. El proyecto de Protocolo es conforme al Artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección: novedad, distinción, homogeneidad y estabilidad

18. En los artículos 6 a 10 del proyecto de Protocolo se establecen las condiciones de protección correspondientes a las disposiciones de los Artículos 5 a 9 del Acta de 1991.

19. En los artículos 7.2) y 3) del proyecto de Protocolo referidos a la disposición facultativa del Artículo 6.2) del Acta de 1991 se establece lo siguiente:

“2) Cuando, de conformidad con el artículo 3, este Protocolo se aplique a un género o especie vegetal al que no se aplicase anteriormente, se considerará que las variedades pertenecientes a dicho género o especie vegetal satisfacen la condición de novedad definida en el párrafo 1), incluso si la venta o la entrega a terceros de la variedad a otros hubiese tenido lugar en los territorios de los Estados Contratantes:

- a) dentro del plazo de cuatro años antes de la fecha de presentación de una solicitud;
- o
- b) en el caso de árboles y vides, dentro del plazo de seis años antes de la fecha de presentación de una solicitud.

“3) El párrafo 2) solo se aplicará a las solicitudes de derechos de obtentor presentadas en el plazo de un año a partir de la aplicación de las disposiciones del presente Protocolo a los géneros o especies en cuestión.”

Artículo 10 del Acta de 1991: Presentación de solicitudes

20. En los artículos 12.1) a 12.3) del proyecto de Protocolo se estipulan las siguientes disposiciones sobre la presentación de solicitudes:

“Artículo 12
“Presentación de una solicitud

“1) De conformidad con el artículo 11, una solicitud de concesión de un derecho de obtentor otorgado por la Oficina de la ARIPO será presentada por:

- a) el obtentor; o
- b) un agente;

ya sea ante la Oficina de la ARIPO o ante la Autoridad nacional de un Estado Contratante:

“2) Una solicitud presentada ante la Autoridad nacional de un Estado Contratante, de conformidad con las disposiciones del párrafo 1), tendrá el mismo efecto que tendría si se hubiese presentado en la misma fecha ante la Oficina de la ARIPO.

“3) Cuando la solicitud se presente ante la Autoridad nacional, esta:

- a) verificará si en dicha solicitud consta, a primera vista, la información mínima especificada en el reglamento; y
- b) transmitirá dicha solicitud a la Oficina de la ARIPO dentro del plazo de un mes a partir de la fecha de recepción de la misma.

“[...]”

21. En relación con la independencia de la protección recogida en el Artículo 10.3) del Acta de 1991, en el artículo 19.6) del proyecto de Protocolo se dispone lo siguiente:

“6) La Oficina de la ARIPO no podrá:

- a) denegar la concesión de un derecho de obtentor alegando que la protección para la misma variedad no ha sido solicitada o se ha denegado en otro Estado o en otra organización intergubernamental; o
- b) limitar la duración del derecho de obtentor alegando que la protección para la misma variedad ha expirado en otro Estado o en otra organización intergubernamental.”

22. En el proyecto de Protocolo no parece haber disposiciones que entren en conflicto con el Artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

23. En el artículo 14 del proyecto de Protocolo se establecen disposiciones sobre el derecho de prioridad que están en conformidad con las disposiciones del Artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

24. En los artículos 17 y 18 del proyecto de Protocolo se establecen disposiciones relativas al examen de la solicitud que están en conformidad con las disposiciones del Artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

25. En el artículo 20 del proyecto de Protocolo se establecen disposiciones sobre protección provisional que están en conformidad con las disposiciones del Artículo 13 del Acta de 1991.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

26. En el artículo 21.2)b) del proyecto de Protocolo se establece la siguiente disposición facultativa: “Actos respecto de ciertos productos” del artículo 14.3) del Acta de 1991:

“2) A reserva de lo dispuesto en los artículos 22 y 23, los actos que se mencionan en los puntos a) a g) del párrafo 1) respecto de:
[...]

“b) productos fabricados directamente a partir de un producto de cosecha de la variedad protegida, cubierto por las disposiciones del párrafo a) de este artículo, por la utilización no autorizada de dicho producto de cosecha, a menos que el obtentor haya podido ejercer razonablemente su derecho en relación con dicho producto de cosecha.”

27. En el artículo 21 del proyecto de Protocolo se establecen disposiciones sobre el alcance del derecho de obtentor que están en conformidad con las disposiciones del Artículo 14 del Acta de 1991.

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

28. En el artículo 22.1) del proyecto de Protocolo se establecen las disposiciones relativas a las excepciones obligatorias al derecho de obtentor que están en conformidad con las disposiciones del Artículo 15.1) del Acta de 1991.

29. En los artículos 22.2) y 3) del proyecto de Protocolo se establecen las siguientes disposiciones relativas a la excepción facultativa prevista en el Artículo 15.2) del Acta de 1991:

“2) No obstante lo dispuesto en el artículo 21, con respecto a la lista de plantas agrícolas y hortícolas, especificada por el Consejo Administrativo de Protección de Variedades Vegetales, para las que históricamente haya sido práctica habitual conservar la semilla en los Estados Contratantes, en la que no se incluirán plantas frutales, plantas ornamentales, otras hortalizas ni árboles forestales, el derecho de obtentor no se extenderá a un agricultor que, dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del titular de los derechos de obtentor, utilice para los fines de reproducción o de multiplicación, en su propia explotación, el producto de la cosecha que haya obtenido por el cultivo, en su propia explotación, de la variedad protegida o una variedad cubierta por el artículo 21.3)a) o b).

“3) En el reglamento se estipularán las condiciones para la aplicación de las disposiciones del párrafo 2), tales como el diferente nivel de remuneración que deberán abonar los agricultores comerciales a pequeña escala y los agricultores comerciales a gran escala y la información que debe facilitar el agricultor al obtentor.”

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

30. En el artículo 23 del proyecto de Protocolo se establecen las disposiciones relativas al agotamiento del derecho de obtentor que están en conformidad con las disposiciones establecidas en el Artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

31. En el artículo 24 del proyecto de Protocolo se establecen las disposiciones relativas a la limitación del ejercicio del derecho de obtentor que están en conformidad con las disposiciones establecidas en el Artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

32. En el artículo 25 del proyecto de Protocolo se establecen las disposiciones relativas a la reglamentación económica que están en conformidad con las disposiciones establecidas en el Artículo 18 del Acta de 1991.

33. El proyecto de Protocolo no parece contener disposiciones que entren en conflicto con el Artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

34. En el artículo 26 del proyecto de Protocolo se establecen las disposiciones relativas a la duración del derecho de obtentor que están en conformidad con las disposiciones establecidas en el Artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

35. En el artículo 27 del proyecto de Protocolo se establecen disposiciones sobre las denominaciones de las variedades que están en conformidad con las disposiciones del Artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

36. En el artículo 28 del proyecto de Protocolo se establecen disposiciones sobre la nulidad del derecho de obtentor que están en conformidad con las disposiciones del Artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

37. En el artículo 29 del proyecto de Protocolo se establecen disposiciones sobre la caducidad del derecho de obtentor que están en conformidad con las disposiciones del Artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

38. Con respecto a la obligación de “proveer los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (Artículo 30.1)i) del Acta de 1991), en el artículo 35 del proyecto de Protocolo se dispone lo siguiente:

“Los Estados Contratantes deben garantizar la existencia de medidas de defensa de derechos y mecanismos de solución de controversias, sanciones y recursos de subsanación accesibles y adecuados para la defensa eficaz de los derechos de los obtentores y contra cualquier otro incumplimiento del presente Protocolo.”

39. En relación con la obligación conforme al Artículo 30.1)ii) del Acta de 1991, en el artículo 4.2) del proyecto de Protocolo se dispone lo siguiente:

“2) La Oficina de la ARIPO está facultada para otorgar derechos de obtentor y administrar dichos derechos en nombre de los Estados Contratantes.

“[...]”

40. El artículo 15 del proyecto de Protocolo se ajusta a la obligación de publicar información relativa a las solicitudes de derecho de obtentor y a los títulos concedidos, así como a las denominaciones propuestas y aprobadas, según se exige en el Artículo 30.1)iii) del Acta de 1991.

Conclusión general

41. En opinión de la Oficina de la Unión en el proyecto de Protocolo se recogen las disposiciones sustantivas del Acta de 1991. Una vez que se haya adoptado el proyecto de Protocolo, sin cambios, y que el Protocolo esté en vigor, los Estados Contratantes vinculados al mismo y la propia ARIPO, en relación con los territorios de dichos Estados Contratantes, estarán en condiciones de “dar efecto” a las disposiciones del Acta de 1991, como se estipula en su Artículo 30.2).

42. *Se invita al Consejo a:*

a) *tomar nota del análisis expuesto en este documento;*

b) *tomar una decisión positiva acerca de la conformidad del proyecto de Protocolo de la ARIPO para la Protección de las Obtenciones Vegetales con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, lo que permite a:*

i) *los Estados Contratantes que no sean miembros de la Unión y*

ii) *la ARIPO,*

una vez que el proyecto de Protocolo se haya adoptado, sin cambios, y que el Protocolo esté en vigor, depositar sus instrumentos de adhesión al Acta de 1991; y

c) *autorizar al Secretario General a informar de esa decisión a la ARIPO.*

[Siguen los Anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 6 de marzo de 2014]

Enviada por: Sr. Fernando dos Santos
Director General
Organización Regional Africana de la Propiedad Intelectual (ARIPO)

Destinatario: Sr. Francis Gurry
Secretario General
Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV)

Estimado Secretario General:

Me complace informarle de que en la decimocuarta sesión del Consejo de Ministros de la ARIPO, que se celebró en Kempala (Uganda) desde el 28 al 29 de noviembre de 2013, el Consejo de Ministros aprobó el proyecto de Marco jurídico para la protección de las obtenciones vegetales como base para la conclusión de un Protocolo en la Conferencia Diplomática que se celebrará en 2014.

De conformidad con las disposiciones del Artículo 34.3) del Convenio de la UPOV, le agradecería que el Consejo de la UPOV examinara el proyecto de Protocolo de la ARIPO para la protección de las obtenciones vegetales para determinar su conformidad con las disposiciones del Convenio de la UPOV.

Aprovecho la oportunidad para saludarle atentamente,

(Firmada)

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ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]



**DRAFT ARIPO PROTOCOL FOR
THE PROTECTION OF NEW VARIETIES OF PLANTS**

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PREAMBLE

The Contracting States of this Protocol,

Having regard to the Agreement on the Creation of an African Regional Intellectual Property Organization (ARIPO) then known as the Industrial Property Organization for English-Speaking Africa, concluded in Lusaka (Zambia) on December 9, 1976, and in particular to its Article III(c), in accordance with which the objectives of the Organization include the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the intellectual property activities affecting its members;

Considering the advantages to be gained by the pooling of resources in respect of intellectual property administration;

Recognizing the need to have an effective *sui generis* system of intellectual property protection of new varieties of plants that meets the requirements of Article 27.3 (b) of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement;

Recognizing that nationals, natural persons and legal entities of Member States shall enjoy equal treatment within the Contracting States provided that the said nationals, natural persons and legal entities comply with all conditions and formalities as set out in this Protocol;

Recognizing the need to provide growers and farmers with improved varieties of plants in order to ensure sustainable agricultural production;

Convinced that provision for plant breeders' rights in the region will allow farmers access to a wide range of improved varieties to contribute to the attainment of the regional goal of economic development and food security;

Aware that the Member States require enhanced capacity building and need to develop effective national plant variety protection systems;

Convinced of the importance of providing an effective system for the protection of new varieties of plants with the aim of encouraging the development of new varieties of plants for the benefit of the society.

CHAPTER I

DEFINITIONS

Article 1
Definitions

“Administrative Council of Plant Variety Protection” means a body consisting of Heads of Offices dealing with the administration of plant variety protection in the Contracting States of this Protocol, provided that any Contracting State may nominate any other person or persons to represent it in the Administrative Council of Plant Variety Protection whom it considers to have the relevant knowledge or experience in plant variety protection;

“agent or representative” means a legally recognized and authorized representative of the breeder or the holder of the breeders’ right residing or having an office in the host country of ARIPO or in the Contracting States to this Protocol who has been so authorized through special power of attorney to act on behalf of the breeder or the holder of a breeder’s right;

“annual fees” means the fees that a breeder is required to pay to the ARIPO Office to keep a breeder’s right in force;

“applicant” means a breeder, who files an application for the grant of a breeder’s right according to Article 11;

“ARIPO” means the African Regional Intellectual Property Organization, established by the Agreement on the Creation of an African Regional Intellectual Property Organization (ARIPO) then known as the Industrial Property Organization for English-Speaking Africa, concluded in Lusaka (Zambia) on December 9, 1976;

“ARIPO Journal” means a Journal published by ARIPO as required in Article 15;

“ARIPO Office” means the Office of the African Regional Intellectual Property Organization;

“authorization” means a legal permission from the holder of the breeder’s right to allow exploitation or use of the protected variety in accordance with Article 20.

“breeder” means—

- (a) a person who bred, or discovered and developed, a variety; or
- (b) a person who is the employer of the aforementioned person or who has commissioned the latter’s work; or
- (c) a successor in title of the first or second aforementioned person, as the case may be;

“breeder’s right” means the rights of a breeder as provided for in Chapter VII;

“Contracting State” means any State that has become party to this Protocol;

“denomination” means the generic designation of a variety;

“holder of the breeder’s right” means—

- (a) a person or legal entity in whose name the breeder’s right certificate has been issued; or
- (b) a successor in title of the person referred to in paragraph (a);

“National Authority” means a designated authority in the Contracting States to this Protocol responsible for breeder’s rights. A Contracting State without a National Authority may appoint the ARIPO Office for the purposes of filing applications under Article 12;

“propagating material” means any reproductive or vegetative material of a plant variety, including seeds and any whole plant or part thereof, that may be used for reproduction or multiplication of that variety;

“register” means the ARIPO Register of Breeders’ Rights kept in terms of Article 5;

“regulations” means regulations made in terms of Article 40;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes; and
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

CHAPTER II

GENERAL

Article 2 Purpose

The purpose of this Protocol is to grant and protect breeders’ rights.

Article 3 Genera and Species to be Protected

This Protocol shall be applied to all plant genera and species from the date of coming into force of this Protocol.

Article 4 Administration

(1) Breeders’ rights granted under this Protocol shall, on the basis of one application be valid in all the Contracting States.

(2) The ARIPO Office is empowered to grant breeders’ rights and to administer such breeders’ rights on behalf of the Contracting States.

(3) The ARIPO Office shall be responsible for—

- (a) granting breeders’ rights; and
- (b) establishing a documentation centre for the purposes of dissemination of information on breeders’ rights; and
- (c) maintaining a register; and
- (d) providing information on breeders’ rights granted by the ARIPO Office; and

- (e) collaborating with other regional and international bodies whose functions relate to the protection of new varieties of plants; and
- (f) liaising with national authorities in all matters relating to the grant and administration of breeders' rights; and
- (g) performing such other functions as are necessary for the furtherance of the objectives of this Protocol.

Article 5 **ARIPO Register of Breeders' Rights**

- (1) The ARIPO Office shall maintain a register, to be known as the ARIPO Register of Breeders' Rights.
- (2) The register shall include the information prescribed in the regulations, in particular—
 - (a) information relating to applications for breeders' rights; and
 - (b) information relating to grants of breeders' rights; and
 - (c) any assignment and exclusive licences of the rights; and
 - (d) any declaration of nullity or cancellation of rights; and
 - (e) any submission, registration, rejection, change or cancellation of variety denomination.
- (3) Any person shall, upon payment of a prescribed fee be entitled, during normal business hours, to examine the register kept in accordance with paragraph (1), and to make or receive copies of or extracts from the information contained therein.

CHAPTER III

CONDITIONS FOR GRANT OF BREEDER'S RIGHT

Article 6 **Conditions of Protection**

- (1) A breeder's right shall be granted where it is determined that a variety is new, distinct, uniform and stable.
- (2) The grant of a breeder's right shall not be subject to any further or different conditions:

Provided that the variety is designated by a denomination in accordance with the provisions of Article 27 that the applicant complies with the formalities provided for in this Protocol and that the breeder pays the required fees.

Article 7 **Novelty**

- (1) A variety shall be deemed to be new if, on the date of filing of an application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder of the variety, for purposes of exploitation of the variety—
 - (a) in the territories of the Contracting States earlier than one year before the date of filing of an application; and
 - (b) in a territory other than that of the territories of the Contracting States earlier than four years or, in the case of trees or of vines, earlier than six years before the date of filing of an application.

(2) Where, according to Article 3, this Protocol applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty set out in paragraph (1), even where the sale or disposal of the variety to others took place in the territories of the Contracting States—

- (a) within four years before the date of filing of an application; or
- (b) in the case of trees or vines, within six years before the date of filing of an application.

(3) Paragraph (2), shall apply only to applications for a breeder's right filed within one year, at the latest, after the provisions of this Protocol apply to the genera or species concerned.

Article 8 Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 9 Uniformity

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 10 Stability

A variety shall be deemed to be stable if its relevant characteristics remain unchanged—

- (a) after repeated propagation; or
- (b) in the case of a particular cycle of propagation, at the end of each such cycle.

CHAPTER IV

APPLICATION FOR GRANT OF BREEDERS' RIGHTS

Article 11 Persons entitled to apply for protection

- (1) An application may be filed by a breeder who—
 - (a) is a resident in any Contracting State; or
 - (b) is not a resident in a Contracting State.

(2) An application filed under paragraph (1), by a breeder who is not resident in any of the Contracting States shall be submitted only through an agent with residence in any of the Contracting States or in the host country of ARIPO.

Article 12

Filing of Application

(1) In accordance with Article 11, an application for the grant of a breeder's right by the ARIPO Office shall be filed—

- (a) by the breeder; or
- (b) by an agent;

with either the ARIPO Office or, the National Authority of a Contracting State:

(2) An application filed with the National Authority of a Contracting State under the provisions of paragraph (1), shall have the same effect as if it had been filed on the same date at the ARIPO Office.

(3) Where an application is filed with a National Authority, the National Authority shall—

- (a) verify that the application on the face of it contains the minimum information specified in the regulations; and
- (b) within one month of receiving the application, transmit that application to the ARIPO Office.

(4) An application shall include the information prescribed in the regulations, in particular—

- (a) the name, address and other required information of the applicant, including the person who bred, discovered and developed the variety, if different from the applicant, and, if applicable, the name, address and other information required of the agent;
- (b) identification of the botanical taxon (botanical and common name);
- (c) the proposed denomination for the variety or provisional designation;
- (d) technical description of the variety;
- (e) information on prior applications and grants of breeders' rights for the same variety;
- (f) date of sale or of disposal of to others for the purposes of exploitation of the variety in accordance with Article 7.

Article 13

Filing Date of Application

The filing date of the application for a breeder's right shall be the date of receipt of the application duly filed subject to the payment of the prescribed fees.

Article 14

Right of Priority

(1) Any breeder who has duly filed an application for the protection of a variety in a Contracting State or a party to an international agreement for the protection of new plant varieties (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety directly with the ARIPO Office or through the National Authorities, enjoy a right of priority for a period of twelve months which shall be computed from the date of filing of the first application.

The day of filing shall not be included in the latter period.

(2) In order to benefit from a right of priority, a breeder shall, in an application filed directly with the ARIPO Office or through the National Authorities, claim the priority of the first application.

(3) For the purposes of paragraph (1), the ARIPO Office shall require the breeder to furnish, within a period of not less than three months from the date of filing an application—

- (a) a copy of the documents which constitute the first application certified to be a true copy by the authority with which that first application was filed; and
- (b) samples or other evidence that the variety which is the subject matter of both applications is the same.

(4) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the ARIPO Office, any necessary information, document or material required for the purpose of the examination under Article 17.

(5) Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of a variety that is the subject of the first application, shall not—

- (a) constitute a ground for rejecting the subsequent application; and
- (b) give rise to any third-party right.

CHAPTER V

PUBLICATION OF INFORMATION

Article 15 **Publication of Information**

(1) The ARIPO Office shall at regular intervals publish an ARIPO Journal containing the following information—

- (a) applications for the grant of breeders' rights; and
- (b) information on variety denominations; and
- (c) withdrawals of applications for the grant of breeders' rights; and
- (d) rejections of applications for the grant of breeders' rights; and
- (e) grants of breeders' rights; and
- (f) changes in the persons (applicants, holders and agents); and
- (g) nullification, surrender, cancellation and expiry of breeders' rights.

(2) No confidential information, as indicated in an application form, shall be published without the written consent of the applicant or the holder of a breeder's right.

Article 16 **Objection**

(1) Any person who wishes to lodge an objection may only do so once an application for a breeder's right is published, in accordance with the procedures set out in the regulations made under Article 40(2)(a).

(2) Any person who wishes to lodge an objection in terms of paragraph (1), shall submit a written and reasoned objection to the ARIPO Office together with the payment of the prescribed fee, at any time prior to the refusal or to the grant of the right in respect of the provisions of Articles 6, 7, 8, 9, 10 and 11, within 3 months from the date of the publication of the proposed variety denomination in respect of the provisions of Article 27.

CHAPTER VI

EXAMINATION FOR GRANTING OF BREEDER'S RIGHT

Article 17
Examination of Applications

- (1) The ARIPO Office shall—
- (a) examine an application to determine whether it and its supporting documents and material fulfill the criteria for protection as stipulated in Articles 6, 7, 8, 9 and 10; and
 - (b) examine the novelty condition in accordance with Article 7; and
 - (c) examine the formal requirements of the application and entitlement to the breeder's right in accordance with Article 11; and
 - (d) arrange for the examination of the distinctness, uniformity and stability of the variety in accordance with the provisions of Article 18; and
 - (e) examine the suitability of the denomination in accordance with Article 27; and
 - (f) receive the payment of fees in accordance with Articles 13 and 33.
- (2) For the purposes of examination, the ARIPO Office may require the applicant or agent to furnish all the necessary information, documents or material as specified in the regulations.

Article 18
Examination for Distinctness, Uniformity and Stability

- (1) In accordance with Article 17(1)(d), the ARIPO Office may, for the purposes of the examination and ensuring compliance with the conditions specified in Articles 8, 9 and 10—
- (a) arrange for the examination to be carried out by any competent institution of a Contracting State or of any member of an inter-governmental organization providing an effective system of plant variety protection; or
 - (b) take into account the results of tests that have already been carried out from the Contracting State or any member of an inter-governmental organization providing an effective system of plant variety protection.
- (2) The practical arrangements of the provisions of this Article will be specified in the regulations.

Article 19
Granting and Rejection of a Breeder's Right

- (1) Where a plant variety fulfils the requirements of novelty, distinctness, uniformity and stability as provided under Articles 7, 8, 9 and 10 and that the proposed denomination of the variety is suitable for registration, the ARIPO Office shall grant a plant breeder's right and where those requirements are not fulfilled, the ARIPO Office shall reject the application.
- (2) The ARIPO Office shall in respect of each breeder's right granted—
- (a) issue a Breeders' Right Certificate to the person who applied for the grant of the right; and
 - (b) enter the applicable particulars in the register; and
 - (c) publish such particulars relating to the grant of such right as may be prescribed by regulations.

(3) Where the examination shows that the proposed denomination of the variety cannot be registered, the ARIPO Office shall request the applicant in writing to submit another denomination within a period of three months, or further time period that the Director General may allow on good cause shown, failing which the application shall be rejected.

(4) An application shall be rejected if it is established that—

- (a) the applicant is not entitled to file an application in accordance with Article 11;
- (b) the applicant has not replied within the prescribed time limit to the official notifications issued by the ARIPO Office, particularly where—
 - (i) the information given was erroneous or incomplete;
 - (ii) the application contained a material irregularity;
- (c) the variety to which the applicant refers does not satisfy the requirements of Articles 7, 8, 9 and 10;
- (d) the applicant refuses or is unable to propose an acceptable denomination;
- (e) the applicant does not comply with the payment of fees as prescribed by regulations.

(5) The ARIPO Office shall in respect of each rejected application—

- (a) notify its decision in writing to the applicant; and
- (b) enter the applicable particulars in the register; and
- (c) publish a notice of rejection.

(6) The ARIPO Office shall not—

- (a) refuse to grant a breeder's right on the ground that protection for the same variety has not been applied for, or has been refused, in any other State or inter-governmental organization; or
- (b) limit the duration of the breeder's right on the ground that protection for the same variety has expired in any other State or inter-governmental organization.

Article 20

Provisional Protection

(1) The Protocol shall recognize provisional protection which is provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

(2) A breeder shall be considered to be a holder of provisional protection during the period provided in paragraph (1), and shall be entitled at least to equitable remuneration from any person who has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 21.

(3) Any legal action in respect of provisional protection can only be initiated after the right is granted.

CHAPTER VII

RIGHTS OF BREEDER

Article 21

Scope of Breeder's Right

(1) Subject to Articles 22 and 23, the following acts in respect of the propagating material of a protected variety shall require the authorization of the breeder—

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) exporting;
- (f) importing
- (g) stocking for any of the purposes mentioned in (a) to (f), above:

Breeders may make their authorizations subject to conditions and limitations.

(2) Subject to Articles 22 and 23, the acts referred to in paragraph (1) items (a) to (g), in respect of—

- (a) harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise the right in relation to the said propagating material;
- (b) products made directly from harvested material of the protected variety falling within the provisions of paragraph (a) through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise the right in relation to the said harvested material.

(3) The provisions of paragraphs (1) and (2) shall also apply in relation to—

- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety; and
- (b) varieties which are not clearly distinguishable in accordance with Article 8 from the protected variety; and
- (c) varieties whose production requires the repeated use of the protected variety.

(4) For the purposes of paragraph (3)(a), a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when—

- (a) it is predominantly derived from an initial variety, or from a variety that is itself predominantly derived from an initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; and
- (b) it is clearly distinguishable from the initial variety; and
- (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(5) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 22

Exceptions to Breeder’s Right

(1) A breeder’s right shall not extend to—

- (a) acts done privately and for non-commercial purposes; and
- (b) acts done for experimental purposes; and

(c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 21(3) apply, acts referred to in Article 21(1) and (2) in respect of such other varieties.

(2) Notwithstanding Article 21, for the list of agricultural crops and vegetables with a historical common practice of saving seed in the Contracting States specified by the Administrative Council of Plant Variety Protection which shall not include fruits, ornamentals, other vegetables or forest trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes, on the farmer's own holdings, the product of the harvest which the farmer has obtained by planting on the farmer's own holdings, the protected variety or a variety covered by Article 21(3) (a) or (b).

(3) The conditions for the implementation of the provisions under paragraph (2), such as the different level of remuneration to be paid by small scale commercial farmers and large scale commercial farmers and the information to be provided by the farmer to the breeder, shall be stipulated in the regulations.

Article 23 **Exhaustion of Breeder's Right**

(1) A breeder's right shall not extend to acts concerning any material of a protected variety, or of a variety covered by the provisions of Article 21 (3), which has been sold or otherwise marketed by the breeder or with the breeder's consent in the territories of the Contracting States to the Protocol, or any material derived from the said material, unless such acts—

- (a) involve further propagation of the variety in question; or
- (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) For the purposes of paragraph (1)—

“material” means, in relation to a variety

- (a) propagating material of any kind; and
- (b) harvested material, including entire plants and parts of plants; and
- (c) any product made directly from the harvested material.

Article 24 **Restrictions on Exercise of Breeder's Right**

(1) Compulsory licences shall be granted to an applicant or to a Contracting State by the ARIPO Office, on application by such third party or Contracting State, but only for reasons of public interest, after consultation with the Administrative Council of Plant Variety Protection.

(2) The ARIPO Office, when granting a compulsory licence, pursuant to paragraph (1), shall stipulate the acts covered and specify the reasonable conditions which shall include the payment of equitable remuneration to the breeder.

(3) The regulations shall lay down details on the implementation of the provisions under paragraphs (1) and (2).

Article 25

Measures Regulating Commerce

A breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material and in any case, such measures shall not affect the application of the provisions of this Protocol.

Article 26

Duration of Breeder's Right

A breeder's right shall be granted for a period of twenty (20) years from the date of the grant of the breeder's right excluding trees and vines, for which a breeder's right shall be granted for a period of twenty-five (25) years from the said date.

CHAPTER VIII

VARIETY DENOMINATION

Article 27

Variety Denomination

- (1) A variety shall be designated by a denomination which—
 - (a) will be its generic designation and enables the variety to be identified;
 - (b) may not consist solely of figures except where this is an established practice for designating varieties;
 - (c) must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
 - (d) must be different from every denomination which designates, in the territory of any Contracting State and any member of an inter-governmental organization providing an effective system of plant variety protection, an existing variety of the same plant species or of a closely related species.
- (2) Subject to paragraph (5), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.
- (3) The denomination of a variety shall be submitted by the breeder to the ARIPO Office in accordance with Article 12.
- (4) Where it is found that a denomination does not satisfy the requirements of paragraph (1), or that a prior right is in existence, the ARIPO Office shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the ARIPO Office at the same time as the breeder's right is granted.
- (5) If, by reason of a prior right, the use of the denomination of a variety is not forbidden, to a person who, in accordance with the provisions of paragraph (9), is obliged to use it, the ARIPO Office shall require the breeder to submit another denomination for the variety.
- (6) A variety must be submitted to the Contracting States, the ARIPO Office and to all members of an inter-governmental organization providing an effective system of plant variety protection under the same denomination.

(7) The ARIPO Office shall register the denomination so submitted, unless it considers the denomination unsuitable, in which case the ARIPO Office shall require the breeder to submit another denomination.

(8) The ARIPO Office shall ensure that the authorities of the Contracting States and of all members of an inter-governmental organization providing an effective system of plant variety protection are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.

Any Contracting State and any member of an inter-governmental organization providing an effective system of plant variety protection may address its observations, if any, on the registration of a denomination to the ARIPO Office.

(9) Any person who offers for sale or markets propagating material of a variety protected within the territories of the Contracting States is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (5), prior rights prevent such use.

(10) When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination, and if such an indication is so associated, the denomination must nevertheless be easily recognizable.

CHAPTER IX

NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

Article 28 **Nullity of Breeder's Right**

- (1) The ARIPO Office shall declare a breeder's right null and void when it is established—
- (a) that the conditions laid down in Articles 7 or 8 were not complied with at the time of the grant of the breeder's right; or
 - (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 9 or 10 were not complied with at the time of the grant of the breeder's right; or
 - (c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.
- (2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

Article 29 **Cancellation of Breeder's Right**

- (1) The ARIPO Office may cancel a breeder's right if—
- (a) it is established that the conditions laid down in Articles 9 or 10 are no longer fulfilled; or
 - (b) after being requested to do so and within the prescribed period—
 - (i) the breeder does not provide the ARIPO Office with the information, documents or material deemed necessary for verifying the maintenance of the variety; or
 - (ii) the breeder fails to pay such fees as may be payable to keep the breeder's right in force; or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).

Article 30 **Surrender of Breeder's Right**

(1) A breeder's right may be surrendered before expiry of its term when the holder of that right renounces it by written declaration addressed to the ARIPO Office.

(2) The date of surrendering shall be the date specified in the declaration or, if none is specified, the date on which the declaration is received by the ARIPO Office.

(3) Upon surrender of the breeder's right, the certificate must be returned to the ARIPO Office.

CHAPTER X

LICENSES

Article 31 **Licenses**

The holder of a breeder's right may grant, to any person, an exclusive or a non-exclusive license relating to all or any of the rights granted to him or her in terms of Chapter VII.

CHAPTER XI

ASSIGNMENT AND TRANSFER OF APPLICATION OR BREEDER'S RIGHT

Article 32 **Assignment and transfer**

(1) An application for the grant of a breeder's right or a breeder's right may be assigned or otherwise transferred.

(2) The assignment or transfer shall be in writing, shall be signed by the parties concerned and shall be registered in the register.

CHAPTER XII

FEES

Article 33 **Fees**

Fees for the implementation of this Protocol shall be paid in accordance with a schedule of fees prescribed in regulations made under Article 40(2)(b).

CHAPTER XIII

APPEALS AND ENFORCEMENT PROCEDURES

Article 34 Appeals

(1) There is hereby established a Board to be known as the Board of Appeal (hereinafter referred to as “the Board”).

(2) The Board shall consist of five (5) members with relevant experience in plant variety protection matters two of whom shall be technically qualified members.

(3) At all sittings of the Board, at least one technically qualified member shall be present.

(4) The members of the Board shall be appointed by the Administrative Council of Plant Variety Protection—

(a) for a period of two years renewable once for another term of two years; and

(b) from the Contracting States to this Protocol; and

(c) on such other terms and conditions as the Council may determine.

(5) The functions of the Board shall be—

(a) to consider and decide on any appeal lodged by an applicant or a holder of a breeders’ right who has been aggrieved by a decision made in terms of Articles 19(1)(3) and (4), 28 and 29;

(b) to review any final administrative decision of the ARIPO Office in relation to the implementation of the provisions of this Protocol;

(c) to decide on any other matter related to or incidental to the exercise of the Board’s powers.

(6) Three members of the Board shall form a quorum.

(7) The decisions of the Board shall be final.

(8) The Board shall have power to make and adopt its own rules of procedure.

Article 35 Enforcement Measures

The Contracting States shall ensure that accessible and appropriate enforcement measures and dispute settlement mechanisms, sanctions and remedies are available for the effective enforcement of breeders’ rights and any other breach of this Protocol.

CHAPTER XIV

GENERAL PROVISIONS

Article 36 Extension of Time Limits

(1) An extension may be granted even when the time limit concerned has expired, where the ARIPO Office deems it justified given the circumstances before it.

(2) The ARIPO Office may, upon having received a written request addressed to it, extend, under conditions it shall lay down, the time limit prescribed for performing an act or satisfying a requirement in

accordance with provisions of this Protocol or of the regulations, by notifying its decisions to the parties concerned.

Article 37 **Uniform Effect of Regional Breeders' Rights**

Regional breeders' rights shall have uniform effect within the territories of the Contracting States and may not be granted, transferred or terminated in respect of the above mentioned territories otherwise than on a uniform basis.

Article 38 **National Plant Breeders' Rights for Plant Varieties**

This Protocol shall be without prejudice to the right of the Contracting States to grant national plant breeders rights for plant varieties, subject to the provisions of Article 39.

Article 39 **Prohibition of Cumulative Protection**

Where the holder of a breeder's right has been granted another breeder's right for the same variety prior to the grant of the regional plant breeder's right, such breeder shall be unable to invoke the rights conferred by such protection for the variety for as long as the regional plant breeder's right remains effective.

CHAPTER XV

REGULATIONS

Article 40 **Regulations**

- (1) The Administrative Council of Plant Variety Protection shall make regulations for the implementation of this Protocol and may amend them, as and when necessary.
- (2) The Regulations shall in particular relate to—
 - (a) any administrative requirements, matters of procedure, or any details necessary for the implementation of the provisions of this Protocol and any relevant international treaties; and
 - (b) the fees to be charged and the details of the distribution of part of those fees among the Contracting States.

CHAPTER XVI

FINAL PROVISIONS

Article 41 **Entry into Force**

- (1) Any State which is a member of ARIPO or any State to which membership of ARIPO is open may become party to this Protocol—
 - (a) by signature followed by the deposit of an instrument of ratification; or

(b) by deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General of ARIPO.

(3) This Protocol shall come into force three months after four States have deposited their instruments of ratification or accession.

(4) Any State which is not party to this Protocol upon its entry into force shall become bound by this Protocol three months after the date of which such State deposits its instrument of ratification or accession.

(5) Any State which ratifies or accedes to this Protocol shall, by the instrument of ratification or accession, be deemed to have indicated its acceptance to be bound by the provisions of the Agreement on the creation of the African Regional Intellectual Property Organization (ARIPO) and such State shall become a member of ARIPO on the date on which it deposits its instrument of ratification or accession to this Protocol.

Article 42 Reservations

Reservations may not be made to this Protocol.

Article 43 Signature of Protocol

(1) This Protocol shall be signed in a single copy and shall be deposited with the Director General of ARIPO.

(2) The Director General of ARIPO shall transmit certified copies of this Protocol to the Contracting States, other member States of ARIPO and the States to which membership of ARIPO is open in accordance with Article IV of the Agreement on the creation of the African Regional Intellectual Property Organisation (ARIPO).

Article 44 Amendment of Protocol

(1) This Protocol may be amended at the instance of any Contracting States or the Director General of ARIPO during the Sessions of the Administrative Council of Plant Variety Protection.

(2) Adoption of the amendments of any provisions of this Protocol shall require a majority of two-thirds of the votes of all the Contracting States.

Article 45 Denunciation of Protocol

(1) Any Contracting State may denounce this Protocol by notification addressed to the Director General of ARIPO.

(2) Denunciation of this Protocol shall take effect six months after receipt of the said notification by the Director General of ARIPO and shall not affect any application filed or breeder's right granted prior to the expiration of the said six months.

[End of Annex II and of document/
Fin de l'annexe II et du document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]