



**AFRICAN REGIONAL INTELLECTUAL PROPERTY
ORGANIZATION (ARIPO)**

ADMINISTRATIVE COUNCIL

FORTY-FIRST SESSION

Lilongwe, Malawi, November 20 to 22, 2017

WORKING DOCUMENTS

I

[IP Technical Matters]

Prepared by the ARIPO Secretariat

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ARIPO/AC/XLI/ 1
November 6, 2017

DRAFT AGENDA

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1. Opening of the Session
2. Adoption of the Draft Agenda (document *ARIPO/AC/XLI/1*);
3. Election of Officers of the Administrative Council (document *ARIPO/AC/XLI/2*)
4. Report of the Director General on the 2017 Activities (document *ARIPO/AC/XLI/3*);
5. Status of Operations of Industrial Property Rights (document *ARIPO/AC/XLI/4*)
6. Report on ARIPO Awareness Raising Initiatives in the ARIPO Member States (document *ARIPO/AC/XLI/5*)
7. Report on ARIPO Capacity Building Initiatives (document *ARIPO/AC/XLI/6*)
8. Agreements with Cooperating Partners (document *ARIPO/AC/XLI/7*)
9. Reports of the Technical Committees of the Administrative Council
 - 9.1. Technical Committee on Copyright and Related Rights (document *ARIPO/AC/XLI/8*)
 - 9.2. Technical Committee on Industrial Property (document *ARIPO/AC/XLI/9*)
 - 9.3. Technical Committee on Plant Variety Protection (document *ARIPO/AC/XLI/10*)

[End of document]

ARIPO/AC/XLI/2
November 6, 2017

**ELECTION OF OFFICERS OF THE ADMINISTRATIVE
COUNCIL**

ELECTION OF OFFICERS OF THE ADMINISTRATIVE COUNCIL

1. Article VII of the Lusaka Agreement relating to the composition and functions of the Administrative Council stipulates that the Council shall elect from among its members the Chairman and two Vice-Chairmen to be officers of the Organization. Such Officers shall hold office for two years and may be eligible for re-election.
2. At the Thirty-ninth Session of the Administrative Council held in Lusaka, Zambia, from November 16 to 18, 2015, the Republic of Zambia was elected Chairman of the Council. Liberia was elected first Vice-Chairman whilst São Tomé and Príncipe was elected as the second Vice-Chairman.
3. The tenure of the current officers of the Administrative Council will end at the Forty-first Session scheduled to take place in Lilongwe, Malawi from November 20 to 22, 2017.
4. Since 2010, the following Member States have served as Officers of the Administrative Council: 2010-2011: Botswana (Chairman), Ghana and Zambia (1st and 2nd Vice-Chairman respectively); 2012-2013: Ghana (Chairman), Zambia and Sudan (1st and 2nd Vice-Chairman respectively); 2014-2015: Uganda (Chairman), Sudan and Namibia (1st and 2nd Vice-Chairman respectively); 2016-2017: Zambia (Chairman), Liberia and Sao Tome and Principe (1st and 2nd Vice-Chairman respectively).
5. **The Administrative Council is invited to elect a Chairman, first Vice-Chairman and second Vice-Chairman to serve as Officers of the Administrative Council of ARIPO for a period of two years (2018-2019)**

[End of document]

**REPORT OF THE DIRECTOR GENERAL ON THE 2017
ACTIVITIES**

HIGHLIGHTS OF ACTIVITIES CARRIED OUT AND MAIN ACHIEVEMENTS IN 2017

1. The Report of the Director General is based on the Value and Growth Transformation Strategic Plan 2016-2020 and the Programme and Budget for 2017 adopted by the Administrative Council at its 40th Session held in Harare, Zimbabwe from December 05 to 07, 2016.
2. The highlights of the achievements under the approved programme of activities and budget for the year 2017 are as follows:

PROGRAMME I: IP OPERATIONS

INDUSTRIAL PROPERTY STATISTICS

Patent Applications

3. During the reporting period ending October 31, 2017, 609 patent applications were received. The number of received applications is higher than the number recorded in the same period in 2016. Considering the current trend of an average monthly filing of 61, the total number of applications received in 2017 is projected to be approximately 732 which will surpass that of 2016 and edge closer to that of 2015.
4. The top five (5) most designated states in 2017 are: Kenya (501), Ghana (464), Tanzania (451), Mozambique (430) and Namibia (416).
5. With regard to the origin of the applications, the top five (5) in 2017 are: United States (222), South Africa (44), Germany (31), India (27) and Switzerland (27).
6. During the reporting period (from January 1 to October 31, 2017) the number of patents granted increased from 378 in 2016 to 393 in 2017 representing a growth of 4%.

Utility Models applications

7. The number of utility models filed with ARIPO has been gradually increasing over the last few years. However as of 31 October, 2017 the number of applications received showed a negative growth of nearly 50% when compared to applications received in 2016. Only 11 applications were received in 2017.
8. During the reporting period (from January 1 to October 31, 2017), 7 utility models were registered.

Industrial Designs Applications

9. During the reporting period, 81 industrial design applications were received which represent a growth of 8% compared to 2016. This is a welcome development in view of the fact that the numbers had been continuously decreasing over the last five years. It is therefore expected that industrial designs applications for 2017 will be higher than the previous year.
10. The top five (5) origin of industrial design applications filed in 2017 are: South Africa (13), Germany (9), United States (8), Netherlands (6) and South Korea (5). Four ARIPO member states including Zimbabwe (5), Uganda (3) Tanzania (3) and Kenya (3) are amongst the top ten users of the system.
11. In terms of designations during the year 2017: Ghana (51), Kenya (49), Zambia (43), Uganda (40) and Mozambique (39) are the most designated countries.
12. During the reporting period (from January 1 to October 31, 2017) 55 designs were registered reflecting a decrease of 38% relative to applications registered in 2016.

Trademark applications

13. With regard to trademark applications, this is the second consecutive year that the trend is showing an increase of the number of applications received. Indeed, considering the current trend of an average of 33 applications per month against an average of 2.1 classes per application, it is projected that the total number of classes for applications received in 2017 will be 834. This could be the highest number of classes per year since the inception of the protocol.
14. As at October 31, 2017, 331 trademark applications were received corresponding to 697 class count.

15. The most designated countries in 2017 are: Zimbabwe (207), Tanzania (203), Uganda (191), Botswana (180) and Malawi (168).
16. Zimbabwe with 105 applications continues to be the highest user of the system. The top five (5) origin of trademark applications are as follows: Kenya (37), United Arab Emirates (24), United States (18) and Zambia (17).
17. During the reporting period (from January 1 to October 31, 2017) 156 marks were registered reflecting a decrease of 16% relative to applications registered in 2016.

Traditional knowledge and Folklore Applications

18. The Swakopmund Protocol has not had any meaningful uptake by the users and there were no new applications lodged in 2017.

PROGRAMME 2: ECOSYSTEM FOR GROWTH

Implementation of the mandate on Copyright and Related Rights

19. A Symposium on Copyright and Related Rights: Shaping the Copyright and Related Rights Systems in Africa was held at ARIPO in collaboration with the World Intellectual Property Organisation from 5 to 7 June 2017. The Symposium was attended by more than 70 delegates from 17 ARIPO Member States and was also graced by the presence of Ms. Sylvie Forbin, the Deputy Director General of WIPO, Copyright and Creative Industry Sector. The outcome of the Symposium was the African Agenda on Copyright and Related Rights (Harare Strategic Action Plan) that was approved by the delegates.
20. Advocacy and Capacity building initiatives were undertaken in different occasions: during the roving seminars in Malawi, Tanzania (mainland and Zanzibar); during the meetings with the Universities and Research Institutions in Rwanda, Sierra Leone, Swaziland and Zambia.
21. The Secretariat finalized two titles, namely: Guidelines to Contract: Music Genre and Comparative study on copyright laws & adherence to international instruments on copyright & related rights (Volume 2) that were distributed to the Member States.
22. A Feasibility Study on the Development of a Policy Framework for the Establishment of a Regional Voluntary Copyright Registration and Notification System was undertaken. The study recommended the

establishment of a secondary copyright registration system, which will provide a central database of works registered within the Member States to be accessed by the copyright offices at the national level as well as rights holders, users and other beneficiaries.

23. The Secretariat also undertook comparative studies on different copyright laws from ARIPO Member States and the Southern and Eastern Africa Copyright Network (SEACONET) sample law on copyright. This informed the Secretariat that there is a need to come up with an ARIPO Model Law that will stipulate important provisions to be considered in the national copyright laws.

PROGRAMME 3: IP KNOWLEDGE

Masters of Intellectual Program

24. The ARIPO Academy has continued to cooperate with Africa University and the WIPO Academy in the delivery of the Masters in Intellectual Property (MIP) degree program.
25. For the year 2017, ARIPO is sponsoring 10 students for MIP at Africa University. Since 2009, ARIPO has sponsored 64 students from 14 Member States of the organization.
26. Besides the ARIPO scholarships, some students have pursued the MIP with scholarships offered by WIPO and the Japan Patent Office through the Japan-Funds in Trust (JFIT) held in WIPO. WIPO and JPO offers 10 scholarships each, every year. There are also some students that are admitted into the MIP program on self-sponsorship.
27. A new MIP Program will be launched at the University of Dar Es Salaam. The approval processes within the University were completed on September 21, 2017 by the University Senate. A meeting has now been arranged with the University and BRELA for February 2018 to finalise the projected action points towards the launching of the MIP Programme at UDSM.
28. The MIP program was also approved by the Kwame Nkrumah University of Science and Technology, Kumasi, Ghana on August 29, 2017. The program is scheduled to commence on January 2018. The University in collaboration with ARIPO has finalised on the curriculum, the admission requirements and fees.
29. A Tracer Study of the MIP graduates as a way of assessing the effectiveness and impact of the MIP Program was carried out by the ARIPO Academy.

The findings of the study revealed that most of the graduates are being used as resource persons on IP Awareness matters (47.2%) followed by those who are involved in lecturing or the teaching of IP (28.3%) in institutions of higher learning either on fulltime or part-time basis. Some have been writing/publishing articles on IP (15.1%) while others have been involved in the development of Institutional IP Policies (11.3%) as well as National IP Policies (13.2%). The plan is to carry out the study every 2 years. The next study will be done in 2018.

Partnerships with Academic institutions

30. The Academy has initiated partnership agreements with the University of Alicante, Spain; Kwame Nkrumah University of Science and Technology, Kumasi, Ghana and University of Cape Town, South Africa.
31. During the reporting period, the Academy hosted 25 students from the Midlands State University in Gweru, Zimbabwe and 21 students from Chinhoyi University of Technology in Chinhoyi, Zimbabwe who came to ARIPO on study visits. The study visits were undertaken on May 3 and 17, 2017 respectively. A further 14 students studying Biotechnology from Chinhoyi University of Technology visited ARIPO on October 9, 2017.

Roving Seminars

32. From 2017 until 2020, the focus of the ARIPO roving seminars are geared towards sensitizing the Universities and the Research Institutions on the urgent need to develop sound institutional IP policies to stimulate innovation and commercialization of research results, particularly in terms of IP protection and utilization.
33. In pursuance of the above, ARIPO in collaboration with WIPO developed guidelines on IP policy and strategy for effective use of the IP system by Universities and Research and Development Institutions in Africa. A Sub-regional Multi-stakeholders Workshop organized in Harare, Zimbabwe from October 30 to 31 validated the guidelines. The final version of the guidelines will be published by WIPO for use by ARIPO and its Member States to facilitate the establishment of the institutional IP policy and strategy by the Universities and Research and Development Institutions in Africa.
34. Within this context ARIPO also rolled out roving seminars in Universities and Research and Development Institutions in Rwanda, Sierra Leone, Swaziland and Zambia attended by approximately 400 students, academicians and researchers.

International and National Exhibitions

35. The Secretariat of ARIPO has participated in a number of international and national exhibitions to raise levels of awareness on the role that IP plays in business development and policy making. It is in this context that ARIPO participated in four exhibitions in Barcelona, Bulawayo, Geneva, Harare and Sydney, namely:
- a) 2017 edition of the Zimbabwe International Trade Fair, Bulawayo, Zimbabwe from 23 to 28 April;
 - b) 139th annual meeting of INTA, Barcelona, Spain from May 20 to 24;
 - c) Zimbabwe Agricultural Show, Harare, Zimbabwe from August 21 to 26;
 - d) WIPO exhibition on the side-lines of the Twelfth Session of the Advisory Committee on Enforcement, Geneva, Switzerland from 4 – 6 September;
 - e) AIPPI World Congress, Sydney, Australia, 13 to 17 October.

Publicity in Social and Print Media

36. ARIPO has been pro-active in creating awareness and increasing its visibility through social and print media. At the beginning of the year ARIPO engaged the New African Magazine, a Pan-African publication that sells over 46,000 copies every month in over hundred countries and reaches over 500,000 readers. ARIPO was featured in the April 2017 edition under the caption “ARIPO; Championing Africa’s Intellectual Property”, followed by other two articles in the July and November editions.
37. ARIPO continuously provides IP information on various social media platforms namely, Facebook, Twitter, LinkedIn and Flickr. These platforms have increased ARIPO’s visibility across the globe.
38. ARIPO has also featured in several TV shows and print media in Mozambique, South Africa, Ghana, Zimbabwe, China, USA, Tanzania and Nigeria. Recently ARIPO signed a Memorandum of Understanding (MOU) with the Zimbabwe Broadcasting Cooperation (ZBC) with the view to creating IP awareness, promoting innovation and creativity among the youth and educating the public on Intellectual Property in Zimbabwe.

Agreements with cooperating partners

39. In the course of the year 2017, the ARIPO Secretariat registered a number of activities which were carried out in the framework of existing cooperation agreements signed in previous years with partners and executed new Agreements.

40. New Agreements were signed with OAPI (9 February), the International Confederation of Societies of Authors and Composers (CISAC) (14 February), the State Administration for Industry and Commerce (SAIC) of the People's Republic of China (30 March), the Zimbabwe Broadcasting Corporation (14 May), the International Federation of the Phonographic Industry (2 May), the African Seed Trade Association (20 June), the West African Health Organisation (20 June) and with the Intellectual Property Unit, University of Cape Town (18 August).

Engagement with users and cooperating partners

41. The Director General of OAPI, Dr. Paulin Edou Edou visited ARIPO on 09 February 2017 and signed with the Director General of ARIPO a four year Cooperation Agreement. The new Agreement establishes a comprehensive cooperation framework in intellectual property matters for the two parties. In the new Agreement, OAPI and ARIPO have agreed to: work towards the harmonization of their systems; exchange documentation and technical information; mutually cooperate in the development of training and joint capacity building programs including in user awareness. The agreement also requires that either party offers technical assistance to the other when such assistance has been requested for. Importantly too, OAPI and ARIPO agreed to take common positions on major IP issues affecting the Member States of the two organizations at continental and international levels.
42. The Minister of the State Administration for Industry and Commerce (SAIC) of the People's Republic of China, Honorable Zhang Mao visited ARIPO on March 30, 2017. During the visit, ARIPO and SAIC signed a new Memorandum of Understanding that establishes a general framework for bilateral cooperation between the two parties on activities aimed at improving the quality of administration and effectiveness of the trademark systems through the exchange of information and best practices, as well as through capacity-building activities.
43. On 26 June 2017, Mr. Etienne Sanz de Acedo, the CEO of The International Trademark Association (INTA) CEO, visited ARIPO. The aim of the visit was to understand how to better serve and increase INTA membership in Africa as well as strengthen ties and cooperation with ARIPO, government departments, the Judiciary and academic institutions responsible for or who have a stake in the effective use of trademarks for development.
44. Heads of IP Offices in ARIPO Member States, high level officials of the ARIPO Secretariat attended the "China-Africa High-Level Seminar on Intellectual Property System and Policies" that took place in Guangdong, China from 23 to 29 July, 2017. The High-level seminar was organized by

the State Intellectual Property Office (SIPO) of the People's Republic of China. Also in attendance were other Heads of IP Offices in some other African Countries, such as Egypt, Ethiopia, Morocco and South Africa.

45. Uwa Ohiku, a partner in Jackson, Etti & Edu law Firm based in Lagos Nigeria, paid a courtesy visit to ARIPO on 07 September, 2017. Jackson, Etti & Edu is one of the largest law firms in West Africa who file applications with ARIPO through a third party from ARIPO member states. In the meeting both parties expressed the need to forge better relationships that will be beneficial to users and both institutions.
46. High-level officers of the ARIPO Secretariat and Heads of ARIPO Member States IP Offices or their representatives attended the Summit on Patent Examination organized by Adams & Adams in Pretoria, South Africa. The aim of the Summit was encourage debate on patent examination, allowing officials to share knowledge and developments. The event was followed by the 5th Annual Adams & Adams Africa Network Meeting that took place on September 14.
47. Ms Janet Tomkow, an Attorney from Hahn & Hahn Inc based in South Africa, visited ARIPO on 27 September, 2017 to familiarise herself with the office practices on Intellectual Property mandates. The visit focused on the process and requirements of restoring lapsed patents, the fees applicable as well as the processing of assignments at ARIPO and Designated State level. Hahn & Hahn Inc is a boutique firm of Intellectual Property practitioners specializing in obtaining and protecting Patent, Design and Trademark rights in South Africa and the entire African Continent.

PROGRAMME 4: POLICY AND LEGAL SUPPORT

48. The Secretariat developed proposals to amend the Harare Protocol on Patents and Industrial Designs and the Banjul Protocol on Marks. The proposals were further consolidated during the Sixth Session of the Working Group on the Improvement of the ARIPO Protocols relating to Industrial Property. The documents were tabled to the Seventh Session of the Technical Committee on Industrial Property that was held in Harare, Zimbabwe, from August 17 to 18, 2017 and will be further transmitted to the Administrative Council for consideration and approval.
49. The draft Regulations for Implementing the Arusha Protocol on the Protection of New Varieties of Plants were reviewed by the Second Session of the Technical Committee on Plant Variety Protection that was held in Harare, Zimbabwe from August 17 to 18, 2017 and will be submitted to the 41st session of the Administrative Council for consideration.

50. The Secretariat also commissioned a Comparative Study on Industrial Property Laws of ARIPO Member States to pursue harmonization of the laws of the Member States.
51. On the diplomatic side and with the view to influence the global norm-setting, ARIPO has been demanding a permanent status at the WTO TRIPS Council. The TRIPS Council, at its ordinary session that took place in Geneva from 19 to 20 October 2017, decided to grant a permanent observer status to ARIPO and OAPI. This move is a clear recognition of the active role of ARIPO in shaping the global debates related to IP and the acknowledgement of the contribution of the organization in the development of the global IP system.

PROGRAMME 5: PEOPLE AND ORGANIZATIONAL TRANSFORMATION

52. The process of recruitment of managerial staff and the placement of the rest of staff on the new Organizational Structure was finalized. As a result, Mrs Hilary Arko-Dadzie, a national of the Republic of Ghana became the Corporate Services Executive; Mr Outule Rapuleng, a national of the Republic of Botswana was appointed Head of ARIPO Academy; Mrs Susan Mwiti, a national of the Republic of Kenya was appointed as Documentations and Communications Officer; and Mrs Naniso Manjengwa, former Senior Finance Associate was appointed to the post of Finance Officer.
53. With the finalization of the recruitment of managerial staff and placement of other staff, 51 posts (74%) out of an establishment of 69 were filled. The post vacant rate was 17 posts (26%). The Gender composition comprises 27 males and 24 females.
54. Member States represented at the professional category in accordance with the current Staff Rules and Procedures are as follows: Botswana (1); Ghana (2); Kenya (3); Lesotho (1); Malawi (1); Mozambique (1); Namibia (1); Rwanda (1); Sudan (1); Tanzania (3); Uganda (1); Zimbabwe (5). Unrepresented Member States were: The Gambia, Liberia, Sao Tome and Principe, Sierra Leone, Somalia, Swaziland and Zambia.
55. Between April and May 2017 an employee engagement survey was conducted to assess the extent to which employees were committed to their work and the Organization, and the extent to which this commitment affected their performance, discretionary effort and intent to stay with the Organization. The overall employee engagement index was 72.37% and it

was concluded that employees were highly engaged as the result compared favorably to international benchmark of between 70%-75%.

PROGRAMME 6: INFORMATION AND COMMUNICATION TECHNOLOGIES

56. There are progresses in the implementation of the new IP administration system (Polite+), the implementation of the Member States module, the digitization project, implementation of the Regional IP database and the setting up of the ARIPO traditional knowledge, expressions of folklore and genetic resources related information database.
57. 57% of all new ARIPO applications for 2017 had been filed using the online platform.
58. With support from WIPO, the Member States module had been implemented in Mozambique and there were plans to implement it in 5 more member states before the end of 2017.
59. The digitization project is in progress and approximately 6,000 patent files out of a total of about 8,600 patent files had been digitized.
60. The ARIPO Regional IP database has been setup and more than 350,000 Trademarks from ARIPO and other Member States have been uploaded on the portal.

PROGRAMME 7: MARKETING AND CORPORATE SERVICES

61. ARIPO continued to boost its image through distribution of branded materials incorporating the new logo. This included T-shirts, pens, notebooks, flyers and booklets.
62. The activities are undertaken under the Marketing Strategy developed by the organization.

PROGRAMME 8: MANAGEMENT ACCOUNTING

Revenue Analysis

63. The overall revenue received for the current financial period as at October 31, 2017 amounted to US\$7,779,340 which is 75% of the projected revenue for 2017 US\$10,396,621.
64. Income from the Harare Protocol was projected at US\$9,396,621 and to date US\$6,944,896 has been received, being 74% of the projection, with regard

to Banjul Protocol, the projection was US\$397,800 and the actual received to date is US\$303,544 translating to 76% of the projection.

65. Furthermore all Member States as at October 31, 2017 had earned fees enough to offset their assessed annual contributions and were all able to pay the assessed contributions for 2017.
66. The Organization has developed a business model booklet which is being used as the marketing tool for the Organization's facilities. ARIPO facilities open for hire like the conference facilities have started generating revenue for the Organization, to date the conference facilities were hired out to two Organizations and a total amount of US\$2,608 has been received.

Expenditure Analysis

67. The overall Expenditure for the current financial year as at October 31, totalled US\$4,148,514 being 74% of the estimated expenditure of US\$5,598,392.
68. The actual personnel costs to date totalled US\$2,624,945 and the estimated budget for the year was US\$3,726,788. The Operating costs have been estimated at US\$490,253 and to date the total amount incurred was US\$498,247. This means that operating costs already has a budget overrun of 2%. The actual amount incurred for missions and training costs is US\$1,025,322 while the estimated budget was US\$1,381,351.

Member States' Financial Position For The Period Ending October 31, 2017

69. As at October 31, 2017, Member States had cumulatively earned fees of US\$3,095,497 representing 80% of the 2017 projected share of fees of US\$3,871,039.
70. The peak allotment remains at 7% (similar to that of 2016), for Member States with the most designations.
71. All member States are earning share of fees above US\$100,000 with exception of Rwanda and São Tomé and Príncipe and it is because they recently joined the Organization. It is worth highlighting though that there has been significant growth for both Rwanda and São Tomé and Príncipe. Rwanda share of fees as at 31 October 2017 has increased to \$77,762, while São Tomé and Príncipe for the same period had earned fees amounting to \$38,143.

Member States Trust Fund Account as at October 31, 2017

72. The fees due to Member States kept in the Member States Trust Fund Account had a closing balance of US\$4,053,274.79 as at October 31, 2017.
73. During the period January 1 to October 31, 2017, 12 Member States requested that part of their share of fees be remitted to their countries. A total amount of payments made to the Member States as per their requests was US\$1,362,546

PROGRAMME 10: INTERNAL AUDIT

74. The internal audit work undertaken during the period ending August 31, 2017 targeted specific audit areas, such as: Fleet Management and Procurement, ICT Compliance, Revenue, Procurement, Expenditure, Construction Tender Process and Budget Performance.
75. In the audit areas mentioned, the Internal Audit's opinion is that the controls and procedures provided sufficient assurance that the Secretariat has adequate controls in place.
76. The Audit Committee met three times in the Seventh, Eighth and Ninth Sessions, from April 11 to 13, 2017, June 27 to 29, 2017 and September 20 to 22, 2017 respectively. The Audit Committee looked at each audit area and made necessary observations, recommendations. The Audit Committee also assessed the Report of the External Auditors and made the relevant observations. Where relevant, documents and policies were recommended for consideration, endorsement or adoption by the Forty-first Session of the Administrative Council.
77. **The Administrative Council is invited to take note of the Report of the Director General on 2017 activities and make any comments it deems fit.**

[End of Document]

**STATUS OF OPERATIONS OF INDUSTRIAL
PROPERTY RIGHTS**

STATUS OF OPERATIONS OF INDUSTRIAL PROPERTY RIGHTS

Introduction

1. The Report on IP Operations covers the operations under the Harare Protocol on Patents, Industrial Designs and Utility Models, the Banjul on Marks and the Swakopmund Protocol on Traditional Knowledge and Expressions of Folklore.
2. The Report is based on analysed statistics covering comparative trends in application filings, registrations and grants.
3. The report is submitted for the consideration and comments by the Administrative Council.

A. Applications Received

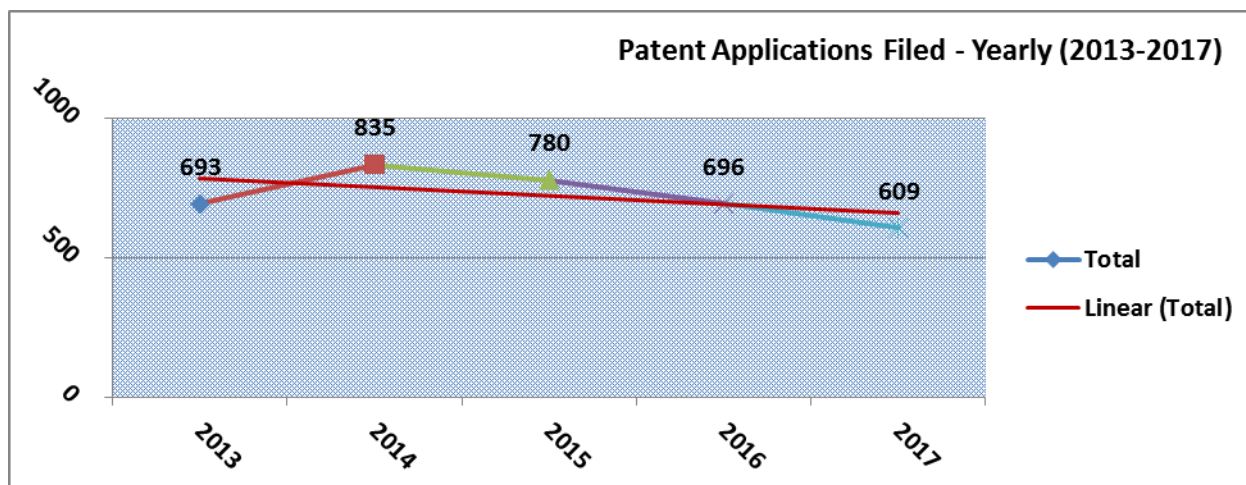
Patent Applications

4. During the reporting period ending October 31, 2017, 609 patent applications were received giving an average of about 61 applications per month. The number of received applications is higher than the number recorded in the same period in 2016 but lower than that recorded in 2015. Considering the current trend of an average monthly filing of 61, the total number of applications received in 2017 is projected to be approximately 732 which will surpass that of 2016 and edge closer to that of 2015. The filing trend is shown in the illustrations below.

Table 1: Yearly Patents Applications received 2013-2017

Years	2013	2014	2015	2016	2017*
Patents	693	835	780	696	609

Fig. 1: Patent applications lodged 2012 – 2016

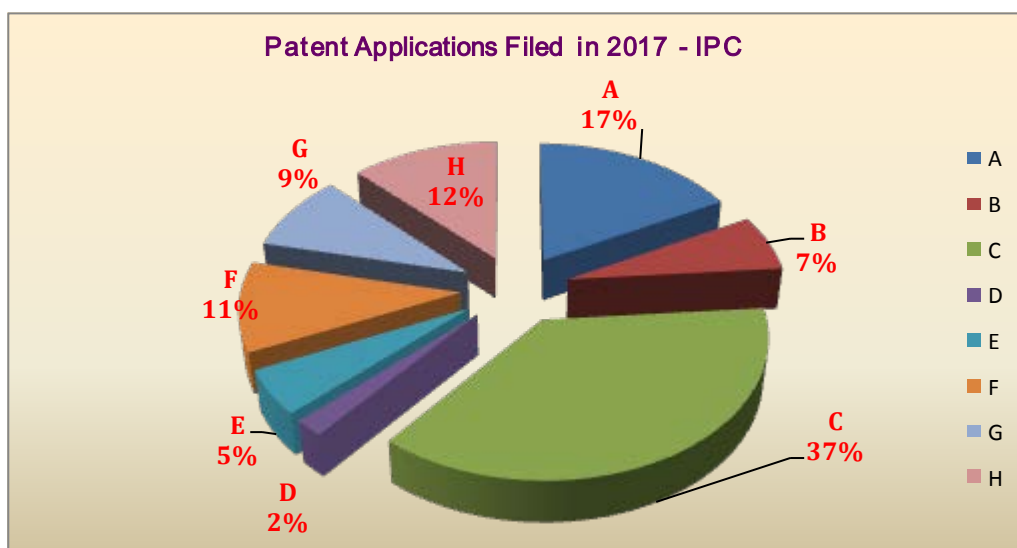


*Denotes up to the end of the reporting period

Source: ARIPO

- The pie chart below shows the top technological fields for which applications were filed in 2017. According to the international patent classification (IPC), the technology field Class C (Chemistry; Metallurgy) is the most applied for at 37%, followed by classes A (Human Necessities) at 17%, H (Performing operations; transporting) at 12% and F (Mechanical engineering; lighting; heating; weapons; blasting) at 11%. The filing trend is shown in the illustrations below.

Fig. 2: Patent applications lodged according to IPC classification



Source: ARIPO

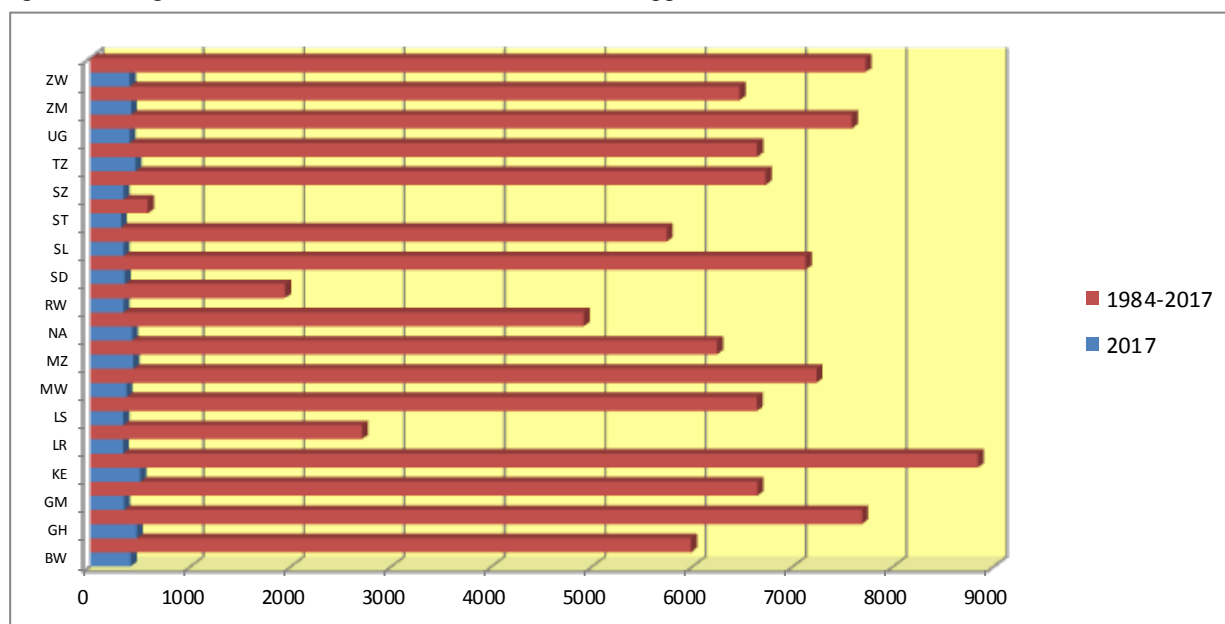
- The table below indicates the total patent application designations of the contracting states received since 1984. From the data, Kenya with 8843 designations and Zimbabwe with 7725 designations remain the top two designated countries followed by Ghana (7689), Uganda (7586) and Malawi (7236). However, the top five (5) most designated states in 2017 are: Kenya

(501), Ghana (464), Tanzania (451), Mozambique (430) and Namibia (416). The trend is shown in the illustrations below.

Table 2: Designations of ARIPO Member States of Patent Applications from 1984 to 2017

Years	BW	GH	GM	KE	LR	LS	MW	MZ	NA	RW	SD	SL	ST	SZ	TZ	UG	ZM	ZW
2017	405	464	337	500	328	329	362	430	416	333	345	332	307	332	451	393	406	394
1984-2017	5986	7689	6647	8843	2709	6642	7236	6245	4917	1942	7129	5743	575	6728	6644	7586	6469	7725

Figure 3: Designations of ARIPO Member States of Patent Applications from 1984 to 2017

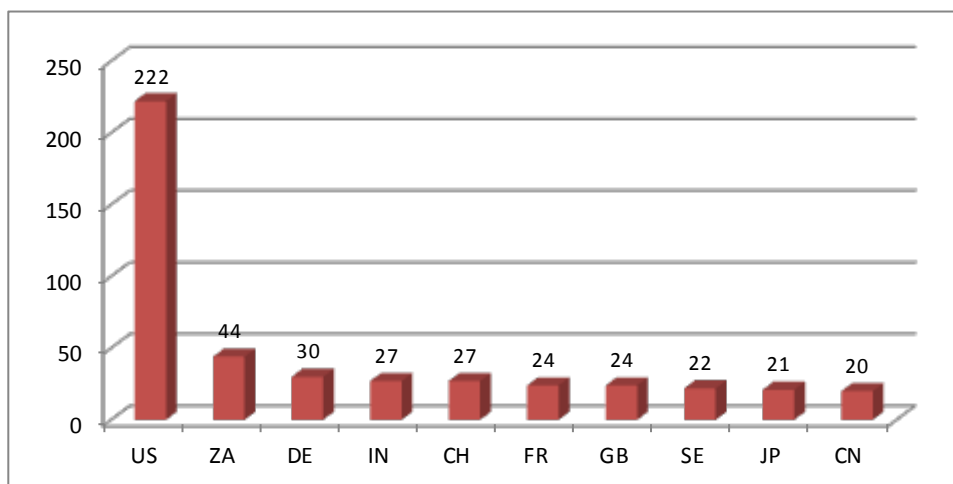


Source: ARIPO

- The table below illustrates the top 10 origin of patent applications filed in 2017. United States (US) with 222 applications representing an increase of 32% from 2016 is the highest user, followed by South Africa (ZA) at 44. It is important to note that Sweden and China replaced Netherlands and Australia in the top 10 in comparison with 2016. The trend is shown in the illustrations below.

Table 3: Patent Applications Filed in 2017 according to Origin - Top 10

Country	2017	Country	2017
United States (US)	222	United Kingdom (GB)	24
South Africa (ZA)	44	France (FR)	24
Germany (DE)	31	Sweden (SE)	22
India (IN)	27	Japan (JP)	21
Switzerland (CH)	27	China (CN)	20



Source: ARIPO

Fig 4: Patent Applications Filed in 2017 according to Origin - Top 10

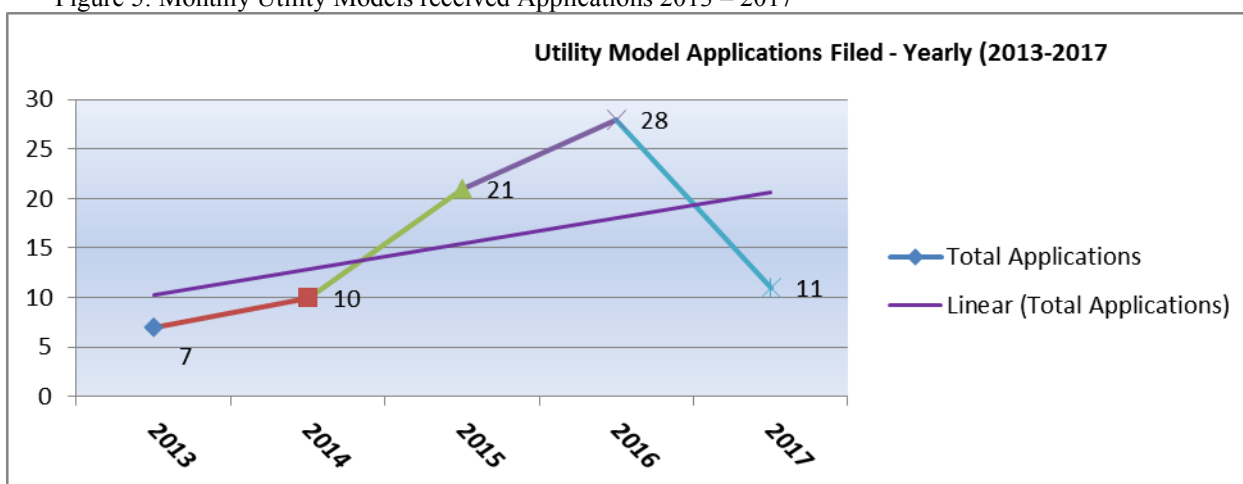
Utility Models applications

8. The number of utility models filed with ARIPO has been gradually increasing over the last few years. However as of 31 October, 2017 the number of applications received showed a negative growth of nearly 50% when compared to applications received in 2016. The filing trend is shown in the illustrations below.

Table 4: Monthly Utility Models Applications received 2013 – 2017

Years	2013	2014	2015	2016	2017
Utility Models	7	10	21	28	11

Figure 5: Monthly Utility Models received Applications 2013 – 2017



Source: ARIPO

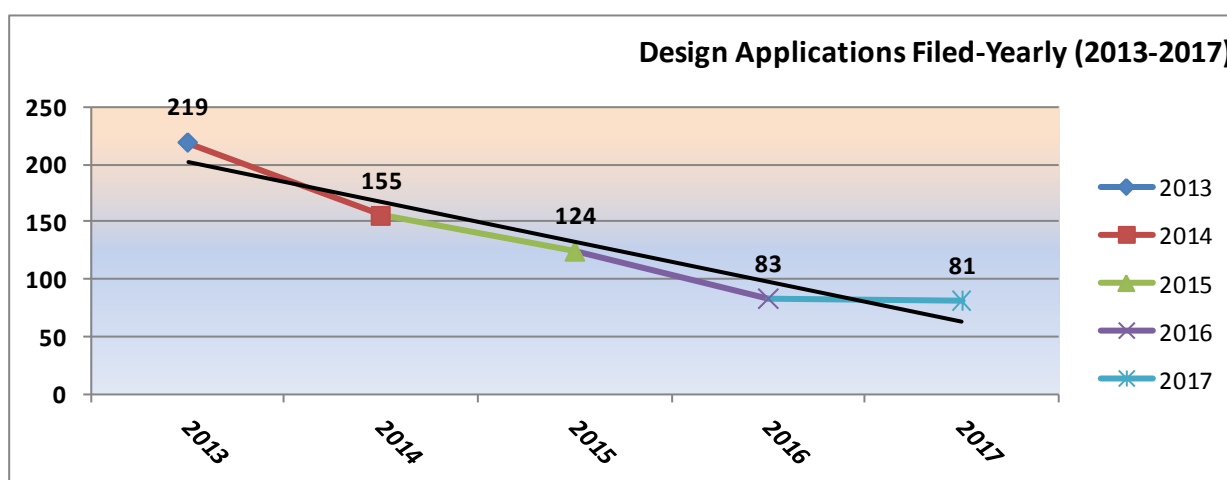
Industrial Designs Applications

9. During the reporting period, 81 industrial design applications were received which represent a growth of 8% compared to 2016. This is a welcome development in view of the fact that the numbers had been continuously decreasing over the last five years. The table below illustrates that trend:

Table 5: Monthly Industrial Design Applications Received 2013 - 2017

Years	2013	2014	2015	2016	2017
Industrial Designs	219	155	124	83	81

Figure 6: Monthly Industrial Design Applications Received 2013 – 2017

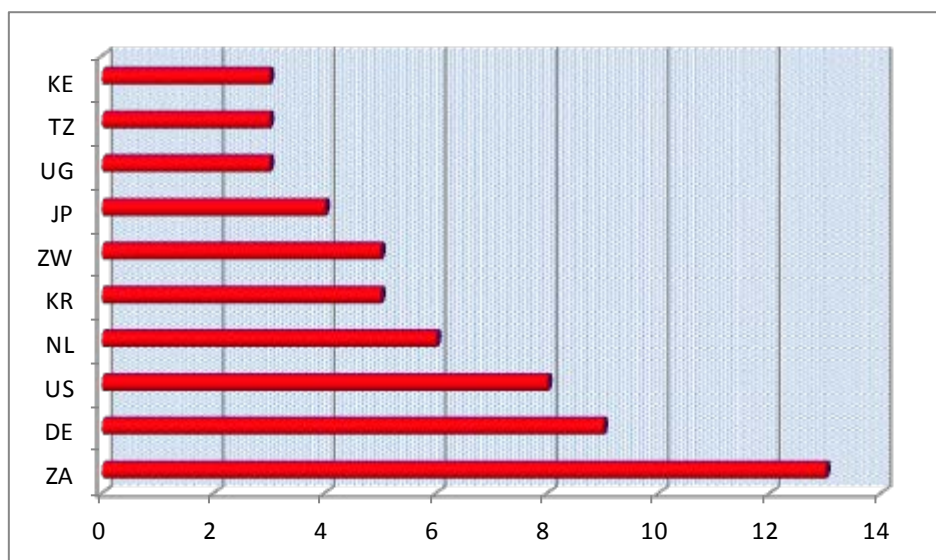


Source: ARIPO

10. The table below illustrates the top 10 origin of industrial design applications filed in 2017. In the top five, South Africa with 13 applications is the highest user, followed by Germany (9), United States (8), Netherlands (6) and South Korea (5). Four ARIPO member states including Zimbabwe (5), Uganda (3), Tanzania (3) and Kenya (3) are amongst the top ten users the system. The trend is shown in the illustrations below.

Table 6 and Figure 7: Industrial Designs applications originating from Member States for 2017

Country	2017	Country	2017
ZA	13	ZW	5
DE	9	JP	4
US	8	UG	3
NL	6	TZ	3
KR	5	KE	3



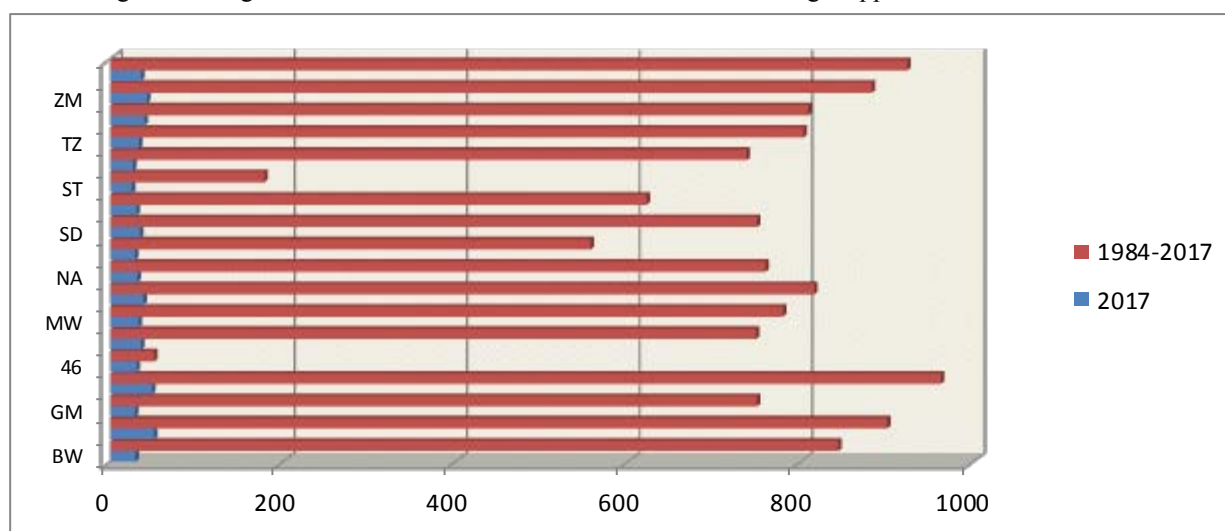
Source: ARIPO

11. The total number of Industrial Designs received this far stands at 1238. The overall top five designated countries are: Kenya (963), Zimbabwe (924), Ghana (901), Zambia (883) and Botswana (844). The most designated States in the year 2017 are: Ghana (51), Kenya (49), Zambia (43), Uganda (40) and Mozambique (39).

Table 7: Designations of ARIPO Member States of Industrial Design Applications from 1984 to 2017

Years	BW	GH	GM	KE	LR	LS	MW	MZ	NA	RW	SD	SL	ST	SZ	TZ	UG	ZM	ZW
2017	30	51	29	49	31	36	33	39	32	29	35	31	26	27	34	40	43	36
1984-2017	844	901	750	963	534	749	780	876	760	557	750	622	179	738	804	810	883	924

Figure8: Designations of ARIPO Member States of Industrial Design Applications from 1984 to 2017



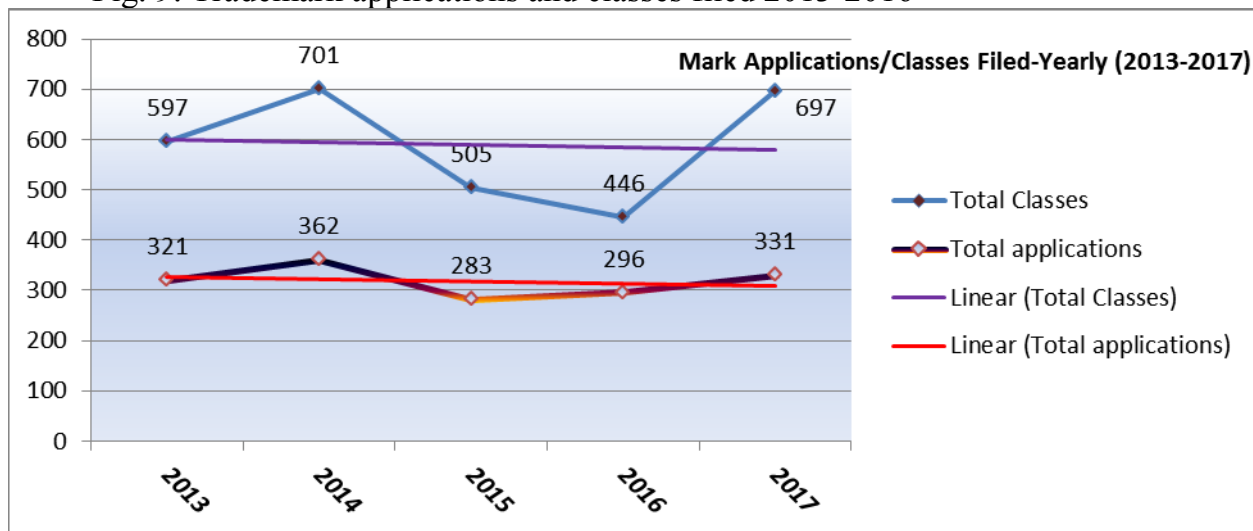
Trademark applications

12. With regard to trademark applications, this is the second consecutive year that the trend is showing an increase of the number of applications received. This could be attributed to the aggressive promotion of the system during high level missions. Considering the current trend of an average of 33 applications per month against an average of 2.1 classes per application, it is projected that the total number of classes for applications received in 2017 will be 834 classes. This could be the highest number of classes per year since the inception of the protocol.

Table 8: Yearly Trademarks Applications Received

Years	2013	2014	2015	2016	2017
Trade Marks	321	362	283	286	331
Classes	597	701	505	446	697

Fig. 9: Trademark applications and classes filed 2013-2016



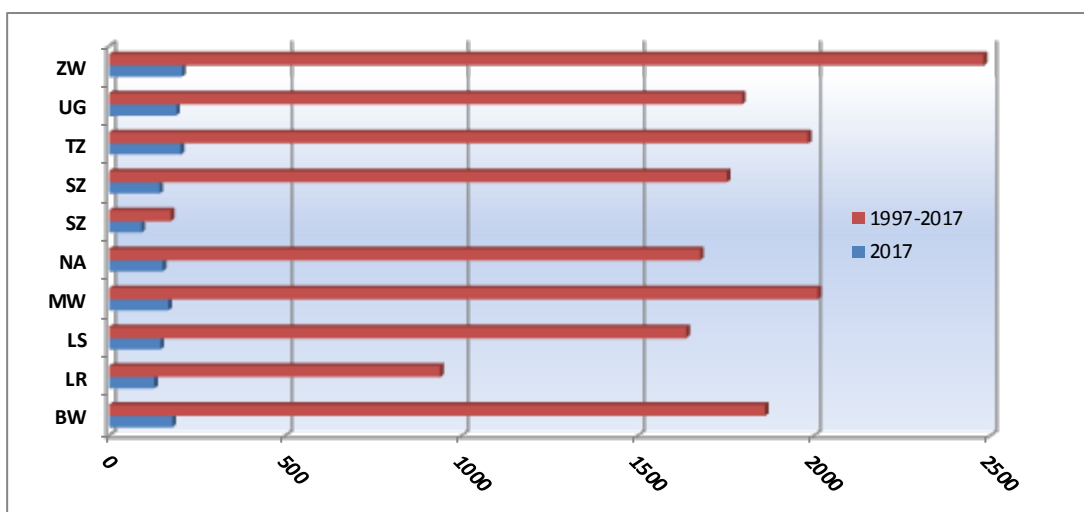
Source: ARIPO

13. The top five designated states for trademarks since inception of the Protocol are: Zimbabwe (2482), Malawi (2011), Tanzania (1983), Botswana (1861) and Uganda (1796). The most designated countries in 2017 are: Zimbabwe (207), Tanzania (203), Uganda (191), Botswana (180) and Malawi (168).

Table 9: Designations of ARIPO Trademark Applications from 1997-2017

Years	BW	LR	LS	MW	NA	ST	SZ	TZ	UG	ZW
2017	180	128	146	168	152	92	143	203	191	207
1984-2017	1861	939	1638	2011	1677	175	1753	1983	1796	2481

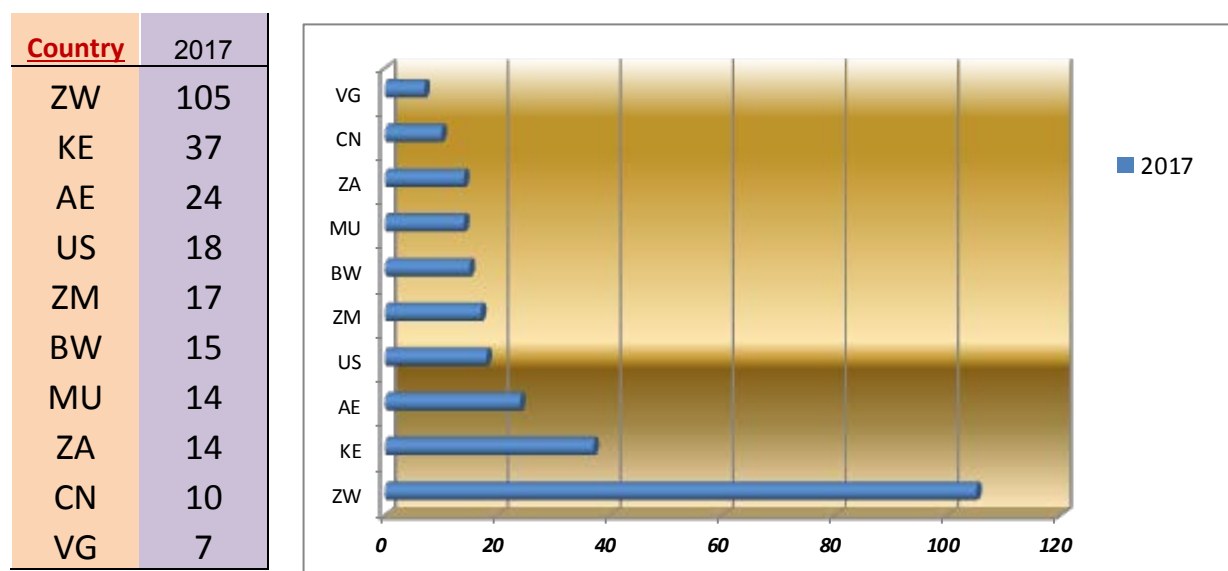
Fig. 10: Graphical representation of Designations of Trademark Applications from 1997-2017



Source: ARIPO

14. The table below illustrates the top 10 origin of mark applications filed in 2017. Zimbabwe, member state of ARIPO, with 105 applications continues to be the highest user of the system. Three other member states including Kenya (37), Zambia (17) and Botswana (15) are amongst the top ten countries users of the system. The trend is shown in the illustrations below.

Table 10 and Figure11: Trademark applications originating from Member States in 2017



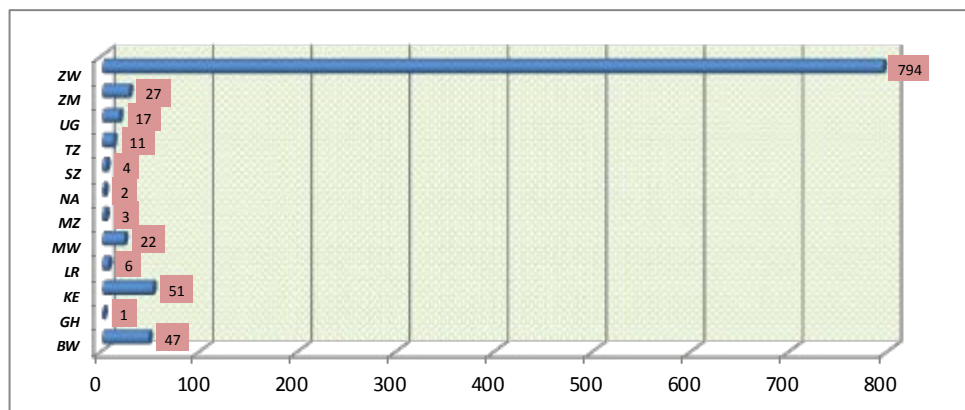
Source: ARIPO

15. Amongst the member states of ARIPO, Zimbabwe has the highest uptake of the system with an overall total of 794 applications filed to date. Uptake in all the other member states is very low with Kenya being second at 51, third Botswana at 47, fourth Zambia at 27 and fifth Malawi at 22. The low uptake by users in respect of the Banjul Protocol contracting states could be attributed to non-domestication of the protocol by the states as well as the

fact that users prefer to use the national systems. The illustrations below show the origin of trademark applications among the Member states.

Table 11 and Figure12: Trademark applications originating from Member States since Protocol 2017 and since Protocol

Member State	Totals
BW	47
GH	1
KE	51
LR	6
MW	22
MZ	3
NA	2
SZ	4
TZ	11
UG	17
ZM	27
ZW	794



Source: ARIPO

B. Grants and Registrations

16. A total of 4360 patents have been granted under the ARIPO system since inception of the Harare Protocol. These grants comprise 42 % of the applications received. According to published WIPO statistics, the trend of grants averages 40% of applications filed in most patent offices. During the reporting period (from January 1 to October 31, 2017) the number of patents granted increased from 378 in 2016 to 393 in 2017 representing a growth of 4%.
17. The total number of patent applications received as of 31 October 2017 is 10267 and those granted to reporting date are 4360. The applications not granted include some which are pending and some which for one reason or another never reached the grant stage. The figure below shows this status.
18. Even though the number of utility model applications received has seen a negative growth of nearly 50% when compared to applications received in 2016, the registrations has seen a positive growth of more that 100%.
19. A total of 936 industrial designs have been registered since the inception of the Harare Protocol which represents 32% of all industrial design applications received by the Office. During the reporting period (from January 1 to October 31, 2017) 55 designs were registered reflecting a decrease of 38% relative to applications registered in 2016.
20. A total of 1238 marks have been registered since the inception of the Banjul Protocol which represents 39% of all mark applications received by the

Office. During the reporting period (from January 1 to October 31, 2017) 156 marks were registered reflecting a decrease of 16% relative to applications registered in 2016. This is a continuous decrease since 2014. The continuous decrease in registrations may be attributed to high number of local applicants who do not pursue their applications up to registration.

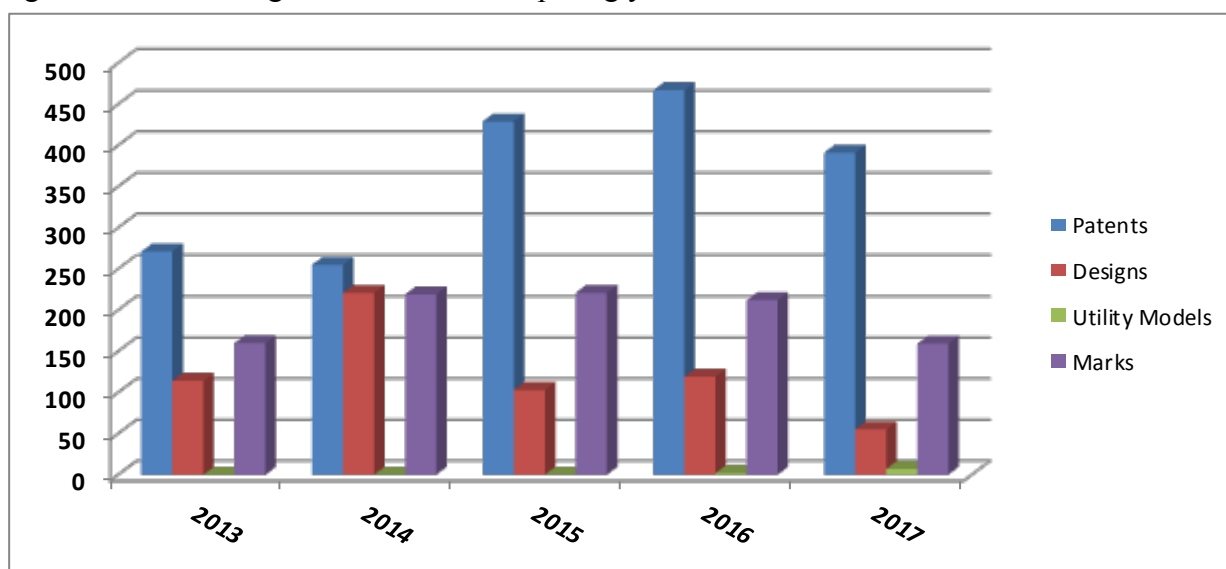
The trends for grants and registrations are shown in the illustrations below:

Table 12: Grant and Registration trends comparing year 2013-2017

	2013	2014	2015	2016	2017
Patents	271	255	429	467	391
Industrial Designs	114	221	103	119	55
Utility Models	0	0	0	2	7
Marks	160	219	221	212	159

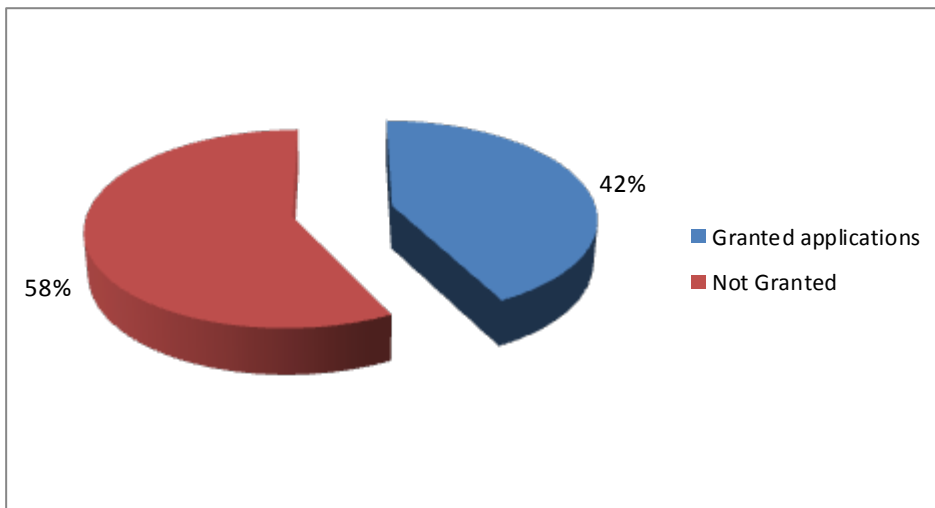
Source: ARIPO

Fig 13: Grant and Registration trends comparing year 2013-2017



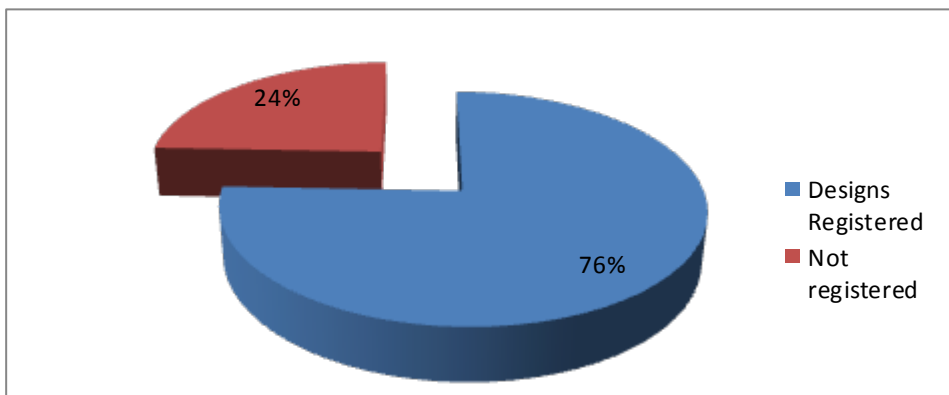
Source: ARIPO

Fig 14: Grant status of applications at ARIPO.



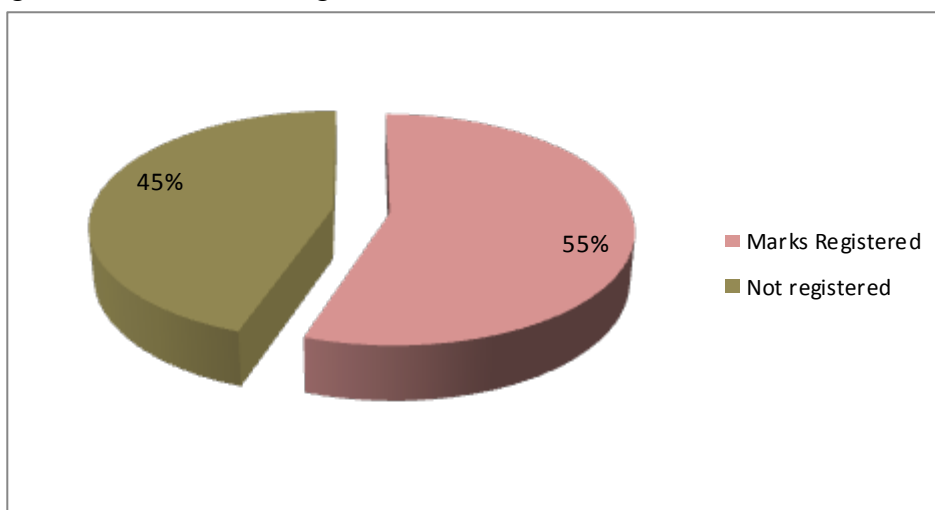
Source: ARIPO

Fig 15: Status of industrial design registrations



Source: ARIPO

Fig 16: Status of marks registrations



Source: ARIPO

21. The Swakopmund Protocol has not had any meaningful uptake by the users and therefore no data is available for statistical analysis.

22. The Administrative Council is invited to take note of the Report of Status of Operations of Industrial Property Rights for the year 2017 and make any comments it deems fit.

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**REPORT ON ARIPO AWARENESS RAISING
INITIATIVES IN THE ARIPO MEMBER STATES**

REPORT ON ARIPO AWARENESS RAISING INITIATIVES IN THE ARIPO MEMBER STATES

I. INTRODUCTION

1. ARIPO has since 2014 developed various awareness raising programs to sensitize IP generators, Administrators, Agents and the general public to educate, inform and change attitude and perspectives on the role that Intellectual Property plays in the socio-economic development of the Member States of the Organization. It is also to raise the level of awareness of policy makers in shaping the intellectual property landscape in the Member States. During the reporting period, the ARIPO Secretariat has undertaken a number of Roving Seminars in the Member States, participated in international and national expositions and publicized the organizations through social and print media. This report provides a summary of the awareness raising activities that the Organization has undertaken between 2014 and 2017.

II. ARIPO NATIONAL ROVING SEMINARS

2. It is recalled that during the Thirty-seventh Session of the Administrative Council of ARIPO that took place in Kampala, the Republic of Uganda on November 25 and 26, 2013, the Council considered proposals for the Secretariat to undertake national roving seminars on making better use of intellectual property for business competitiveness and development in Africa and approved it for implementation in the 2014-2015 biennium. The national roving seminars provide an enabling platform to promote innovation, creativity as well as awareness of the usefulness of intellectual property in the sectors of the economies of the Member States.

THE ARIPO NATIONAL ROVING SEMINARS UNDERTAKEN FROM 2014 TO 2017

3. During 2014-2017, the Roving Seminars were carried out in 15 ARIPO Member States, namely Swaziland, Mozambique, Liberia, Sierra Leone, The Gambia in 2014 and Rwanda, Kenya, Zambia, Lesotho, Ghana in 2015. In

2016, the Roving Seminars were carried out in Uganda, Namibia, and Botswana and in 2017 in Malawi and United Republic of Tanzania. In all, 15 out of the 19 Member States have been covered. In total 2028 participants attended the seminars. (See Annex I)

4. The Roving Seminars undertaken during the 2014-2015 biennium were under the theme “Making Better Use of Intellectual Property for Business Competitiveness and Developments in Africa” whilst from 2016, the roving seminars have been organised under the theme “Fostering creativity and innovation for economic growth and development in Africa” both of which reflect the missions of the Organization for the period of the ARIPO Strategic Plans.

Evaluation of the Roving Seminars

5. The participants were highly satisfied with the seminars and found the topics relevant and professionally delivered and called for follow-up seminars to deepen the knowledge of IP for development (See Annex 2). The results showed that the seminars were very relevant and afforded participants the opportunity to understand the important role that ARIPO is playing in the field of intellectual property in Africa. The resource persons were highly rated and participants called for follow-up sensitization programmes in future. The participants indicated that they will use what they have learnt in the Seminars most of the time.

III. NEW ORIENTATION OF THE ARIPO ROVING SEMINARS: BUILDING KEY RELATIONSHIP WITH IP GENERATORS FROM UNIVERSITIES AND RESEARCH INSTITUTIONS

6. Following the successful roving seminars in the Member States of the Organization, it was felt that the next phase of the roving seminars should be targeted at the IP generators. It is in this respect that during the development of the ARIPO Value and Growth Transformation Strategic Plan, emphasis was placed on building key relationships with the IP generators from Universities and Research Institutions.
7. From 2017 until 2020, the focus of the ARIPO roving seminars are geared towards sensitizing the Universities and the Research Institutions on the urgent need to develop sound institutional IP policies to stimulate innovation and commercialization of research results, particularly in terms of IP protection and Utilization.

8. In pursuance of the above, ARIPO is collaborating with WIPO to develop guidelines on Intellectual Property Policy and Strategy for effective use of the IP system by Universities and Research and Development Institutions in Africa. Three (3) Consultants have been engaged by WIPO and draft guidelines have been developed. From August 3 to 4, 2017, WIPO and ARIPO organized a Pre-validation workshop at the ARIPO Headquarters in Harare, Zimbabwe. The workshop was attended by all the Consultants together with other IP experts in Africa as well as ARIPO Staff. The guidelines have been pre-validated and the Consultants have produced a revised version of the guidelines which will be further reviewed by WIPO and ARIPO.
9. A regional workshop has been planned by WIPO and ARIPO at the end of October to validate the guidelines by experts from Universities and Research and Development Institutions together with IP Offices. The final version of the guidelines will be published by WIPO for use by ARIPO and its Member States to facilitate the establishment of the institutional IP policy and strategy by the Universities and Research and Development Institutions in Africa
10. It is within this context that ARIPO intends to roll out the roving seminars in the Universities and Research and Development Institutions.
11. Nevertheless, ARIPO has already commenced the roving seminars in the Universities. To date, Four (4) have been carried out in Sierra Leone, Zambia, Swaziland and Rwanda. (See Annex II)
12. The Sierra Leone roving seminar was organized by all the seven public Universities and one Research Institution and attracted over 100 participants from the University Academic Staff and Researchers. It was attended by five Vice Chancellors from the Universities. It was well attended and generated a lot of interest. At the end of the seminar, an Inter-University Committee was established to develop medium to long term plans for the Universities of Sierra Leone to make full use of the IP system for development
13. Another successful roving seminar was organised by the University of Zambia with invitations from other Universities in Zambia. It was officially opened by the Minister of Trade and Industry who is also the Chairperson of the Council of Ministers of ARIPO. The seminar was attended by over 75 researchers including the deans and Deputy Vice Chancellor of the University of Zambia. At the end of the seminar the University developed 15-point recommendations including the IP Audit.

14. From August 28 to 29, 2017, ARIPO in collaboration with the Intellectual Property Office of Swaziland and the University of Swaziland (UNISWA) organised the ARIPO Roving Seminar for academic institutions at the Kwaluseni Campus of the University. The seminar was attended by Vice Chancellor, Deputy Vice Chancellor, Deans and Senior Policy Makers from the government and industry. Over 120 participants mainly, researchers from UNISWA, other local Universities and Research Institutions attended the seminar.
15. Finally, from November 2 to 3, 2017, a similar seminar was organised by ARIPO in collaboration with the Rwanda Development Board and the University of Rwanda at the Kigali Campus. The Seminar was attended by more than 100 participants from the University of Rwanda and other research institutions such as the National Industrial Research and Development Agency (NIRDA), the Integrated Polytechnical Regional Centres (IPRC), the East African Science and Technology Commission (EASTCO) and the Institute of Legal Practice and Development (ILPD).
16. The Seminars held in Sierra Leone, Zambia, Swaziland and Rwanda attracted around 400 participants and focused on key IP Issues including patent drafting, the role of copyright and related rights in the digital era, strategic IP asset management and commercialisation of research results. They further explored fostering use and exploitation of IP in Universities and the development of institutional IP policies for the universities and research institutions. At the end of the seminars the universities committed themselves towards conducting IP audits and the establishment of institutional IP policies and strategies to stimulate innovative research and commercialisation of research results for the benefit of the researchers, the university community and the public.

Roving Seminars in 2018

17. The roving seminars in 2018 are proposed to take place in Mozambique, Liberia, Namibia and Lesotho.

IV. PARTICIPATION IN INTERNATIONAL AND NATIONAL EXHIBITIONS

18. The Secretariat of ARIPO has participated in a number of international and national exhibitions to raise levels of awareness on the role that IP plays in business development and policy making. In 2017, the Secretariat of ARIPO participated in the following international and national exhibition;

- i. At the kind invitation of WIPO, ARIPO participated in an exhibition headlined, “Engaging Audiences to Build Respect – Awareness-raising Activities” that was organized by the WIPO Secretariat in the lobby of the main WIPO building to run on the side-lines of the Twelfth Session of the Advisory Committee on Enforcement which took place at the WIPO headquarters in Geneva, Switzerland from 4 – 6 September, 2017. The exhibition featured awareness-raising activities undertaken by various WIPO Member States and IP organizations that are targeted at young people.
- ii. ARIPO attended the 139th annual meeting of INTA that took place in Barcelona, Spain from May 20 to 24, 2017. The meeting attracted over 10,000 participants from 140 countries. ARIPO took part in the exhibition organised by INTA to create awareness on ARIPO and its role in the promotion of intellectual property rights in Africa. The exhibition also highlighted the relevance of the ARIPO system in protecting the intellectual Property rights of users abroad. A number of ARIPO Intellectual Property practitioners partnered with ARIPO in the exhibition. As a result of the exhibition a number of IP Agents expressed interest in filing applications on behalf of their clients using the ARIPO system.
- iii. ARIPO participated in the 2017 edition of the Zimbabwe International Trade Fair that took place in Bulawayo, Zimbabwe from 23 to 28 April, 2017. ARIPO co-exhibited with the Zimbabwe Intellectual Property Office (ZIPO) and Zimbabwe Institute of Patents and Trademarks Agents (ZIPTA). ARIPO together with the partners also organised a mini-conference for universities, colleges, companies, research institutions to raise IP awareness among the participants.
- iv. ARIPO also participated in the Zimbabwe Agricultural Show that was held in Harare from August 21 to 26, 2017 under the theme “Seed to Food; Innovate, Consolidate, Sustain”. The annual exhibition offered exhibitors an exceptional opportunity to increase business exposure and showcase their product and services to the consumers and the general public. ARIPO had the opportunity to display information on the substantive activities including capacity building initiatives to the visitors at the exhibition.

V. PUBLICITY IN SOCIAL AND PRINT MEDIA

19. ARIPO has been pro-active in creating awareness and increasing its visibility through social and print media. At the beginning of the year ARIPO engaged the New African Magazine, a Pan-African publication that sells over 46,000 copies every month in over hundred countries and reaches over 500,000 readers. ARIPO was featured in the April, 2017 under the caption “ARIPO; Championing Africa’s Intellectual Property” this was followed by another publication in the July, 2017 edition under the caption “Unleashing the economic power of IP in Africa”. Two additional ARIPO publications will be featured in the forthcoming November and December editions
20. ARIPO continuously provides IP information on various social media platforms namely, Facebook, Twitter, LinkedIn and Flickr. These platforms have increased ARIPO’s visibility across the globe.
21. ARIPO has also featured in several TV shows and print media in Mozambique, South Africa, Ghana, Zimbabwe, China, USA, Tanzania and Nigeria. Recently ARIPO signed a Memorandum of Understanding (MOU) with the Zimbabwe Broadcasting Cooperation (ZBC) with the view to creating IP awareness, promoting innovation and creativity among the youth and educating the public on Intellectual Property in Zimbabwe and other audiences having access to ZBC’s broadcasting programmes. The MOU will also cover the diffusion of events organised by ARIPO, training of ZBC staff on IP and collaborating to produce audio visual promotional materials on IP for the benefit of the general public.
22. **The Administrative Council is invited to take note of this Report and its Annexes and make any comments as it deems fit.**

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Annexes follow

ANNEX I: Number of Participants that attended the roving seminars

Country	Date	IP subject matter treated	No of Participants	Total number of Participants
Swaziland	24-26 March, 2014	Industrial Property	44	84
	27-28 March, 2014	Protection of TK, GR and Folklore	40	
Mozambique	23-25 April, 2014	Copyright and related rights	60	103
	21-22 April 2014	Plant Variety Protection	43	
Liberia	28 April to 2 May 2014	Industrial Property	40	40
Sierra Leone	19-21 May, 2014	Industrial Property	82	165
	22-23 May, 2014	Copyright and Related Rights/TK	83	
The Gambia	4-6 August, 2014	Industrial Property	90	180
	7-8 August, 2014	Protection of TK, GR and Folklore	90	
Rwanda	9-11 March, 2015	Industrial Property	70	120
	12-13 March, 2015	Plant Variety Protection	50	
Kenya	19-20 March, 2015	Industrial Property	69	129
	16-17 March, 2015	Copyright and Related Rights	60	
Zambia	11-13 May, 2015	Industrial Property	58	123
	14-15 May, 2015	Protection of TK, GR and Folklore	65	
Lesotho	26-27 May, 2015	Industrial Property	50	93
	28-29 May, 2015	Copyright and Related Rights	43	
Ghana	13-14 August, 2015	Industrial Property	95	201
	10-12 August, 2015	Protection of TK, GR and Folklore	106	
Botswana	14-15 March, 2016	Industrial Property	85	165
	16-18 March, 2016	Plant Variety Protection/TK	80	
Uganda	1 April, 2016	Protection of TK, GR and Folklore	82	166

	29 March, 2016	Copyright and Related Rights	84	
Namibia	16-19 May, 2016	IP/Copyright/PVP/TK	130	130
Malawi	20-21 March, 2017	Industrial Property	70	126
	23-24 March, 2017	Copyright and Related Rights/TK	56	
Zanzibar	24-28 July, 2017	IP/Copyright/PVP/TK	84	84
Tanzania	17-21 July, 2017	IP/Copyright/PVP/TK	121	121
Grand Total				2028

**ANNEX II: Number of Participants that attended seminars for Universities
and research institutions in 2017**

Country	Date	IP subject matter treated	No of Participants
Sierra Leone	June 13-14	IP/Copyright/ARIPO Services/Patents/ Commercialization of Research/IP Policies	100
Swaziland	August 28-29	IP/Copyright/ARIPO Services/ Patents/ Commercialization of Research/IP Policies	120
Zambia	July 12-13	IP/Copyright/ARIPO Services/ Patents/ Commercialization of Research/IP Policies	75
Rwanda	November 2-3	IP/Copyright/ARIPO Services/ Patents/ Commercialization of Research/IP Policies	100
Total			395

ANNEX III: List of topics covered under each of the IP domains during the ARIPO National Roving Seminars

Industrial Property

- i. Introduction to Intellectual Property;
- ii. Legal Framework and Management of Intellectual Property at the National, regional and International Levels;
- iii. Use of IP to Promote Innovation;
- iv. Making Better Use of Technological Information including ARIPO Search Services;
- v. Trademarks and Industrial Designs as Tools for Adding Value to Products and Services;
- vi. Using Industrial Designs, Utility Models and Trademarks to Enhance the Competitiveness of Micro, Small and Medium Enterprises(MSMEs);
- vii. Commercialization of Research Results;
- viii. Intellectual Property Enforcement;
- ix. Administrative and registration Procedures under the Banjul and Harare Protocols and National Law;
- x. Managing IP Portfolio of an Organization
- xi. Development of national and regional GI systems

Copyright and related Rights

- i. Overview of IP and ARIPO;
- ii. Principles of copyright and related rights;
- iii. Management of copyright and related rights and the necessary environment for effective collective management;
- iv. Implications of recent international developments in the copyright and related rights
- v. Economic distribution of copyright and related rights;
- vi. Strategies for the development of cultural industries;
- vii. IP enforcement and anti-piracy and anti-counterfeiting measures;
- viii. Benefit of collective rights organizations
- ix. Copyright and Broadcasting in the Digital Environment
- x. Managing Digital content in the Music, book and Software Industries

Protection and Utilization of Traditional Knowledge, Expressions of Folklore and Genetic Resources

- i. Promotion and protection of TK/TCES: past, present and future;
- ii. Development and Implementation of ARIPO Swakopmund Protocol;
- iii. International developments on the protection of TK, GR and Folklore;

- iv. National initiatives on the protection of TK, GR and Folklore;
- v. Practical measures to support the effective protection of the Resource documentation initiatives;
- vi. Linkage between traditional knowledge and creative industries.

Plant Variety Protection

- i. Introduction to Plant Variety Protection under the UPOV Convention;
- ii. Level of Agricultural productivity and food security in Africa;
- iii. Key Provisions on the ARIPO PVP Protocol;
- iv. Using PVP to deliver public goods;
- v. Developments on the establishment of the regional system of plant variety protection in ARIPO;
- vi. Regulations for the Protection of New Varieties of Plants;
- vii. Benefits of the PVP System to Breeders, Farmers and industry;
- viii. The relationship between the UPOV Convention and other International Treaties;
- ix. Concerns raised by civil society organizations;
- x. Challenges on the implementation of the PVP System.

Annex 3: Topics covered under the ARIPO Intellectual Property Roving Seminars for Academic and Research Institutions

- i. Intellectual Property principles and concepts
- ii. The Role of ARIPO in shaping the IP Landscape in Africa
- iii. Acquisition of Intellectual Property Rights – National, Regional and International Routes
- iv. Basic principles of Patent Drafting and Usefulness of Patent Information in Research and Development
- v. Using Trademarks and Industrial Designs as tools for branding and value addition of University outputs
- vi. Beyond Publish or Perish Dogma: Towards Strategic IP Assets Management
- vii. The Role of Copyright and Related Rights and Enforcement in the Digital Era
- viii. Recent research achievements of the Universities and Research Institutions
- ix. Fostering use and Exploitation of IP in Universities: Developing IP Policies and institutional framework for Universities and Research and Development Institutions

ARIPO/AC/XLI/7
November 06, 2017

REPORT ON ARIPO CAPACITY BUILDING INITIATIVES

REPORT ON ARIPO CAPACITY BUILDING INITIATIVES

I. INTRODUCTION

1. The ARIPO Academy was established in 2006 as a regional centre for training and human resource capacity building in the ARIPO member states in particular and Africa as a whole. The Academy has since its establishment developed various training activities designed to expand the range and impact of training opportunities within the organization. During the 39th session of the Administrative Council that took place in Lusaka Zambia the Council approved the Value and Growth Transformation Strategic Plan (2016-2020) which includes various initiatives of the academy.
2. This report therefore provides a summary of the level of implementation of initiatives undertaken by the Academy between January and October, 2017.

II. CAPACITY-BUILDING ACTIVITIES CARRIED OUT IN 2017

3. The following activities outlined in the Value & Growth Transformation Strategic Plan of the Organization have been carried out under each of the following Strategies:

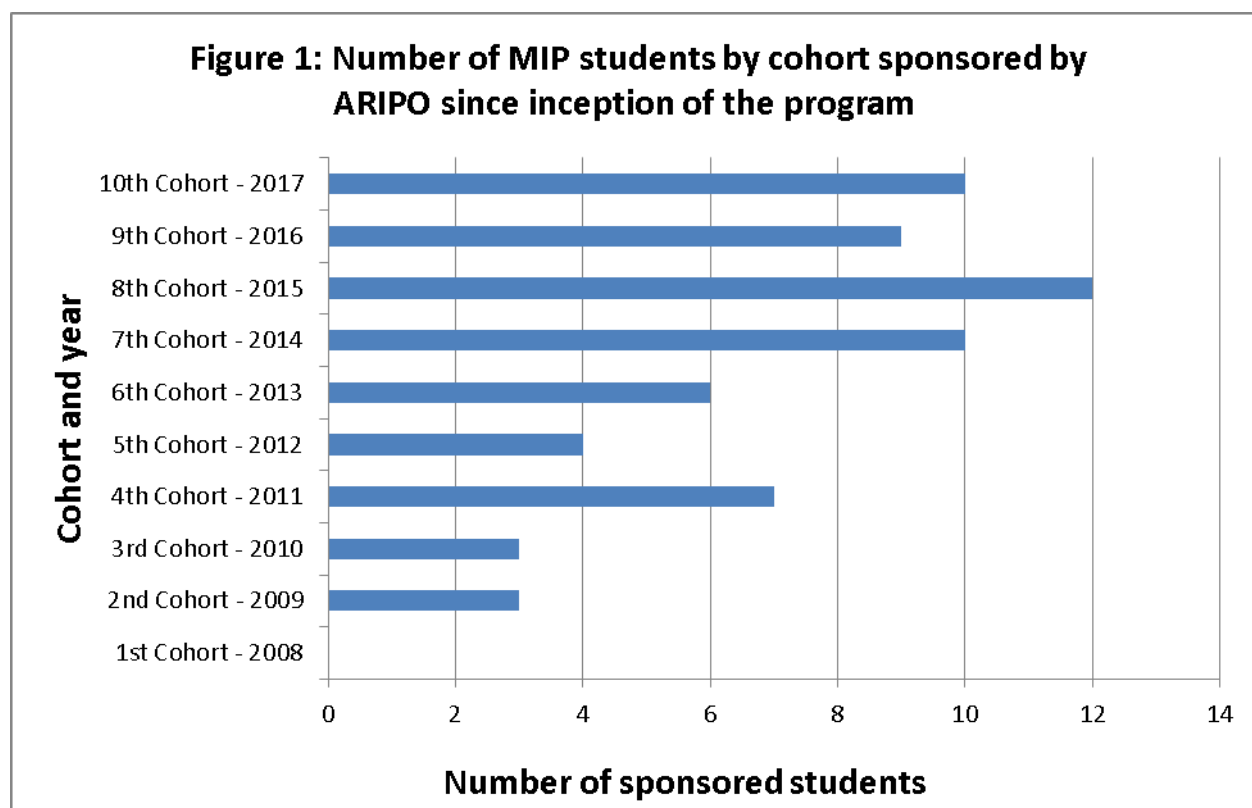
STRATEGY I: CAPACITY-BUILDING: DEVELOPING CRITICAL MASS OF EXPERTS IN AFRICA

4. The initiatives under this strategy are aimed towards developing the critical mass of IP expertise through the establishment of academic programs with universities in ARIPO Member States as well as enhance the skills of those engaged in the promotion of the IP system.

MASTERS DEGREE IN INTELLECTUAL PROPERTY AT AFRICA UNIVERSITY, MUTARE, ZIMBABWE

5. The ARIPO Academy has continued to collaborate and cooperate with Africa University and the WIPO Academy in the delivery of the Masters in Intellectual Property (MIP) degree program.
6. For the year 2017, ARIPO is sponsoring 10 students for MIP at Africa University. ARIPO started providing sponsorship in 2009 and has sponsored

students from 14 Member States of the organization. The number of MIP students by cohort and the countries that they represent are shown in Figures 1 and 2 respectively.



7. Besides the ARIPO scholarships, some students have pursued the MIP with scholarships offered by WIPO and the Japan Patent Office through the Japan-Funds in Trust (JFIT) held in WIPO. WIPO and JPO offers 10 scholarships each, every year. Some students are admitted into the MIP program on self-sponsorship.
8. **Award of graduation prizes to best graduating students:** As a way of encouraging hard work, ARIPO awards graduation prizes to the best graduating students, both in academics and in leadership. On 10 June 2017, during the Africa University graduation ceremony, the IP Development Executive and the Head of Academy presented prizes to the best graduating student and to the student who had demonstrated leadership potential in IP, respectively.
9. The MIP Program has so far produced 251 graduates from the first to ninth cohort, representing an overall graduation rate of approximately 91%.

LAUNCH OF MIP PROGRAM IN EAST AND WEST AFRICA

10. The MIP Program of Africa University commenced in 2008. During the first five years, the program received 414 applications. However, a total of 158 were admitted representing 38.2% of the total applications received.
11. Therefore, it was clear that more applicants were interested in the MIP Program but could not be absorbed by Africa University.
12. Due to the inadequate places at Africa University to absorb the overwhelming numbers of admissible applicants received every year, the Council of Ministers, at its 12th Session held from November 26 to 27, 2009 in Gaborone, Botswana, recommended that ARIPO should partner with two more universities, one in East Africa and the other in West Africa, to launch the Master of Intellectual Property (MIP) Degree program.

i. Partnership with the University of Dar Es Salaam

13. Following the Administrative Council's approval of the selection of the University of Dar Es Salaam (UDSM) to partner with ARIPO Academy in offering the MIP Program, the approval processes within the University were completed on September 21, 2017 by the University Senate. A meeting has now been arranged with the University and BRELA for February 2018 to finalise the projected action points towards the launching of the MIP Programme at UDSM.

ii. Partnership with Kwame Nkrumah University of Science and Technology, Kumasi, Ghana

14. The MIP program was approved by the KNUST on August 29, 2017. The program is scheduled to commence January 2018. The University in collaboration with ARIPO has finalised on the curriculum, the admission requirements and fees.

STRATEGY II: IP LEARNING (INCREASE IP KNOWLEDGE AND UTILIZATION)

15. Under this Strategy, the Academy IP Awareness Seminars in Universities of three member states, namely, the University of Sierra Leone, the University of Zambia and the University of Swaziland. Details about these IP Awareness seminars are contained in *document ARIPO/AC/XLI/5* (Report on ARIPO awareness raising initiatives in the ARIPO Member States)

STRATEGY IV: IP RESEARCH AND PUBLICATIONS

The Academy conducts research studies on various IP issues affecting the Member States of the organization with the view to providing evidence-based information for policy-making and decisions. The research studies are conducted by MIP graduates as well as interested scholars who request for such studies at ARIPO. In most cases the research outputs are published and disseminated.

TRACER STUDY OF THE MIP GRADUATES

16. The Academy carries out a Tracer Study of the MIP graduates as a way of assessing the effectiveness and impact of the MIP Program. The plan is to carry out the study every 2 years. The next study will be done in 2018.
17. The findings of the latest study revealed that most of the graduates are being used as resource persons on IP Awareness matters (47.2%) followed by those who are involved in lecturing or the teaching of IP (28.3%) in institutions of higher learning either on fulltime or part-time basis. Some have been writing / publishing articles on IP (15.1%) while others have been involved in the development of Institutional IP Policies (11.3%) as well as National IP Policies (13.2%).

DOCUMENTATION OF THE FIRST 10 YEARS OF THE MIP PROGRAM AT AFRICA UNIVERSITY

18. The Academy is documenting the first 10 years of the MIP program (MIP@10). This monumental milestone will culminate in a ceremony that will coincide with the MIP conference in December 2017. The work is focusing on background of the MIP program, objective of the MIP program, and development of the program, launch and implementation of the program, management of the program, impact of the program as well as the sectors from which the students came. It will showcase outstanding alumni as well as celebrate other success stories. The event will also be an opportunity to look back, in order to move forward.

PUBLICATION OF THE AFRICAN JOURNAL OF INTELLECTUAL PROPERTY (AJIP)

19. The ARIPO Academy and Africa University have partnered to launch the African Journal of Intellectual Property (AJIP). The journal was launched with the aim of responding to the growing need for documentation of, and

access to research in diverse aspects of intellectual property in Africa. The AJIP is a scholarly peer-reviewed journal which is published bi-annually. Each journal edition features articles, comments and reviews from the academia, post-graduate students, administrators, practitioners, and other interested contributors.

20. The journal was officially launched on 9 December 2016 during the 40th Anniversary of ARIPO's establishment.
21. So far, 2 editions of the journal have been published and distributed. The second edition came with the additional development of an online version which will be sold online through services of experts in the area such as Amazon.

STRATEGY V: PARTNERSHIPS AND COOPERATION WITH OTHER IP INSTITUTIONS

22. Since a wide range of actors influence capacity building activities in the field of Intellectual Property, the Academy intends to build effective partnerships and collaborations with universities and other IP institutions to ensure cohesion and achieve maximum impact through shared resources. Currently the Academy has initiated partnership agreements with the University of Alicante, Spain; Kwame Nkrumah University of Science and Technology, Kumasi, Ghana and University of Cape Town, South Africa.

STUDY VISITS TO ARIPO

23. During the reporting period, the Academy hosted 25 students from the Midlands State University in Gweru, Zimbabwe and 21 students from Chinhoyi University of Technology in Chinhoyi, Zimbabwe who came to ARIPO on study visits. The study visits were undertaken on May 3 and 17, 2017 respectively. A further 14 students studying Biotechnology from Chinhoyi University of Technology visited ARIPO on October 9, 2017.

INTRODUCTION OF REGIONAL PATENT EXAMINATION TRAINING AT ARIPO IN PARTNERSHIP WITH IP AUSTRALIA

24. The ARIPO Academy has partnered with IP Australia to deliver the Regional Patent Examination Training (RPET) program which is a modern, comprehensive and intensive competency based blended online training program for patent examiners. It will be blended into ARIPO Academy's

existing training framework. This award-winning program aims to improving the competency of examiners to conduct search and examination to international standards (PCT standards), leading to greater confidence in the patents taken out. The Academy will be the regional centre for its Member States and non-Member States. The program embeds learning into the workplace while providing the ability to align domestic practices with international standards.

The training will consist of 3 phases, each having several various units of specific subject matter. It will run for 2 years. The trainers will be drawn from ARIPO Examiners and other Examiners from the Member States. The trainees will be new ARIPO Examiners as well Examiners from the Member States.

BENCHMARKING VISIT BY HEAD OF ACADEMY TO USPTO

25. The new Head of Academy undertook a study visit to benchmark with United States Patent and Trademark Office in Alexandria (USPTO), Virginia during the week of September 25-29, 2017. He was hosted by the Director of the Global Intellectual Property Academy (GIPA); in a bid to deliberate how ARIPO Academy could leverage its advantage/position as a regional center of excellence for Africa to coordinate training for its Member States as well as how to manage growth and track quality of training. Other items discussed were the programs and target groups to be trained, including non-Member States, and the impact and outcome of the training interventions. Some of the important takeaways from the visit include standardization of training curricula; systemic survey and metrics tools as well as an organizational hotline to call for all IP issues for ARIPO.
26. Most essentially, the USPTO has expressed willingness and readiness to work with ARIPO Academy as the point hub in Africa as opposed to dealing with individual countries. His meeting with the Chief Economist of USPTO also offered direction on how ARIPO could improve on IP research tools on economic impact as well as further bridging ARIPO with IP scholars and academic institutions.

PROPOSED ACTIVITIES TO BE CARRIED OUT IN 2018

27. In pursuance of the strategies and initiatives as outlined in the Organization's Strategic Plan (2016-2020), the Academy plans to undertake the following activities in 2018:

STRATEGY I: DEVELOPMENT OF CAPACITY BUILDING PROGRAMS

28. To increase the uptake of the MIP Program, the ARIPO Academy will:
- (i) Continue to partner with WIPO and Africa University in offering Master of Intellectual Property (MIP) degree program at Africa University. In 2018, the Academy will sponsor ten students from the Member States of ARIPO.
 - (ii) Jointly launch and offer MIP in January 2018 with Kwame Nkrumah University of Science and Technology. ARIPO will provide five scholarships to students from its member states
 - (iii) Finalise preparations for the launch of the MIP program with the University of Dar es Salaam and BRELA in 2018.
29. The Academy will also organise a Patent drafting workshop in collaboration with cooperating partners.

STRATEGY II: DEVELOPMENT OF EDUCATIONAL MATERIALS AND PUBLICATIONS

30. Under this strategy the Academy will:
- (i) Continue to partner with Africa University to biannually publish the African Journal of Intellectual Property.
 - (ii) Develop modules for capacity building programs for 2018.
 - (iii) Develop model IP curricula for educational institutions.
 - (iv) Update the ARIPO Directory of IP experts to incorporate changes occasioned by staff movements as well as new entrants.

STRATEGY III: INCREASED IP KNOWLEDGE AND UTILIZATION

31. Under this strategy the academy will conduct:
- (i) Two National Workshops on Generation, Protection and Commercialization of Research and Development Results from Universities and Research & Development Institutions.
 - (ii) IP Awareness Seminar for the judiciary in two member states.
 - (iii) IP Policy Development Awareness from Universities and Research & Development Institutions.

STRATEGY IV: ESTABLISH NETWORKS AND PARTNERSHIPS WITH IP INSTITUTIONS

32. In pursuance of this strategy the Academy will continue establishing partnership with other institutions.
33. Currently ARIPO is collaborating with WIPO to pilot the institutional IP policy guidelines that will be validated at ARIPO by the partners on October 31, 2017. This will be done in 5 universities of the ARIPO Member States.

STRATEGY V: RESEARCH STUDIES, ATTACHMENTS AND INTERNSHIP

34. In pursuance of this strategy the Academy will continue establishing partnership with at least one institution.
 - (i) Two interns will be attached to the Academy.
 - (ii) The Academy will conduct benchmarking visits to selected IP Academies.
35. The Administrative Council is invited to take note of the Report on ARIPO Capacity Building initiatives and make any comments as it deems fit.

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AGREEMENTS WITH COOPERATING PARTNERS

AGREEMENTS WITH COOPERATING PARTNERS

1. Article VI of the Lusaka Agreement which was adopted on December 9, 1976 on the creation of ARIPO mandates the Organization to “*co-operate with Governments of States not members of the Organization and with organizations, institutions and bodies other than those referred to in Article V of this Agreement (thereinafter referred to collectively as "Co-operating States and Organizations") which are desirous of assisting the Organization or its members in achieving the objectives of the Organization*”.
2. In the course of the year 2017, the ARIPO Secretariat registered a number of activities which were carried out in the framework of existing cooperation agreements signed in previous years with partners and executed new Agreements.

A. IMPLEMENTATION OF AGREEMENTS SIGNED BEFORE 2017

3. ARIPO achieved a number of actions in collaboration with the following partners:
 - i) WIPO: many activities have been organised in collaboration with WIPO including capacity building and the organisation of Roving Seminars in ARIPO Member States. Particularly, a Symposium on Copyright and Related Rights: Shaping the Copyright and Related Rights Systems in Africa was organised in collaboration with WIPO from July 5 to 7, 2017 at the ARIPO Headquarters in Harare. ARIPO and WIPO have also jointly commissioned a project for the development of “*Guidelines on Intellectual Property Policy and Strategy for an effective use of the IP System by Universities and Research and Development Institutions in Africa*” which will be published in the near future.
 - ii) State Intellectual Property Office (SIPO) of the People’s Republic of China: in pursuance of the Cooperation Agreement between ARIPO and SIPO, the Commissioner of SIPO extended an invitation to the African Regional Intellectual Property Organization (ARIPO) to attend the “*China-Africa High-Level Seminar on Intellectual Property System and Policies*” that took place in Guangdong Province, China from 24 to 28 July, 2017. The Seminar was attended by Heads of IP Offices in ARIPO Member States and officials from ARIPO Secretariat.

Further, in a view to implement one of the areas of cooperation under the MoU between ARIPO and SIPO, namely the data exchange between the two Organisations, a supplementary agreement (the Patent Prosecution Highway Agreement) was signed on 2 October 2017. This Agreement will enrich the data amount of both sides, and further facilitate the examination work in both Offices.

- iii) EUIPO: facilitated study tours to ARIPO members of staff and offered capacity building. EUIPO offered the following online tools for use by ARIPO: TMClass, DesignClass, Quality, User Satisfaction Survey and Forecasting.
- iv) USPTO: a benchmarking visit by the Head of the ARIPO Academy to the Global Intellectual Property Academy (GIPA) was facilitated in order discuss a better coordination of capacity building in ARIPO Member States.
- v) JPO: Continued support in sponsoring 10 students in the Master of Intellectual Property (MIP) Programme at the Mutare University, Zimbabwe every year.
- vi) The Norwegian Copyright Development Association (NORCODE): The African Regional Training Program on Collective Management of Copyright and Related Rights is scheduled from November 20 to 30, 2017 in Dar-es-Salaam, Tanzania. The Training Program is organized by NORCODE, in cooperation with ARIPO and WIPO, with the assistance from other partners including the International Federation of Reproduction Rights Organisations (IFRRO), the International Confederation of Societies of Authors and Composers (CISAC) and the International Federation of the Phonographic Industry (IFPI).
- vii) IP Australia: In the framework of the existing MoU between IP Australia and ARIPO, the two Offices agreed to partner in delivering the Regional Patent Examination Training (RPET) program. The programme will be blended into ARIPO Academy's existing training framework. The programme aims to improve the competency of examiners to conduct search and examination to international standards (PCT standards). The Academy will be the regional centre for its Member States and non-Member States.
- viii) The French Seeds Association (GNIS): ARIPO and GNIS continued to implement the plan of activities for 2017. Particularly, in collaboration with the Government of the Republic of Ghana, ARIPO

and GNIS conducted a Seminar on the Arusha Protocol for the Protection of Plant Varieties in Accra, Ghana on 15 June 2017.

- ix) the International Confederation of Societies of Authors and Composers (CISAC): A Strategic Planning Workshop for Collective Management Organizations (CMOs) was jointly organised by ARIPO and CISAC at the ARIPO Headquarters in Harare, from 20 to 23 June 2017 to come up with chronogram of activities on copyright and related rights to be implemented 2017 to 2020 which was pre-validated by the participating CMOs and validated during the CISAC Annual African Committee (CAF) held in Kigali Rwanda on 25 to 28 July 2017. Further, ARIPO was invited to participate in events organised by CISAC including the African Committee Meeting held in Kigali, Rwanda from 25 to 28 July 2017 and the “African Screenwriters, Writers and Music Creators from here and abroad” Event held in Algiers, Algeria from 14 to 15 September 2017.

B. AGREEMENTS EXECUTED IN 2017

- 4. Further to Article VI of the Lusaka Agreement, ARIPO signed Memoranda of Understanding with the following partners:
 - i) COMESA, on 9 December 2016¹. The areas of cooperation include the harmonisation of policies, laws and strategies to promote IP development for the benefit of the region; the Promotion of innovation and creativity in the region; the Capacity building and awareness creation on the importance of the use of IP for economic development; Strengthening regional and national IP administration systems; and Promoting the use of IP to enhance business competitiveness of small and medium enterprises.
 - ii) OAPI, on 9 February 2017. The MoU is a renewal of pre-existing Agreements in order to cater for new areas of cooperation between the two Organisations. Importantly, the MoU states that the Parties will among other things work towards harmonizing the two systems, cooperate in training and capacity building, agree on common positions on major IP issues affecting the Member States of the two Organizations at the international and African levels. The signing of the MoU concluded a working session of the Joint Commission ARIPO-OAPI which reviewed specific provisions of the Legal instruments in both

¹ signed after the 40th Session of the ARIPO Administrative Council

Organizations looking at the similarities and differences with a view to harmonize the processes in the two systems.

- iii) the International Confederation of Societies of Authors and Composers (CISAC), on 14 February 2017. ARIPO and CISAC agreed to cooperate *inter alia* in establishing, strengthening and supporting local Collection Management Offices (CMOs) in ARIPO Member States; capacity building in Copyright administration Offices, Collective Management Organizations, at national and regional levels.
- iv) the State Administration for Industry and Commerce (SAIC) of the People's Republic of China, on 30 March 2017. The MoU establishes a general framework for bilateral cooperation on activities aimed at improving the quality of administration and effectiveness of the trademark systems through the exchange of information and best practices, as well as through capacity-building activities.

The objective of the MoU is to streamline the trademark application process and deal with protection issues of well-known trademarks and geographical indications. ARIPO and SAIC have agreed to work on initiatives to promote awareness and encourage the use of the IP system relating to trademarks in each's respective territory.

- v) the Zimbabwe Broadcasting Corporation (ZBC), on 14 May 2017. The two parties intend to cooperate mainly in creating IP awareness, promoting innovation and creativity among the youth and educating the public on Intellectual Property in Zimbabwe and other audiences having access to ZBC's broadcasting programmes. The MoU will also cover the diffusion of events organised by ARIPO, training of ZBC staff on IP and collaborating to produce audio visual promotional materials on IP for the benefit of the general public.
- vi) the International Federation of the Phonographic Industry (IFPI), on 2 May 2017. The areas of cooperation include the development of joint activities to address issues of mutual interest in the field of copyright and related rights, including coordinating and conducting joint seminars and workshops; strengthening and supporting the collective management organizations in ARIPO Member States and Africa at large; capacity building in copyright administration offices, collective management organizations, at national and regional levels; and technical cooperation, on issues relevant to international instruments in the field of copyright. IFPI offered technical support during the Symposium on Copyright and Related Rights: Shaping the Copyright and Related Rights Systems in Africa held at ARIPO on 5 to 7 June 2017.

- vii) the African Seed Trade Association (AFSTA) on 20 June 2017. The areas of cooperation under this MoU include the provision of technical assistance for capacity building programmes for the Agriculture sector, particularly the seed industry, on intellectual property matters; conducting, joint studies in the field of Agriculture and the seed industry;
 - viii) The West African Health Organisation (WAHO), on 20 June 2017. Under this MoU, ARIPO and WAHO agreed to cooperate in exchanging documentation on traditional medicines; building capacity of traditional medicine practitioners through joint programmes on Intellectual Property; and facilitating the registration of traditional knowledge including traditional medicine in the West African Sub-region through the ARIPO Swakopmund Protocol on the Protection of Traditional Knowledge and Expression of Folklore.
 - ix) the Intellectual Property Unit, University of Cape Town, on 18 August 2017. Under this MoU, the two parties will cooperate *inter alia* in carrying out joint research projects in IP topical issues; exchange, where appropriate and on specific terms, results of studies conducted by each party; organize joint awareness raising activities on IP in Universities and Research Institutions in ARIPO Member States; promote innovation and creativity in African Universities; undertake a joint study on the establishment of an IP policy coordinating body and an institutional framework for implementation in Universities in ARIPO Member States; and to collaborate in publication.
5. Further to the cooperation Agreements executed this year, including the MoU with COMESA which was signed in late 2016, ARIPO looks forward to cooperating with other Regional Economic Communities. It is in that regard that the Secretariat has undertaken negotiations with the Southern African Development Community (SADC) and the East African Community (EAC) in order to sign cooperation Agreements.
6. **The Administrative Council is invited to take note of this document and make any comments as it deems fit on its contents.**

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**REPORT OF THE TECHNICAL COMMITTEE ON
COPYRIGHT AND RELATED RIGHTS**

REPORT OF THE TECHNICAL COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

INTRODUCTION

23. The Fourth Session of the Technical Committee on Copyright and Related Rights (hereinafter referred to as the “Committee”) was held at the ARIPO Headquarters in Harare, Zimbabwe, from August 17 to 18, 2017.
24. The following members of the Committee attended the Fourth Session: Botswana, The Gambia, Kenya, The United Republic of Tanzania and Zimbabwe.
25. The Committee reviewed and discussed the following documents that were presented by the Secretariat:
 - i. Report on Copyright and Related Rights Activities in 2017 and proposed activities for 2018 (document ARIPO/TCCR/IV/2).
 - ii. Report on Feasibility Study and development of Policy Framework for the establishment of a Regional Voluntary Copyright Registration and Notification System (document ARIPO/TCCR/IV/3).
 - iii. Development of ARIPO Model Law on Copyright and Related Rights (document ARIPO/TCCR/IV/4).
 - iv. Proposed Draft Africa Agenda on Copyright and Related Rights (document ARIPO/TCCR/IV/5).
 - v. Progress report on the Regional ICT Projects for IP Business Processes: Regional Copyright Database (document ARIPO/TCCR/IV/6).

REPORT ON COPYRIGHT AND RELATED RIGHTS ACTIVITIES IN 2017 AND PROPOSED ACTIVITIES FOR 2018 (*document ARIPO/TCCR/IV/2*)

26. The Committee considered document *ARIPO/TCCR/IV/2* that contained the Copyright and Related Rights Report for the period January to August 2017 and proposed activities for 2018.
27. The activities undertaken in 2017 are in line with the Value and Growth Transformation Strategic Plan 2017-2020. Strategies that were addressed are: Copyright and Related Rights Advocacy, Strengthening the Administration of Copyright Offices, Collective Management Organizations' and Enforcement Agencies, Partnership with other copyrights institutions, Participate in international conferences, meetings, workshops and seminars, and Department staff development. Some of the activities are in the paragraphs hereafter.
28. The Secretariat engaged consultants to undertake a feasibility study and development of the policy framework for the establishment of a regional voluntary copyright registration and notification system. The final report and policy was submitted to the Member States for comments that were consolidated and presented to the Committee.
29. The Secretariat undertook comparative studies on different copyright laws from ARIPO Member States (Botswana, Ghana, Kenya, Rwanda, Uganda and Sierra Leone –Vol. 1 and The Gambia, Lesotho, Liberia, Mozambique, Sudan, Swaziland, Zambia and Zimbabwe Vol. 2) and the Southern and Eastern Africa Copyright Network (SEACONET) sample law on copyright. This informed the Secretariat that there is a need to come up with an ARIPO Model Law that will stipulate important provisions to be considered in the national copyright laws. A roadmap was presented to the Committee for consideration.
30. A Symposium on Copyright and Related Rights: Shaping the Copyright and Related Rights Systems in Africa was held at ARIPO in collaboration with the World Intellectual Property Organisation on 5 to 7 June 2017. The Symposium was attended by more than 70 delegates from 17 ARIPO Member States. The outcome of the Symposium was the African Agenda on Copyright and Related Rights (Harare Strategic Action Plan) that was approved by the delegates. The Agenda has six pillars namely: Policy and Legal Framework, Institutional Framework (Administrative infrastructure), Capacity Building and Awareness Creation, Building evidenced-based information pipelines for copyright/ creative industries, Building Partnerships and Synergies and Enforcement.

31. Advocacy and Capacity building initiatives were undertaken in different occasions: during the roving seminars in Malawi, Tanzania (mainland and Zanzibar); during the meetings with the Universities and Research Institutions in Sierra Leone and Swaziland; during workshops and seminars with cooperating partners.
32. The Secretariat signed two Memoranda of Understanding (MoUs). On 14 February 2017, ARIPO signed MoU with International Confederation of Societies of Authors and Composers (CISAC) and on 4 May 2017, ARIPO signed MoU with the International Federation on Phonographic Industries (IFPI). The MoU paves the way for joint projects on strengthening copyright, technical exchange, education and training of organisations collecting revenues for creators. Further the Secretariat participated in activities organised with or by cooperating partners such as CISAC, The International Federation of Reproduction Rights Organisations (IFRRO), and Electronic Information for Libraries (EIFL).
33. The Secretariat finalized the following titles, published and distributed to Member States: Guidelines to Contract: Music Genre, Comparative study on copyright laws & adherence to international instruments on copyright & related rights Volume 2. The CMO phase 2 survey studies and CO survey study is yet to be published.
34. The Committee discussed the report and recommended the following:
 - i. For the 2018 high level meeting the Permanent Secretaries should be prioritized. Thereafter, Cabinet Ministers and Chief Executive Officers of Copyright Offices.
 - ii. To facilitate strengthening of CMOs in The Gambia, Liberia and Rwanda and support establishment of CMOs in Lesotho and Swaziland.
 - iii. To organize study visits to Ghana for seven CMOs to be identified.
 - iv. Member States that have implemented provisions on “Blank Tape Levy” to share experiences with the Secretariat for guidelines to be developed and shared with the other states.
 - v. To incorporate the principles of Transparency, Accountability and Good governance (TAG) in CMO trainings.

- vi. It was proposed that the Copyright department attend the WIPO Advisory Committee on Enforcement (ACE) meeting
- 35. After due deliberations, the Committee unanimously recommended the submission of the Copyright and Related Rights Report to the Forty-first Session of the Administrative Council for noting and endorsement of the recommendations.
- 36. The detailed Copyright and Related Rights Report is contained in Compendium I from page 16 to page 23.
- 37. **The Administrative Council is invited to take note of the Copyright and Related Rights Report for January – August 2017 and endorse the recommendations therein as contained in Paragraph 12.**

REPORT ON FEASIBILITY STUDY AND DEVELOPMENT OF POLICY FRAMEWORK FOR THE ESTABLISHMENT OF A REGIONAL VOLUNTARY COPYRIGHT REGISTRATION AND NOTIFICATION SYSTEM (*document ARIPO/TCCR/IV/3*)

38. The Committee considered document *ARIPO/TCCR/IV/3* that contained a roadmap and its annexes on the Feasibility Report and Policy Framework for the Establishment of a Regional Voluntary Copyright Registration and Notification System.
39. The feasibility study focused mainly on six ARIPO Member States namely, Ghana, The Gambia, Malawi, Namibia, Kenya and Zambia that have well established voluntary registration systems. Other ARIPO Member States with voluntary registration system are Botswana, Rwanda, Sierra Leone, Sudan and Uganda.
40. Findings of the study included: registration and notification system is not uniform in the different countries as there are no linkages between the national offices. For instance, in some countries like Kenya, Ghana, and Zambia as well as Malawi, verification of the works is required, but in the Gambia, although this is a requirement, there is no system for verification. Furthermore, where the system is not automated double registration occurred. Some offices do not charge fees for registration or notification as a result funding is limited. Lack or limited technical expertise in setting up and maintaining the copyright registration systems at national level. Lack or limited automation was also identified as a challenge. In Ghana, Kenya, Malawi and Zambia, although the systems are partly automated, they still require the rights holder to physically deposit the works in the copyright office when making the application.
41. Recommendations of the study included: A regional system may be required, to have a secondary copyright registration system, which will provide a central database of works registered within the Member States, which can be accessed by the copyright offices at the national level as well as rights holders, users and other beneficiaries. In order for the Regional system to be developed ARIPO should work with Member States and draw on their national systems as well as mobilise human technical and financial resources for the system to be established.
42. The Policy Framework indicated that there is no specific protocol that covers the issue of copyright and related rights and in particular registration. There is need to come up with relevant legislative framework, procedure(s), guidelines and standards on voluntary copyright registration or notification system for ARIPO.

43. The Secretariat advised the Committee that there is a need for development of a legislative framework to facilitate effective and efficient implementation of the regional voluntary copyright registration and notification system.
44. The Committee reviewed the documents and its annexes (feasibility report and the policy framework) and made the following recommendations to the Administrative Council:
- i. Adopt the report of the feasibility study and policy framework (November 2017)
 - ii. Adopt the following roadmap:
 - a) Engagement of a consultant to consider the best possible legal framework to implement the voluntary registration for ARIPO taking into account other aspects of Copyright and Related Rights. (February 2018)
 - b) Review of the draft legal framework by the Member States (May-June 2018)
 - c) Consideration by the Committee in the Fifth Session (August 2018)
 - d) Submission of the recommended legal framework for review by the Administrative Council (November – December 2018)
45. A summary of the report of the feasibility study and the policy framework is contained in Annex I of this document. The full report of the feasibility study and the policy framework is contained in Compendium I from page 24 to page 73.
46. **The Administrative Council is invited to adopt the Feasibility Report and Policy Framework for the establishment of a Regional Voluntary Copyright Registration and Notification System and its implementation roadmap as recommended in Paragraph 22.**

DEVELOPMENT OF ARIPO MODEL LAW ON COPYRIGHT AND RELATED RIGHTS (*document ARIPO/TCCR/IV/4*)

47. The Committee discussed document *ARIPO/TCCR/IV/4* that contained the proposed roadmap for the development of ARIPO Model Law on Copyright and Related Rights.
48. The Secretariat undertook comparative studies on different copyright laws from ARIPO Member States (Botswana, Ghana, Kenya, Rwanda, Uganda and Sierra Leone –Vol. 1 and The Gambia, Lesotho, Liberia, Mozambique, Sudan, Swaziland, Zambia and Zimbabwe Vol. 2) and the Southern and Eastern Africa Copyright Network (SEACONET) sample law on copyright. This informed the Secretariat that there is a need to come up with an ARIPO Model Law that will stipulate important provisions on copyright and related rights to be considered in the national copyright laws. A roadmap was presented to the Committee for consideration
49. The Committee discussed the documents and the proposed roadmap and agreed that an ARIPO Model Law be developed. The Committee amended the proposed roadmap and recommends that the Administrative Council adopts the following roadmap:
 - i. To advertise the Expression of Interest for consultancy (December 2017).
 - ii. Development of ARIPO Model law on copyright and related rights (February-April 2018).
 - iii. Review of the ARIPO Model Law on copyright and related rights by the Member States (May-June 2018).
 - iv. Review of the ARIPO Model Law and comments by the Technical Committee on Copyright and Related Rights (August 2018).
 - v. Adoption of the ARIPO Model Law by the Administrative Council (November-December 2018).
 - vi. Publication and Dissemination of the Model Law to Member States (2018).
 - vii. Advocacy of the Model Law in the Member States (2018)
50. **The Administrative Council is invited to adopt the roadmap for development of the ARIPO Model Law on Copyright and Related Rights as contained in Paragraph 27.**

PROPOSED DRAFT AFRICA AGENDA ON COPYRIGHT AND RELATED RIGHTS (*document ARIPO/TCCR/IV/5*)

51. The Committee considered document ARIPO/TCCR/IV/5 and its annex on the draft Africa Agenda on Copyright and Related Rights.
52. The Secretariat informed the Committee that the Agenda (Harare Strategic Action Plan) was as a result of the Symposium on Copyright and Related Rights: Shaping the Copyright and Related Rights Systems in Africa, held on 5 to 7 June 2017 at ARIPO and was attended by more than 70 delegates from ARIPO Member States which was graced by Ms. Sylvie Forbin, the Deputy Director General of WIPO, Copyright and Creative Industry Sector, Administrative Council Members Mr. Anthony Bwembya, Mr. Tileinge Andima, Mr. Chapusa Phiri, Mr. Conductor Masena and Ms Jane Okot P'Bitek Langoya and Cooperating Partners.
53. The Africa Agenda on Copyright and Related Rights has six pillars namely: Policy and Legal Framework, Institutional Framework (Administrative infrastructure), Capacity Building and Awareness Creation, Building evidenced-based information pipelines for copyright/ creative industries, Building Partnerships and Synergies and Enforcement. The pillars will guide copyright and related rights activities in reaching a level playing field.
54. The Committee reviewed and discussed the document with its annex. The Committee developed a monitoring and evaluation matrix for Member States (Copyright Offices and Collective Management Organizations) to report twice a year on the status of implementation, challenges and recommendations. The developed matrix is to be attached as an annex to the Africa Agenda on Copyright and Related Rights. The Committee emphasized that the Africa Agenda should inform the Intellectual Property Policy, the Creative Sector Policy and Strategy in Member States.
55. The Committee recommended the following to the Administrative Council:
 - i. To adopt the Africa Agenda on Copyright and Related Rights as a basis for development of the creative sector in ARIPO region.
 - ii. Member States to be encouraged to customize the Africa Agenda on Copyright and Related Rights use it for planning and implementation.
 - iii. Monitoring and Evaluation matrix on the status of implementation of the six pillars in the Africa Agenda on Copyright and Related Rights to be completed twice a year and submitted to ARIPO

56. The draft Africa Agenda on Copyright and Related Rights is contained in Annex II of this document.
57. **The Administrative Council is invited to adopt the Africa Agenda on Copyright and Related Rights as contained in Paragraph 33.**

PROGRESS REPORT ON THE REGIONAL ICT PROJECTS FOR IP BUSINESS PROCESSES: REGIONAL COPYRIGHT DATABASE (*document ARIPO/TCCR/IV/6*)

58. The Committee considered document *ARIPO/TCCR/IV/6* and its annex on the Regional ICT projects for IP Business Processes: Regional Copyright Database.
59. The Secretariat informed the Committee that the regional copyright database is very important as it will synchronize the Member States' systems with the ARIPO system. The proposed architecture will consist of two different types of databases, which are the local and regional databases. The local database will be hosted by the copyright offices and CMOs. Its data will be fully managed and maintained by the copyright office or CMO. The regional database will be hosted by ARIPO. The regional database will contain specific data that can be accessed by the public from the copyright offices and CMOs in the ARIPO Member States. The regional database will only provide centralized access. Detailed information would only be available on the national systems. Member States use different systems such as the WIPOCOS, DISTRO, IPAS, GDA, COSIS and currently the WIPO Connect.
60. The regional database will provide users with the copyright information from the various Member States and offices in a single place with an online search tool allowing any internet users to search for information from the participating offices. The project proposal has also been uploaded on the WIPO match making database.
61. The Committee discussed the report and proposed the following changes:
- i. To add under paragraph 5, "GDA or any other system that Member States opt for as long as it can be compatible with the ARIPO copyright database."
 - ii. Customize WIPO Connect to work for Member States and have it as the foundation system.
62. The Committee recommended that the progress report be forwarded to the Administrative Council for noting.
- 63. The Administrative Council is invited to take note of the Progress Report of the Regional ICT Projects for IP Business Processes: Regional Copyright Database as recommended in Paragraph 40.**

ANNEX I

SUMMARY OF THE REPORT ON FEASIBILITY STUDY AND POLICY FRAMEWORK FOR THE ESTABLISHMENT OF A REGIONAL VOLUNTARY COPYRIGHT REGISTRATION AND NOTIFICATION SYSTEM

I INTRODUCTION

1. The Fortieth Administrative Council held at Harare, Zimbabwe from 5 to 7 December 2016, approved the following roadmap for the establishment of a regional voluntary copyright and related rights registration system:
 - (i) Situational Analysis of the voluntary registration and notification system in the member states. (January- April 2017).
 - (ii) Development of Policy Framework (May- June 2017).
 - (iii) Review of the Policy Framework by the Member States and the Adoption by the Administrative Council (July-December 2017).
2. Two Consultants, namely Dr Marisella Ouma, PhD, Intellectual Property Consultant and former Executive Secretary of Kenya Copyright Board and Naana Halm, Intellectual Property Consultant and Researcher from South Africa were engaged to undertake the feasibility study and development of the policy framework.
3. The following summarizes the report of the feasibility study and the policy framework for review by the Technical Committee. The detailed reports of the feasibility study and the policy framework have been attached to this document as Annexes I and II.

II SUMMARY OF THE REPORT OF THE FEASIBILITY STUDY ON VOLUNTARY COPYRIGHT REGISTRATION OR NOTIFICATION SYSTEM IN ARIPO MEMBER STATES

4. The feasibility study aims to establish the technical, economic and financial, institutional and managerial, environmental and socio-cultural, and operational aspects of the Voluntary Copyright Registration & Notification System at ARIPO. Among the ARIPO Member States, the following countries have the voluntary registration systems in place: Botswana, Ghana, the Gambia, Kenya, Namibia, Rwanda, Sierra Leone, Sudan, Uganda and Zambia. The study however focused mainly on six ARIPO Member States namely, Ghana, The Gambia, Malawi, Namibia, Kenya and Zambia that have well established voluntary registration systems.
5. The study reviewed the existing legal and administrative framework as well as the institutional framework of the collective management organizations in the ARIPO Member States. Key personnel of the copyright and collective management offices of the selected countries were interviewed. Where applicable, some of the right holders including authors and copyright organisations and other relevant government agencies were also interviewed.

Findings of the feasibility study

6. The study identified the following challenges faced by the ARIPO Member States in the implementation of the voluntary registration systems:

- i. The registration or notification system is not uniform in the different countries as there are no linkages between the national offices. For instance, in some countries like Kenya, Ghana, and Zambia as well as Malawi, verification of the works is required, but in the Gambia, although this is a requirement, there is no system for verification. Furthermore, where the system is not automated double registration occurred.
- ii. In some countries, the registration system is limited to local works; works either produced locally or by citizens or residents of the country. Where registration of foreign works is available, there is a requirement to have the works verified in the country of origin, which can be quite difficult. This is made worse if the other country does not have a copyright office or the office is limited in its functionality and has no registration system.
- iii. Another stumbling block is evident in the lack of clear legal/regulatory frameworks. In some cases the voluntary copyright registration and notification system is purely administrative. The mere nature of the system being voluntary makes room for the possibility that right holders may not register their works unless they see benefits of the same or are given incentives. For instance, the Copyright administrator of Ghana was concerned that the copyright office was not reaching as many people as they wanted and this had a negative impact on the number of registered works.
- iv. It was found out that some offices do not charge fees for registration or notification. As a result, funding becomes limited as was the case in Zambia.
- v. Lack or limited technical expertise in setting up and maintaining the copyright registration systems at national level. In some countries, the copyright office only has two members of staff while others have to work in other departments within the parent ministry. This lack of human resources affected the operations of the system.
- vi. Lack or limited automation was also identified as a challenge. In Ghana, Kenya, Malawi and Zambia, although the systems are partly automated, they still require the rights holder to physically deposit the works in the copyright office when making the application. The withdrawal of the GDA system by WIPO has left several copyright offices that were under the programme in a difficult situation, as they either have to get alternative support or implement a new system.
- vii. There is an issue with physical space as well as security of digital works. Since the applicants are required to deposit their works, most offices do not have adequate space to store the works.

- viii. There are countries that do not have national copyright offices, for instance Liberia and Sierra Leone, and others have sections within the Department of the Registrar General such as Lesotho and Swaziland, which will present a challenge in setting up the ARIPO system.

Recommendations

- 7. The following recommendations were made:
 - i. The current registration systems are based on existing national laws and/or practices. From the countries under study,

voluntary copyright registration or notification system is important for creation and maintenance of a database of works, publication of the rights of owners, use *as prima facie* evidence of ownership and help in enforcement of rights at national level and to some extent beyond the borders where there are corresponding copyright registration systems.
 - ii. It is deduced that giving the current challenges facing the national offices in the voluntary copyright registration systems, a regional system may be required. In this regard, the proposed ARIPO system will provide a central system, which can be accessed by the copyright offices at the national level as well as rights holders, users and other beneficiaries. In order for the Regional system to be developed ARIPO should work with Member States and draw on their national systems as well as mobilise human technical and financial resources for the system to be established
 - iii. The purpose of the ARIPO copyright registration or notification system therefore would be to create a database on copyright and related rights within ARIPO that can be accessed by the Member States, beneficiaries and other countries. This will be a fully automated digital registry or database which will help in the enforcement of copyright and related rights especially in cases of cross border infractions.

III SUMMARY OF THE POLICY FRAMEWORK ON VOLUNTARY COPYRIGHT REGISTRATION AND NOTIFICATION SYSTEM AT ARIPO AND ARIPO MEMBER STATES

- 8. Following the successful completion of the feasibility study on the voluntary registration system at the ARIPO level, it was proposed that the consultants proceed with the drafting of a policy framework which will form the basis for the establishment of the Regional system. The draft policy framework which has been developed by the consultants included a summary of the situational analysis of the feasibility study, policy statements and strategic policy pillars upon which the system can be effectively implemented as well as the roles of ARIPO, Member States offices and copyright owners in ensuring that the system becomes functional and effective.
- 9. The draft policy framework identified the key policy drivers (pillars) and provided a roadmap for the establishment and implementation of the registration and notification system of

copyright and related rights within ARIPO and ARIPO Member States. The following key pillars were identified:

- i. Enabling legislation
- ii. Governance
- iii. Institutional mechanism
- iv. Networking and partnerships
- v. Financiers
- vi. Resources
- vii. Implementation
- viii. Monitoring and Evaluation

10. The policy framework defined the roles that ARIPO Member States, national copyright offices and copyright owners should play in the implementation of the system.

The benefits and opportunities of the system

11. The establishment of the Regional voluntary system will provide accessible data and evidence based information for governments of the Member States to identify their national copyright works and enable them to allocate funds to their copyright industries and offices. The system will also enable creative authors to use the information to monitor the use of their works by third parties and enhance the enforcement of copyright and related rights in both national and regional level.
12. The voluntary registration and notification system will promote Foreign Direct Investment in the Member States as potential investors and business owners will access the relevant information to enhance the growth of the copyright industry.

Recommendations

13. ARIPO should work with Member States to facilitate the national offices to set up systems where they do not exist, or enhance the existing institutional frameworks in countries which already have the registration and notification process in place. These systems should bear in mind the evolution of the digital era and accommodate online registration and notification and access by third parties from within and outside ARIPO.
14. It is imperative for the Member States to network and learn the best practices from each other as well as train and make good use of resources. ARIPO will also work with the national offices and offices that have set up registration systems in their different jurisdictions. Some of these are, but not limited to: the World Intellectual Property Organization; The Copyright Office in the United States under the Library of Congress; the US Patent and Trademarks Office; and the Copyright Office South Korea.
15. There is need to enhance the staff capacity within the ARIPO copyright department to facilitate training, development and implementation of the registration and notification system at the national level and at ARIPO. Resources required include: staff trained in matters of copyright and related rights, registry staff, ICT; ICT equipment; Funding and Office Space.

The way forward

16. The Fourth Session of the Technical Committee will be required to review the report on the feasibility study on voluntary copyright registration and notification system in ARIPO

Member States and examine the draft policy framework if it provides sufficient basis for the development of legislative framework. The Committee is further requested to make appropriate recommendations for the policy framework to be forwarded to the Administrative Council for consideration and approval.

17. In order to determine the way forward regarding the development of a regional Protocol for the voluntary copyright registration and notification system at ARIPO, the Technical Committee is further requested to review the following roadmap and make appropriate recommendation to the Administrative Council for approval:

- i. Approval of the policy framework by the Forty-first Session of the Administrative Council.
- ii. Engagement of a legal draftsman to draft a legal framework based on the policy framework.
- iii. Review of the draft legal framework by ARIPO Members States.
- iv. Consideration of comments and finalization of the legal framework by the Technical Committee of Copyright and Related Rights (Fifth Session of TCCR).
- v. Submission of the final legal framework for review by the Administrative Council.
- vi. Submission of the legal framework to the Council of Ministers for adoption and decision on reformulation of the legal framework into a draft ARIPO Protocol for the voluntary registration and notification of copyright works. The Council of Ministers will also determine the date for the Diplomatic Conference for the adoption of the Protocol.

[End of Annex I]

ANNEX II

PROPOSED DRAFT AFRICA AGENDA ON COPYRIGHT AND RELATED RIGHTS

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Statement by the DG ARIPO

Creativity and innovation will remain essential in sustaining long term growth and improving human, economic, social and cultural development in Africa. Countries are investing more resources in the knowledge economy though poverty and insufficient statistics on creative industries and industrial property continues to threaten the Least Developed Countries and Developing Countries. There is need for a paradigm shift to provide accurate, comprehensive and timely statistics that will facilitate a high empirical analysis in support of evidence based policy making for the benefit of Africa. ARIPO in its pursuit to promote Intellectual Property through the Value and Growth Transformation Strategy has five strategic goals, namely: Intellectual Property Advocacy and Norm Setting, Providing Premier Services, Capacity Building and Awareness Creation, Development of ICT Tools for IP business process and Enhancing the IP Ecosystem. These goals support ARIPO's Mission "To Foster Creativity and Innovation for Economic Growth and Development."

The Vision for ARIPO is "To be Africa's leading Intellectual Property Hub". Having said this Intellectual Property statistics are very essential to know where we are, where we want to go and how we shall reach our destination. There is also need for using Africa's own researchers who are committed to look on the contribution of creative industries to national economies. This will be an asset to the African countries to have ownership of the documents for informed policy decisions. ARIPO has come up with the databases, Polite+, questionnaires, use of social media, communication strategies among others that will enable timely, accurate and comprehensive statistical information on all the Intellectual Property Rights. The ICT systems of the Member States need to be strengthened for efficiency.

ARIPO collaborates closely with sister organisation African Intellectual Property Organization (OAPI), World Intellectual Property Organisation (WIPO) and other strategic cooperating partners in order to accomplish the noble task to promote and shape Intellectual Property in Africa.

Africa needs tailored, updated and balanced Intellectual Property legislative; regulatory; policy frameworks and institutional reinforcement to be upheld in order to position Africa in a competitive advantage. The right holders need a level playing field, Copyright Offices (CO's), Collective Management Organizations (CMO's) and Enforcement Agencies in Africa have to position themselves for the present and the future. The political will towards Intellectual Property of Parliamentarians in Africa is essential to realize the goal of promoting and positioning Intellectual Property at a competitive advantage. This Africa Agenda on copyright and related rights will input to the Intellectual Property Agenda for Africa that ARIPO looks forward to develop.

ACRONYM

ARIPO:	African Regional Intellectual Property Organization
CO:	Copyright Offices
CMO:	Collective Management Organisation
CISAC:	International Confederation of Societies of Authors and Composers
IP:	Intellectual Property
IPRs:	Intellectual Property Rights
IFPI:	International Federation of Phonographic Industries
NORCODE:	Norwegian Copyright Development Association
SDGs:	Sustainable Development Goals
TCCR:	Technical Committee on Copyright and Related Rights
USPTO:	United States Patent and Trademark Office
WIPO:	World Intellectual Property Organisation
EUIPO:	European Union Intellectual Property Office
OAPI:	African Intellectual Property Organization

I. BACKGROUND

Overview of ARIPO

ARIPO, an inter-governmental organization, turned 40 years on 9 December 2016 with 19 Member States: Botswana, the Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. ARIPO facilitates cooperation among Member States with an aim of pooling resources to shape the Intellectual Property system in Africa.

On 9 December 1976 there was the birth of ESARIPO (English Speaking African countries) in Lusaka and the Lusaka Agreement came into force on 15 February 1978 following the deposit of instruments of ratification or accession by the Gambia, Ghana, Kenya, Malawi and Zambia. The United Nations Economic Commission for Africa (UNECA) and the World Intellectual Property Organisation (WIPO) acted as an interim joint Secretariat of ESARIPO until 1 June 1981 when ESARIPO established its own Secretariat in Nairobi, Kenya. Soon thereafter, the Organization shifted its headquarters to Harare, Zimbabwe, where it still sits to date with the new state of art building.

Following the amendment of the Lusaka Agreement in 1985, membership was open to all African states members of the United Nations Economic Commission for Africa or the African Union (Organization of African Unity –OAU as it was known then). The name changed to African Regional **Industrial** Property Organization (ARIPO).

ARIPO acquired new mandates on copyright and related rights and the emerging issues of Intellectual Property such as Plant Varieties and Traditional Knowledge. At the twenty-seventh session of the Administrative Council held in 2003 following the Council of Ministers instructions the name changed from African Regional **Industrial** Property Organization to African Regional **Intellectual** Property Organization.

Currently, ARIPO has the following protocols: Banjul Protocol (1993) for Trademarks, Arusha Protocol (2015) for Plant Variety Protection, Harare Protocol (1982) for Patent; Utility Model and Industrial Design, Swakopmund Protocol for Traditional Knowledge and Folklore (2010). To this pool of legal frameworks is added the Access and Benefit Sharing draft Regional Framework and Geographical Indication Regional and National Framework.

As far as management and development of ARIPO Protocols is concerned: there was the entry into force of the Swakopmund Protocol on 11 May 2015, eight Member States- Botswana, Malawi, Namibia, Rwanda, The Gambia, Liberia, Zambia and Zimbabwe who ratified or acceded to the Protocol.

Arusha Protocol for the protection of new varieties of plants was adopted in a Diplomatic Conference held in Arusha on 6 July 2015 with five signatures from the following Member States being received: Ghana, Mozambique, Sao Tome and Principe, The Gambia and Tanzania. The Protocol awaits ratification or accession to enter into force.

New accessions to the existing ARIPO protocols during 2013 to 2016 for example Sao Tome and Principe acceded to the Harare Protocol in 2014 and the Banjul Protocol in 2016. Zimbabwe followed suit in 2013, Namibia; The Gambia and Zambia in 2015 and Liberia acceded to the Swakopmund Protocol in 2016.

ARIPO Mission

The ARIPO mission is “To Foster Creativity and Innovation for Economic Growth and Development”.

ARIPO vision

The ARIPO vision is “To be Africa’s leading Intellectual Property Hub”.

ARIPO Achievements at 40

The Achievements for ARIPO at 40 include but are not limited to the following:

Formation of the Copyright Department at the Secretariat and a Technical Committee on Copyright and Related Rights (TCCR) established as a subsidiary organ of the Administrative Council. Initiatives were undertaken which include the development and improvement of the collective management organizations, copyright offices management and administration, training the enforcement agencies on intellectual property, development of publications on copyright and related rights, training materials for enforcement, awareness tools like the dice game, undertaking competitions on copyright and related rights and awarding the winners.

There has been an increase in Intellectual Property Rights (IPRs) applications to ARIPO and some rights showed a slow growth although through ARIPOs visibility in Member States, Africa and the rest of the world, we look forward to more filings of the IPRs. ARIPO encourages filing of utility models which is an asset to most African countries.

Capacity building and awareness creation is among the areas where ARIPO gives priority, the Masters in Intellectual Property (MIP) offered jointly by ARIPO, WIPO and Africa University has produced more than 218 graduates and offered at least 54 sponsorships. Statistics on Intellectual Property (IP) related activities done by the MIP graduates as published in the Tracer Study Report 2016 show that 47.2% are involved as resource persons on IP awareness matters, 28.3% lecture on IP, 15.1% publish articles on IP, 13.2% drafted and validated National IP Policy and Strategy, 11.3% drafted Institutional IP Policy 7.5% established IP firms with other partners.

The roving seminar aims to promote the use of IP in the ARIPO Member States and encourage IP generators and research institutions to use the IPRs protection system. Since its inception, 15 countries have been covered these are Botswana, Ghana, the Gambia Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Sierra Leone, Swaziland, Uganda and Zambia.

ARIPOs membership increased to 19 when Sao Tome and Principe joined in 2014. There has been construction of the extension of the ARIPO headquarters giving the organization a new

state of the art look with a feeling of contentment brought about by more offices, conference rooms, meeting rooms and parking bays.

ARIPO continues its strong cooperation with strategic partners and has signed agreements with them, these include; African Intellectual Property Organization (OAPI), International Confederation of Societies of Authors and Composers (CISAC), The Mexican Institute of Industrial Property (IMPI Mexico), United States Patent and Trademark Office (USPTO), Norwegian Copyright Development Association (NORCODE), International Federation of Reproduction Rights Organisation (IFRRO), European Union Intellectual Property Office (EUIPO) and International Federation for Phonographic Industries (IFPI). ARIPO looks forward to signing Memorandum of Understanding (MoU) with other strategic partners.

There has also been automation of the business processes through the successful implementation of the ICT project-Polite+

Through all the achievements there has been the Promotion of the visibility of ARIPO in the Member States, in Africa and worldwide.

Value and Growth Transformation Strategic Plan

ARIPO has adopted the Value and Growth Transformation Strategic Plan 2016-2020 which is a well-constructed and sustainable transformation program that will change the face of the Organization with regards to performance and culture. The Strategic Goals for ARIPO for 2016 to 2020 are:

- (i) Promotion of Creativity, Innovation and the Utilization of IP
- (ii) Promotion and Development of IP Policies, Laws and Systems appropriate to the needs of the member state and international cooperation
- (iii) Provision of Premier IP Services
- (iv) Capacity Building and Awareness Raising
- (v) Revenue Generation and Mobilization
- (vi) Effective Resource Management, Governance and Support

The core activities for ARIPO are: Administration of IPRs, Capacity Building and Awareness on IP and Harmonization of IP law, Strategies, Policies and Procedures.

The core values for ARIPO are: Client Focus, Engagement, Innovation, Integrity and Accountability.

In the Value and Growth Transformation Strategic Plan 2016-2020, copyright and related rights falls under Programme 2 IP Ecosystem for Growth, which contributes to the attainment of the organization's core mandates on the provision of premier IP services, promotion of creativity, innovation and the utilization of IP, capacity building and awareness raising and revenue generation and mobilization. There are five strategies for the copyright and related rights department at ARIPO:

- (i) Copyright and related rights advocacy;
- (ii) Strengthening the administration of copyright offices, collective management organisations and enforcement agencies;
- (iii) Partnerships

- (iv) Participate in international conferences, meetings, workshops and seminars and
- (v) Department staff developments

Sustainable Development Goals

There are seventeen (17) Sustainable Development Goals (SDGs) also known as the Global Goals to build on the successes of the Millennium Development Goals. The SDGs provide clear guidance for countries to adopt in the spirit of partnership and pragmatism to improve life in a sustainable way for future generations.

The SDGs are: no poverty, zero hunger, good health and well-being, quality education, gender equality, affordable and clean energy, decent work and economic growth, industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace, justice and strong institutions and partnerships for the goals.

IP being crosscutting offers pragmatic partnerships amongst various stakeholders and this is an asset as copyright and related rights is part of the intellectual property that falls squarely in the SDGs.

Through IP which promotes innovation and creativity we can outdo poverty. IP offers decent work and leads to economic growth enabling zero hunger, good health and well-being making it possible for more innovation and creativity to surface. It also results in affordable and clean energy, through innovation we have clean water and sanitation and a good life on land, sustainable cities and communities. IP offers gender equality and reduces any inequalities as either gender has the chance to innovate, be creative and to benefit from IP.

The copyright and related rights agenda aims at fulfilling the global goals. This is only possible by having pro-active players from the national, regional and international framework.

Dakar Declaration on Intellectual Property for Africa

The Dakar Declaration recognizes the importance and relevance of intellectual property for innovation and creativity in the knowledge based economy. It emphasizes the role of intellectual property in advancing innovation for sustainable agriculture technologies, for the use and transfer of environmentally sound technologies, and to help guarantee food security, improve access to health services, and combat the negative effects of climate change, and the need for a sound IP policy and institutional frameworks for the effective and balanced use of the IP system so as to foster innovation, creativity, entrepreneurship and development in Africa. The Declaration also recalls the principles of the 2006 African Union Charter for African Renaissance and the role of creativity and copyright and related rights as catalysts for the growth of sustainable creative industries.

The Dakar Declaration is committed to enhancing innovative and creative capacities by providing a conducive environment with dynamic IP systems that propel creativity, innovation and inventiveness and effectively guide the promotion, acquisition and commercialization of intellectual property for sustainable growth, development and for the well-being of African populations, and to enhance social recognition of creators. It further commits to foster the

development and utilization of copyright and related rights to support the development of new business models for the legal distribution of works and move towards realizing through effective management of rights, effective contractual practices, and new revenue models their potential role as drivers for, and contributors to, economic, social and cultural development. Moreover, it nurtures the culture of innovation and creativity by reviewing and strengthening the present education systems enhancing business competitiveness through strategic use of IP tools among others. The Dakar Declaration also supports the SDGs.

Charter for African Culture Renaissance 2006

The African Union Charter for African Culture Renaissance, 2006, that replaced the Cultural Charter for Africa, 1976, sets its objectives and principles under article 3 *inter alia* to integrate cultural objectives in development strategies and emphasizing the need for cultural policies in Africa, preparing an inter-African convention on copyright in order to guarantee the protection of African works and intensify their efforts to modify existing international conventions to meet African interests and enact national and inter-African laws and regulations guaranteeing the protection of copyright and setting up national authors' associations responsible for protecting the material and moral interests of those who produce cultural goods and services (article 23 and 24). The Charter recognizes the need to establish intra and inter-African cultural cooperation. This is very relevant for ARIPO Member States and Africa at large to promote culture and protection of African works and creativity.

Cultural Festivals

From the foregoing paragraphs and the paragraphs hereunder, we see that the international and regional frameworks recognize the importance of culture and its value for example:

Article 27 of the Universal Declaration of Human Rights of 1948 provides that;

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

The **International Covenant on Economic, Social and Cultural Rights** 1966 entered into force on 3 January 1976 after the deposit of the 35 instruments of ratification or accession in accordance with article 27. Article 15 takes recognizance of the importance of culture and the benefits thereto.

Article 15

- 1. The States Parties to the present Covenant recognize the right of everyone:*
 - (a) To take part in cultural life;*
 - (b) To enjoy the benefits of scientific progress and its applications;*
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*
- 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.*

- 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.*
- 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields*

Article 22 of the African Charter of Human and Peoples Rights 1981 provides that

- 1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*
- 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*

The above recognition has trickled down to most African countries having Ministry of Culture, cultural policies and cultural events such as festivals, arts exhibition and carnivals.

During these particular events we see that the hotels are flooded, foreigners come to watch the festivals, people get temporary employment and it becomes a very busy session. The country's economy at this particular time increases. The dances performed, the clothes worn, the artistic works and patterns created or displayed and performed, values taught, drama to name a few, all these are part of copyright expressions of culture and folklore that the African countries need to monetize for the benefit of their countries.

Most of the events are usually done once every year then there is need to think big on how the communities will benefit, how the country will benefit and how the visitors; tourists, will benefit so that it can be a win-win situation.

There should be marketing strategies that are set to inform the international arena on such events so that they can participate and bring income to our African communities. There should be a fee and a permit issued to persons who want to take a clip of the event or specified pictures and there should also be a limitation on what can be captured or not captured explicitly explained prior to the events so that we as Africans can preserve our culture heritage and still benefit economically from it.

There is a need to set up the national and regional frameworks on the protection and promotion of cultural expressions and folklores. Therefore, in implementing the above the copyright and related rights ecosystem for growth in Africa will accelerate and contribute towards the achievement of the Dakar Declaration and the Sustainable Development Goals

Administration of Copyright and Related Rights

The administration of copyright and related rights in ARIPO Member States is enabled by legislations that are put in place in the respective countries. The Copyright Offices (COs) in the Member States fall under different Ministries, for example The Ministry of Information and Broadcasting Services, Ministry of Justice, Ministry of Tourism and Culture, Ministry of Sports and Culture, Ministry of Civic Education, Culture and Community Development Ministry of

Industry, Trade and Investment and the Ministry of Commerce and Industry. Some copyright offices are under the same Ministry as the Industrial Property Office while some are independent departments or autonomous. There are some COs doing well in terms of implementing their laws, reviewing of the laws, overseeing collective management organisations, addressing enforcement issues, creating awareness and building their copyright systems. Other copyright offices still require concerted effort for them to adequately implement their laws as they face challenges with human resource, financial constrain and ICT challenges among others leading to unsatisfactory implementation of the copyright laws.

Management of Copyright and Related Rights

Collective Management Organizations' (CMOs) are very essential to assist the right holders in managing their copyright and related rights. The laws of a number of Member States provide for the establishment of CMO while some do not have such a provision. Some CMOs are success stories while others are struggling to penetrate the market, license works, collect and distribute royalties to their members. This is largely owing to the inadequate or lack of awareness of users to pay royalties for the use of copyrighted works. Some CMOs do not have reciprocal agreements while others do but there is a challenge in implementing the reciprocal agreements. Transparency, accountability and good governance is very important and so is orientation of the board members and the chief executive officer on how to run the CMO.

Values

Some of the values that need to be taken on board by all stakeholders in the copyright and related rights system include:

Flexibility. Stakeholders to adapt to each sector in creative industry's needs.

Efficiency. Through knowing the roles of copyright offices and collective management organizations it is possible to obtain very efficient results in protecting creators' rights at a low cost.

Experience. Stakeholders to use team of experts working in the organizations to change the landscape of copyright and related rights in Africa.

Networking. Stakeholders to be proactive members of networking amongst themselves, be being a part of the large international network of stakeholders in the creative industries.

Information. Information sharing amongst stakeholders will make a difference.

Advice. Stakeholders to be willing to give advice on IP matters.

Promotion. Stakeholders to promote IPRs through symposiums, seminars, awards, and conferences for IP generators, users and enforcement agencies.

Building Respect

The World Intellectual Property Organisation (WIPO) Development Agenda Recommendation 45 provides that:

“ To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that ‘the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations’.”

Article 7 of the TRIPS Agreement makes provision for:

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

The enforcement of Intellectual Property, specifically copyright and related rights faces numerous challenges. These range from: enforcement officials lacking or having insufficient knowledge of copyright and related rights issues, lack of capacity to handle copyright matters and lack of appropriate institutional frameworks. Furthermore, the fight against piracy is also a challenge and there is need for cooperation with all enforcement agencies in Africa.

In July 2014, the African Regional Intellectual Property Organization (ARIPO) in collaboration with the World Intellectual Property Organization (WIPO) and the International Police (INTERPOL) organised a Workshop on Capacity Building for Sustainable Enforcement of Intellectual Property Rights. The workshop was attended by Heads of Police Training Institutions in the Member States of ARIPO.

The follow-up to this was a Training of Trainers (TOT) Workshop on the Teaching of Intellectual Property in Police Academies of the ARIPO Member States was undertaken in collaboration with WIPO and European Union Intellectual Property Office (OHIM as it then was). The workshop brought together instructors from the Police Academies or Collages from the ARIPO Member States. Training tool on “Investigating and Prosecuting IP Crimes” was introduced and Member States, with the support of the IP offices and ARIPO are encouraged to customize the tool into a pocket size booklet that the enforcement agencies can carry with comfort and ease for reference purposes and also introduce (if it has not been done) the teaching of intellectual property in Police Academies. There is need to leverage on inter countries cooperation and regional blocks cooperation

Creative Industries

Creative industries also known as Copyright-based Industries are industries requiring creativity, skill and talent, with the potential for wealth and job creation through exploitation of their intellectual property. The creative industries produce knowledge and tangible products that have cultural and social meaning. These works generate income and create job opportunities. The

creative industries are divided into four categories as per the WIPO Guide on Surveying the Economic Contribution of the Copyright Based Industries (2003):

1. Core Copyright Industries

The core copyright industries are industries that are wholly engaged in the creation, production, manufacturing, distribution, broadcasting, performance of copyright protected works. For example; Music, theatrical productions, visual and graphics arts, photography, collective management societies, television, radio etc.

2. Interdependent industries

These are industries that are engaged in the production, manufacture and sale of equipment's which facilitate the creation, production or use of copyright works they are consumed with those in the Core Industries. For example: manufacture, wholesale & retail and distribution of televisions, radio, CD recorders, computers, musical instruments, photocopying machines, etc.

3. Partial Copyright Industries

Partial copyright industries are the industries that only a specific proportion of their production is associated with products protected by copyright and related rights. For example: Crafts, Jewellery, Architecture, furniture, restaurants etc.

4. Non-dedicated Support Industries

These are industries which a portion of it facilitates the broadcasting, communication, distribution, sale of products and works for example: telephony, transportation, internet etc

Table on Economic Contribution of Creative Industries to GDP and Employment

Country	Year	GDP	Employment
Australia	2009	10.3%	8%
Colombia	2005	3.34%	5.80%
Hungary	2002	7.42%	7.41%
Jamaica	2005	4.8%	3%
Kenya	2008	5.31%	3.25%
Malawi	2013	3.5%	3.35%
Peru	2009	2.67%	4.50%
Singapore	2001	5.7%	5.8%
South Africa	2011	4%	4%
Ukraine	2008	2.85%	1.90%
USA	2004	11.01%	8.51%
Tanzania	2012	3.2%	2.6%

Source: WIPO Studies on the Economic Contribution of Copyright based Industries

Digital Environment

The Berne Convention for the Protection of Literary and Artistic Works, 1886, has three principles: national treatment, automatic protection and independence of protection. It addresses both moral and economic rights of the creator, setting minimum standards that enable national legislations to offer more than what is in the Berne Convention.

Due to the technological development which also affected copyright works from the point of creation to its availability in the public, the Internet Treaties administered by the World Intellectual Property Organisation (WIPO Copyright Treaty [WCT] and WIPO Performances and Phonogram Treaty [WPPT] 1996) came to fill the gap that was left by the Berne Convention and the Rome Convention by setting international norms aimed at preventing unauthorized access to and use of creative works on the internet and other digital networks.

The Internet Treaties require countries to make provision for anti-circumvention measures and rights management information, Internet Treaties also added a new definition of “communication to the public” and the “making available to the public” taking into account technological development.

Over the years, technology has advanced along with the internet introducing new players like the Digital Service Providers (DSPs) most of whom do not participate in the creation and production of copyright works as they merely provide a platform to link the user with the copyrighted work. This is done by offering download services, streaming services and selling. Technology enables creators to produce high quality work at minimal cost.

The digital environment has created new modes of exploitation of copyright works. Previously, the creator or copyright owner had to decide at what particular time the work should be in the market, but with technology, interactive service users can decide what, when and where works and productions can be accessed. This shows a paradigm shift from analogue to digital.

Over the years, the digital environment has evolved. It has brought with it opportunities and challenges to the creator of works and the end user. Technology has advanced and with it digital copyright content has become easier to share, link, download and extract in more ways than one (Sherrel & Smith, 2014). The social media platforms are sprouting like mushrooms one common misconception has been held that anything available on the internet is free to copy and use (Kisch, 2017). Technology has produced enormous benefits for users but also presented multiple challenges for creators and their business associates. Creators have the opportunity to harness the evolution of digital technology and there may be a need for flexible legislative reforms to modernize the copyright laws. However, based on the volatile and constantly developing technology could we be fighting a losing battle?

Software

Software is a generic term for organized collections of computer data and instructions, often broken into two major categories: system software that provides the basic non-task-specific functions of the computer, and application software which is used by users to accomplish specific tasks.

Software is a set of instruction expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing a computer to perform or achieve a particular task or result; Computer hardware and software require each other and neither can be realistically used without the other. The software can be open source which provide full access to the underlying source code, enabling those with programming skills to customise the software to their needs example power point, iTunes, Windows Media Player,

Anti-Virus, word processor, outlook, spread sheet etc. •A freeware system is often based on proprietary coding, so there are limits to what you can do with it. •The software plays a big role in the technological environment. The distributions of the copyright works are facilitated highly by the different software.

Software being an intellectual property outcome needs protection. Most countries protect computer programmes under the copyright law while others like India and USA protect it under both copyright and patent at the same time opening Pandora box for the influx of cases. There is need for the policy makers to clarify issues on what each protection regime covers and how both can be used to craft a strong regime for software protection and promotion.

Broadcasting

Broadcasting came in Africa as a result of colonialism, settlers in most colonies used broadcasting as a means of spreading propaganda and political opinion. Most African countries were not left behind from using smoke signals to using advance form of communication. As time went by, there was need to change mode of transmission from ad-hoc (one person to one) to a more star network (transmitting to more than one person at a time). Initially it was only the National/State broadcasting companies that were allowed to broadcast but soon thereafter private broadcasting firms grew and there was a demand of wave length (influx of frequency spectrum). Broadcasting basically relay on copyright content that may be produced by contributory efforts and the more copyright content that the broadcasters have the more it puts them in a competitive age. For example: BBC is a major contributor to the UK creative industries, spending approximately £2.4 billion per annum on original content and £1billion of that is spent on rights

In June 2006 Regional Radio Communication Conference took place in Geneva marked the end of an Era: Analogue Television Broadcasting (ATB) in different parts of the world and replaced with Digital Terrestrial Broadcasting (DTB). The outcome of the conference was the Regional Agreement, Geneva 2006, (GE06-Geneva Agreement) in replacement of the corresponding regional Agreements for analogue television broadcasting GE89. The Nigerian National Broadcasting Commission termed the migration “an inevitable global phenomenon”-Africa cannot stand aside.

Most African countries are now migrating to the digital terrestrial broadcasting. This comes with a lot of opportunities and challenges. Some of the opportunities are: There is creation of alternative business models such as: signal distribution one chooses the time, area to show a specific program; there is an increase of content providers and this encourages locals to come up with creative content for broadcasting hence there is creation of job opportunities and increase in competition between broadcasters. There is substantial investment by broadcasting companies in the equipment's and human resource training in order to fully realize the potential of digital migration.

Some of the challenges that come with digital migration by the broadcasting organisations are: The economic challenge to consumers to replace the analogue TV set with a digital TV or use analogue TV with an external Set Top Box (STB) which will convert digital signal to analogue, consumers to pay content providers like DSTV and ZUKU, it is costly to cover the whole

country in digital migration, many content developers and free to air broadcasters are at risk of digital infringement of their copyrighted works among others.

Audio-visual

Nigerian Nollywood has stormed the broadcasting industries in Africa and the world. In 2006 UNESCO collected data on released audiovisual: Bollywood 1,091, Nollywood 872 and Hollywood 485. By 2009, Nollywood had surpassed Hollywood as the world's second largest movie industry by volume, right behind India's Bollywood. The Nigeria Bureau of Statistics in 2013 published that Motion picture; sound recording and music production contributed 1.42% of Nigeria GDP in 2013. In 2014, the Nigerian government released data showing Nollywood is a \$3.3 billion sector, with 1844 movies produced in 2013 alone. Most of the Nollywood films are features in Netflix, DSTV and most African national or private broadcasting organisations.

Tanzania has the flourishing Bongo Movies which is being consumed mostly in East Africa and Africa. Film production is expensive as it requires sophisticated equipment's to produce high quality films for the market.

The film industry offers employment and this helps to reduce unemployment and poverty. This industry if well harnessed can turn the tables round for Africa prosperity. Having a voluntary registration of films produced in Africa centrally managed by ARIPO can be an asset to Africa by having an African registry of all films and this can enhance business negotiations and reduce piracy.

Resale Rights

The resale rights originated in France and in 1920 the first resale right law was enacted in France. The resale right, also referred to as “*droit de suite*” is a royalty paid to visual artists when their works are resold by an auction house or gallery above a certain price. It guarantees creators to earn a fair share from the resale of their works. There is traceability of works during the exploitation of the secondary market. Article 14ter of the Berne Convention provides for the resale rights on a reciprocity basis meaning an artists can only receive the resale royalty if legislation is in place in both his home country as well as the country where the sale occurred. Article 14ter states:

“(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.”

The European Union passed Directive 2001/84/EC to implement the resale right which now exists in more than 70 countries worldwide. The resale rights is not implemented in many African countries and major art markets such as the United States and China make it a major hurdle for visual artists in Africa and the rest of the world.

ARIPO Member States and Africa at large have to ensure that the legislations accommodate the resale rights and institutional frameworks are established and strengthened for the implementation of the resale rights to be a reality. Collective Management Organisations play a key role to make sure royalties are collected from sellers and distributed to the artists.

Voluntary Copyright Registration and Notification System

Copyright records are essential to both right holders, users, businessmen and entrepreneurs. Licensing, cross licensing, assignments and royalty negotiations all rely in good records of the copyrighted work. Good record keeping that is properly captured and organized is needed in any office; this information can be a catalyst to prospective businesses and foreign direct investment. There is need to have records of the copyrighted works on the authorship and ownership of the work, scope of the copyright, contractual agreements/ transactions, term of expiration of the rights among others. Most copyright laws provide for a voluntary registration and notification system for copyrighted works though it is known that copyright subsists with no formalities. The voluntary registration is done by the copyright offices. ARIPO is exploring the possibilities of having a regional voluntary registration and notification system.

3D Printing

We operate in an increasingly interconnected global economy where markets have become very dynamic powered by constantly expanding Information and Communication Technology networks and technologies binding us all together. In this context, ARIPO recognizes that national and regional policies concerning Intellectual Property have to be outward looking.

There may be 3D violations arising from the traditional cultural expressions of our African local communities, for example, baskets and mats that for time immemorial have been produced locally, mostly handmade but can now be produced by 3D technology. What are the rights of the local communities in such situations? There is a need for countries to come up with protection mechanisms for all beneficiaries in such cases

Licensing, cross licensing is also a way to benefit and protect the 3D and allow the societies to benefit from this technology.

However, control of the abuse of 3D printing still remains a largely uncharted territory due to the fact that most countries in Africa are lagging behind in such issues. There is need for Africa's legislators and policy makers to be more proactive in order to accommodate challenges related to technologies in Intellectual Property in their national systems and collaborate with other countries in Africa and the other continents. This can be done by putting in place policies, laws on intellectual property, enforcement provisions in the laws; civil and criminal procedures, conservatory measures to enforce rights, remedies and penalties (sanctions) with clear

procedures to be followed in case of infringement. Civil education is necessary to enlighten the public on such issues.

On the other hand, the evolution of technology presents challenges for monitoring of infringement. Every person with a 3D printer becomes a potential infringer of another's rights. After all, "why buy it when I can print it?" can become a philosophy in the minds of printer owners. What is needed is to come up with protection mechanisms for all beneficiaries, increase vigilance on monitoring infringements, but also give room for the technology to grow and generate the necessary solutions for Africa

II. PROPOSED AFRICA AGENDA ON COPYRIGHT AND RELATED RIGHTS

Symposium on Copyright and Related Rights

The Symposium on Copyright and Related Rights held on 5 to 7 June 2017 at ARIPO headquarters, Harare, Zimbabwe, developed a draft Comprehensive Agenda for Copyright and Related Rights in Africa (Harare Strategic Action Plan) with the view to reaching a level playing field in the global Copyright ecosystem while balancing the interest of all stakeholders. The proposed agenda has six strategic pillars, objectives and actions for 2017 to 2020. The pillars and areas of focus are:

- (I) Policy and Legal Framework:
 - (a) Ratification/ Accession of International Instruments
 - (b) Update of national laws
 - (c) Content Policy and Strategy
- (II) Institutional Framework (Administrative infrastructure)
 - (a) Upgrading Collective Management Organizations
 - (b) Technical Support
 - (c) Commercial infrastructure and Financial mechanism
 - (d) Management
 - (e) Improvement of the Copyright Offices and development of ARIPO Copyright Department
- (III) Capacity Building and Awareness Creation
 - (a) Copyright awareness for high level policy makers
 - (b) Linkages with other training institutions
 - (c) Development of relevant modules and customization of existing modules
- (IV) Building evidenced-based information pipelines for copyright/creative industries
 - (a) Comprehensive data collection and statistics
 - (b) Development of experts specialized in economics and statistics to produce intellectual property statistics
 - (c) Studies and indexes of contribution of creative industries to economic development
- (V) Building Partnerships and Synergies
 - (a) Building and Strengthening Public Private Partnership (PPP)
 - (b) Promoting and mentoring on a regional basis among Copyright Offices and Collective Management Organisations.
- (VI) Enforcement
 - (a) Regional collaboration on sharing of information on enforcement

- (b) Promoting respect for copyright and related rights for all intermediaries in the value chain
- (c) Build capacity of law enforcement agencies
- (d) Customization of WIPO toolkit on Intellectual Property Crime Prosecution
- (e) Collection and dissemination of copyright case law

The Role of ARIPO in delivering the African Agenda on Copyright & Related Rights

ARIPO will cooperate with strategic partners and member states to implement the Africa Agenda on Copyright and Related Rights above.

Implementation Plan

ARIPO will come up with an implementation plan together with strategic partners and the member states towards implementing the Agenda.

Moreover, the activities of the copyright and related rights at ARIPO be dynamic and accommodate opportunities, needs as stipulated in this document and as they come by.

Way-forward

ARIPO member states and strategic partners are encouraged to collaborate in realizing the Africa Agenda on Copyright and Related Rights

ARIPO member states are encouraged to continue recognizing and participating fully in the Standing Committee on Copyright and Related Rights to build the international framework on copyright and related rights.

ARIPOs future on copyright and related rights is to facilitate the beneficiaries to gain from the copyright and related rights system by continuing to be pro-active, offer policy advice, support the copyright offices, collective management organizations, and enforcement agencies, users of copyrighted works and stakeholders of copyright and related rights.

ARIPO also looks forward to its continued cooperation with OAPI as Regional Organizations in Africa and harmonizing the ARIPO and OAPI systems on Intellectual Property to strengthen Africa in Intellectual Property hence shaping the IP landscape in Africa. Strategic partners will also cooperate to shape the copyright and related rights landscape in Africa.

ARIPO urges its member states and potential member states to ratify or accede to the international instruments on copyright and related rights, to have policies and laws that promote intellectual property and to ensure implementation of those laws and policies.

There is a need for transparency, accountability and good governance in Africa for CO's, CMO's, users and stakeholders. Conducive environment for creativity and innovation (legal framework, institutional framework, social-economic and cultural) cannot be overlooked. There is a need to have flexible, implementable, national legal, institutional framework that will facilitate the socio-economic and cultural development. This will lead to an increase in business

opportunities for right holders and improved individual and collective management of rights. Building up on the existing frameworks and improving them will expedite progress.

There may be a need to use the bottom up approach in capacitating the COs, CMOs, RHs, Enforcement agencies, stakeholders on copyright and related rights. Networking and communication is the best medicine for progress in the copyright and related rights system. ARIPO cooperation with OAPI and other partners by coming up with programmes, resource mobilizations for projects, financial support and technical assistance will promote a common view and approach in copyright and related rights, harmonization, and development of copyright and related right. An increase in the uptake of copyright and related rights instruments for development in Africa will facilitate mass consumption of understanding and appreciating the economic contribution of copyright to the national economy and its impact in policy formulation. All projects must be monitored and evaluated for the sake of sustainability.

Focus must be placed on shaping the copyright and related rights systems in Africa as it is in our hands to positively change the status by being proactive to make a positive impact. There is need to adopt a paradigm shift for the dream to be a reality having a positive trajectory and building upon existing initiatives where possible and having flagship programmes for sustainable development.

[End of Annex II]

**REPORT OF THE TECHNICAL COMMITTEE ON
INDUSTRIAL PROPERTY**

REPORT OF THE TECHNICAL COMMITTEE ON INDUSTRIAL PROPERTY

INTRODUCTION

1. The Seventh Session of the ARIPO Technical Committee on Industrial Property (hereinafter referred to as the “Committee”) was held at the ARIPO Headquarters, Harare, Zimbabwe, from August 17 to 18, 2017.
2. The following members of the Committee attended the Seventh Session: Kenya, Swaziland, Uganda, Zambia and Zimbabwe.
3. The Committee reviewed and discussed the following documents that were tabled by the Secretariat:
 - (i) Report on IP Operations
 - (ii) Proposals to amend the Harare Protocol on Patents and Industrial Designs (*document ARIPO/TCIP/VII/2*)
 - (iii) Proposals to amend the Banjul Protocol on Marks, (*document ARIPO/TCIP/VII/3*)
 - (iv) Report on the Regional ICT Projects for IP Business Processing (*document ARIPO/TCIP/VII/4*)

REPORT ON IP OPERATIONS

4. The Report on IP Operations covered the Harare, the Banjul and the Swakopmund Protocols.
5. The Report contained statistics under the Harare, the Banjul and the Swakopmund Protocols. The analysed statistics showed comparative trends in application filings, registrations and grants.
6. In addition to the statistics, the Secretariat reported on the implementation of the approved amendments to the Harare Protocol that came into effect on

January 2017 and highlighted that users of the system have embraced and expressed satisfaction with the introduced amendments.

7. Members of the Committee extensively reviewed and discussed the report and raised concerns with regard to the low level of filings originating from member States in respect of patent, utility model, industrial designs and mark applications.
8. Members of the Committee observed that there has not been any meaningful uptake and use of the Swakopmund Protocol and sought reasons as to why this is the case. The Committee also requested for an update on the progress made in the implementation of the mandate on Geographical Indications.
9. In its response, the Secretariat explained that the low level of filings from Member States could be attributed to, *inter alia*, limited awareness about the ARIPO system and IP in general and added that this is being addressed through awareness campaigns in the form of Roving Seminars.
10. With regard to Geographical Indications (GI), the Secretariat indicated that ARIPO is in the process of requesting Member States to provide information on potential GIs in the member states and that a feasibility study on the suitability of a Regional Legal Framework for the registration of GI would be undertaken. The Secretariat further indicated that the Comparative Study on Industrial Property Laws of ARIPO Member States that is being undertaken will include the status of GI laws in the Member States.
11. In respect of the Swakopmund Protocol, the Secretariat highlighted that the low uptake and use of the Protocol could be attributed to the fact that Contracting States have not put in place the required institutional arrangements for the operationalization of the Protocol. The Secretariat urges each Contracting State to establish a National Competent Authority as required by the Protocol.
12. After due deliberations, the Committee recommended the following:
 - (i) The Secretariat to study filing trends from Member States and compare these statistics with global trends with a view to innovatively suggesting how local entities within the Region could be encouraged to utilize the Organization's services under the three Protocols.
 - (ii) The ARIPO Office and national IP Offices of the Member States continue with IP awareness drives in order to stimulate the uptake of IP.

- (iii) The Secretariat to use the report of the Comparative Study on Industrial Property Laws of ARIPO Member States to pursue harmonization of the laws of the Member States.
- (iv) The Secretariat to encourage Swakopmund Protocol Contracting States to establish national competent authorities as required by the Protocol.

13. The Administrative Council is invited to take note of the recommendations contained in Paragraph 12.

**PROPOSALS TO AMEND THE HARARE PROTOCOL ON
PATENTS AND INDUSTRIAL DESIGNS** (*document
ARIPO/TCIP/VII/2*)

13. The Secretariat presented proposals to amend the Harare Protocol on Patents and Industrial Designs, contained in *document ARIPO/TCIP/VII/2*.
14. The Secretariat reported that member states and users of the Protocol were invited to submit proposals for the amendment of the Harare Protocol.
15. The Secretariat further reported that Kenya submitted various proposals including proposal for the introduction of individual fees under the Harare Protocol.
16. The Secretariat highlighted that the proposals that were submitted by the member states and users of the protocol as well as those from the Secretariat were consolidated and tabled for consideration by the Sixth Session of the Working Group on the Improvement of the ARIPO Protocols relating to Industrial Property.
17. The Secretariat further highlighted that the proposals before the Committee were based on the outcome of the Sixth Session of the Working Group on the Improvement of the ARIPO Protocols relating to Industrial Property.
18. The Committee extensively debated and examined the proposals and recommended:
 - (i) The submission to the Forty-First Session of the Administrative Council for consideration and approval of the proposed amendments to the Harare Protocol and its Implementing Regulations.
 - (ii) That a study be commissioned to establish the impact of individual fee systems within a Regional Patent Administration system; with input being invited from all Member States before the Committee considers the proposal in its next session.
19. The full text of the proposed amendments to the Harare Protocol as recommended by the Committee is contained in Annex I of this document.

**20. The Administrative Council is
invited to:**

- (a) consider and approve the proposals to amend the Harare Protocol as recommended in Paragraph 18(i)**
- (b) take note of the recommendation to commission a study to establish the impact of individual fee systems within a Regional Patent Administration system as contained in Paragraph 18(ii).**

PROPOSALS TO AMEND THE BANJUL PROTOCOL ON MARKS
(document *ARIPO/TCIP/VII/3*)

21. The Secretariat presented proposals to amend the Banjul Protocol on Marks contained in document ARIPO/TCIP/VII/3.
22. The Secretariat indicated that member states and users of the Protocol were invited to submit proposals for the amendment of the Banjul Protocol.
23. The Secretariat underscored that the proposals that were submitted by the member states and users of the protocol as well as those from the Secretariat were consolidated and tabled for consideration by the Sixth Session of the Working Group on the Improvement of the ARIPO Protocols relating to Industrial Property.
24. The proposals before the Committee were centred on the outcome of the Sixth Session of the Working Group on the Improvement of the ARIPO Protocols relating to Industrial Property.
25. The Committee extensively reviewed and discussed the proposals and recommended the submission to the Forty-First Session of the Administrative Council for consideration and approval of the proposed amendments to the Banjul Protocol and its Implementing Regulations.
26. The full text of the proposed amendments to the Harare Protocol as recommended by the Committee is contained in Annex II of this document.

28. The Administrative Council is invited to consider and approve the proposals to amend the Banjul Protocol as recommended in Paragraph 25.

REPORT ON THE REGIONAL ICT PROJECTS FOR IP BUSINESS PROCESSING (*document ARIPO/TCIP/VII/4*)

29. The Secretariat presented a Report on the Regional ICT Projects for IP Business Processing contained in *document ARIPO/TCIP/VII/4*.
30. The report highlighted the progress made in the implementation of the new IP administration system, implementation of the Member States module, the digitization project, implementation of the Regional IP database and the setting up of the ARIPO traditional knowledge, expressions of folklore and genetic resources related information database.
31. The report indicated that about 57% of all new ARIPO applications for 2017 had been filed using the online platform.
32. The report further indicated that with support from WIPO, the Member States module had been implemented in Mozambique and there were plans to implement it in 5 more member states before the end of 2017.
33. The Secretariat reported that the digitization project is in progress and approximately 6,000 patent files out of a total of about 8,600 patent files had been digitized.
34. The Secretariat also reported that the ARIPO Regional IP database has been setup and more than 350,000 Trademarks from ARIPO and other Member States have been uploaded on the portal.
35. Moreover, the Secretariat highlighted that the consultant appointed to carry out a feasibility study on the establishment of databases that will contain registered traditional knowledge, associated genetic resources, expression of folklore had submitted the inception and draft feasibility study reports.
36. After due deliberations the Committee took note of the report and recommended its submission to the Forty-First Session of the Administrative Council for its consideration and noting.
37. The detailed ICT report is contained in Compendium I from page 106 to page 111.

37. The Administrative Council is invited to take note of the ICT report as recommended in Paragraph 36.

[End of Document]

[Annexes Follow]

ANNEX I

PROPOSALS TO AMEND THE HARARE PROTOCOL ON PATENTS AND INDUSTRIAL DESIGNS (*Document ARIPO/TCIP/VII/2*)

1. PROPOSAL TO AMEND SECTION 3

Section 3 *Patents*

[...]

6(b) If the Office decides to grant a patent, it shall notify the applicant and each designated State. ~~Where the examination was based on a search report and examination report, a copy of the same shall be attached to the said notification.~~ **A copy of the search and examination report shall be attached to the said notification.** The designated State shall have 6 months within which to respond to the notification.

Explanatory Notes for Section 3(6)(b)

Patent grants at ARIPO are always based on search and examination reports. The amendment is proposed in order to clarify that there are no situations where grants would not be based on search and examination reports.

[...]

- (11) On each anniversary of the filing of the application, the ARIPO Office shall collect the prescribed annual maintenance fees, part of which shall be distributed among the designated States concerned **as provided for in the regulations**. The amount of the fees shall depend on the number of States in respect of which the application or patent is maintained. Provided it is maintained, a patent granted by the Office shall in each designated State have the same effect as a patent registered, granted or otherwise having effect under the applicable national law. The duration of the patent shall be 20 years from the filing date.

Explanatory Notes for Section 3(11)

The amendment is proposed for precision purposes.

2. PROPOSAL TO AMEND SECTION 3ter

Section 3ter *Utility Models*

[...]

- (10) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fees, part of which shall be distributed among designated States concerned **as provided for in the regulations**. The amount of fees shall depend on the number of States in respect of which the application or registration is maintained. **Provided it is maintained, a utility model registered by the Office shall in each designated State have the same effect as a utility model registered or otherwise having effect under the applicable national law.** ~~Provided that it is maintained, the registration of a utility model registered by~~

~~the Office shall have a duration of 10 years from the filing date.~~ The duration of the utility model shall be 10 years from the filing date.

Explanatory Notes for Section 3ter

The amendment is proposed for precision and clarity purposes. It is also proposed to introduce consistency with the provisions under patent and industrial designs.

3. PROPOSAL TO AMEND SECTION 4

Section 4 Industrial Designs

[....]

- (6) On the anniversary of the filing of the application, the ARIPO Office shall collect the prescribed annual maintenance fees, part of which shall be distributed among the designated States concerned **as provided for in the regulations**. The amount of the fees shall depend on the number of States in respect of which the application or registration is maintained. Provided that it is maintained, the registration of an industrial design effected by the Office shall in each designated State have the same effect as a registration effected or otherwise in force under the applicable national law. The duration of such a registration shall be 10 years from the filing date.

Explanatory Notes for Section 4(6)

The amendment is proposed for precision purposes.

4. PROPOSAL TO AMEND SECTION 4bis

Section 4bis The Board of Appeal

[....]

- (b) to review any final administrative decision of the Office in relation to the implementation of the provisions of this Protocol, ~~the Banjul Protocol on Marks or any other protocol within the framework of ARIPO.~~

Explanatory Notes

The Secretariat basically sought guidance from the Committee by asking whether this provision should be amended to remove reference to the Banjul Protocol on Marks or any other Protocol within the framework of ARIPO; which was found to be improper in terms of legal drafting.

5. PROPOSAL TO AMEND SECTION 6

Section 6

Entry into Force and Final Provisions

[....]

(4)(c) This Protocol may be amended at the instance of any Contracting State or by the Director General during the sessions of the Administrative Council of ARIPO.

(d) Adoption of amendments of any provision of this Protocol shall require two-thirds of the votes of all Contracting States.

Explanatory Notes for New Paragraphs (4)(c) and (d)

The new paragraphs (4)(c) and 4(d) are proposed to give legal basis to amendments that are brought to the Protocol from time to time.

6. PROPOSAL TO AMEND RULE 7 TO CATER FOR UNITY OF INVENTION AS PROVIDED FOR IN SECTION 2bis 1(a)

New Paragraphs 7(4)(b) and (c) Claims

[...]7(4)(a)

New Rule 7(4)(b) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

New Rule 7(4)(c) Claims shall be grouped in the most logical manner to facilitate comprehension of the scope of protection being sought.

Explanatory notes for Paragraphs Rule 7(4)(b) and (c) proposed changes

The proposal basically requires that dependent claims can only come after the parent independent claim; and goes towards grouping of claims to assist assessment of unity or even support by the description. The proposal will also assist to mitigate against complexities brought about by multiple nested dependency of claims.

New Paragraphs 7(5) and 7(6) Claims

(5) Where a group of inventions is claimed in an ARIPO patent application, the requirement of unity of invention under Section 2bis 1(a) shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art.

(6) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Explanatory notes for Paragraphs 7(5) and 7(6)

Paragraphs (5) and (6) are introduced to cater for unity of invention as provided for in Section 2bis 1(a).

***New Rule 7(7)
Claims***

New Rule (7) Without prejudice to Section 2bis (1) (a) of the Protocol, an ARIPO patent application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject-matter of the application involves one of the following:

- (a) a plurality of interrelated products,
- (b) different uses of a product or apparatus,
- (c) alternative solutions to a particular problem, where it is inappropriate to cover these alternatives by a single claim.

Explanatory notes for Rule 7(7)

Unnecessary proliferation of independent claims is not desirable during examination as it often leads to the actual scope of protection being difficult to determine. Basically this paragraph 7(5) is needed to make unity of invention requirements transparent; and simplify substantive examination by streamlining the structuring of claims.

***New Rule 7(8)
Claims***

New Rule (8) Where the ARIPO patent application contains drawings including reference signs, the technical features specified in the claims shall preferably be followed by such reference signs relating to these features, placed in parentheses, if the intelligibility of the claim can thereby be increased. These reference signs shall not be construed as limiting the claim.

Explanatory notes for Rule 7(6)

Drawing references in claims to be placed in parenthesis for clarity. We are already demanding this from applicants without a legal basis; but it makes engineering applications a lot easier to comprehend, examine and discuss with applicants.

7. PROPOSAL TO AMEND RULE 18(7) TO CATER FOR EXPIDITED EXAMINATION

***New Rule 18(7)
Examination as to Substance***

New Rule (7) Notwithstanding the provisions of paragraph (1) above, the applicant may upon request made through a duly completed form, cause the Office to have an application; once it meets the formal requirements including a request for substantive examination; to be substantively examined in a preferential manner adhering to a modified timeframe as follows:-

- (a) Expedited/accelerated Examination of an application so as to have a decision made on its patentability within a period specified in the Administrative Instructions from the time of making the request; subject to:-
 - i. The application being for a single invention and/or the applicant agreeing to the examination division conclusively examining the application by considering only the first identified invention;
 - ii. the applicant undertaking to respond immediately to any clarifications sought by the examining division;
 - iii. the application not getting abandoned and then reinstated before conclusion of examination;
 - iv. a search report, based on acceptable minimum documentation conducted on claims corresponding to the claims either of the same scope as or narrower in scope than the claims in the ARIPO application file, is availed to the Office.
- (b) Delayed commencement of substantive examination for up-to one year beyond the stipulations of Rule 18(1)(a) provided:-
 - i. a request for substantive examination has been lodged by the stipulated time in Rule 18(1)(a);
 - ii. a written explanation satisfactory to the Director General has been submitted with the request;
 - iii. the application does not lapse due to non-payment of annuities.
- (c) The Office shall acknowledge a request to modify the examination timeline as in paragraphs (a and b) above and provide direction upon receipt of such a request to either:-
 - i. direct the applicant to remit the requisite fees for such modification of timeline; or
 - ii. indicate that such modification in the examination timeframe is not possible with an outline of the reasons.

The request shall not be considered made unless the due fees are fully paid.

Explanatory Notes for Rule 18(7)

Rule 18(7) is introduced to provide for applicant initiated modification of substantive examination timelines under the Protocol as follows:-

(7)(a) Applicants have been requesting for availability of expedited examination to enable them articulate their market positions or negotiate better for their IP in a timely manner. Member states could also consider certain technology areas of interest that may

be fast-tracked for development and support; and where patents would always receive preferential examination.

(7)(b) Applicants sometimes wish to delay examination due to commercial interest; or to wait for conclusion of examination of a family member that the applicant believes is more significant economically; but there is need to let them positively indicate their interest in maintaining activity on the application as they take care of their other interests.

(7)(c) The Office may encounter an unmanageable avalanche of expedited examination requests beyond available means; and may wish to have a way of matching client expectations to practically available resources.

8. AMENDMENT OF RULE 15(1) TO INCLUDE FORMALITY EXAMINATION, INDUSTRIAL DESIGN AND UTILITY MODELS

Rule 15

Examination as to Formal Requirements

(1) Upon receiving the application, the ARIPO Office shall examine it for compliance with the requirements of Section 3(1), 3ter(3) and 4(1) of the Protocol, Rules 5, 6, 6bis, 7, 8, 10 and 11, and the Administrative Instructions, and ascertain whether the requisite fees have been paid.

Explanatory Notes

The inserted text relates to the formality examination of utility model and industrial design applications.

9. AMENDMENT OF RULE 21(1) TO INCLUDE UTILITY MODELS AND INDUSTRIAL DESIGNS

Rule 21

Payment of Annual Maintenance Fees

(1) The amount of annual maintenance fees payable under Section 3(11), 3ter (10) and 4(6) of the Protocol shall be as prescribed in the Schedule of Fees.

Explanatory Notes

The amended Rule 21(1) maintains fees generated by Industrial Designs and Utility models

10. CORRECTION OF RULE 23(2) RELATING TO INTERNATIONAL APPLICATIONS

Rule 23

International Applications

(1) Where, in an international application, a Contracting State which is also bound by the Patent Cooperation Treaty is designated for the purpose of obtaining a patent under the provisions

of the Protocol, the applicant shall, within the time limit applicable under Article 22 or 39 (1)(a) of the Patent Cooperation Treaty:

- ...
- (b) pay the following fees, as prescribed in the Schedule of Fees, to the ARIPO Office:
- (i) the application fee;
 - (ii) the designation fee per country designated;
 - (iii) subject to ~~Rule 21 (4)~~ Section 3bis(6)(ii), the annual maintenance fees which have become due;

Explanatory Notes

To include the correct reference

PROPOSED FEE FOR EXPEDITED EXAMINATION

30. Fee for expedited examination..... US\$700

AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

ARIPO Form No. 48 HARARE PROTOCOL REQUEST FOR EXPEDITED EXAMINATION OF PATENT OR UTILITY MODEL APPLICATION (Instruction) To: Director General ARIPO Office P.O. Box 4228 Harare Zimbabwe	For Official Use Received on: <hr/> Applicant's or Representative's File Reference:
I. IN THE MATTER OF: * <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Application for Grant of Patent, No.: </div> <div>Filing date:</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <input type="checkbox"/> Application for Utility Model No: </div> <div>Filing date:</div> </div>	
II. PERSON(S) REQUESTING** Name: In the capacity of: Address:	
III. REQUEST I/We hereby request, in accordance with Rule, that the above identified application under go: <div style="margin-top: 10px;"> <input type="checkbox"/> Expedited Search </div> <div style="margin-top: 10px;"> <input type="checkbox"/> Expedited Examination </div>	

VII.	SIGNATURE(s)***..... (Date)
	

- * Clearly identify the application
- ** Identify requesting party(s)
- *** Type name(s) under signature(s)

[End of *Annex I*]

ANNEX II

PROPOSALS TO AMEND THE BANJUL PROTOCOL ON MARKS (*Document ARIPO/TCIP/VII/3*)

1. PROPOSAL TO AMEND SECTION 2 RELATING TO FILING OF APPLICATIONS

SECTION 2

FILING AND TRANSMITTAL OF APPLICATIONS

[....]

It is proposed to amend the title of **Section 2**.

Explanatory Notes for Section 2

Sections 2:4 is directed to transmittal of application. It is proposed to amend the title of the section to include transmittal.

2. PROPOSAL TO AMEND SECTION 3 RELATING TO CONTENTS OF APPLICATION

SECTION 3

CONTENTS OF APPLICATION

3:1 An application for the registration of a mark shall:

- (i) identify the applicant;
- (ii) contain, as prescribed, a representation of the mark;
- (iii) designate the Contracting States in which registration is being requested; and
- (iv) be subject to the payment of the prescribed fees.

Explanatory Notes for Section 3

Section 3:1 is amended in order to bring clarity on the list of requirements for filing an application.

3. PROPOSAL TO AMEND SECTION 3*bis* RELATING TO FILING DATE

SECTION 3*bis*

FILING DATE

3*bis*:1. The Office shall accord as the filing date of an application the date on which the following indications or elements were received by the Contracting State in which the application was filed or received by the Office:

- (i) an express or implied indication that registration of a mark is sought;

- (ii) an indication allowing the identity of the applicant to be established;
- (iii) indications sufficient to contact the applicant or **the applicant's** representative, if any, by mail **or any other safe/secure electronic means of communication;**

[....]

3bis: 2 If the Office finds that the application does not comply with the requirements under 3bis:1, it shall notify the applicant accordingly, inviting the applicant to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

It is proposed to amend **Section 3bis** by introducing numbering and new paragraph **3bis: 2**.

Explanatory Notes for Section 3bis

In view of the introduction of a second paragraph in Section 3bis and for consistency with the rest of the Protocol, it is necessary to introduce numbering in Section 3bis as indicated in the proposal above.

Currently paragraph, (iii) limits contacting the applicant or his representative through the use of mail only. It is therefore proposed to amend the paragraph to allow the use of other available communication means.

Paragraph *3bis: 2* have been introduced to explicitly provide for action to be taken by the Office in cases where the application does not comply with the filing date requirements.

4. PROPOSAL TO AMEND SECTION 4 RELATING TO RIGHT OF PRIORITY

SECTION 4

RIGHT OF PRIORITY

4:1 An applicant **or a successor in title** shall have the **rights** to claim priority rights provided under Article 4 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised.

[.....]

It is proposed to amend **Section 4:1**

Explanatory Notes for Section 4

The amendment is proposed to bring the provision under Section 4:1 in line with the provision of Article 4 A (1) of the Paris Convention.

5. PROPOSAL TO AMEND SECTION 5 RELATING TO FORMALITIES EXAMINATION AND NOTIFICATION

SECTION 5

FORMALITIES EXAMINATION; ~~AND~~ NOTIFICATION AND CONVERSION

[.....]

It is proposed to amend the title of **Section 5**.

Explanatory Notes for Section 5

The Section does not only provide for formalities examination and notification but also conversion to a national application as provided for under Section 5:4 hence the amendment to include conversion in the title.

6. PROPOSAL TO AMEND SECTION 6 RELATING TO SUBSTANTIVE EXAMINATION BY A DESIGNATED STATE

SECTION 6

SUBSTANTIVE EXAMINATION BY A DESIGNATED STATE

[.....]

- 6:4 The applicant shall be given an opportunity to respond, ~~directly~~ **through the Office**, to the designated State concerned ~~and respond~~ to the decision to refuse the application. The decision shall be subject to appeal or review under the national laws of the designated State concerned. **The appeal or review shall be filed through the Office. The decision upon appeal or review shall be communicated to the Office by the designated State within 1 month from date of issuance.**

It is proposed to amend **Section 6:4**.

Explanatory Notes for Section 6

The amendment is proposed in order to be in line with the spirit of the Protocol in respect of centralised procedures that are not cumbersome to the users of the Protocol. In addition, the amendment will keep ARIPO in the loop in respect of the application.

7. PROPOSAL TO AMEND SECTION 6bis RELATING TO PUBLICATION AND REGISTRATION OF A MARK BY THE OFFICE

SECTION 6bis

PUBLICATION; ~~AND~~ REGISTRATION OF A MARK BY THE OFFICE AND NOTICE OF OPPOSITION

[.....]

- 6bis:4 At any time after the publication in the Marks Journal of an application as accepted by the designated State or designated States in terms of Section 6bis:1

but before the registration of the mark in terms of Section 6*bis*:2, any person ~~shall lodge a notice of opposition to the application for registration; which notice shall be filed with the Office~~ give. ~~in a designated State or designated States.~~ Thereafter, the application shall be treated according to the opposition procedures laid down under the national laws of the designated State or designated States concerned.

It is proposed to amend the title of **Section 6*bis*** and **Section 6*bis*:4**.

Explanatory Notes for Section 6*bis*

The title of Section 6*bis* is amended to clearly reflect the contents of 6*bis*:4

Section 6*bis*:4 is amended to provide that notice of opposition be filed directly with the ARIPO Office and not designated State or designated States.

Proposals to amend the regulations to clearly set out the procedural elements of oppositions and the relevant documentary requirements will be submitted for consideration in 2018. The proposals are expected to limit the number of extensions of opposition terms and will be subject to payment of fees.

8. PROPOSAL TO AMEND SECTION 9 RELATING TO LATER DESIGNATIONS

SECTION 9

~~LATER~~ SUBSEQUENT DESIGNATIONS

[.....]

8:2 Where, under Section 9:1, the owner of a registered mark or applicant for registration of a mark designates any other State which becomes a party to this Protocol, such ~~later~~ subsequent designation shall be deemed to be an application for the registration of a mark with respect to the State so designated and shall accordingly be subject to examination under the national law of such designated State as provided for under Section 6 of the Protocol. In such a case, the filing date of the application in the State so designated shall be the ~~same as the filing date of the earlier application.~~ The date of subsequent designations, if it complies with the applicable requirements, shall be the date on which it was received by the Office. The date of subsequent designations shall be recorded in the register and published in the ARIPO Journal. ~~on which the application for later designation is received.~~

8:3 The period of protection under the subsequent designation expires on the same date as the earlier registration. ~~This means that the date of renewal of the earlier registration (or the date of payment of the renewal fees) is the same for all designations contained in the registration, irrespective of the date on which the designations were recorded.~~

It is proposed to amend **Section 9**.

Explanatory Notes for Section 9

The amendment is proposed so as to avoid having multiplicity of filing dates for the same registration that has subsequent designations. Where priority was claimed in the earlier registration, priority right may not apply for in the subsequent designated state or designated states. The concept of claiming priority may not apply if multiple filing dates are maintained on the basis of subsequent designations. The proposal to change from later designations to subsequent designations was because of the reason that users are more familiar with subsequent designation more than later designation in view of its use in the Madrid Agreement and Protocol.

9. The table of contents will be amended accordingly if the proposal to amend the titles under Sections 2, 5, *6bis* and 9 are adopted.

RULES

10. PROPOSAL TO AMEND RULE 1 RELATING TO BOARD OF APPEAL

Rule 1

Definitions

For the purposes of these Regulations, unless the context otherwise requires:

[.....]

“*Board of Appeal*” means the Board of Appeal established under Section 4bis of the Protocol on Patents and Industrial Designs within the Framework of the African Regional Intellectual Property Organization (ARIPO) adopted at Harare, Zimbabwe, on December 10, 1982;

The deletion of the reference to the Harare Protocol in Sections 5bis and Rule 1 of the Banjul Protocol is proposed; subject to provision being made within the Banjul Protocol for a competent Board of Appeal.

Explanatory Notes for Rule 1

Reference to the Harare Protocol in the Banjul Protocol is poor legal drafting.

11. PROPOSAL TO AMEND RULE 5 RELATING TO APPLICATION PROCEDURE

Rule 5

Application and Transmittal Procedures

[.....]

5:2 If the Office finds that the application does not comply with the said requirements under Rule 4, it shall notify the applicant, inviting the applicant to comply with the said requirements within 2 weeks. Such notification shall be made on Form No. M4C. If the applicant does not comply with the requirements within the specified period, the Office shall refuse the application.

5:3 Where an application is filed with the office of a Contracting State, such State shall without delay transmit the application to the Office. Transmittal of the

application to the Office shall be made on Form No. M 5. The applicant shall be notified of the transmittal on Form No. M 6.

It is proposed to amend **Rule 5**.

Explanatory Notes for Rule 5

Rule 5:2 is introduced for clarity purposes whereas Rule 5:3 (formerly Rule 6:2) was misplaced.

12. PROPOSAL TO AMEND RULE 6 RELATING TO FORMALITIES EXAMINATION BY THE OFFICE

Rule 6

Formalities Examination by the Office

6:2 ~~Where an application is filed with the industrial property office of a Contracting State, such State shall without delay transmit the application to the Office. Transmittal of the application to the Office shall be made on Form No. M 5. The applicant shall be notified of the transmittal on Form No. M 6.~~

6:2

It is proposed to amend **Rule 6**.

Explanatory Notes for Rule 6

Refer to explanatory note for Rule 5:3. **Current rule 6.3 will subsequently become new Rule 6.2**

13. PROPOSAL TO AMEND RULE 7 RELATING TO REPRESENTATION OF THE MARK

Rule 7

Representation of the Mark

[.....]

7:3 Where the mark is three-dimensional, the application shall contain an indication to that effect according to Section 3:4 of the Protocol.

[.....]

Explanatory Notes for Rule 7

The amendment is brought for precision purposes.

14. PROPOSAL TO AMEND RULE 11 RELATING TO EXAMINATION BY A DESIGNATED STATE

Rule 11

Examination by a Designated State

[.....]

11:2 The communication referred to under Section 6 of the Protocol shall be made on Form No. M 9 **or Form M9B whichever is applicable.**

11:3 The applicant has 2 months to respond to Form **M 9** which ARIPO shall communicate to the designated state without delay. **The applicant's response should be done on Form M 9 C.**

11:4 The designated state has 2 months to respond to the communication, failure to which ARIPO shall proceed with the registration of the mark.

Explanatory Notes for Rule 11

The amendment is introduced for precision purposes.

15. PROPOSAL TO AMEND RULE 13 RELATING TO CHANGES IN REGISTERED PARTICULARS

Rule 13

Changes in Registered Particulars

13:1 Request for the recording of change, such as ~~territorial extension to one or more countries in respect of all or some of the goods and services,~~ transfer, partial assignment for some of the goods and services or for some of the countries, cancellation of the registration, voluntary cancellation in respect of some of the countries concerned, limitation of the list of goods and services, or change in the name and address of the owner, shall be presented in a single copy, dated and signed by the applicant or his representative on Form No. M 11.

It is proposed to amend **Rule 13**.

Explanatory Notes for Rule 7

It does not appear legally feasible for territorial extension to one or more countries in respect of all or some of the goods and services or for some of the countries. The same may be achieved through later designations as provided for under Section 9 and Rule 9 of the Protocol.

16. PROPOSAL TO AMEND RULE 15 RELATING TO REGISTRATION AND PUBLICATION

Rule 15
Registration and Publication

[.....]

- 15.4 ~~The Director General of the Office may establish Administrative Instructions which shall deal with details in respect of the application of these Regulations. Administrative Instructions so established shall not be in conflict with the provisions of the Banjul Protocol and these Regulations.~~

It is proposed to amend Rule 15.

Explanatory Notes for Rule 15

The provision under Rule 15:4 is neither directed to registration nor publication and is therefore misplaced. It is proposed that it be moved under Rule 17 on General Provisions.

17. PROPOSAL TO AMEND RULE 17 RELATING TO GENERAL PROVISIONS

Rule 17
General Provisions

- 17:1 Communications between the Office and the industrial property offices of Contracting States on matters relating to the Protocol and these Regulations shall be effected direct and by registered mail **or any other safe/secure electronic means of communication.**

[.....]

- 17:5 **The Director General of the Office may establish Administrative Instructions which shall deal with details in respect of the application of these Regulations. Administrative Instructions so established shall not be in conflict with the provisions of the Banjul Protocol and these Regulations.**

Explanatory Notes for Rule 17

Rule 17:1 is amended to avoid limitation of means of communication whereas Rule 17:5 (formerly Rule 15:4) fits under the General Provisions.

18. PROPOSAL TO AMEND FORM M 1 AND THE SCHEDULE OF FEES

- i) Delete reference to series of marks from the Form M 1
- ii) Replace reference to ~~mark~~ with **class** in items 11, 13, 14, 15, 18 and 19 of the Fee Schedule

SCHEDULE I
BANJUL PROTOCOL FEES

Part B: Regional Fees Structure

The Regional Fees will remain the same as indicated in the Table below.

	Matter or Proceeding	Amount of fee (US \$)	Corresponding Form
1.	Authorization of Agent (Power of Attorney)		No. M 2
2.	Application for Registration of a Mark		No. M 1
	(a) Paper filing	100.00	
	(b) Electronic filing (including 20% reduction)	80.00	
	(c) For one mark		
	(i) In one class per D/S	50.00	
	(ii) In every additional class per D/S	10.00	
	(d) For every additional mark		
	(i) In one class per D/S	50.00	
	(ii) In every additional class per D/S	10.00	
3.	Later Designation per D/S	100.00	No. M 3
4.	Registration fee:		
	(i) In one class per D/S	100.00	
	(ii) In every additional class per D/S	50.00	
5.	Certificate of Registration		No. M 12
6.	Request for Renewal of Registration of a Mark:		No. M 10
	(i) In one class per D/S	100.00	
	(ii) In every additional class per D/S	50.00	
7.	Additional Fee for Late Renewal:		
	(i) In one class	20% surcharge	
	(ii) In every additional class	20% surcharge	
8.	Application to Remove Mark from Register for Non-use or to Rectify a Register Entry	20.00	
9.	Application for Change of Representative	50.00	No. M 11
10.	Application by Registered Proprietor to Strike out Goods or Services from those for which Mark is Registered per D/S	50.00	
11.	Request for correction of error(s), change(s), or alteration(s) of Application or Registered Mark:		No. M 11
	(a) For one mark class per D/S	50.00	

(b) For every additional class per D/S	50.00	
12. Restoration of a mark per D/S	100.00	No. M 14
13. Application for Registration of Registered User:		
(i) For one mark class per D/S	50.00	
(ii) For every additional class per D/S	50.00	No. M 17
14. Application by Registered Proprietor and Registered User of Mark to Vary Entry of Registered User:		
(i) For one mark class per D/S	50.00	No. M11
(ii) For every additional class per D/S	50.00	
15. Application by Registered Proprietor and Registered User of Mark to Cancel Entry of Registered User:		
(i) For one mark class per D/S	50.00	No. M17
(ii) For every additional class per D/S	50.00	
16. Request for Registrar's Certificate of Certified Copies of Entries in the Register of Documents or of Extracts	30.00	No. M18
17. Inspection of the Register	20.00	
18. Registration of assignments, transmission or other form of transfer		No. M15
(i) For one mark class per D/S	50.00	
(ii) For every additional class per D/S	50.00	
19. Application to ARIPO to register a licence or other similar rights		
(i) For one mark class per D/S	50.00	No. M16
(ii) For every additional class per D/S	50.00	
20. Request for conversion of application into national application	50.00	No. M7
21. Request for classification of a trademark in accordance with the latest edition of the NICE Classification	50.00	
22. Search Fee	50.00	
23. Request for extension (extension is calculated from date the action is due)	50.00	No. M19
24. A surcharge per word for the goods listing of each class on any application after the 50 th word	5.00 per word after 50	



<p>Form No. M 1</p> <p>BANJUL PROTOCOL (Rule 4:1) (Rule 7:1)</p> <p>To:</p>	<p>Date of Receipt by Receiving Office: Date of Receipt by ARIPO Office:</p> <p style="text-align: center;">(ARIPO Office's Stamp)</p> <p>Filing Date:</p> <hr/> <p>Applicant's or Representative's File Reference:</p>
<p>APPLICATION FOR THE REGISTRATION OF A MARK OR OF A SERIES OF MARKS</p>	
<p>I. APPLICANT(S)</p> <p>Name _____</p> <p>Address: _____</p> <p>Nationality: _____</p> <p>Country of residence or principal place of business: _____</p> <p>Telephone Number _____ Facsimile Number(s) _____</p> <p>Mobile Phone: _____ E-mail: _____</p>	
<p>II. REPRESENTATIVE</p> <p>The following representative has been appointed by the applicant(s) in the power of attorney on Form No. M 2</p> <p>[] accompanying this Form</p> <p>[] to be filed within 2 months from the filing of this Form</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone Number _____ Facsimile Number(s) _____</p> <p>Mobile Phone: _____ E-mail: _____</p>	
<p>III. DESIGNATION OF STATES</p>	

IV. DECLARATION OF PRESENTATION IN AN EXHIBITION

☐ Check this box if the applicant wishes to take advantage of any declaration resulting from the presentation of goods and/or services in an exhibition. In that case, give the details on an additional sheet.

Date:

Place:

V. PRIORITY DECLARATION (if any)

The priority of (an) earlier application(s) is claimed as follows ☐

The priority of more than one earlier application is claimed, the data are indicated in the supplemental box ☐

Application No.	Country	Filing Date	DAS Control code	Class(es)

☐ The certified copy of the earlier application accompanies this Form

☐ The certified copy of the earlier application will be furnished within three months from the filing of this Form.

☐ The English translation of the earlier application accompanies this Form

☐ The English translation of the earlier application will be furnished within six months from the filing of this Form.

VI. REPRODUCTION OF THE MARK

☐ The applicant wishes that the Office register and publish the mark in the standard characters used by it.

[End of *Annex II*]

ARIPO/AC/XLI/10
November 6, 2017

**REPORT OF THE TECHNICAL COMMITTEE ON
PLANT VARIETY PROTECTION**

REPORT OF THE TECHNICAL COMMITTEE ON PLANT VARIETY PROTECTION

INTRODUCTION

1. The Second Session of the Technical Committee on Plant Variety Protection (hereinafter referred to as the “Committee”), was held at the ARIPO Headquarters in Harare, Zimbabwe from August 17 to 18, 2017.
2. Four (4) Member States of the Committee were represented at the Session, namely: Ghana, Kenya, Zambia and Zimbabwe (*ex-officio* member of the Committee). The United Republic of Tanzania was not represented.
3. In view of the comments for the improvement of the Draft Regulations for implementing the Arusha Protocol received from member States and the Civil Society Organizations, two ARIPO Member States that are not members of the Committee attended the session: Malawi and Uganda. A representative of the Civil Society Organizations, from the Alliance for Food Sovereignty in Africa (AFSA) also attended the Session of the Technical Committee.
4. The Committee reviewed and discussed the following documents that were presented by the Secretariat:
 - (a) Consideration of the Draft Regulations for Implementing the Arusha Protocol for the Protection of New Varieties of Plants (*document ARIPO/TCPVP/II/2*);
 - (b) Consideration of the revised List of Agricultural Crops with historical practice of farm-saved seeds in the Member States (*document ARIPO/TCPVP/II/3*);
 - (c) Consideration of proposed Competent Institutions, Quality Audits and arrangements for DUS Testing (*document ARIPO/TCPVP/II/4*);

CONSIDERATION OF THE DRAFT REGULATIONS FOR IMPLEMENTING THE ARUSHA PROTOCOL FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (*document ARIPO/TCPVP/II/2*)

5. The Committee considered document *ARIPO/TCPVP/II/2* which contained the directives of the Fortieth Session of the Administrative Council on the need of further review of the draft Regulations for Implementing the Arusha Protocol on the Protection of New Varieties of Plants.
6. The Secretariat indicated to the Committee that the Administrative Council resolved that, due to concerns raised by Member States and Civil Society Organizations on the draft Regulations, the draft Regulations should be referred back to the Technical Committee so that the comments of the Member States and Civil Society Organizations can be taken into account in finalizing the draft Regulations. The Council had also resolved that Member States that wish to submit comments on the draft Regulations should do so before the 29th of January, 2017.
7. In order to cater for the concerns raised in the comments received from two member States, Malawi and Uganda, and the Civil Society Organizations, the Committee amended the draft Regulations as follows:
 - (a) Rule 7 (*Technical Questionnaire and Test Guidelines*) was amended in its paragraph (1) in a view to prevent misappropriation of local genetic resources:

“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.
 - (b) Rule 12 (*Grant and Rejection of a Breeder’s Right*) was amended in its paragraph (1) to cater for the operationalization of Article 4(1) of the Arusha Protocol:

“(1) Grant of Certificate for Breeder’s Right
 - (a) Transmission of applications to the designated States*
 - (i) Prior to grant of certificate of Breeder’s Right and upon compliance with the requirements for grant, the ARIPO Office*

shall transmit without delay the application to all designated States;

(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.

(c) In order to address the concerns raised with regard to the rights of small scale farmers and the need to define the “acts done privately and for non-commercial purposes”, the Committee agreed that Rule 15 (*Exceptions to Breeder's Right*) be completed in its paragraph 2 as follows:

“(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 that shall not include fruits, ornamentals, other vegetables or forest trees after consultation with the Contracting States. The list shall be periodically published by the ARIPO Office.

8. The Committee agreed that the revised draft Regulations for Implementing the Arusha Protocol on the Protection of New Varieties of Plants be submitted to the Administrative Council for consideration and adoption.

9. The full text of the draft Regulations is contained in Annex I to this report.

10. The comments from Member States and the Civil Society Organizations are contained in Compendium I from page 123 to page 144.

11. The Administrative Council is invited to consider and adopt the revised draft Regulations for Implementing the Arusha Protocol on the Protection of New Varieties of Plants as recommended in Paragraph 8.

CONSIDERATION OF REVISED LIST OF AGRICULTURAL CROPS WITH HISTORICAL PRACTICE OF FARM-SAVED SEEDS IN THE MEMBER STATES (*document ARIPO/TCPVP/II/3*)

12. The Committee considered document ARIPO/TCPVP/II/3 on consideration of revised list of agricultural crops with historical practice of farm-saved seeds in the Member States.
13. The Secretariat informed the Committee that some Member States have not yet provided their Lists of Agricultural Crops with historical practice of farm-saved seeds. It was also noted by the Committee that some countries which had provided the Lists did not include all the necessary information, including an indication on National Agricultural Centres that have capacities to undertake the examinations of new varieties.
14. The Committee requested the Secretariat to send letters to Member States that have not yet submitted their country information as per tables below, and also request for their input regarding the proposed criteria for the entrustment of competent Institutions by the Administrative Council. The Committee further requested the Secretariat to write to Member States to submit the list of their Agricultural Institutions with capacity to undertake Distinctness, Uniformity and Stability (DUS) tests and state the crops in which they have the technical capacity and reference materials to conduct the DUS examination.
15. The Committee developed some indicative Tables that follows bellow which were sent to Member States for them to fill in the required information.

List of Crops with historical practice of farm-saved seeds

(i) Table- List of Agricultural Crops

Country	Agricultural crops (farm-saved seeds)		Acreage/tonnage that defines a small holder farmer in their territory (ha)
	Common Name	Scientific Name	

(ii) Table- List of Vegetable Crops

Country	Vegetable crops (farm-saved seeds)	Acreage/tonnage that defines a small holder
----------------	-------------------------------------------	----------------------------------------------------

		farmer in their territory (ha)
	Common Name	Scientific Name

(iii) Table: Agricultural Institutions with capacity to undertake DUS

Institution	Crop Species

16.The Secretariat took action as per the recommendation of the Committee to update the list of Agricultural crops with historical practice of farm-saved seeds.

17.The Committee recommended that the updated list of Agricultural crops with historical practice of farm-saved seeds be submitted to the Administrative Council for consideration and approval.

18.The updated list of Agricultural crops with historical practice of farm-saved seeds is contained in Annex II of this document.

19.The Administrative Council is invited to consider and approve the updated list of Agricultural crops with historical practice of farm-saved seeds as recommended in Paragraph 16.

**CONSIDERATION OF PROPOSED COMPETENT INSTITUTIONS,
QUALITY AUDITS AND ARRANGEMENTS FOR DUS TESTING**
(document ARIPO/TCPVP/II/4)

20. The Committee considered document ARIPO/TCPVP/II/4 on Competent Institutions, Quality Audit and arrangements for DUS testing. The Secretariat indicated that the proposed scheme was drawn following consultations and a study visit to the European Community Plant Variety Office (CPVO).
21. The Committee reviewed the proposed scheme and determined the minimum requirements for entrusting competent institutions by the Administrative Council as follows:
- (i) Experience in specific crop(s) with reference collections
 - (ii) Capacity to undertake independent DUS Tests or Trials with integrity and confidentiality
 - (iii) Available skilled personnel
 - (iv) Readiness to enter into an agreement and corporate with ARIPO
 - (v) Adequate facilities and equipment including irrigation facilities
 - (vi) Available Test Protocols and Procedures
 - (vii) Storage facilities for plant materials
 - (viii) Quality management system with effective documentation and reporting structures
22. The Committee also took note of the proposed independent audit team and reviewed the basis upon which the Director General should designate Examination Offices to undertake the DUS tests. It was agreed that the following should form the basis:
- (i) Where the variety was bred
 - (ii) Suitable agro-ecological conditions
 - (iii) Competence of the Examination Office
 - (iv) Preference of the breeder.
23. The Committee recommended to the Secretariat to re-draft the document indicating the processes that the Administrative Council should follow in the entrustment of the Competent Institutions.
24. The Committee further recommended to the Secretariat to revise the document on the Agricultural Institutions with capacity to undertake DUS for consideration by the Administrative Council.

25.The Committee recommended that the proposed ARIPO Quality Audit scheme and procedure for entrustment of Competent Institutions to conduct DUS testing be submitted to the Administrative Council for consideration and approval.

26.The proposed Quality Audit scheme and procedure for entrustment of Competent Institutions to conduct DUS testing is contained in this document as Annex III.

27.The Administrative Council is invited to consider and approve the proposed ARIPO Quality Audit scheme and procedure for entrustment of Competent Institutions as recommended in Paragraph 24.



The African Regional Intellectual Property Organization (ARIPO)

The Arusha Protocol for the Protection of New Varieties of Plants

**Regulations for Implementing the Arusha Protocol for the
Protection of New Varieties of Plants**

**ARIPO
Harare, Republic of Zimbabwe
August 2017**

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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 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 made in writing in the prescribed manner and shall be accompanied by the fee prescribed in the Second Schedule and a statement of the grounds upon which the objector relies and any evidence in support of the objector's objection.
- (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) *Transmission of applications to the designated States*
 - (i) *Prior to grant of certificate of Breeder's Right and upon compliance with the requirements for grant, the ARIPO Office shall transmit without delay the application to all designated States in Form PVP 2;*
 - (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 that shall not include fruits, ornamentals, other vegetables or forest trees after consultation with the Contracting States. The list shall be periodically published by the ARIPO Office.
- (3) For the purpose 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) The level of the equitable remuneration to be paid may form the object of a contract between the holder and the small scale commercial farmer and large scale commercial farmer concerned;
 - (b) Where such contract has not been concluded or does not apply, the level of remuneration 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;
 - (c) If no licensed production of propagating material of the variety concerned has taken place in the area in which the holding of the farmer is located, and if there is no uniform level of the aforesaid amount throughout the ARIPO Region, the level of remuneration shall be reasonably lower than the amount which is normally included, for the above purpose, in the price at which propagating material of the

lowest category qualified for official certification, of that variety is sold in that area, provided that it is not higher than the aforesaid amount charged in the area in which that propagating material has been produced.

(5) Information to be provided by farmers to breeders

For the purpose of implementing Article 22 (3) of the Protocol in these Regulations on the information to be provided by the farmer to the breeder, the following should be included:

- (a) The details of the farmer and address including the location of farmer's own holding;
- (b) The details of the protected variety;
- (c) Quantity of seed saved;
- (d) The detail of the processor if the saved seed has been processed.

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 only 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 compulsory license should be authorized predominantly for the supply of the domestic market of the Contracting State authorizing such use;
 - (h) 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

Fees

- (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

PART II

(To be completed by the Applicant)

APPLICATION FOR A GRANT OF PLANT BREEDER'S RIGHTS

Application

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 _____
 - (ii) Date of first sale or offer for sale _____
 - (iii) Terms or conditions of sale _____
 - (iv) 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: _____

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)

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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:



Form PVP 2
ARUSHA PROTOCOL

For Official Use

NOTIFICATION OF DECISION TO GRANT
(Rule 12(a)(i))

Applicant's or Representative's File Reference:

To*:

I. IN THE MATTER OF:

☐ 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.

☐ A copy of the DUS examination report upon which this decision is based is attached hereto.**

☐ 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*****

.....
DIRECTOR GENERAL
ARIPO OFFICE

.....
(Date)

* 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 a notification Form No. ... is being sent in connection with the above-identified application

***** Type name of Director General under signature.



**Form PVP 3
ARUSHA PROTOCOL**

For Official Use

**COMMUNICATION BY DESIGNATED STATE
THAT BREEDER'S RIGHT SHALL HAVE NO
EFFECT IN ITS TERRITORY
(Section 19; Rule 12 (a)(ii))**

**To: Director General
ARIPO Office
P.O. Box 4228
Harare
Zimbabwe**

Applicant's or Representative's File Reference:

I. IN THE MATTER OF:

☐ Application for grant of a breeder's right

Application No.:
Filing Date:

II. APPLICANT(S)

Name:
Address:

III. COMMUNICATION

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:

☐ 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):

☐ 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):

IV. SIGNATURE*

.....

.....

(Date)

PLANT VARIETY OFFICE**

* 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)

.....



FORM PVP 6: CERTIFICATE OF GRANT OF PROVISIONAL PROTECTION

I certify that

.....

(Name of Holder)

.....

(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)

vide 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.
4.
5.

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

Date.....
.....

Signature of Applicant



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



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)



**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 denomination)

to the said employer

Place and

date: _____

(Name and signature of the breeder)

Dated the _____ **at**

SECOND SCHEDULE
FEES



Type of Charges	Fees (USD)
1. Application for grant of plant breeders' rights	450
2. Transmittal Fee	50
3. Application for surrender of grant	50
4. Application for opportunity to make representations	150
5. Technical evaluation of a variety (DUS)	800
6. Grant of plant breeders' rights certificate	250
7. Duplicate copy of the register or other document	1 per page
8. Annual fees for maintenance of grant	300
9. Purchase of a report from a testing authority of another country	320
10. Replacement of lost or destroyed certificate	50
11. Claim of priority from a preceding application	50
12. Change of an approved denomination	100
13. Surcharge of late payment	100
14. Transfer/ Assignment Fee	50

15. Fees for Objection	250
16. Extension of Time Limits	50
17. Designation fee per Designated state	100
18. Certified Copies	10
19. Correction of errors	10 for the first 25 errors and 2.50 for subsequent errors
20. Change of an agent or representative	50

[End of Annex I]

UPDATED LIST OF AGRICULTURAL CROPS WITH HISTORICAL PRACTICE OF FARM-MADE SEEDS

I. AGRICULTURAL CROPS

Country	Agricultural crops (farmer-made seed)	Acreage/tonnage that defines a small holder farmer in their territory (ha)	National Agricultural Centres that have capacities to undertake the examination of new varieties (DUS)
Botswana	<i>Sorghum bicolor</i> (grain/ sweet sorghum) <i>Vigna spp</i> (Cowpeas, bambara g/ nuts, etc.) <i>Langeria spp</i> <i>Eleusine caracana</i> (Finger millet) <i>Pennisetum glaucum</i> (Pearl millet) <i>Zea mays</i> (Maize) <i>Arachis hypogaea</i> (Groundnut)	≤16 ha (of ploughed land)	Department of Agricultural Research
The Gambia		Less (<)3	The Seed Technology Unit (STU) of the National Agricultural Research Institute (NARI)
Ghana	<i>Sesamum spp</i> & <i>Zea mays</i> (Maize) <i>Oryza sativa</i> (Rice) <i>Manihot esculenta</i> (Cassava) <i>Vigna unguiculata</i> (Cowpea) <i>Arachis hypogaea</i> (Groundnut) <i>Vigna subterranea</i> (Bambara groundnut) <i>Glycine max</i> (Soyabean) <i>Dioscorea spp.</i> (Yam) <i>Colocasia esculenta/Xanthosoma</i>	0.25 <0.80 <0.80 <0.80	CSIR-Crops Institute, Kumasi Savannah Agricultural Research Institute, Nyankpala Plant Genetic Resources Institute, Bunso

	<i>Sagittifolium</i> <i>(Cocoyam)</i> <i>Ipomoea batatas</i> <i>(Sweet potato)</i>		
Kenya	<u>Cereals</u> Finger millet <i>(Eleusine coracana</i> <i>(L.) Gaertn)</i> Pearl millet <i>(Pennisetum (L.)</i> <i>R.Br.)</i> Finger millet <i>(Eleusine coracana)</i> Rice <i>(Oryza sativa L.)</i> Sorghum <i>.(Sorghum</i> <i>bicolor (L.) Moench.)</i> Wheat <i>(Triticum spp.)</i> <u>Pulses</u> Beans <i>(Phaseolus</i> <i>vulgaris L.)</i> Cowpea <i>(Vigna</i> <i>unguiculata (L.)</i> <i>Waip.)</i> Dolichos bean <i>(Dolichos lablab L.)</i> Pigeon pea <i>(Cajanus</i> <i>cajan)</i> <u>Oil Crops</u> Ground nut <i>(Arachis</i> <i>hypogaea L.)</i> Soya beans <i>.(Glycine</i> <i>max (L.) Merr.)</i> <u>Root and Tuber Crops</u> Irish potatoes <i>(Solanum tuberosum)</i> Cassava <i>(Manihot</i> <i>esculenta)</i>	3.0	Kenya Plant Health Inspectorate Service (KEPHIS)
Mozambique	Maize Rice Groundnut Cassava Sorghum	10	

	<i>Beans</i> <i>Sweet potatoes</i>		
Namibia	<i>Pearl millet</i> <i>(pennisetum glaucum)</i> <i>Sorghum (Sorghum bicor)</i> <i>Maize (Zea Mays)</i> <i>Cowpea (Vigna unguiculata)</i> <i>Bambara groundnuts (Vigna subterranean)</i> <i>Groundnuts (Arachis hypogaea)</i> <i>Sweetpotato (Ipomea batatas)</i> <i>Cassava</i>	≤ 5	None
Rwanda	<i>Soyabeans</i> <i>Groundnuts (Arachis hypogaea)</i> <i>Peas</i>	<0.5	Rwanda Agriculture Board (RAB)
Sierra Leone	<i>Sesame –sesame</i> <i>Oryza-Rice</i> <i>Ipomoea –Sweet Potato</i> <i>Phaseolus – Field bean</i> <i>Zea-Maize</i> <i>Arachis-Peanut</i> <i>Sorghum-Sorghum</i> <i>Manihot-Manioc</i> <i>Vigna-Cowpea</i> <i>Panicum-Millet</i>	5	Sierra Leone Agricultural Research Institute (SLARI)
Swaziland	<i>Maize</i> <i>Sorghum</i> <i>Rice</i> <i>Beans</i> <i>Ground nuts</i> <i>Cowpeas</i> <i>Jugobeans</i> <i>Pigeon peas</i> <i>Soybeans</i> <i>Mungbeans</i> <i>Cotton</i> <i>Sweet potato</i> <i>Cassava</i>	0.5 to 2 (in the Highveld regions) 5 to 10 (in the Lowveld region)	

	<i>Pumpkin</i> <i>Irish potatoes</i>		
Zambia	<p>Cowpea - <i>Vigna unguiculata</i></p> <p>Cassava - <i>Manihot esculentus</i></p> <p>Sweet potato - <i>Ipomeae batatas</i></p> <p>Common beans - <i>Phaseolus vulgaris</i></p> <p>Pigeon pea - <i>Cajanus cajan</i></p> <p>Bambara groundnuts - <i>Vigna subteccanea</i></p> <p>Groundnuts - <i>Arachis hypogen</i></p> <p>Maize - <i>Zea mays</i></p> <p>Rice - <i>Oryza sativa</i></p> <p>Sorghum - <i>Sorghum bicolor</i></p> <p>Millet - <i>Pennisetum glaucum</i></p> <p>Ground orchids - <i>Spathoglottis plicata</i></p> <p>Sesame - <i>Sesamum indicum</i></p> <p>Winged bean - <i>Psophocarpus tetragonolobus</i></p> <p>Green gram - <i>Vigna radiata</i></p> <p>Mung bean - <i>Vigna mungo</i></p>	≤ 5	<ul style="list-style-type: none"> - Seed Control and Certification Institute - Zambia Agriculture Research Institute - Cotton Development Trust (Cotton) - University of Zambia

Zimbabwe	Cowpea - <i>Vigna unguiculata</i> Cassava - <i>Manihot esculentus</i> Sweet potato - <i>Ipomeae batatas</i> Common beans - <i>Phaseolus vulgaris</i> Pigeon pea - <i>Cajanus cajan</i> Bambara groundnuts - <i>Vigna subteccanea</i> Groundnuts - <i>Arachis hypogen</i> Maize - <i>Zea mays</i> Rice - <i>Oryza sativa</i> Sorghum - <i>Sorghum bicolor</i> Millets - <i>Pennisetum glaucum</i> Ground orchids - <i>Spathoglottis plicata</i> Sesame - <i>Sesamum indicum</i> Winged bean - <i>Psophocarpus tetragonolobus</i> Green gram - <i>Vigna radiata</i> Mung bean - <i>Vigna mungo</i>	<10 10 or less	<ul style="list-style-type: none"> - Department of Research and Specialist Services under the Seed Services Institute - The National Gene Bank *These Institutions are under the Ministry of Agriculture, Mechanisation and Irrigation Development - Crop Breeding Institute (CBI)-potatoes and legume crops - Tobacco Research Board (TRB)-tobacco - Cotton Research Institute-cotton - Coffee Research Institute-coffee - Zimbabwe Sugar Association Experimental Station (ZSAES)-sugar cane - ArtFarm-vegetables and other crops except for tobacco, cotton and sugar cane - Ratray Anorld Research Station-maize, wheat and soyabean
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II. VEGETABLES (INDIGENOUS AND NATURALISED)

Country	Vegetable crops (farmer-saved seed)	Acreage/tonnage that defines a small holder farmer in their territory (ha)	National Agricultural Centres that have capacities to undertake the examination of new varieties (DUS)
Botswana	<i>Amaranthus spp</i> <i>Cleome spp</i> <i>Corchorus spp</i> <i>Solanum panduriforme</i> (E. Mey) <i>Solanum</i>	≤16 ha (of ploughed land)	Department of Agricultural Research

	<i>susymbriifolium (Lam)</i> <i>Acanthosicyos</i> <i>naudinianus (Sond.)</i> <i>Cucumis spp (C.</i> <i>Jeffrey) (wild</i> <i>cucumber)</i> <i>Cucumis myriocarpus</i> <i>(Naudin) subsp.</i> <i>Myriocarpus (striped</i> <i>cucumber)</i> <i>Citrullus lanatus</i> <i>(melon)</i>		
The Gambia	<i>Tomato</i> <i>Hot Pepper</i> <i>Okra</i> <i>Onion</i> <i>Lettuce</i> <i>Egg Plant</i> <i>Bitter tomato</i> <i>Shallot onion</i>	Less (<)3	The Seed Technology Unit (STU) of the National Agricultural Research Institute (NARI)
Ghana	<i>Amaranthus spp – A.</i> <i>blitum, A. cruentus</i> <i>Celocia argentea</i> <i>Cleome gynandra</i> <i>Crassocephalum spp;</i> <i>c. rubens;</i> <i>C. crepidioides;</i> <i>Solanecio biafrae</i> <i>Cucumeropsos mannii</i> <i>Lagenaria siceraria</i> <i>Momordica charantia</i> <i>Solenostemon</i> <i>rotundifolius</i> <i>Abelmoschus caillei;</i> <i>A. esculentus (Okra)</i> <i>Hibiscus spp.</i> <i>Sesamum spp &</i> <i>Cerathotheca spp</i> <i>Talinum fruticosum</i> <i>Solanum aethiopicum;</i> <i>S. macrocarpa, S.</i> <i>Melongena; S.</i> <i>anguivi; S. torvum</i> <i>Corchorus olitorius;</i>	0.25 0.25 2.00 0.25 0.25 0.25 0.25 0.20 0.25 1.00 0.20 0.25 0.10 0.60 0.25 0.20 <0.80 <0.80 <0.80 <2.00 <2.00 <2.00	CSIR-Crops Institute, Kumasi Savannah Agricultural Research Institute, Nyankpala Plant Genetic Resources Institute, Bunso

	<i>C. tridens</i> <i>Asystasia spp</i> <i>Vigna unguiculata</i> (Cowpea) <i>Arachis hypogaea</i> Cocoyam	<2.00	
Kenya	<i>Cleome gynandra</i> - spider plant <i>Solanum nigrum</i> -black night shade <i>Solanum villosum</i> - African nightshade <i>Cucurbita maxima</i> <i>Cucurbita moschata</i> – Pumpkin leaves <i>Cucurbita pepo</i> <i>Corchorus olitorius</i> - jute mallow <i>Vigna unguiculata</i> – cow peas <i>Crotalaria breviden/</i> <i>ochroleuca s-</i> slenderleaf <i>Amaranthus hydridus</i> – pig weed <i>Solanum scabrum</i> <i>Basella alba</i> - <i>Commelina Africana</i> <i>Ipomea batatas</i> – Sweet potato <i>Amihot esculentum</i> – Cassava <u>Vegetables</u> African nightshade (<i>Solanum nigrum</i>) Spider plant (<i>Cleome</i> <i>gynandra</i>) African kale (<i>Brassica</i> <i>oleracea.</i>)	2.5 0.1	Kenya Plant Health Inspectorate Service (KHEPHIS)
Mozambique	Onion Cassava Beans Sweet potatoes	10	

Namibia	<i>Cowpea (Vigna unguiculata)</i> <i>Tomatoes-cherry tomatoes</i> <i>Watermelons</i> <i>Melons</i> <i>Pumpkins</i> <i>Hibiscus spp</i> <i>Cleome spp</i> <i>Amaranthus spp</i>	≤ 5	None
Rwanda	<i>Peas</i>	<0.5	Rwanda Agriculture Board (RAB)
Sierra Leone	<i>Sesame –sesame</i> <i>Amaranthus –</i> <i>Amaranthus</i> <i>Solanum-Aubergine</i> <i>Ipomoea –Sweet</i> <i>Potato</i> <i>Capsicum-Chilli? Bell</i> <i>pepper</i> <i>Phaseolus – Field</i> <i>bean</i> <i>Citrullus-Water melon</i> <i>Lycopersicon-Tomato</i> <i>Vigna-Cowpea</i>	5	Sierra Leone Agricultural Research Institute (SLARI)
Swaziland	<i>Pumpkin</i> <i>Irish potatoes</i> <i>Some vegetables</i> <i>(Spinach</i> <i>Tomatoes)</i>	0.5 to 2 (in the Highveld regions) 5 to 10 (in the Lowveld region)	
Zambia	<i>Amaranthus -</i> <i>Amaranthus spp</i> <i>Okra - Abelmoschus</i> <i>esculentus</i> <i>Jute - Corchorus</i> <i>olitorius</i> <i>Pumpkin - Cucurbita</i> <i>moschata</i> <i>Roselle - Hibiscus</i> <i>subdariffa</i> <i>Spider plant - Cleome</i> <i>gynandra</i> <i>Cowpea - Vigna</i> <i>unguiculata</i> <i>Black jack - Bidens</i>	≤ 0.25	- Seed Control and Certification Institute - Zambia Agriculture Research Institute

<p> <i>pilosa</i> Ethiopian mustard - <i>Brassica carinata</i> Cassava - <i>Manihot</i> <i>esculentus</i> Sweet potato - <i>Ipomeae batatas</i> Night shade - <i>Solanum</i> <i>nigrum</i> Moringa - <i>Moringa</i> <i>oleifera</i> Ethiopian Eggplant - <i>Solanum aethiopicum</i> Common beans - <i>Phaseolus vulgaris</i> Horned melon - <i>Cucumis metuliferus</i> Tomato - <i>Solanum</i> <i>lycopersicum</i> Mustard - <i>Brassica</i> <i>carinata</i> Ground orchids - <i>Spathoglottis plicata</i> Sesame - <i>Sesamum</i> <i>indicum</i> Cat whiskers - <i>Gynandropsis</i> <i>gynandea</i> Kanuka (local name) - <i>Dioscorea hirtiflora</i> Tindigoma (local name) - <i>Ceratohoca</i> <i>resamoides</i> Winged bean - <i>Psophocarpus</i> <i>tetragonolobus</i> Lablab - <i>Lablab</i> <i>purpureus</i> Lima bean - <i>Phaseolus lunatus</i> Jack- and sword-bean - <i>Canavalia species</i> Green gram - <i>Vigna</i> <i>radiata</i> Mung bean - <i>Vigna</i> <i>mungo</i> </p>		
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Zimbabwe	<i>Corchorus tridens</i> – <i>derere</i> <i>Cleome gynandra</i> (nyeve, cat's whiskers/spider plant) <i>Amaranthus spinosa</i> and <i>hybridus</i> (pig weed) <i>Bidens pilosa</i> (black jack) <i>Brassica juncea</i> (tsunga) Okra <i>Curcubita maxima</i> (muboora) <i>Vigna unguiculata</i> (munyemba) <i>Amaranthus hybridus</i> – Mova guru <i>Amaranthus thumbergii</i> – Mova <i>Bidens pilosa</i> - Nhungunira <i>Corchorus olitorius</i> – Nyenje/gusha	<10 10 or less	<ul style="list-style-type: none"> - Department of Research and Specialist Services under the Seed Services Institute - The National Gene Bank *These Institutions are under the Ministry of Agriculture, Mechanisation and Irrigation Development - Crop Breeding Institute (CBI)-potatoes and legume crops - Tobacco Research Board (TRB)-tobacco - Cotton Research Institute-cotton - Coffee Research Institute-coffee - Zimbabwe Sugar Association Experimental Station (ZSAES)-sugar cane - ArtFarm-vegetables and other crops except for tobacco, cotton and sugar cane Ratray Anorld Research Station-maize, wheat and soyabean

[End of Annex II]

PROPOSED ARIPO QUALITY AUDIT SCHEME AND PROCEDURE FOR ENTRUSTMENT OF COMPETENT INSTITUTIONS TO CONDUCT DUS TESTING

1. Quality Audit Schemes are essential for the entrustment of competent institutions with the capacity to undertake DUS Testing due to the fact that the examination of plant varieties is undertaken in the field with different ecologies and climate. The Scheme will ensure that the examination officers conduct their tests in a standard way to produce quality DUS Test results that are reliable, comparable and repeatable as well as demonstrate a certain level of competence to accord strong protection for the breeders' rights. In order to achieve this, three key essential elements are required. These are entrustment criteria, independent Audit team and establishment of an independent review body.

A. ENTRUSTMENT REQUIREMENTS

2. The entrustment requirements provide clear criteria for the entrustment or appointment of competent institutions in the ARIPO Member States to conduct DUS Testing on behalf of the Organization. The following are non-exhaustive proposed criteria for consideration:
 - (i) Experience in specific crop(s) with reference collections
 - (ii) Capacity to undertake independent DUS Tests or Trials with integrity and confidentiality
 - (iii) Available skilled personnel
 - (iv) Readiness to enter into an agreement and corporate with ARIPO
 - (v) Adequate facilities and equipment including irrigation facilities
 - (vi) Available Test Protocols and Procedures
 - (vii) Storage facilities for plant materials
 - (viii) Quality management system with effective documentation and reporting structures

B. ESTABLISHMENT OF AN INDEPENDENT AUDIT TEAM

3. In order for assessment of the competent institutions in ARIPO Member States to be undertaken based on the above mentioned criteria, an independent audit

team should be established for assessment and review of competent institutions. It is therefore proposed that the audit team should be composed of the following:

- i. One technical staff from ARIPO Member States with relevant expertise in conducting field trials
 - ii. One technical staff from ARIPO
 - iii. Head of Internal Auditor
4. The technical staff should have hands-on experience in technical work. The team should be trained on basic auditing techniques and should carry out their work under confidentiality agreement.
5. It is also proposed that the team should be given terms of reference that includes assessment of proposed institutions to conduct DUS testing as well as periodic (once in three years) review of the appointed competent institutions for compliance with entrustment criteria and tests guidelines.

C. AUDIT ADVISORY BOARD

6. It is proposed that the Audit Committee of the Administrative Council should serve as the Audit Advisory Board who will from time to time review the work of the audit team.

D. ARRANGEMENT FOR EXAMINATION OF CANDIDATE VARIETIES (DUS TESTING)

To enable the Director General of ARIPO to designate examination offices to undertake tests on candidate varieties submitted as applications to the ARIPO Office, the following shall be considered in identifying which examination office should carry out the technical examination of the candidate varieties:

- i. Where the variety was bred
 - ii. Suitable agro-ecological conditions
 - iii. Competence of the Examination Office
 - iv. Preference of the breeder.

E. PROCESS THAT THE ADMINISTRATIVE COUNCIL SHOULD FOLLOW IN THE ENTRUSTMENT OF THE COMPETENT INSTITUTIONS

- i. The ARIPO Secretariat in consultation with ARIPO Member States will identify competent institutions with capacity to undertake DUS Testing
- ii. The ARIPO Secretariat will inform the candidate Institutions and request for relevant information that meet the requirements stated under point A above.
- iii. The Secretariat shall constitute the audit team to assess the competence of candidate institutions and, where applicable, visit the institutions for onsite assessment
- iv. The audit team shall make appropriate recommendations to the Administrative Council for consideration and admission as ARIPO competent institutions for conducting DUS testing.

[End of Annex III]