



ARIPO

*African Regional Intellectual
Property Organization*

WORKSHOP ON THE PROMOTION OF ARIPO PROTOCOLS

Overview of the Arusha Protocol and its Benefits

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Fostering Creativity and Innovation for Economic Growth and Development in Africa

OUTLINE

- Introduction of the Arusha Protocol
- Key Provisions of the Arusha Protocol
- Application and Granting Procedures
- Expected Benefits of the Protocol



The Arusha Protocol

- The Protocol was adopted by a Diplomatic Conference of ARIPO at Arusha, Tanzania, on July 6, 2015.
- By December 31, 2015, five (5) Member States signed the Protocol: Ghana, The Gambia, Mozambique, São Tomé and Príncipe, and Tanzania.
- The Regulations were adopted by ARIPO's Administrative Council in Malawi, November 2017.
- The protocol enter into force twelve (12) months after four (4) States deposited their instrument of ratification/accession.
- To date, three (3) countries have deposited their instrument of ratification/accession: Cabo Verde, São Tomé and Príncipe and Rwanda.



Purpose of the Protocol



- To provide an effective system of plant variety protection, with the aim of encouraging the development of **new varieties of plants**, for the **benefit of society**.

Purpose of the Protocol

New,
improved
protected
varieties

- **Technology transfer:** Usable technology (varieties), Public Private Partnership
- **Food Security:** Better, Cheaper food
- **Environment:** Sustainable production, Less input
- **Climate change:** Adapted crops
- **Economy:** Export, International competitiveness, Rural employment, etc.

Benefit of Society



Implementation of the Arusha Protocol

▪ Institutional Framework

- ✓ Accreditation of Examination Offices for conducting DUS Testing and purchase of test results
- ✓ Technical Questionnaire and Test Guidelines
- ✓ Audit guidelines for the evaluation of Examination Offices
- ✓ List of Agricultural Crops with historical practice of farm-saved seeds



Key Provisions of the Arusha Protocol

Uniform Effect of Protection (Art. 37)

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

Duration of the Protection (Art. 26)



- The duration of protection of plant varieties is:
 - 25 years - Trees and Vines
 - 20 years - Other Plants

Scope of Protection of Breeders Rights - *Art. 21*

- PBR confers the right to exclude others from:
 - a) Producing or reproducing, (multiplication)
 - b) Propagating,
 - c) Offering for sale
 - d) Selling or other marketing
 - e) Exporting
 - f) Importing, or
 - g) Stocking for any of the above purposes

the protected variety



Exceptions to the Protection - *Art. 22*

- Farmer's Privilege (Farm-saved seed)
 - Enable farmers to use the seeds and other propagating material of the protected varieties for non-commercial purposes without breeder's prior authorization

- Breeder's Exemption
 - Breeding new varieties using protected varieties
 - For experimental purposes



Licenses & Assignment - *Art. 31 & 32*

- The holder of a PBR may grant, to any person, exclusive or non-exclusive license relating to all or any of the rights granted to him or her
- An application for the grant of a breeders' right may be assigned or otherwise transferred
- The assignment shall be in writing, signed by the parties concerned and shall be registered in the ARIPO register



Board of Appeal – *Art. 34*



- The main function of the Board of Appeal is to consider and decide any appeal by the applicant where the office refuses application; and
- The Board consists of 5 members with relevant experience in plant varieties matters (two must be examiners)
- Decisions of the Board of Appeal are final.

Enforcement - *Art. 35*

- The PBR holders can enforce their rights within the Contracting States
- The Contracting States shall ensure that appropriate enforcement measures and dispute settlement mechanisms, sanctions and remedies are available for the effective enforcement of breeders' rights, such as:
 - ✓ Civil Measures (forfeiture, seizure, damages)
 - ✓ Administrative Measures
 - ✓ Customs Measures
 - ✓ Criminal Measures
 - ✓ Alternative Dispute Resolution Mechanism
 - ✓ Specialized Courts



Grant Requirements – *Art. 6*



The Plant Variety must comply with the following requirements

Novelty

Variety Denomination

Formalities & Payment of fees

The DUS Criteria

- Distinctness
- Uniformity
- Stability



Technical Examination (DUS) – *Art. 18*

- **DUS** examination is done by:
 - ✓ Competent Institutions (Examination Offices) in the Contracting States.
 - ✓ Breeder's own field
- **Examination reports** conducted by other institutions (Takeover reports)
- DUS is based on completed technical questionnaire and test guidelines



Novelty – *Art. 7*

- A plant variety is **new**, if at the date of filing of the application, the propagating or harvested material of the variety has **not been sold** or **disposed** for the purpose of **exploitation**, with **consent** of the **breeder** of the variety,
 - In contracting States - earlier than **1** year before filing of application
 - Other territory - earlier than (before filing of application) -
 - **6** years for trees and vine
 - **4** years in other cases



Distinctness – *Art 8*

- A plant variety is distinct, if it is clearly distinguishable from any existing variety at the time filing of the application.

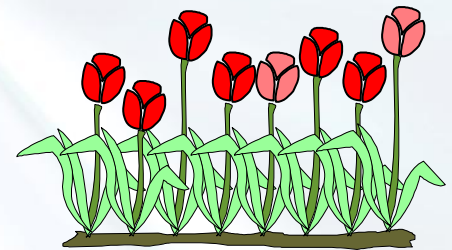
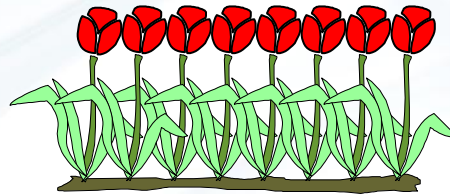
Distinct (D)



Uniformity – *Art 9*

- A plant variety is uniform, if it is sufficiently uniform in its relevant characteristics.
 - How uniform the varieties are in the fields

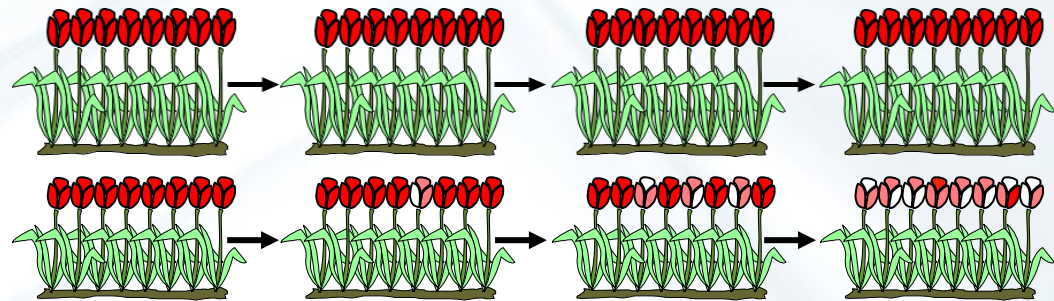
Uniformity (U)



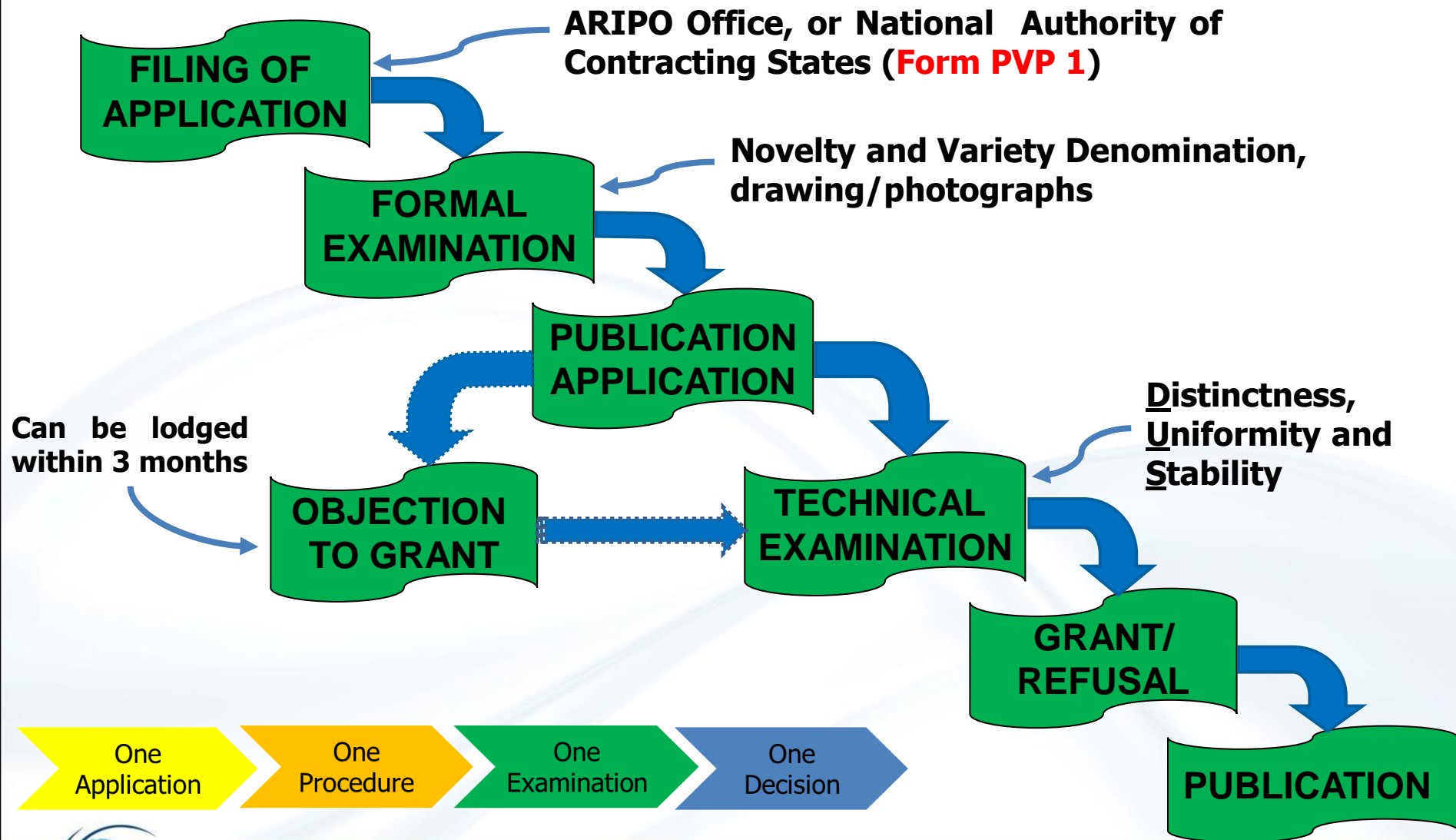
Stability – *Art. 10*

- A plant variety is stable, if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
 - How stable and consistent the varieties are when grown at different seasons, cycles and ecological zones

Stability (S)



Overview of Granting Procedures



Grant/Rejection of Breeder's Right – *Art 19*

- Upon compliance with requirements for grant, ARIPO Office will notify all the designated states.
- Designated states shall be given **6 months** to indicate whether the grant shall have effect in their territories or not.
- Where the application is **granted**, the ARIPO office shall issue certificate of grant, notify the applicant, designated states and **publish** it in the ARIPO Journal
- Where a designated state has **refused** the grant, it shall be communicated to the applicant together with the **grounds of refusal**



Expected Benefits of the Protocol

- Facilitate the access to superior varieties - foreign crops varieties
- Effective and appropriate tool for increasing foreign direct investment in the region due to increased market size
- Development of new agricultural industry on foreign markets
- Increase Diversity of breeders
- Delivering added value products to consumers
- Income generation and Knowledge





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