

**DRAFT ARIPO LEGAL FRAMEWORK FOR
THE PROTECTION OF NEW VARIETIES OF PLANTS**

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PREAMBLE

The Contracting States of this Legal Framework,

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

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

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

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

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

CHAPTER I

DEFINITIONS

Article 1 **Definitions**

Administrative Council” means a body consisting of Heads of Offices dealing with the administration of plant variety protection in the Contracting States of the Legal Framework, provided that any Contracting State may nominate any other person or persons to represent it in the Administrative Council whom it considers to have the requisite knowledge of plant variety protection.

“agent or representative” means a legally recognized and authorized representative of the breeder or the holder of the breeders’ right residing or having an office in the host Country of ARIPO or in the Contracting States to the Legal Framework who has been so authorized through special power of attorney to act for and on behalf of the breeder or the holder of the breeders’ right.

“applicant” means the 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;

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

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

“authorization” means a legal permission from the holder of the breeder’s right to allow exploitation or use of his protected variety.

For the purposes of this Regional Legal Framework:

“breeder” means

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

“breeder’s right” means the right of the breeder provided for in this Legal Framework;

“Contracting State” means any State that has become party to this Legal Framework.

“denomination” means the generic designation of the variety.

“holder of the breeder’s right” means:

- (i) A person or legal entity in whose name the breeder's right certificate has been issued; or
- (ii) A successor in title of the person referred to in paragraph (i)

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

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

“register” means the register of breeder's rights kept in terms of Article 5;

“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

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

CHAPTER II

GENERAL

Article 2

Purpose

- (1) The purpose of this Legal Framework is to grant and protect breeders' rights.

Article 3

Genera and Species to be Protected

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

Article 4

Administration

- (1) Breeders' rights granted under this Legal Framework shall, on the basis of one application be valid in all the Contracting States.
- (2) The ARIPO Office is empowered to grant breeders' rights and to administer such breeders' rights on behalf of the Contracting States.

(3) The ARIPO Office shall be responsible for:

- (a) grant breeders' rights
- (b) to establish a documentation centre for the purposes of dissemination of information on breeders' rights
- (c) to maintain a register and to provide information on breeders' rights granted by the ARIPO Office.
- (d) to collaborate with other regional and international bodies whose functions relates to the protection of new varieties of plants.
- (e) to liaise with national authorities in all matters relating to the grant and administration of breeders' rights and
- (f) to perform such other functions as are necessary for the furtherance of the objectives of this Legal Framework.

Article 5 Breeders' Rights Register

- (1) The ARIPO Office shall maintain a register, to be known as ARIPO Register of Breeders' Rights in which at least the following shall be entered:
 - (a) information relating to applications for breeders' rights
 - (b) information relating to the grant 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.
- (2) Any person shall, upon payment of the prescribed fee be entitled, during normal business hours, to examine the register kept in accordance with this Article, and to make or receive copies of or extracts from the information contained therein.

CHAPTER III CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

Article 6 Conditions of Protection

- (1) The breeder's right shall be granted where the variety is
 - (i) new,
 - (ii) distinct,
 - (iii) uniform and
 - (iv) stable.
- (2) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 27, that the applicant complies with the formalities provided for in this Legal Framework and that he pays the required fees.

Article 7

Novelty

(1) The variety shall be deemed to be new if, at the date of filing of the 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, for purposes of exploitation of the variety

(i) in the territories of the Contracting States to this Legal Framework earlier than one year before the date of filing of the application and

(ii) in a territory other than that of the territories of the Contracting States to this Legal Framework earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) Where, according to Article 3, this Legal Framework 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 defined in paragraph (1) of this Article even where the sale or disposal of to others described in that paragraph took place in the territories of the Contracting States to this Legal Framework within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

(3) The provision under paragraph (2) of this Article, shall only apply to applications for a breeder's right filed within one year, at the latest, after the provisions of the Legal Framework 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

The 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

The variety shall be deemed to be 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.

CHAPTER IV
APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHTS

Article 11
Persons entitled to apply for protection

- (1) An application may be filed by the breeder.
- (2) An application filed under Article 11 (1) by a breeder who is not resident in any of the Contracting States to this Legal Framework shall be submitted only through an agent or representative with residence in any of the Contracting States to this Legal Framework.

Article 12
Filing of Application

- (1) Applications for the grant of breeders' rights by the ARIPO Office shall be filed by the agent or representative of the applicant or by the applicant 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) of this Article shall have the same effect as if it had been filed on the same date at the ARIPO Office.

Where the application is filed with the National Authority of a Contracting State, the National Authority shall verify that the application on the face of it contains the minimum information specified in the regulations

- (3) The application shall include the information prescribed in the Regulations, in particular:
 - (a) The name, address and other required information of the applicant, the person who bred, discovered and developed the variety, if different from the applicant, and agent or representative.
 - (b) Identification of the botanical taxon (botanical and common name).
 - (c) The proposed denomination for the variety or provisional designation.
 - (d) Technical description of the variety.
 - (e) Information on prior applications and grants of breeders' rights for the same variety.
 - (f) Dates of sale or 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 to this Legal Framework or in party to an international agreement for the protection of new varieties plants (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 12 months. This period 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 the right of priority, the breeder shall, in the application filed directly with the ARIPO Office or through the National Authorities, claim the priority of the first application. The ARIPO Office shall require the breeder to furnish, within a period of not less than three months from the filing date of the application, 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 samples or other evidence that the variety which is the subject matter of both applications is the same.

(3) 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.

(4) Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

CHAPTER V

PUBLICATION OF INFORMATION

Article 15

Publication of Information

(1) The ARIPO Office shall publish at regular intervals 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 or representative); and
- (g) Nullification, surrender, cancellation and expiry of breeders' rights.

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

Article 16

Objection

(1) Once the application for a breeder's right for a particular application is published, any person may submit a written and reasoned objection to the ARIPO Office:

(a) at any time prior to the refusal or to the grant of the right in respect of the provisions of Article 6 to Article 11:

(b) within 3 months from the date of the publication of the proposed variety denomination in respect of the provisions of Article 27.

(2) The objection shall be subject to payment of a prescribed fee.

(3) Procedures for an objection and reply shall be as prescribed in the Regulations.

CHAPTER VI

EXAMINATION FOR GRANTING OF A BREEDER'S RIGHT

Article 17

Examination of the application

(1) The ARIPO Office shall examine the application to determine whether it and its supporting documents and material fulfill the criteria for protection as stipulated in Article 6 to Article 10.

(2) The ARIPO Office shall examine the formal requirements of the application and entitlement to the breeder's right in accordance with Article 11, the payment of fees in accordance with Article 13 Article 33, the novelty condition in accordance with Article 7 and the suitability of the denomination in accordance with Article 27.

(3) The ARIPO Office will arrange the examination of distinctness, uniformity and stability in accordance with the provisions of Article 18.

(4) For the purposes of examination, the ARIPO Office may require the breeder to furnish all the necessary information, documents or material as specified in the implementing regulations.

Article 18

Examination for distinctness, uniformity and stability

(1) The ARIPO Office may, for the purposes of the examination of the compliance with the conditions laid down in Articles 8, 9 and 10:

(a) arrange for the examination to be carried out by the competent institutions of the Contracting States to the Legal Framework or of UPOV members; or

(b) take into account the results of tests that have already been carried out from the Contracting States or UPOV members.

- (2) The practical arrangements of the provisions of this Article will be specified in the implementing regulations.

Article 19

Granting and rejection of a breeder's right

- (1) Where the plant variety fulfills the requirements of novelty, distinctness, uniformity and stability as provided under Articles 7 to 10 and that the proposed denomination of the variety is suitable for registration, the ARIPO Office shall grant a plant breeder's right and where those requirements are not fulfilled, the ARIPO Office shall reject the application.
- (2) The ARIPO Office shall in respect of each breeder's right granted -
- (a) Issue a Breeders' Right Certificate in respect thereof 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.
- (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;
 - (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 to 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 the Regulations.
- (5) The ARIPO Office shall in respect of each rejected application -
- (a) notify its decision in writing to the applicant;
 - (b) enter the applicable particulars in the register; and
 - (c) publish a notice of rejection.
- (6) The ARIPO Office shall not refuse to grant a breeder's right on the ground that protection for the same variety has not been applied for or has been refused in any other state or intergovernmental organization. The ARIPO Office shall not limit the duration of the protection on the ground that protection has expired in any other state or intergovernmental organization.

Article 20

Provisional Protection

- (1) The Legal Framework 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) The breeder shall be considered to be the 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) Legal action in respect of provisional protection can only be initiated after the right is granted.

CHAPTER VII

THE RIGHTS OF THE BREEDER

Article 21

Scope of the Breeder's Right

- (1) (a) Subject to Articles 22 and 23, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:
- (i) production or reproduction (multiplication),
 - (ii) conditioning for the purpose of propagation,
 - (iii) offering for sale,
 - (iv) selling or other marketing,
 - (v) exporting,
 - (vi) importing,
 - (vii) stocking for any of the purposes mentioned in (i) to (vi), above.
- (b) The breeder may make his authorization subject to conditions and limitations.
- (2) Subject to Articles 22 and 23, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of 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 his right in relation to the said propagating material.
- (3) Subject to Articles 22 and 23, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) 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 his right in relation to the said harvested material.

- (4) (a) The provisions of paragraphs (1) to (3) shall also apply in relation to
- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
 - (ii) varieties which are not clearly distinguishable in accordance with Article 8 from the protected variety and
 - (iii) varieties whose production requires the repeated use of the protected variety.
- (b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when
- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
 - (ii) it is clearly distinguishable from the initial variety and
 - (iii) 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.
- (c) 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 the Breeder’s Right

- (1) The breeder’s right shall not extend to
- (i) acts done privately and for non-commercial purposes,
 - (ii) acts done for experimental purposes and
 - (iii) 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) to (3) in respect of such other varieties.
- (2)....Notwithstanding Article 21, for the list of agricultural crops specified by the Administrative Council which shall not include fruits, ornamentals, 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 his own holdings, the product of the harvest which he has obtained by planting on his own holdings, the protected variety or a variety covered by Article 21(4) (a) (i) or article 21 (4) (a) (ii).
- (2) The conditions for the implementation of the provisions under paragraph (2), such as the different level of remuneration to be paid by small and large farmers and the information to be provided by the farmer to the breeder, shall be stipulated in the implementing Regulations.

Article 23

Exhaustion of the Breeder's Right

(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 21 (4), which has been sold or otherwise marketed by the breeder or with his consent in the territories of the Contracting States to the Legal Framework, or any material derived from the said material, unless such acts

- (i) involve further propagation of the variety in question or
- (ii) 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,

- (i) propagating material of any kind,
- (ii) harvested material, including entire plants and parts of plants, and
- (iii) any product made directly from the harvested material.

Article 24

Restrictions on the Exercise of the Breeder's Right

(1) Compulsory licences shall be granted to a person or to a Contracting State by the ARIPO Office, on application by that person or that Contracting State, but only for reasons of public interest, after [consulting]/[approval of] the Administrative Council.

(2) The ARIPO Office, when granting the 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 will lay down details on the implementation of the provisions under paragraphs (1) and (2).

Article 25

Measures Regulating Commerce

The 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. In any case, such measures shall not affect the application of the provisions of this Legal Framework.

Article 26

Duration of the Breeder's Right

The breeder's right shall be granted for a period of Twenty years 20 from the date of the grant of the breeder's right. For trees and vines, the said period shall be Twenty-five years 25 from the said date.

CHAPTER VIII
VARIETY DENOMINATION

Article 27
Variety Denomination

(1) The variety shall be designated by a denomination which will be its generic designation. Subject to paragraph (4), of this Article 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.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It 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. In particular, it must be different from every denomination which designates, in the territory of any Contracting State to this Legal Framework and any member of an intergovernmental organization providing an effective system of plant variety protection, an existing variety of the same plant species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the ARIPO Office. If it is found that the denomination does not satisfy the requirements of paragraph (2), 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.

(4) Prior rights of third persons shall not be affected. 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 (7), is obliged to use it, the ARIPO Office shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted to the Contracting States and to all members of an intergovernmental organization providing an effective system of plant variety protection under the same denomination. The ARIPO Office shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

(6) The ARIPO Office ensures that the authorities of the Contracting States and of all members of an intergovernmental organization providing an effective system of plant variety protection are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the ARIPO Office.

(7) 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 (4), prior rights prevent such use.

(8) 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. If

such an indication is so associated, the denomination must nevertheless be easily recognizable.

CHAPTER IX

NULLITY, CANCELLATION AND SURRENDER OF THE BREEDER'S RIGHT

Article 28

Nullity of the Breeder's Right

(1) The ARIPO Office shall declare the breeder's right null and void when it is established

(i) 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,

(ii) 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

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

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

Article 29

Cancellation of the Breeder's Right

(1) (a) The ARIPO Office [may] cancel the breeder's right if it is established that the conditions laid down in Articles 9 or 10 are no longer fulfilled.

(b) Furthermore, the breeder's right may be cancelled if, 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,

(ii) the breeder fails to pay such fees as may be payable to keep his 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 the Breeder's Right

(1) The 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 that 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 Licensing

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 provided for under this Legal Framework.

CHAPTER XI

ASSIGNMENT AND TRANSFER OF THE APPLICATION OR BREEDER'S RIGHT

Article 32 Assignment and transfer

- (1) An application for the grant of a breeder's right or the 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

The applicant and breeder's right holder shall pay fees as prescribed in the Regulations for the implementation of this Legal Framework.

CHAPTER XIII

APPEALS AND ENFORCEMENT PROCEDURES

Article 34 Appeals

- (1) The Administrative Council shall appoint an Appeals Board for this Legal Framework consisting of one lawyer and two technical qualified members and shall appoint one person from among the members to be the Chairperson. The Appeals Board may co-opt two experts when deemed necessary.

(2) A person who feels aggrieved by any decision or action taken by the ARIPO Office under Articles [19, 24, 28, 29] of this Legal Framework may, within the period and in the manner prescribed in the Regulations and upon payment of the prescribed fees, appeal to the Appeals Board against the decision or action in question.

(2) (a) An appeal under sub-article 34(2) shall be heard on the date and at the time and place fixed by the chairperson and he/she shall advise the person appealing and any other party that has an interest in the appeal, in writing thereof.

(b) The person appealing and the ARIPO Office shall be entitled to be represented.

(3) The Appeals Board may after investigation of the appeal -

(a) confirm, set aside or vary the relevant decision or action of the ARIPO Office;

(b) order the ARIPO Office to execute the decision of the Appeals Board in connection therewith.

(4) The decision of the Board shall be in writing, and a copy thereof shall be furnished to the ARIPO Office, the appellant and any other party.

(5) If the Appeals Board sets aside any decision or action by the ARIPO Office, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, or, if the board varies any such decision or action, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

Article 35

Offences and Penalties

(1) Any person who willfully-

(a) makes a false entry in the register or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register or a document lodged with the ARIPO Office, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy;

(b) makes a false statement or representation, or who furnishes false information, knowing it to be false;

(c) having appeared as a witness at any proceedings under this Legal Framework, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;

commits an offense and shall be liable to a fine or to an imprisonment or to both. The amount of the fine and the duration of the imprisonment shall be decided by the Courts of the Contracting States.

Article 36

Enforcement measures

(1) The Contracting States to this Legal Framework shall ensure that the following measures are available for the effective enforcement of the breeders' rights:

(2) Actions concerning the enforcement measures referred to in paragraph (1) can be filed before the competent courts or authorities of the Contracting States concerned.

CHAPTER XIV

OTHER PROVISIONS

Article 37

Extension of time limits

Where the ARIPO Office deems it justified by the circumstances it may, on a written request addresses 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 legal framework or of the Implementing Rules, by notifying its decisions to the parties concerned. Extension may be granted even if the time limit concerned has expired.

Article 38

Uniform Effect of Regional Breeders' Rights

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

Article 39

National Plant Breeders' Rights for Plant Varieties

This Regulation shall be without prejudice to the right of the Contracting States to grant national plant breeders rights for plant varieties, subject to the provisions of Article 92 (1).

Article 40

Prohibition of Cumulative Protection

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

CHAPTER XV

REGULATIONS

Article 41 Regulations

- (1) The Administrative Council of ARIPO shall make Regulations for the implementation of this Legal Framework and may amend them, where necessary.
- (2) The Regulations shall in particular relate to
 - (i) any administrative requirements, matters of procedure, or any details necessary for the implementation of the provisions of this Legal Framework and any relevant international treaties;
 - (ii) the fees to be charged by the ARIPO Office and the details of the distribution of part of those fees among the Contracting States.

CHAPTER XVI

FINAL PROVISIONS

Article 42 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 Legal Framework:
 - (i) signature followed by the deposit of an instrument of ratification; or
 - (ii) deposit of an instrument of accession.
- (2) Instruments of ratification or accession shall be deposited with the Director General of ARIPO.
- (3) This Legal Framework shall come into force three months after four States have deposited their instruments of ratification or accession.
- (4) Any State which is not party to this Legal framework upon its entry into force shall become bound by this Legal Framework 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 Legal Framework 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 Legal Framework.

[End of Draft Legal Framework]