

OPEN LETTER TO MEMBERS OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)

**ARIPO's Draft Protocol for the Protection of New Varieties of Plants ("DRAFT Protocol")
Undermines Farmers' Rights, Lacks Credibility & Legitimacy
9th April 2014**

Dear UPOV Members,

We the undersigned organizations from Africa and around the world are concerned with the conservation of agricultural biodiversity for livelihood security and food sovereignty, promoting farmers' rights and citizen involvement in the decision-making process. **The undersigned organizations would like to express serious concerns with the ARIPO Draft Protocol that has been submitted by ARIPO (African Regional Intellectual Property Organization) on 6 March 2014, for the consideration of the UPOV Council at its 31st Session in Geneva on 11 April 11, 2014.**

12 out of 18 ARIPO members are recognized by the UN as being Least Developed Countries (LDCs), i.e. the poorest and most vulnerable segment of the international community.¹ In these countries the majority of the population lives below the poverty line (e.g. Malawi (90%). These countries face numerous socio-economic challenges (e.g. poor literacy, access to electricity, water, limited infrastructure). In view of LDCs' special needs, domestic constraints and the need for policy space the WTO has accorded LDCs a transition period until 1 July 2021 (which can be further extended). During this period, LDCs that are members of the WTO are under NO obligation to put in place any regime for the protection of new plant varieties(PVP).²

Considering the conditions prevailing in LDCs, the Draft Protocol which is based on UPOV 1991, is very likely to adversely impact these countries. It is worth recalling that UPOV 1991 came about in tandem with industrialization in developed countries (particularly European nations) and the development of large-scale commercial farming and breeding focused on producing uniform plant varieties. Such a regime is unsuitable for the conditions in LDCs.

The informal seed system is the prevailing agriculture system in ARIPO member states and constitutes the primary source of subsistence, employment and income for the majority of the population in the ARIPO region, which consists mainly of the rural poor. About 80%-90% of all seed used in the ARIPO region originates from the informal seed system (i.e. farm-saved seed, exchanges, barter and local markets) independent of whether farmers cultivate local or modern varieties. The reasons for this include: inadequate access to markets; market channels unfavorable to farmers in remote areas; limited access to financial resources or credit to buy seeds; formal system unable to provide timely adequate access to quality seeds of improved varieties and to varieties that are specifically adapted to local conditions. **The Draft Protocol ignores this fundamental reality.**

¹ Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe (18 members, of which the 12 underlined members are LDCs).

² ARIPO Members - Liberia, Somalia and Sudan - are NOT members of the WTO and thus are also under NO obligation to implement the TRIPS Agreement.

The limitations imposed by the Draft Protocol on farmers with regard to use of the protected varieties are scandalous. The Draft Protocol outlaws centuries old practices of farmers freely using, exchanging and selling seeds/propagating material, practices which underpin 90% of the agricultural system within the ARIPO region.

The Draft Protocol does not allow smallholder farmers to freely exchange or sell farm-saved seed/propagating material even if the breeders' interests are not affected (e.g. small amounts or for rural trade). Use of farm-saved seeds on a farmer's own holdings is allowed only for certain crops and this too may be subject to payment of royalties to the breeder. Further, farmers will be required to provide information to breeders on the use of farm saved seed.

African nations have championed and called for the strengthening of farmers' rights in various international fora.³ About 14 ARIPO members are parties to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which in its Preamble, affirms that "the rights recognized in the Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding.....the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels". It also requires its contracting parties to take responsibility to realize Farmers' Rights and "take measures to protect and promote Farmers' Rights".⁴

Instead of upholding farmers' rights, the Draft Protocol goes in the opposite direction and proposes a legal framework, which is inconsistent with the intent and spirit of the ITPGRFA. It proposes an inequitable agriculture policy, fails to recognize smallholder farmers as an integral part of the agricultural innovation systems and undermines farmers' rights.

The Draft Protocol also undermines sovereign rights of member states by putting in place a centralized regional PVP system under the control and powers of ARIPO Office, which will prevail over national PVP regimes. The ARIPO Office will have the full and absolute authority to grant and administer breeders' rights on behalf of all contracting states. This top-down approach prevents sovereign nations from taking any decision related to the plant varieties granted breeders rights by the ARIPO Office; decisions that are at the very core of national socio-economic development and poverty reduction strategies.

The Draft Protocol facilitates biopiracy as it does not require a breeder to prove that the genetic material used in the development of the protected variety was lawfully acquired. More specifically it does not require disclosure of origin and evidence of prior informed consent and access and benefit sharing arrangements, where applicable. While the Draft Protocol fails to protect the legitimate interests of sovereign African nations and their local communities against misappropriation, it quite willingly protects the "confidential information" of breeders on their request. This position is untenable as it makes a mockery of the efforts of African nations that have for decades championed in various international forums for measures and mechanisms, including in intellectual property laws, to safeguard against biopiracy.

The Draft Protocol lacks credibility in that no independent assessment has been conducted to justify the suitability of UPOV 1991 for the ARIPO region or of its impacts on farmers, food sovereignty, agrobiodiversity, local breeders and seed companies. In short, there is no empirical basis for the Draft Protocol. This is unacceptable especially considering that most ARIPO

³ e.g. in the WTO (see IP/C/W/163; IP/C/W//206; IP/C/W/404); see also Articles 6 and 9 of the ITPGRFA.

⁴ Article 9 of the ITPGRFA.

members are LDCs, most ARIPO members do not even have PVP legislation in place and none have experience with UPOV 1991.

The process of developing the Draft Protocol has been untransparent and largely closed to the participation of farmers, farmer organisations or other members of civil society.⁵ By contrast industry associations such as the CIOPORA, African Seed Trade Association (AFSTA), French National Seed and Seedling Association (GNIS)) and foreign entities such as the United States Patent and Trademark Office (USPTO), the UPOV Secretariat, the European Community Plant Variety Office (CPVO) have been consulted extensively.

This is a violation of Article 9(2)(c) of the ITPGRFA which recognises the rights of the local and indigenous communities and farmers “to participate in making decisions....on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.” The UN Special Rapporteur on the Right to Food has also recommended that governments: “Put in place mechanism ensuring the active participation of farmers in decisions related to the conservation and sustainable use of plant genetic resources for food and agriculture particularly in the design of legislation covering... the protection of plant varieties so as to strike the right balance between the development of commercial and farmers’ seed systems”.⁶

Finally we are of the view that the Lusaka Agreement that constituted ARIPO, an intellectual property office does not provide ARIPO the authority to join UPOV 1991 as a contracting party. Unlike the European Union, ARIPO is merely a regional intellectual property office and cannot undertake commitments on behalf of ARIPO member states.

The Draft Protocol clearly lacks credibility and legitimacy. We strongly urge you to reject the Draft Protocol and that the Draft Protocol should be sent back to the drawing board; that ARIPO consult with smallholder farmers and civil society in all ARIPO member states; and, especially, that it discusses appropriate and equitable PVP regime that reflects conditions and realities prevailing in ARIPO countries, the obligation of protecting biodiversity, incorporates farmers’ interests and rights and safeguards to protect public interests and prevent biopiracy.

Signatories

1. Alliance For Food Sovereignty (AFSA)	A Pan African platform that represents smallholder farmers, pastoralists, hunter/gatherers, indigenous peoples, citizens and environmentalists from Africa. It comprises networks and farmer organizations working in Africa including the African Biodiversity network (ABN), Coalition for the Protection of African Genetic Heritage (COPAGEN), Comparing and Supporting Endogenous Development (COMPAS) Africa, Friends of the Earth-Africa, Indigenous Peoples of Africa Coordinating Committee (IPACC), Participatory Ecological Land Use Management (PELUM) Association, La Via Campesina Africa, World Neighbours, Network of Farmers' and Agricultural Producers'
---	--

⁵ For more information see AFSA’s response to ARIPO available at <http://www.acbio.org.za/images/stories/dmdocuments/AFSA-letter-ARIPO-March2014%20.pdf>

⁶ See UN General Assembly Document A/64/170 titled “Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation”

	Organizations of West Africa (ROPPA), Community Knowledge Systems (CKS) and Plate forme Sous Régionale des Organisations Paysannes d'Afrique Centrale (PROPAC).
2. African Biodiversity Network (ABN)	Regional network that represents 36 organizations in 12 African countries seeking solutions to the ecological and socio-economic challenges facing the continent.
3. Building Eastern Africa Community Network (BEACON)	Regional network of churches and NGOs working for development of communities on food security, trade and livelihoods in the East and Horn of Africa.
4. Eastern and Southern Africa Small Scale Farmers Forum (ESAFF)	Network of smallholder farmers operating in 13 countries that advocates for policy reflecting the needs of small-scale farmers in east and southern Africa.
5. FAHAMU	Pan-African organization seeking to strengthen and nurture the movement for social justice
6. La Via Campesina Africa 1 Region	Movement of millions of small-scale farmers/producers defending small-scale sustainable agriculture as a way of promoting social justice and dignity.
7. SADC Council of NGOs	Apex body of NGOs operating in all SADC Countries.
8. Abibiman Foundation (Ghana)	An organization working towards improving conflict situations and involved in agriculture and human rights.
9. Acção Académica para o Desenvolvimento das Comunidades Rurais –ADECRU (Mozambique)	An organization that promotes citizen awareness and interaction in the development of rural communities.
10. Actionaid International	An international organization working with over 15 million people in 45 countries for a world free from poverty and injustice.
11. African Centre for Biosafety (South Africa)	An organization working on issues dealing with the genetic engineering and corporate control of Africa's food systems.
12. Basler Appell gegen Gentechnologie (Switzerland)	An organization focusing on genetic engineering and other risk technologies.
13. BEDE -Biodiversity, Exchange and Diffusion of Experiences (France)	An organization contributing to the protection and advancement of family farming.
14. Berne Declaration (Switzerland)	An organization with more than 20,000 members promoting more equitable, sustainable and democratic North-South relations.
15. Bifurcated Carrots (the Netherlands)	A NGO seeking to promote biodiversity, environmental issues, and the rights of small farmers and independent plant breeders.
16. Biodynamic Agricultural Association of Southern Africa	Voluntary association for individuals who are practicing biodynamic farming.
17. Biowatch (South Africa)	A NGO publicizing and monitoring issues of genetic modification to promote biological diversity and sustainable

	livelihoods.
18. Carbone Guinée -Conakry (Guinée)	An organization concerned with harmonious and sustainable development through the conservation of biodiversity and the promotion of peace
19. Both ENDS (the Netherlands)	A NGO that that works towards a sustainable future for our planet.
20. Centre for Environmental Policy and Advocacy (Malawi)	A NGO contributing to the development of environment and natural resources management in Malawi and the Southern Africa Region.
21. The Centre for Sustainable Development (CENESTA)	A NGO dedicated to promoting sustainable community- and culture-based development in Iran and Southwest Asia.
22. Centre pour l'Environnement et le Développement/ Les Amis de la Terre – (Cameroon)	An organization focusing on the protection of the environment with a view to sustainable development
23. Centro Internazionale Crocevia (Italy)	A NGO working on environmental and agrarian issues, with specific focus on community alternatives
24. Earthlife Africa (Durban)	Membership driven organization of environmental and social justice activists.
25. EcoNexus (UK)	Public interest research organization analyzing developments in science and technology and their impacts on environment and society.
26. Eco Ruralis (Romania)	Grassroots association of small farmers practicing organic and traditional farming.
27. Find Your Feet (UK)	An organization working with vulnerable families in poor communities to improve harvests and increase family income, and access education services.
28. Food Matters Zimbabwe	Volunteer movement focusing on food issues such as GMOs.
29. Food Rights Alliance (Uganda)	Coalition of NGOs advocating for food security as a human right, sustainable agriculture systems and fair trade in Uganda.
30. Food Sovereignty Ghana	Grass-roots movement of Ghanaians, home and abroad, dedicated to the promotion of food sovereignty in Ghana.
31. Forest Peoples Programme (United Kingdom)	International NGO supporting the rights of peoples who live in forests and depend on them for their livelihoods.
32. Gaia Foundation (UK)	Foundation working with local communities to secure land, seed, food and water sovereignty.
33. GardenAfrica UK)	An organization focused in Southern Africa on productive organic training gardens.
34. GRAIN International	An organization working to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems.

35. Greenpeace Africa	Established in 1971, Greenpeace's sole reason for existence is to expose crimes against the environment wherever they might occur and irrespective who they are committed by.
36. Green Squad Alliance (GSA) (South Africa)	People's movement for a more ecologically sustainable future launched at the University of KwaZulu-Natal.
37. groundWork, Friends of the Earth, (South Africa)	Environmental justice service and developmental organization in South Africa
38. Grow Biointensive Agriculture Centre of Kenya (G-BIACK)	A NGO promoting community development techniques for sustainability among small-scale farm holders in Central, Eastern, and Nairobi Provinces in Kenya.
39. Inades-Formation international (Côte d'Ivoire)	National organization working towards the promotion of family farming and local development.
40. InfOMG - Info Center About Genetically Modified Organisms (Romania)	Non-governmental association offering information to the public and decision-making bodies about the GMO situation in Romania.
41. Initiative for GE-free Seeds and Breeding (IG Saatgut) (Germany)	International association of commercial and non-commercial seed conservation organizations, cultivators and breeders.
42. Institute for Sustainable Development (ISD) (Ethiopia)	A NGO supporting Ethiopia's smallholder farmers to maintain their rights to save, use and sell their own seed.
43. JINUKUN, Réseau National pour une Gestion Durable des Ressources Génétiques au Bénin	National network for sustainable management of genetic resources and focal point in Benin Coalition for the Protection of African Genetic Heritage.
44. Justiça Ambiental/Friends of the Earth Mozambique	A NGO raising public awareness and campaigns against damaging environmental practices in Mozambique
45. Kasisi Agricultural Training Centre (Zambia)	Farmer training institution based in Lusaka, Zambia.
46. Les Amis de la Terre-Togo/FoE-Togo	A non-profit organization, focusing on the protection of the environment with a view to sustainable development
47. Maendeleo Endelevu Action Program- Kenya	NGO using participatory processes to engage communities around issues relating to their environment, biodiversity and land use.
48. Mauritius Trade Union Congress	National trade union center in Mauritius.
49. MELCA Ethiopia (Movement for Ecological Learning and Community Action)	NGO working for the enhancement of traditional ecological knowledge and protecting the rights of communities in Ethiopia.
50. MUGEDE - Gender and Women Development Association (Mozambique)	Non-profit organization developing activities to educate civil society, especially women on preventing and mitigating the effects of climate change.
51. Navdanya (India)	NGO promoting biodiversity conservation, organic farming, rights of farmers, and the process of seed saving.

52. National Farmers Union (Canada)	Organization of Canadian farm families working towards the development of economic and social policies to maintain the family farm as the primary food-producing unit in Canada.
53. Norwegian Development Fund (Norway)	NGO supporting small-scale farmers in their fight against hunger and poverty.
54. OGM Dangers (France)	NGO working against GMOs in agriculture
55. Pan-Africanist International (Belgium)	Platform serving as a tool for the identification, defense, and the advancement of the interests of Africa.
56. Peasant Farmers Association of Ghana	NGO working for agriculture development and growth of the small farmers through pro-poor agricultural policy advocacy.
57. Permaculture Association (UK)	National charity that supports members and the public with advice, support, information and training about the theory and practice of permaculture.
58. Red de Semillas "Resembrando e Intercambiando" (Spain)	Coordinator of local seed networks working on the conservation and use of agricultural biodiversity in the local, national and international context.
59. Research Foundation for Science Technology and Ecology, India	A participatory research initiative founded by the scientist and environmentalist Dr. Vandana Shiva, to provide direction and support to environmental activism.
60. SAVE Foundation (Safeguard for Agricultural Varieties in Europe)	European umbrella organization for the promotion and coordination of activities for the conservation of endangered breeds of domestic animals and cultivated plant varieties in the form of live populations.
61. Save Our Seeds (Europe/Germany)	European initiative in favor of the purity of seeds against genetically modified organisms (GMO)
62. Southeast Asia Regional Initiatives for Community Empowerment (SEARICE)	A regional NGO promoting and implementing community-based conservation, development and sustainable use of plant genetic resources in Bhutan, Laos, the Philippines, Thailand, Vietnam and Cambodia.
63. Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI-Uganda) and (SEATINI- South Africa)	Regional NGO strengthening the capacity of key stakeholders to influence global, regional and national agricultural trade and financial processes.
64. Seeds Action Network (Germany)	Non-profit organization working on issues relating to the socio economics of plant breeding.
65. Self Help Africa (Ireland)	International development agency working at grassroots level in nine African countries, tackling poverty and improving the lives of local communities.
66. Surplus People Project (South Africa)	Non-profit organization advocating for pro-poor agrarian reform and food sovereignty.
67. SWISSAID (Switzerland)	Non-profit development organization supporting “self-help projects” for indigenous population groups suffering the deepest poverty.

68. Tanzania Alliance for Biodiversity (TABIO)	Alliance of civil society and private sector organizations concerned with the conservation of agricultural biodiversity for livelihood security and food sovereignty.
69. Third World Network (Malaysia)	An international NGO working on issues relating to development and developing countries.
70. UNAC – National Farmers Union (Mozambique)	National organization representing small-scale farmers.
71. UK Food Group	Network of 50 development, environment, farmer and academic groups in the UK working on global food, agriculture and hunger issues.
72. Verein zur Erhaltung der Nutzpflanzenvielfalt-(Seed Savers' Association, Germany)	Association based in Germany working to promote GMO free crop diversity and GMO free seeds and breeding
73. War on Want (UK)	Non-profit organization fighting poverty in developing countries in partnership with people affected by globalization.
74. World Development Movement (UK)	Membership organization in the UK which campaigns on issues of global justice and development in the Global South
75. Alliance for Agro-ecology and Biodiversity Conservation (Zambia)	An umbrella organization working on issues of biodiversity and GMO free agriculture