Overview of the Arusha Protocol and its Benefits

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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.
- 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

➢ 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.
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*

- **Famer’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
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 – \textit{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 filling 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 filling of application
  - Other territory - earlier than (before filling 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

ARIPO Office, or National Authority of Contracting States (Form PVP 1)

Novelty and Variety Denomination, drawing/photographs

Distinctness, Uniformity and Stability

Can be lodged within 3 months

One Application
One Procedure
One Examination
One Decision

Fostering Creativity and Innovation for Economic Growth and Development in Africa
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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