



Arusha Protocol for the Protection of New Varieties of Plants

ARIPO

Arusha, United Republic of Tanzania



**Arusha Protocol
for the Protection of
New Varieties of Plants Within the Framework of the
African Regional Intellectual Property
Organization (ARIPO)**

*[adopted by a Diplomatic Conference of ARIPO at
Arusha, (Tanzania) on July 6, 2015]*

and

**Regulations
for Implementing
the Arusha Protocol for the Protection of
New Varieties of Plants
Within the Framework of the
African Regional Intellectual Property
Organization (ARIPO)**

**ARIPO Office
Arusha, Tanzania
July 2015**

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PREAMBLE

The Contracting States of this Protocol,

Having regard to the Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO) 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,

Hereby agree as follows:

CHAPTER I

DEFINITIONS

Article 1

Definitions

- “Administrative Council” means the Administrative Council established by the Agreement on the creation of the African Regional Intellectual Property Organization (ARIPO);
- “agent or representative” means a legally recognized and authorized representative of the breeder or the holder of the breeder’s right residing 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;
- “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 the African Regional Intellectual Property Organization (ARIPO) 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 Secretariat 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 21.
- “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 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;

“person” means a natural person or legal entity;

“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 39;

“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;
- (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) A breeder's right granted under this Protocol shall, on the basis of one application, be protected in the designated Contracting States provided the designated Contracting State has not refused the grant.

(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;
- (b) establishing a documentation centre for the purposes of dissemination of information on breeders' rights;
- (c) maintaining a register;
- (d) providing information on breeders' rights granted by the ARIPO Office;
- (e) collaborating with other regional and international bodies whose functions relate to the protection of new varieties of plants;
- (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;
- (b) information relating to grants of breeders' rights;
- (c) any assignment and exclusive licences of the rights;
- (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 GRANTING 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:

- (a) the variety is designated by a denomination in accordance with the provisions of Article 27;
- (b) the applicant complies with the formalities provided for in this Protocol; and
- (c) 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 two years, 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 GRANTING OF BREEDER'S RIGHT

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 by a breeder who is not resident in any of the Contracting States shall be filed only through an agent with residence in any of the Contracting States.

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; and
- (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;
- (b) information on variety denominations;
- (c) withdrawals of applications for the grant of breeders' rights;
- (d) rejections of applications for the grant of breeders' rights;
- (e) grants of breeders' rights;
- (f) changes in the persons (applicants, holders and agents); and
- (g) nullity, 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 39(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 fulfil the criteria for protection as stipulated in Articles 6, 7, 8, 9 and 10;
- (b) examine the novelty condition in accordance with Article 7;
- (c) examine the formal requirements of the application and entitlement to the breeder's right in accordance with Article 11;
- (d) arrange for the examination of the distinctness, uniformity and stability of the variety in accordance with the provisions of Article 18;
- (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 selected by the Administrative Council; 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 selected by the Administrative Council.

(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) Subject to Article 4(1), 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;
- (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 outside the territories of the Contracting States 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; and
- (g) stocking for any of the purposes mentioned in (a) to (f), above.

(2) Breeders may make their authorizations subject to conditions and limitations.

(3) 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.

- (4) The provisions of paragraphs (1), (2) and (3) 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;
 - (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.
- (5) For the purposes of paragraph (4)(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;
 - (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.
- (6) 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;
 - (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(4) apply, acts referred to in Article 21(1), (2) and (3) 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 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(4) (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;
 - (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) A compulsory licence shall be granted to an applicant by a Contracting State only for reasons of public interest.

(2) The National Authority, 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

(1) A breeder's right shall be granted for a period of twenty 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 years from the said date.

(2) Notwithstanding sub-paragraph (1), the term of protection may be extended for an additional five years by a notice in writing to the ARIPO Office in respect of specific genera and species.

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 forbidden, to a person who, in accordance with the provisions of paragraph (10), 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.

(9) 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.

(10) 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.

(11) 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.

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).

CHAPTER IX

NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

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 in accordance with 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 39(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:
 - (a) for a period of two years renewable once for another term of two years;
 - (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

Breeders' rights shall have uniform effect within the territories of the designated Contracting States where the breeders' rights have been granted.

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.

CHAPTER XV

REGULATIONS

Article 39

Regulations

(1) The Administrative Council 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 40

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 twelve 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 41

Reservations

Reservations may not be made to this Protocol.

Article 42

Signature of the Protocol

- (1) This Protocol shall be signed in a single copy and shall be deposited with the Director General of ARIPO. It shall remain open for signature by Member States of the Organization and other States, members of the African Union until December 31, 2015.

(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 Organization (ARIPO).

Article 43

Amendment of the 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.

(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 44

Denunciation of the 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.

**Regulations for Implementing
the Arusha Protocol for the Protection of
New Varieties of Plants Within the Framework of
the African Regional Intellectual Property
Organization (ARIPO)**

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Arusha Protocol for the Protection of New Varieties of Plants

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PREAMBLE

PURSUANT to the provisions of Article 39 of the Arusha Protocol for the Protection of New Varieties of Plants and the powers conferred therein to the Administrative Council of the African Regional Intellectual Property Organization, the Council makes the following Regulations: **REGULATIONS FOR IMPLEMENTING THE ARUSHA PROTOCOL FOR THE PROTECTION OF NEW VARIETIES OF PLANTS.**

SHORT TITLE

These shall be referred to as: **Regulations for Implementing the Arusha Protocol for the Protection of New Varieties of Plants**

RULE 1

INTERPRETATION

The terms defined in Article 1 of the Protocol shall have the same meaning for the purpose of these Regulations and unless the context otherwise requires the following terms:

“application” means an application for the grant of breeder’s right, under the provisions of the Protocol;

“Competent Institution” means an institution selected by the Administrative Council and being an institution designated to carry out technical examination by a Contracting State or by any member of an intergovernmental organization that provides an effective system of plant variety protection;

“Designated State” means a State designated, as may be indicated in the application Form PVP 1;

“Examination Office” means a competent institution designated by the Director General of ARIPO to carry out technical examination;

“Prescribed fee” means the fee prescribed under the Protocol and as presented in Second Schedule of these Regulations; and

“Protocol” means the Arusha Protocol for the Protection of New Varieties of Plants within the Framework of the African Regional Intellectual Property Organization (ARIPO) adopted at Arusha, United Republic of Tanzania, on July 6, 2015.

RULE 2

APPLICATION FOR A BREEDER’S RIGHT

1) Filing of the application

- a) An application for a breeder’s right shall be filed at the ARIPO Office or National Authority and the filing may be in paper format or electronic means and shall be subjected to the payment of prescribed fee in Second Schedule.
- b) The application shall contain:
 - i) A duly completed Form PVP 1 set out in the First Schedule;
 - ii) variety description contained in a crop-specific technical questionnaire;
 - iii) where applicable, a declaration of priority, a power of attorney, a priority document;
 - iv) evidence of payment of the prescribed fees in the Second Schedule;
 - v) any other document relevant to the application.
- c) Where an application is filed at the National Authority in paper format, it shall be in duplicate and one copy shall be forwarded to the ARIPO Office. Where in electronic format, it will be copied electronically to the ARIPO Office.
- d) Where the application is submitted by electronic means it shall contain an electronic signature.

2) Receipt and transmittal of an application to ARIPO Office

- a) Where an application is filed with a National Authority, the National Authority shall:
 - i) Verify that the application fulfils the requirements in (1). Where the National Office finds the application incomplete it shall notify the applicant to provide the necessary information within 30 (thirty) days, failure to which the application will be deemed not filed;
 - ii) Record the number of documents received;
 - iii) Allocate a file number and the date of receipt;
 - iv) Issue an acknowledgement of receipt of the application to the applicant;
 - v) within one month of receiving the application, transmit that application to the ARIPO Office on Form PVP 2 as set out in the first schedule;
 - vi) A notice of transmittal shall be issued to the applicant by the National Authority.
- b) Where the ARIPO Office receives an application directly or through the National Authority, it shall:
 - i) Verify whether the application meets the requirements
 - ii) Record the number of documents received;
 - iii) Record the date of receipt at the ARIPO Office; and,
 - iv) Allocate a file number and a filing date.
- c) ARIPO Office shall issue an acknowledgement receipt bearing the filing date of the application to the applicant and/or the National Authority through which the ARIPO Office received the application.

RULE 3

EXAMINATION AS TO FORMAL REQUIREMENTS

1) Formality examination

- a) The ARIPO Office shall examine all duly received applications for compliance with the requirements set out in Rule 2 including novelty and variety denomination. If the application complies with the requirements, the ARIPO Office shall accord the filing date.
- b) If the ARIPO Office finds that the application does not comply with Rule 2 of these Regulations, it shall notify the applicant accordingly inviting him/her to comply with the requirements within thirty (30) days. If the applicant does not comply within the said period, the application shall be rejected.
- c) The ARIPO Office may request for any necessary information and documentation, and, if necessary, sufficient drawings or photographs for the conduct of the technical examination within such time limit as it shall specify.

RULE 4
PUBLICATION OF THE APPLICATION

- 1) Upon completion of the formal examination, the ARIPO Office shall notify the designated Contracting State(s) and the applicant of the decision of the ARIPO Office;
- 2) Where the application is accepted, the ARIPO Office shall publish such application in the ARIPO Journal.

RULE 5
OBJECTIONS TO APPLICATIONS

- 1) In pursuance of Article 16 of the Protocol, objection shall be lodged by any person who wishes to do so as follows:
 - a) Within the period of three (3) months after the publication of application for a breeder's right;
 - b) At any time prior to the refusal or the grant of rights in respect of the conditions for the granting of breeder's right as prescribed in Chapter III of the Protocol; and
 - c) Within the period of three (3) months from the date of publication of the proposed variety denomination in respect of Article 27 of the Protocol.
- 2) All objections shall be filed at the ARIPO Office or National Authority, shall be made in writing in the prescribed Form, accompanied by the fee prescribed in the Second Schedule and a statement of the grounds upon which the objector relies including any evidence in support of the objector's objection. Where an objection is filed through a National Authority, the objection shall be transmitted to the ARIPO Office within thirty (30) days.
- 3) The Director General shall serve a copy of the opposition on the applicant for registration and, within thirty (30) days of service upon the applicant of such copy of the opposition, the applicant shall send to the ARIPO office in the prescribed manner, a counter statement of the grounds on which he or she relies for their application together with any evidence in support of their application, and if he or she does not do so, the objection shall proceed without the applicant.
- 4) The Director General shall, after hearing the parties, if so required, and after considering the grounds and evidence upon which the application has been opposed and after giving reasons for his decision uphold or reject the opposition or permit registration subject to the provisions of the Protocol.
- 5) The Director General shall prescribe the manner in which oppositions and counter-statements are to be filed and the manner in which any evidence upon which the opponent and the applicant may rely on is to be submitted.
- 6) Where a person objecting to the application neither resides nor carries on business in any Contracting State, the Director General may require him or her to give security for the cost of proceedings before the ARIPO Office and in default of such security being given, may treat the opposition as abandoned.

RULE 6

EXAMINATION FOR GRANT OF BREEDER'S RIGHT

1) Examination for Distinctness, Uniformity and Stability (DUS)

Three months after the date of publication of the application in the ARIPO Journal, the ARIPO Office shall arrange for technical examination for DUS, provided there is no objection to the application and subject to payment of prescribed fee in Second Schedule.

2) Designation of Examination Office

- a) The Administrative Council may entrust any competent institution of a Contracting State or any member of an inter-governmental organization providing an effective system of plant variety protection to carry out technical examination for grant of breeder's right.
- b) When the Administrative Council so entrusts such competent institution the Director General shall notify the designation of such Office, hereinafter referred to as 'an Examination Office'.
- c) A notification given under paragraph (b) shall take effect on the day of issue of the notification and this provision shall apply *mutatis mutandis* to the cancellation of the designation of an Examination Office.
- d) A member of the staff of an Examination Office taking part in a technical examination shall not be allowed to make any unauthorized use of, or disclose to any unauthorized person, any facts, documents and information coming to their knowledge in the course of or in connection with the technical examination and such staff shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of an Examination Office concerned.
- e) Paragraph (d) shall apply *mutatis mutandis* to material of the plant variety which has been made available to an Examination Office by the applicant.

3) The ARIPO Office shall monitor compliance with paragraphs (2) (d) and (e) above and shall decide on any matter that may be raised by the applicant during the examination process.

4) Procedure for designation of an Examination Office

- a) The designation of an Examination Office shall be effected by a written agreement between the ARIPO Office and an Examination Office.
- b) The effect of the written agreement under paragraph (a) shall be such that acts performed or to be performed by members of the staff of an Examination Office in accordance therewith shall be considered, as far as third parties are concerned, to be acts of the ARIPO Office .

- c) Where an Examination Office intends to avail itself of the services of other technically qualified bodies, such bodies shall be named in the written agreement with the ARIPO Office and the staff members of the bodies shall sign a written undertaking to observe confidentiality as required in sub-rule (2) (d) .
- d) The ARIPO Office shall pay an Examination Office a fee as set out in the Second Schedule for conducting technical examination.
- e) The Director General shall develop audit guidelines to form the basis for periodically auditing the competencies of Examination Offices to enhance customer satisfaction and conformity to the provisions of the Protocol and these Regulations.
- f) Where upon review of the competence of the Examination Office the Director General is not satisfied with the results of the review, the Director General may revoke the written agreement with the Examination Office.
- g) Any cancellation of designation of an Examination Office may not take effect prior to the day on which revocation of the written agreement referred to in paragraph (a) of this sub-rule takes effect.
- h) The Director General may recommend to the Administrative Council the cancellation of the designation of the Examination Office as a Competent Institution.

RULE 7

TECHNICAL QUESTIONNAIRE AND TEST GUIDELINES

- 1) The Director General of ARIPO shall develop and publish a Technical Questionnaire and Test Guidelines for each species for conducting technical examination. The Technical Questionnaire shall require Applicants to provide among others information on the source of genetic material used.
- 2) For purposes of Paragraph (1), the list of the Technical Questionnaire and Test Guidelines for the species concerned shall be published in the ARIPO Journal.
- 3) In instances where the Director General of ARIPO has not developed and published a Technical Questionnaire and Test Guidelines, an existing Technical Questionnaire and Test Guidelines of other Competent Institutions and Inter-Governmental Organizations may be used.

RULE 8

INFORMATION AND MATERIALS FOR TECHNICAL EXAMINATION

The ARIPO Office shall make available the relevant material and information to the Examination Office for conducting technical examination.

RULE 9

EXAMINATION REPORTS

1) Reports of examination commissioned by ARIPO

- a) An Examination Report shall be established by the Examination Office and signed by the responsible member of the staff of an Examination Office and shall contain conclusions of the technical examination, in the form of Distinctness, Uniformity and Stability of a variety.
- b) The provisions of paragraph (a) shall apply *mutatis mutandis* to any progress reports to be submitted to the ARIPO Office.
- c) The ARIPO Office may provide the applicant with summary reports of progress of the technical examination;
- d) The ARIPO Office shall provide conclusions of the technical examination to the applicant.

2) Other Examination Reports

- a) An examination report on the results of any technical examination which has been carried out or is in the process of being carried out for official purposes in Contracting States and any member of an inter-governmental organization providing an effective system of plant variety protection may be considered by the ARIPO Office to constitute a sufficient basis for decision, provided that the material submitted for the technical examination has complied, in quantity and quality, with any standards that may have been laid down in the specific Test Guidelines, pursuant to Articles 17 and 18 of the Protocol.
- b) Where the final report is not immediately available, interim reports on each growing period may be submitted to the ARIPO Office to monitor progress.
- c) Where the ARIPO Office does not consider an Examination Report referred to in paragraph (a) to constitute a sufficient basis for a decision, it may follow the procedure laid down in Article 18(1)(a) of the Protocol, after consulting the applicant and an Examination Office concerned.
- d) The ARIPO Office and each National Authority in the Contracting States and any member of an inter-governmental organization providing an effective system of plant variety protection shall give administrative assistance to each other by making available, upon request, any examination reports on a variety, for the purpose of assessing DUS.

RULE 10

VARIETY DENOMINATION

1) Proposal for a variety denomination

- a) The proposal for a variety denomination shall be signed and filed at the ARIPO Office, or, if the proposal accompanies the application for a breeder's right filed at the National Authority, it shall be filed in duplicate.
 - b) Where the proposal for a variety denomination is submitted by electronic means it shall contain an electronic signature.
- 2) Examination of the proposed variety denomination**
- a) Where the variety denomination proposal does not accompany the application for a breeder's right, the ARIPO office will notify the applicant on the need to provide it, before the variety can get a grant of breeder's right.
 - b) Where a proposed variety denomination cannot be approved by the ARIPO Office, the ARIPO Office shall within seven (7) days communicate this to the applicant, shall require him or her to submit a new proposal within a period of thirty (30) days and shall indicate the consequences of failure to do so.
 - c) Where the ARIPO Office establishes at the time of receipt of the results of the technical examination that the applicant has not submitted any proposal for a variety denomination, it shall refuse to grant breeder's right, until an acceptable variety denomination has been provided.
- 3) Amendments of the variety denominations**
- a) Where the variety denomination has to be amended, the ARIPO Office shall communicate the grounds thereof to the holder, shall set up a time limit within which the holder must submit a suitable proposal for an amended variety denomination, and shall state that, should he or she fail to do so, the breeder's right may be cancelled pursuant to Article 29 of the Protocol.
 - b) Where the proposal for an amended variety denomination cannot be approved by the ARIPO Office, the ARIPO Office shall without delay inform the holder, within thirty (30) days within which the holder must submit a suitable proposal, and shall state that, should he or she fail to comply, the breeder's right may be cancelled pursuant to Article 29 of the Protocol.
 - c) Where the proposal for an amendment of a variety denomination is submitted by electronic means it shall contain an electronic signature
 - d) Any objections to a proposed variety denomination should be lodged within three (3) months of the publication of the proposal.

RULE 11
COOPERATION BETWEEN ARIPO OFFICE
AND EXAMINATION OFFICES

The Examination Office and the ARIPO Office shall designate staff to cooperate in all phases of examination covering the following aspects:

- a) the monitoring of the conduct of the technical examination, including the inspection of the locations of the test plots and the methods used for the tests;
- b) without prejudice to other investigations by the ARIPO Office, information from an Examination Office about details of any previous disposal of the variety for the purpose of determining novelty; and
- c) the submission by an Examination Office to the ARIPO Office of interim reports on each growing period.

RULE 12

GRANT AND REJECTION OF A BREEDER'S RIGHT

1) Grant of Certificate for Breeder's Right

- a) Notification of intention to grant a breeder's right
 - i) Prior to grant of certificate of Breeder's Right and upon compliance with the requirements for grant, the ARIPO Office shall notify without delay all designated States of the intention to grant a breeder's right on Form PVP 2 together with all relevant documents including DUS examination report;
 - ii) The designated State shall within six (6) months notify the ARIPO Office in Form PVP 3 whether or not the breeder's right shall have effect in its territory;
 - iii) Where a designated State notifies the ARIPO Office that the breeder's right shall not have effect in its territory, the notification shall specify grounds for the decision;
 - iv) After expiration of the six (6) months, the ARIPO Office shall grant the breeder's right, which shall have effect in those designated States that had not made communication referred to in sub-section (ii) above.
- b) Where the ARIPO Office grants breeder's right it shall-
 - i) notify the applicant of the decision and request for the payment of the grant fee within thirty (30) days;
 - ii) issue a certificate of breeder's right on Form PVP 4 of the First Schedule as evidence of the grant;
 - iii) publish the particulars of the grant in the ARIPO Journal; and
 - iv) enter the particulars of the grant in the register.
- c) On request, the ARIPO Office may issue a certified copy upon payment of a prescribed fee in the Second Schedule to the applicant if it establishes that the original certificate has been lost or destroyed.

2) Rejection of Grant of Breeder's Right

Where an application is rejected in accordance with Article 19(4) of the Protocol, the ARIPO Office shall-

- a) notify the applicant of the decision within thirty (30) days of the decision;

- b) publish the decision in the ARIPO journal, and;
- c) Enter the decision in the register.

RULE 13

REGISTER OF BREEDER'S RIGHT

1) Entries in the register related to proceedings and to breeder's rights

- a) The following shall be entered in the Register:
 - i) a description, or a description and photograph, of the plant variety and the denomination of the variety;
 - ii) the name and other particulars of the variety;
 - iii) the name of the holder
 - iv) the name and address of the breeder or holder of the breeder's right;
 - v) the name and address of the person to whom any breeder's right has been transferred;
 - vi) the address for the service of documents of the applicant or the holder of the breeder's right, which is shown on the application for the rights;
 - vii) the date on which the breeder's right is granted and the date of expiry;
 - viii) the date of publication where such publication is a relevant event for the computation of time limits;
 - ix) any objection, together with its date, the name and address of the objector and those of his or her procedural representative;
 - x) priority date (date and State of the earlier application)
 - xi) any institution of actions in respect of claims as to entitlement to the breeder's right, and the final decision in, or of any other termination of, any such action;
 - xii) any assignment or transfers of the breeder's right;
 - xiii) any decision of nullity or cancellation and surrender of the breeder's right; and
 - xiv) details concerning any compulsory licenses issued in a contracting states and details thereof
- b) The following shall be entered in the Register, upon request:
 - i) the giving of a breeder's right as a security or as the object of any other rights *in rem*;
 - ii) any institution of actions in respect of claims relating to the breeder's right, and the final decision in, or of any other termination of, any such action; or
 - iii) any contractual license agreement in force and records of any related proceedings.
- c) The ARIPO Office shall decide upon the details of the entries to be made and may decide upon further particulars to be entered in the Register which may be maintained in the form of an electronic database.

2) Inspection of the Register

- a) The ARIPO Register of Breeders' Rights shall be open for public inspection.
- b) Copies of extracts from the Register shall be provided upon payment of a prescribed fee as provided in the Second Schedule.
- c) The Director General of the ARIPO Office may provide for public inspection of the Register through the National Authority.

RULE 14

**ENTRY OF ASSIGNMENT AND TRANSFER OF
BREEDER'S RIGHT IN THE REGISTER**

- 1) An assignment or transfer of a breeder's right shall be entered in the Register upon notification in Form PVP 9 in the First Schedule.
- 2) The notification to register an assignment or transfer shall be accompanied by documentary evidence of such transfer or assignment and shall be accompanied by a prescribed fee in the Second Schedule.

RULE 15

EXCEPTIONS TO BREEDER'S RIGHT

- 1) The Breeder's right shall not extend to acts as provided under Article 22 (1) of the Protocol.
- 2) In the case of the provision under Article 22 (2) of the Protocol, the Administrative Council shall specify from time to time a list of agricultural crops and vegetables with historical practice of saving, using, sowing, re-sowing or exchanging seeds and acreage/tonnage that defines a small-scale farmer in each Member State based on the criteria established at the national level. The list shall be periodically published by the ARIPO Office.
- 3) For the purposes of implementing Article 22 (2) of the Protocol in these Regulations, an 'own holding' shall be considered to be any holding or part thereof which the farmer actually exploits for growing plants, whether as his or her property or otherwise managed under his or her own responsibility and on his or her own account, in particular in the case of lease holds.
- 4) For the purposes of determining the level of remuneration under Article 22 (3) of the Protocol, it is hereby provided that:
 - a) Small scale commercial farmers and large scale commercial farmers referred to in Article 22(3) of the Protocol who exceed the acreage/tonnage that defines a small-scale farmer provided under paragraph (2) are subject to pay remuneration to the breeder;

- b) The level of the equitable remuneration to be paid may form the object of a contract or license between the holder and the small scale commercial farmer and large scale commercial farmer concerned;
 - c) In the absence of a contract or license, designated States may determine the level of remuneration which shall be reasonably lower than the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the same area;
- 5) For the purpose of implementing Article 22 (3) of the Protocol in these Regulations, where a breeder has prior evidence that a commercial farmer has used or is using farm saved seeds of the breeder's protected variety for propagating purposes, the breeder may request the following information:
- a) The particulars of the farmer including name, address and location of farmer's own holding;
 - b) The details of the protected variety;
 - c) Quantity of seed saved.

RULE 16

PROCEEDINGS BEFORE THE ARIPO OFFICE

1) Parties to Proceedings

- a) The following persons may be party to proceedings before the ARIPO Office—
 - i) the applicant for a breeder's right;
 - ii) the holder(s) of the breeder's right;
 - iii) any person whose application or request is a prerequisite for a decision to be taken by the ARIPO Office .
- b) The ARIPO Office may allow participation in the proceedings by any person other than those referred to in paragraph (a) of this sub-rule who is directly and individually concerned, upon written request.
- c) Any natural or legal person as well as anybody qualifying as a legal person under the law applicable to that body shall be considered a person within the meaning of paragraphs (a) and (b) of this sub-rule.
- d) Where a Contracting State is party to proceedings, it shall designate a representative for each proceeding in which it takes part.

2) Languages of parties to proceedings

- a) Proceedings and documentation at the ARIPO office shall be in English
- b) If a party to proceedings files a document in a language other than English, the ARIPO Office shall require a translation of the documents received to be made by the party to the proceedings into English.

- c) Where a translation of a document is to be filed or is filed by a party to proceedings, the ARIPO Office may require the filing, within such time as it may specify, of a certificate, issued by a recognized institution that the translation corresponds to the original text.
 - d) Failure to file the translation referred to in paragraph (a) and the certificate referred to in paragraph (b), shall lead to the document being deemed not to have been received.
- 3) Use of other premises for proceedings**
- National Authorities shall, without cost, avail their premises to members of staff of the ARIPO Office for holding periodical consultations with parties to proceedings and third persons.
- 4) Services and Notifications**
- a) Service and notifications shall be made by:
 - i) registered mail;
 - ii) delivery by hand;
 - iii) public notice; or
 - iv) electronic means or any other appropriate means.
 - b) The Director General shall determine the details concerning service by electronic means.
 - c) Documents or copies thereof containing actions shall be served by registered letter with advice of delivery served by postal means and may also be served by electronic means if so required by the Director General.
 - d) If the ARIPO Office is unable to prove that a document which has reached the addressee has been duly served, or if provisions relating to its service have not been observed, the document shall be deemed to have been served on the date established by the ARIPO Office as the date of receipt.

RULE 17

TIME LIMITS AND INTERRUPTION OF PROCEEDINGS

1) Computation of time limits

Time limits shall run from the day following the day on which the relevant event occurred.

2) Extension of time limits

- a) If a time limit expires on a day on which the ARIPO Office is not open for business, the time limit shall extend until the first day thereafter on which the ARIPO Office is open for business.

- b) As regards documents submitted by electronic means, paragraph (a) shall apply mutatis mutandis in cases where there is an interruption of the connection of the ARIPO Office to the electronic means of communication.
- c) Paragraphs (a) and (b) shall apply mutatis mutandis to the National Authorities as well as to the Examination Offices.

RULE 18

AGENTS OR REPRESENTATIVES

1) Designation of an agent or representative

- a) An applicant who is not a resident in any of the Contracting States shall designate an agent or representative in any of the Contracting States to act on their behalf before the ARIPO Office and such designation shall be in Form PVP 5.
- b) An agent or representative whose mandate has ended shall continue to be considered as an agent or representative until the termination of his or her mandate has been communicated to the ARIPO Office
- c) If there are two or more parties to proceedings acting in common, which have not designated an agent or representative to the Office, the party to the proceedings first named in an application for breeder's right or for an exploitation right to be granted by the ARIPO Office or in an objection shall be deemed to be designated as the agent or representative of the other party or parties to the proceedings

RULE 19

APPEALS

- 1) The Board of Appeal established under Article 34 of the Protocol, shall consider and decide appeals as provided under Article 34 (5) (a) and (b) of the Protocol.
- 2) The Board of Appeal shall be governed by Rules of Procedure specified in Article 34 (8)
- 3) **Registry attached to a Board of Appeal**
 - a) The Director General of the ARIPO Office shall attach a registry to the Board of Appeal and members of staff of the ARIPO Office shall be excluded from the registry if they have participated in proceedings relating to the decisions under appeal.
 - b) The ARIPO Office shall be the secretariat of the Board of appeal.
- 4) **Decisions**
 - a) Decisions of the ARIPO Office which are open to appeal shall be accompanied by a statement to that effect, together with the time limits provided for lodging such appeal. The parties to proceedings may not plead the omission of that statement.

- b) A decision of the ARIPO office that is subject to appeal shall be in accordance with the procedure provided by the Board of Appeal.

5) Taking of evidence by ARIPO Office

- a) Where the ARIPO Office considers it necessary to hear the oral evidence of parties to proceedings or of witnesses or experts, or to carry out an inspection, it shall take a decision to that effect, stating the means by which it intends to obtain evidence, the relevant facts to be proved and the date, time and place of hearing or inspection.
- b) Where oral evidence from witnesses and experts is requested by a party to proceedings, the decision of the ARIPO Office shall state the period of time within which the party to proceedings filing the request must make known to the ARIPO Office the names and addresses of the witnesses and experts whom the party to proceedings wishes to be heard.
- c) At least thirty (30) days' notice of a summons dispatched to a party to proceedings, witness or expert to give evidence shall be given unless the ARIPO Office and the party to the proceedings agree to a shorter period.
- d) Before a party to proceedings, a witness or an expert may be heard, the ARIPO Office may request the competent judicial or other authority in his or her country of domicile to re-examine his or her evidence on oath or in some other binding form.

6) Commissioning of experts

- a) The ARIPO Office may appoint an expert to appear before the proceedings.
- b) The ARIPO Office shall decide in what form the report to be made by an expert whom it appoints shall be submitted.

7) Costs of taking evidence

The taking of evidence may be made conditional upon deposit with the ARIPO Office, by the party to proceedings who requested that such evidence be taken, of a sum to be quantified by the ARIPO Office by reference to an estimate of the costs.

RULE 20
CONFLICT OF INTEREST OF THE
MEMBERS OF THE BOARD OF APPEAL

- 1) Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.
- 2) If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he should not take part in any appeal proceedings, he shall within 14 days inform the Board of Appeal accordingly.

- 3) Members of the Boards of Appeal may be objected to by any party to the appeal proceedings for one of the reasons mentioned in paragraph (1), or where there is evidential proof of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.
- 4) The Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs (2) and (3) without the participation of the member concerned. For the purposes of taking this decision, the member who withdraws or has been objected to shall be replaced in the Board of Appeal by his alternate.

RULE 21

APPORTIONMENT AND DETERMINATION OF COSTS

1) Awards of costs

- a) A decision as to costs shall be dealt with in the decision on the nullity or cancellation of a breeder's right, or the decision on the appeal.
- b) In the case of an award of costs, the ARIPO Office shall set out that award in the statement of the grounds of the decision on the nullity or cancellation of a Breeder's right, or the decision on the appeal.

RULE 22

ADMINISTRATIVE AND LEGAL COOPERATION

1) Communication of information

- a) Information relating to publications and any other useful information relating to applications and granted breeder's rights shall be communicated directly between the ARIPO Office and the National Authorities.
- b) The communication of information between the ARIPO Office, Examination Offices, and the courts or National Authorities may be effected through the National Authority of the Contracting States, without costs.

2) Inspection of files and documents in the Contracting States

- a) The inspection of files related to applications and granted breeder's rights shall be of copies of the files issued by the ARIPO Office exclusively for that purpose.
- b) Courts of the Contracting States may, in the course of proceedings before them, lay the documents transmitted by the ARIPO Office open to inspection by third parties. Such inspection shall be free of charge.
- c) The ARIPO Office shall, at the time of transmission of the files to the courts of the Contracting States, indicate the restrictions to which the inspection of documents relating to applications for, or to grants of breeder's rights are subject to.

RULE 23
COMPULSORY LICENSES

- 1) Where a National Authority of a Contracting State grants a compulsory license of a breeder's right for reasons of public interest in accordance with Article 24 of the Protocol, the following guidelines may be considered:
 - a) the decision to grant a compulsory license should be in writing and contain a statement setting out the public interest involved;
 - b) authorization of such use should be considered on its individual merits;
 - c) such license may be issued if, prior to such license, the applicant has applied unsuccessfully to obtain a contractual license from the holder of the plant breeder's right within a reasonable period of time to be determined by the Contracting State;
 - d) the right holder should be paid equitable remuneration depending on the circumstances of each case;
 - e) the scope and duration of the compulsory license should be limited to the reasons of public interest for which it was authorized;
 - f) the compulsory license should be non-assignable and non-exclusive;
 - g) the legal validity of any decision relating to the authorization of such use should be subject to appellate review in that Contracting State.
- 2) The Contracting State should notify the ARIPO Office of the issuance and the details of the compulsory license.

RULE 24
FEEES

- 1) The fees for the implementation of the Protocol and the amounts of such fees are set out in the Second Schedule of these Regulations.
- 2) Subject to paragraph (4), fees shall be paid in United States Dollars directly to the ARIPO Office.
- 3) In relation to the application fees, the payment shall be made directly to the ARIPO Office or the National Authority or the application shall be accompanied by an undertaking signed by the applicant that he will effect payment to the ARIPO Office within a period of 21 days from the date on which the application is filed with the ARIPO Office or the National Authority.
- 4) (a) Notwithstanding paragraph (2), where the applicant is a national of the Contracting State in which the application is filed, the National Authority concerned may—
 - i) accept payment of the fees in local currency equivalent, at the prevailing official rate of exchange, to the prescribed fees; and
 - ii) request the ARIPO Office to debit its account in ARIPO with the amount of such fees.

- (b) The ARIPO Office shall be bound by the decision taken by the National Authority of a Contracting State concerning the applicability of this paragraph with regard to the nationality of the applicant.

RULE 25

DISTRIBUTION OF FEES

- 1) The distribution of fees between the ARIPO Office and Contracting States shall be as follows:
 - a) 5% of the application fees shall be due to the Contracting State in which the application is filed and 95% shall be due to the ARIPO Office;
 - b) 50% of the designation fee shall be due to each designated State and 50% shall be due to the ARIPO Office;
 - c) 50% of the annual maintenance fee shall be due to the designated State and 50% shall be due to the ARIPO Office.
- 2) Fees due to Contracting States shall be held in their favour or, on request, transmitted to them by the ARIPO Office.

RULE 26

ADMINISTRATIVE INSTRUCTIONS

The Director General shall establish Administrative Instructions which will deal with details in respect of the application of these Regulations and which shall not be in conflict with the provisions of the Protocol and these Regulations.

**FIRST SCHEDULE:
FORMS**



**FORM PVP 1: APPLICATION FOR A GRANT OF PLANT BREEDER'S RIGHTS
{r.(3)}**

PART I

(Notes to be read before completing the form. Section A and B should be completed by all applicants from ARIPO member states, while Section C should be completed by applicants from non ARIPO members.)

- 1) This form should be completed by a person or organization applying for a grant of plant breeder's rights under Article 12 of the Arusha Protocol for the Protection of New Varieties, 2015.
- 2) Where the application is by the successor in title to the breeder, it shall be accompanied by:-
 - a) The original or a certified copy of the deed of assignment; or
 - b) The original or certified copy of the certificate of the grant of probate, letters of administration; or
 - c) Such other documentary evidence as is in the opinion of the ARIPO Office sufficient to establish the title of the applicant-
- 3) If the applicant is a partnership firm, the application must be signed by all partners or by one partner on behalf of the firm.
- 4) If the applicant is a body corporate, a society or another similar organization, the application must be signed by the secretary or other principle officer or by its authorized agent.
- 5) The application shall be processed subject to: -
 - a) Provision of all necessary information, records and materials required by the ARIPO Office under the Arusha Protocol for the Protection of New Varieties, 2015 ; and
 - b) Payment of the application fee prescribed in these Regulations.
- 6) An applicant who wishes to apply for a provisional protection at the ARIPO Office under the Arusha Protocol for the Protection of New Varieties, 2015, shall also complete Form.
- 7) Where the variety concerned represents a genetically modified organism, the ARIPO Office may require the applicant to transmit a copy of the written attestation of the responsible authorities stating that a technical examination of the variety does not pose risks to the environment

Arusha Protocol for the Protection of New Varieties of Plants

ARIPO Form PVP 1 cont'd

PART II (To be completed by the Applicant)

APPLICATION FOR A GRANT OF PLANT BREEDER'S RIGHTS

Application No: _____ Date of Submission: _____

National Authority where submitted: _____

1. Particulars of Applicant

A. I/We _____

(Full Names of Applicant)

of _____

(Address)

(Telephone Number) (Fax Number)

Email _____ apply for a grant of plant breeder's rights in the plant variety specified in Section B.

B. Details of Plant Variety

1. Species or group of plant varieties to which plant variety belongs: -----

2. Name or proposed name for variety -----

3. Country in which the variety was bred or discovered -----

4. Name of breeder or discoverer and developer -----

-5. Have plants of the variety or any material forming part of, or derived from them been sold?

6. If so, give the following particulars: - YES/NO

i) Country of sale _____

ii) Is the sale in ARIPO or Non ARIPO Member _____

iii) Date of first sale or offer for sale _____

iv) Terms or conditions of sale _____

v) Has the breeder or discoverer and developer consented to sale? _____ (YES/NO)

7. Does the application contain any confidential information? _____ (YES/NO)

If Yes indicate which _____

C. To be completed by Applicants from outside ARIPO Member States

i) Country of origin _____

ii) Variety name or designation _____

iii) Has any application for similar rights been lodged in any other country? _____ (YES/NO)

iv) If so give details: _____

v) Do you claim priority in respect of an application lodged in another country within the last 12 months? _____ (YES/NO)

vi) If so, give details of such applications: _____

Arusha Protocol for the Protection of New Varieties of Plants

ARIPO Form PVP 1 cont'd

DECLARATION

I/We declare that I/We have read and understood the conditions specified in Part 1 and undertake to abide by them as required and confirm that the information given in this application is correct to the best of my/our knowledge and belief.

(Signature of Applicant)

FOR OFFICIAL USE ONLY

Remarks by National Authority of (country): _____

Variety verified that it contains the minimum information specified in the regulations

Signature: _____ Date: _____

9. Remarks by ARIPO Office

Variety approved for plant variety protection

Variety rejected for plant variety protection

Signature: _____ Date: _____

Arusha Protocol for the Protection of New Varieties of Plants



Form PVP 2 ARUSHA PROTOCOL NOTIFICATION OF DECISION TO GRANT (Rule 12(a)(i)) To*:	For Official Use
	Applicant's or Representative's File Reference:
I. IN THE MATTER OF: <input type="checkbox"/> Application for grant of breeder's right Application No.: Filing Date:	
II. APPLICANT(S) Name: Address:	
III. NOTIFICATION We hereby notify you, pursuant to Section 19, that the ARIPO Office has decided to grant a breeder's right on the above identified application. <input type="checkbox"/> A copy of the DUS examination report upon which this decision is based is attached hereto.** <input type="checkbox"/> A copy of the above-identified application is attached hereto.** We hereby request the applicant(s) to make payment of the grant and publication fee within (period specified) *** from the date of this notification. Before the expiration of six months from the date of this notification, each designated State may, pursuant to Section 19, make a written communication to the ARIPO Office on Form PVP 2 to the effect that, if a breeder's right is granted by the ARIPO Office on the above-identified application, said breeder's right shall have no effect in its territory for any of the reasons indicated in Section 19. Upon expiration of the said six months and subject to payment of the grant and publication fee by the applicant(s), the ARIPO Office shall grant the breeder's right in accordance with Section 19, Rule 12, and the granted breeder's right shall have effect in those designated States which have not made the communication referred to in the preceding paragraph.	
This notification is being sent to****:	
IV. SIGNATURE***** <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> DIRECTOR GENERAL ARIPO OFFICE </div> <div style="text-align: center;"> (Date) </div> </div>	

* Type name and address of person(s) to whom this Form is being sent.
 ** Attach a copy each of the search and examination report AND of the above-identified application.
 *** Period specified for fee payment.
 **** Indicate all those to whom the notification is being sent in connection with the above-identified application
 ***** Type name of Director General under signature.

Arusha Protocol for the Protection of New Varieties of Plants



<p>Form PVP 3 ARUSHA PROTOCOL</p> <p>COMMUNICATION BY DESIGNATED STATE THAT BREEDER'S RIGHT SHALL HAVE NO EFFECT IN ITS TERRITORY (Section 19; Rule 12 (a)(ii))</p> <p>To: Director General ARIPO Office P.O. Box 4228 Harare Zimbabwe</p>	<p>For Official Use</p>
	<p>Applicant's or Representative's File Reference:</p>
<p>I. IN THE MATTER OF:</p> <p><input type="checkbox"/> Application for grant of breeder's right</p> <p style="text-align: right;">Application No.:</p> <p style="text-align: right;">Filing Date:</p>	
<p>II. APPLICANT(S)</p> <p>Name:</p> <p>Address:</p>	
<p>III. COMMUNICATION</p> <p>On behalf of (designated State), we hereby communicate to the ARIPO Office, pursuant to Section 19, that, if the said Office grants a breeder's right on the above-identified application in accordance with its decision to grant a patent, as notified on Form PVP 2 dated, the said breeder's right shall have no effect in the territory of (designated State) because:</p> <p><input type="checkbox"/> the plant variety cannot be protected in accordance with the provisions of the Protocol and the Rules pertaining thereto for the following reasons (citing relevant statutory provisions):</p> <p><input type="checkbox"/> given the nature of the plant variety which is the subject of the above-identified application, a breeder's right cannot be granted or has no effect under the law of (designated State) for the following reasons (citing relevant statutory provisions, copies of which shall be attached to this communication):</p>	
<p>IV. SIGNATURE*</p> <p style="text-align: center;">.....</p> <p style="text-align: right;">..... (Date)</p> <p>PLANT VARIETY OFFICE**</p>	

* Type name and title under signature.

** Type name and State of the Office of the designated State.



FORM PVP 4: CERTIFICATE OF GRANT OF PLANT BREEDER'S RIGHTS

I certify that

(Name of grantee)

of

(Address & Telephone)

has been granted plant breeder's rights in respect of

.....
(Name/Denomination of variety)

.....
(Class)

.....
(Registration Number)

for a period of years, commencing
on the, 20.....

Date issued: _____

Fee paid: _____

ARIPO Office



FORM PVP 5. APPLICATION FOR PROVISIONAL PROTECTION

I/We.....

(Name of Applicant)

of.....

(Address)

Email.....

having submitted my/our application for grant of plant breeders rights in respect of

hereby apply for a provisional protection in respect of the variety in accordance with the Arusha Protocol for the Protection of New Varieties of Plants , 2015.

I/We UNDERTAKE that during the period between the date of my application for grant and the time when the application is finally determined (or if this undertaking is discharged at an earlier date, until that date) no plants of the variety, and no material forming part of, or derived from plants of that variety, shall be offered for sale or sold in any ARIPO member state by my/our consent.

Date..... (Signature of Applicant)

Arusha Protocol for the Protection of New Varieties of Plants



FORM PVP 6: CERTIFICATE OF GRANT OF PROVISIONAL PROTECTION

I certify that
(Name of Holder)

of
(Address)

has, pursuant to Article 20 of the Arusha Protocol for the Protection of New Varieties of Plants, 2015, been granted a provisional protection in respect of
..... of species/class

Application No:.....with effect
from

GRANT NO:..... Date of issue:

Fee paid:.....

.....

ARIPO Office



FORM PVP 7: APPLICATION FOR SURRENDER OF GRANT FOR PLANT BREEDER'S RIGHTS

1. I/We
(Name of the applicant)

of
(Address)

Email being the grantee of
plant breeder's rights in respect of
(Name/Designation Variety)

Certificate of Grant No. issued on due to
expire on, hereby apply to surrender the grant for the
following reasons:

.....
.....
.....

2. The following persons/organizations are, by virtue of the provisions of the Arusha Protocol for the Protection of New Varieties of Plants, 2015 Regulations, interested in this application:

1.

2.

3.

3. Enclosed herewith is the application fee of payable in respect of this application.

Date:.....

Signature of Applicant

Arusha Protocol for the Protection of New Varieties of Plants



FORM PVP 8: APPLICATION FOR OPPORTUNITY TO MAKE REPRESENTATIONS

(Notes to be read before completing the form)

1. This form should be completed by a person or organization applying for an opportunity to make representations concerning any matter pursuant to the provisions of the Arusha Protocol for the Protection of New Varieties of Plants of July 6, 2015
2. The application should be lodged within the period specified under regulations.
3. The application may be lodged directly with the ARIPO Office or through the National Authority of the Contracting Party, as the case may be.
4. The application must be accompanied by the prescribed fee.

(To be completed by the Applicant)

1. I/We
(Name of Applicant)
of
(Address) (Telephone)
Email.....apply for an opportunity to make representations concerning the
(particulars of application or other matter)
notified in the ARIPO Journal No: of, 20.....
2. I am a person/organization entitled to make representations concerning this matter by virtue of
(Specify relevant provisions of the Protocol / Regulations)
.....
(Specify nature of interest)
.....
3. Enclosed herewith is the fee of payable in respect of this application.

Date:.....
Signature of Applicant

Arusha Protocol for the Protection of New Varieties of Plants



FORM PVP 9: ASSIGNMENT/TRANSFER OF RIGHTS BY BREEDER

I _____ breeder

(Name of breeder (Variety))

do hereby declare that I have assigned, transferred and delivered all the rights for the

_____ variety.

(Common name)

(Variety Denomination)

To: _____

(Name and Address)

Place and Date: _____

(Name and signature of Breeder)

Arusha Protocol for the Protection of New Varieties of Plants



FORM PVP 10: ASSIGNMENT OF RIGHTS FROM A BREEDER WHO IS AN EMPLOYEE OF AN ORGANIZATION

I _____ being employed as a breeder by _____
(Name and address of employer)

do herewith declare that I have assigned, transferred and delivered all rights to the _____ variety:
(Common name)

_____ variety:
(Variety denomination)

to the said employer _____

Place and date: _____

(Name and signature of the breeder)

Dated the _____ **at** _____

**SECOND SCHEDULE:
FEES**

Arusha Protocol for the Protection of New Varieties of Plants



ARUSHA PROTOCOL FEES SCHEDULE

Type of Charges	Fees (USD)
Application for grant of plant breeders' rights	450
Transmittal Fee	50
Application for surrender of grant	50
Application for opportunity to make representations	150
Technical evaluation of a variety (DUS)	800
Grant of plant breeders' rights certificate	250
Duplicate copy of the register or other document	1 per page
Annual fees for maintenance of grant	300
Purchase of a report from a testing authority of another country	320
Replacement of lost or destroyed certificate	50
Claim of priority from a preceding application	50
Change of an approved denomination	100
Surcharge of late payment	100
Transfer/ Assignment Fee	50
Fees for Objection	250
Extension of Time Limits	50
Designation fee per Designated state	100
Certified Copies	10
Correction of errors	10 for the first 25 errors and 2.50 for subsequent errors
Change of an agent or representative	50



ARIPO Office

11 Natal Road, Belgravia
P. O. Box 4228, Harare, Zimbabwe

Tel: (+263) (4) 794054/65/66

Mobile: (+263) (0) 731 559 987
(+263) (0) 731 020 609
(+263) (0) 715 837 323

Fax: (+263) (4) 794 072/3

Email: mail@aripo.org
Website: www.aripo.org