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Civil Society Concerned With ARIPO 's Draft Regional Policy and Legal Framework for Plant Variety Protection

We, the undersigned organizations are concerned with the conservation of agricultural biodiversity for livelihood security and food sovereignty, promoting farmers' rights and self-determination, and citizen involvement in the decision-making process. We are extremely concerned also about the industrialisation and privatisation of Africa's food systems and the commodification of nature and knowledge.

The undersigned organizations would like to express serious concerns with regard to the ARIPO Draft Regional Policy and Legal Framework for Plant Variety Protection contained in documents ARIPO/CM/XIII/8 and ARIPO/AC/XXXVI/9.

We understand that the Administrative Council of ARIPO will be meeting in Zanzibar from 26-30th November to discuss the abovementioned documents. **Thus we request you to circulate this letter and the attached submission to all members of the Administrative Council as well as to all member states of ARIPO.**

The undersigned organizations are of the view that the draft legal framework proposed does not develop a regime that is suitable to the needs of ARIPO member states. The draft legal framework is based on UPOV 1991, which was developed by industrialised countries to address their own needs, and does not reflect the concerns and conditions of African nations. UPOV 1991 imposes a "one-size-fits-all" and an inflexible legal framework which limits the ability of countries to design national laws that suit their individual needs.

Some key concerns with regard to the draft regional policy and legal framework are:

1. The draft legal framework will not resolve but will exacerbate the many challenges raised in the draft regional policy (e.g. hunger, food security, climate change, biopiracy). The attached submission illustrates this point.

2. The draft legal framework is aimed at replacing traditional varieties with uniform commercial varieties and increasing dependency of smallholders towards commercial seed varieties. This vision itself is problematic as it will lead to erosion of crop diversity and thus reduce resilience to threats such as pests, disease or climate change. It also increases the risk of farmer indebtedness in the face of unstable incomes (as revenue would vary depending on seasons). Additionally the high yielding varieties are likely to be less suited to the specific agroecological environments in which farmers work and for which traditional farmer varieties may be more appropriate.

3. The draft policy champions farmers' rights in terms of the customary rights of farmers to save, use, exchange and sell farm-saved seed and acknowledges that their rights and efforts should be recognised, rewarded and supported for their contribution to the global pool of genetic resources and to the development of commercial varieties, as addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). However the draft legal framework not only does not operationalize these commitments, it goes in the opposite direction. It totally fails to acknowledge farmers' contribution as breeders and instead severely limits the rights of farmers.

   Although the agricultural landscape in ARIPO member states is dominated by small-scale farmers, the legal framework does not allow farmers to continue its customary practices of freely saving, exchanging and selling farm-saved seeds or to develop new varieties from the protected varieties. Thus it is clear that the winners of the legal framework are the commercial breeders (usually foreign commercial breeders) while the losers are small-scale farmers as the legal framework effectively puts farmer systems in jeopardy.

4. The draft legal framework contains provisions that diverge from positions taken by African nations regionally and internationally around issues concerning community and farmers' rights and plant breeders' rights (PBRs) (e.g. in the context of ITPGRFA as well as the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and For the Regulation of Access to Biological Resources (hereinafter referred to as the "OAU Model Law").

5. The provisions contained in the draft legal framework are based on UPOV 1991 and in some areas goes beyond UPOV 1991. As such the draft legal framework adopts standards found in UPOV 1991 that strengthen breeders rights to the prejudice of farmers' rights. This includes coverage of all plant genera and species, extensive duration of protection i.e. of 20-25 years; extensive scope of breeders rights, limited exemptions to breeder rights and severely limited farmers' rights etc.

   Consequently ARIPO member states are being asked to give up the very important flexibility that they currently have to develop a "sui generis" system that is relevant to their individual conditions and needs.

6. The draft legal framework proposes a regional PVP system whereby ARIPO has the authority to grant and administer breeders' right on behalf of all contracting states, thereby denying member states the right to take any decision related to PVP although such issues are critical to national socio-economic development.

7. The ARIPO documents accompanying the legal framework clearly show that the Secretariat has not conducted any independent impact assessment of the potential impacts of the proposed policy and legal framework on PVP. The Secretariat has drafted the legal framework entirely on the claims made by the UPOV Secretariat (which has an interest in promoting UPOV 1991), industry and foreign entities. In short there is no independent empirical evidence to support the underlying premise of the proposed legal framework (i.e. the benefits of the UPOV 1991 & the regional model for African nations).

8. The process of developing the legal framework and policy has been closed to farmers, farmer organisations or other members of civil society, while industry associations (e.g. CIOPORA, African Seed Trade Association (AFSTA), French National Seed and Seedling Association (GNIS)) and foreign organizations such as the United States Patent and Trademark Office (USPTO), the UPOV Secretariat, the European Community Plant Variety Office (CPVO) have been consulted extensively.

   It needs to be recalled that Article 9(2)(c) of the ITPGRFA recognises the rights of the local and indigenous communities and farmers "to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture." The UN Special Rapporteur on the Right to Food has also recommended that governments: "Put in place mechanism ensuring the active participation of farmers in decisions related to the conservation and sustainable use of plant genetic resources for food and agriculture particularly in the design of legislation covering…. the protection of plant varieties so as to strike the right balance between the development of commercial and farmers' seed systems"[1]

Attached is a detailed submission by the signatories highlighting some of the key concerns with regard to the Draft regional policy as well as the legal framework.

The undersigned signatories urge the ARIPO Secretariat, the ARIPO Administrative Council as well as Member states to:

1. **Reject development of the ARIPO regional legal framework on PVP on the basis of UPOV 1991. Accordingly it is also not in the interests of the ARIPO member states for ARIPO to join UPOV.**

2. **Revise the Draft regional policy and legal framework taking into account elements contained in the ITPGRFA and the OAU Model Law and support the development of a legal framework that acknowledges the contribution of farmers as breeders and that upholds and promotes the customary practices of small scale farmers within the ARIPO region.**

3. **Reject development of a legal framework that is based on "one grant system" (whereby the ARIPO regional authority has the power to grant and to administer breeders' rights on behalf of the Contracting states). Instead a regional legal framework should encourage and provide policy space to its member states to develop PVP laws that reflect national agricultural systems (which varies in the region), the different levels of development, interests and needs.**

4. **Urgently provide adequate opportunities for consultations with farmers, farmer movements and civil society organizations working in the sector, before any further work is undertaken on the draft law.**

5. **Urgently make available publicly all information with regard to the process and timelines involved in developing the Draft regional policy and legal framework.**

[1] See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation"

This information should also be updated on a regular basis. Currently absolutely no information on process or timelines is publicly available.

Please acknoweldge receipt hereof. We look forward to hearing from you as soon as possible.

Signatories

African Biodiversity Network (ABN)	representing 36 organisations in Africa
La Via Campesina Afrique	representing small scale farmers from Zimbabwe, Mozambique, Democratic Republic of the Congo, Rwanda, Angola, Uganda, Tanzania, Kenya, Zambia, South Africa, Central Africa Republic
Movement for Ecological Learning and Community Action (MELCA)	Ethiopia
Institute for Sustainable Development (ISD)	Ethiopia
Participatory Ecological Land Use Management (PELUM)	Kenya
National coordination of peasant organisations of Mali (CNOP)	Mali
Centre for Environmental Policy and Advocacy	Malawi
Never Ending Food	Malawi
Participatory Ecological Land Use Management (PELUM)	Rwanda
Abalimi	South Africa
African Centre for Biosafety (ACB)	South Africa
Biowatch	South Africa
DIAKONIA Council of Churches	South Africa
Erathlife Africa eThekwini	South Africa
Farm & Garden Trust	South Africa
Eastern and Southern Africa Small Scale Farmers Forum (ESAFF)	Tanzania
Envirocare	Tanzania
Participatory Ecological Land Use Management (PELUM)	Tanzania
Tanzania Alliance for Biodiversity	Tanzania
Tanzania Organic Agriculture Movement	Tanzania
Advocates Coalition for Development and Environment (ACODE)	Uganda
Center for Health Human Rights and Development (CEHURD)	Uganda
Eastern and Southern Africa Small Scale Farmers Forum (ESAFF)	Uganda
Food Rights Alliance (FRA)	Uganda
National Organic Agricultural Movement of Uganda (NOGAMU)	Uganda
Participatory Ecological Land Use Management (PELUM)	Uganda

Southern and Eastern African Trade Information and Negotiations Institute (SEATINI)	Uganda
Volunteer Efforts for Development Concerns (VEDCO)	Uganda
Community Technology Development Trust (CTDT)	Zimbabwe

CIVIL SOCIETY SUBMISSION ON ARIPO's DRAFT REGIONAL POLICY AND LEGAL FRAMEWORK FOR PLANT VARIETY PROTECTION

We, the undersigned organizations are concerned with the conservation of agricultural biodiversity for livelihood security and food sovereignty, promoting farmers' rights and self-determination, and citizen involvement in the decision-making process. We are extremely concerned also about the industrialisation and privatisation of Africa's food systems and the commodification of nature and knowledge.

Use of terms: In this submission, we use the terms plant variety protection (PVP), and plant breeders' rights (PBR) interchangeably.

Structure of submission

In this submission, we provide an introduction to the value and importance of farmer managed seed systems in Africa followed by a discussion of our key concerns pertaining to the draft policy and legal framework on PVP.

1. INTRODUCTION

It is internationally accepted that 80-90% of the world's seed stocks are provided through the farmer-managed systems-also commonly referred to as the 'informal' seed system. More than 80% of all seed in Africa is still produced and disseminated informally. Traditional crop varieties are accessible, affordable and offer critical advantages to farmers in today's economic and environmental climate. The informal sector/farmer-managed seed system contributes as high as 90-98% of overall seed supply in West Africa and in South and East Africa it is between 70-95%. Small farmers save 60-70% of seed used on-farm, acquire 30-40% of their seeds from relatives and neighbours, with less than 10% obtained from the formal sector. This shows that informal seed networks are important sources for both modern and traditional varieties. These figures vary considerably over the region and between crops. For example, with self-pollinating crops like wheat, millet, the percentage of farm-saved seed is much higher than with maize.

There is a global convergence around the importance of smallholder farmer-managed seed systems. Even the pivotal role of women in maintaining this system is now recognised. On-farm-seed conservation is recognised in global treaties such as the ITPGRFA as well as the Convention on Biological Diversity (CBD).

For African communities, it is not modern agriculture, but their own systems of agriculture and knowledge that have helped them cope with extreme environmental conditions and political disasters. The reality is that small farmers are by far the largest and most prolific group of seed breeders in Africa and they have successfully cultivated an abundant diversity

of crops for centuries. Farmer varieties are more resilient to the threats of pest, disease and climate change as well as to difficult environments farmers usually live in. Further reliance by farmers' on farmers' seed system allows them to limit the cost of production by preserving independence from the commercial seed sector while the unfettered exchange of seeds in farmers' seed systems ensures the free flow of genetic resources, thus contributing to the development of locally appropriate seeds and to crop diversity.[2] It is thus in the interest of all to support the development of such systems.

However, we are aware that in the past decade much effort is going into developing intellectual propery right (IPR) frameworks in Africa. In particular, there is an aggressive push within the region for governments to adopt legal framework for PVP that is based on UPOV 1991. At present, in Africa only Morocco and Tunisia are signatories to UPOV 1991, while Kenya & South Africa are signatories to UPOV 1978.

Generally, the UPOV 1991 model is unsuitable for most countries in the region as it is favorable to corporate/commercial breeders' interests and marginalises the small-scale farmers that for centuries have been the backbone of Africa's agricultural system, consequently eroding crop diversity which in turn threatens food security.

2. COMMENTS ON ARIPO'S DRAFT REGIONAL POLICY FOR PLANT VARIETY PROTECTION

2.1 ARIPO's Draft Regional Policy for PVP

According to ARIPO's document (ARIPO/CM/XIII/8), a number of policy considerations underpin the legal regional framework on PVP that is being proposed. These include:

a. *Important for sustainable agricultural development:* Many countries are establishing effective PVP systems with a view to promote sustainable agricultural development.

b. *Hunger:* 70% of the world's hungry are involved in agriculture themselves, either as smallholders or landless labourers, thus urgent changes to agricultural systems are required.

c. *Agricultural innovation:* Need measures to reward those who create new varieties. IP have been considered critical for socio-economic development including agricultural growth and promotion.

d. *Climate Change:* There is a need to design effective agricultural policies and utilize the intellectual property tools such as plant variety protection to stimulate innovation in the agricultural sector and shift economies towards low carbon pathways.

e. *Its about African farmers:* The seed sector in sub-Saharan Africa is dominated by informal systems with farm-saved seeds accounting for approximately 80% of planted seeds. Creating an enabling environment for the development of the seed industry has a potential competitive advantage in meeting the needs of smallholder farmers, promoting food security and welfare improvement within economically disadvantaged rural communities. PVP systems encourage variety development and permit recovery of development costs while serving the needs of farmers.

[2] See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation".

f. *Concerns about biopiracy:* Developing countries possess most of the biodiversity and traditional farmers in particular have contributed and continue to improve plant varieties and preserve biodiversity, providing gene pools crucial for major food crops and plants. Developing countries have voiced concerns with regard to biopiracy.

g. *Industry/UPOV recommendations:* Industry associations - Africa Seed Trade Association (AFSTA) and UPOV recommended PVP to promote R&D into new plant varieties, claiming that development of high performing plant varieties will increase agricultural productivity, improve rural income and ensure food security.

h. *Sui generis PVP system has great benefits:* While breeders are able to conduct further research and development based on protected plants, farmers can save seeds for the next planting season. This flexibility makes the plant variety protection option more attractive and less restrictive than protection under the patent system. Other advantages include: (i) the number of new varieties increases after PVP introduction; (ii) increased breeding activity with the encouragement of the new types of breeders such as plant breeders and farmer breeders; (iii) development of new protected varieties that provide improvements for farmers, growers, industry and consumers, with overall economic benefit; (iv) improved competitiveness in foreign markets and to the development of the rural economy; (v) breeders exemption, whereby protected plant varieties can be freely used for further plant breeding, is an important feature of the UPOV system which advances progress in plant breeding; (vi) access to foreign plant varieties is an important form of technology transfer that can also lead to enhanced domestic breeding programmes.

2.2 Comments on the Draft Regional Policy

a. The draft policy argues that a sui generis PVP system has great benefits (see above para 2.1(h)), but the legal framework accompanying the policy adopts UPOV 1991 and imposes a one-size-fits-all and an inflexible legal regime on all ARIPO member states.

   UPOV 1991 has been the subject of critisism[3] as it *inter alia* limits innovative activities using the protected variety as well as prohibits farmers from freely saving, using, exchanging or selling farm-saved seeds. There is simply no evidence provided to support the contention that the legal framework as it is currently drafted will actually deliver all the benefits set out in para 2.1(h) above.

b. The draft policy argues that PVP is required to promote the development of new varieties and consequently to deal with challenges of climate change. However, in reality, IPR systems, such as UPOV 1991 threaten crop diversity, thus reducing resilience to climate change. In this regard, the UN Special Rapporteur on the Right to Food has noted: "Intellectual property rights reward and encourage standardization and homogeneity, when what should be rewarded is agrobiodiversity particularly in the face of the emerging threat of climate change and of the need, therefore, too build resilience by encouraging farmers to rely on a diversity of crops".[4]

   Thus the argument that UPOV 1991 like PVP systems will create resilience against climate change is fundamentally flawed.

[3] See e.g. UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation". See also "Technical Issues on Protecting Plant Varieties by Effective Sui Generis Systems" South Centre (2000); "Sui Generis Systems for Plant Variety Protection" Biswajit Dhar, QUNO (2002)

[4] See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation".

c. The draft policy and the legal framework are contradictory. The policy acknowledges the dominance of farm-saved seeds (80% of planted seeds) in sub-Saharan Africa as well as the contribution of farm-saved seeds to genetic diversity. However, the legal framework accompanying the policy not only fails to recognise farmers' rights as an integral part of the innovation systems, it effectively limits and undermines farmers' rights.

The draft policy mentions that the issue of farmers' rights have been dealt with under the ITPGRFA, not recognising that the draft legal framework is in conflict with the ITPGRFA. While the latter (ITPGRFA) promotes the upholding of farmers rights[5] (to save, use, exchange and sell farm-saved seed/propagating material), the draft legal framework aims to limit and undermine those rights.

The draft policy states that an UPOV-like PVP system will not affect the farmers' role in the maintenance of crop diversity and that it provides options to farmers who may have the resources to buy varieties. In this regard, it is worth noting the findings of the UN Special Rapporteur on the Right to Food that: "…about 75% of plant genetic diversity has been lost as farmers worldwide have abandoned their local varieties for genetically uniform varieties that produce higher yields under certain conditions".[6] The Special Rapporteur also highlights that as access to credit is often packaged with commercial varieties, farmers are incentivised to use uniform varieties, consequently adversely impacting on crop diversity. It further adds that the argument that varieties are available to those that can afford it, basically creates a system of dependency by farmers on commercial varieties, thus creating the vicious cycle of indebtedness.

d. Overall, it is argued in the draft policy that PVP systems are important for sustainable agricultural development including increasing agricultural productivity, improving supply of seeds to farmers, improving rural incomes and ensuring food security.

However the legal framework accompanying the policy is based on UPOV 1991. And it has been found that PVP systems that adopt UPOV 1991 are likely to result in:

- Progressive marginalization of farmer-managed seed systems and the disappearance of local varieties;
- Farmers becoming increasingly dependent on expensive inputs, creating the risk of indebtedness in the face of unstable incomes;
- An imbalance between the private and the public sectors in agricultural research, with R&D being orientated towards meeting the needs of farmers in rich countries while needs of poor farmers in developing countries are comparatively neglected.
- Agrobiodiversity being threatened by the unifomization encouraged by the spread of commercial varieties;

3. COMMENTS ON ARIPO'S DRAFT REGIONAL LEGAL FRAMEWORK FOR PLANT VARIETY PROTECTION

[5] Preamble of the ITPGRFA states: "*Affirming also* that the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels". See also Article 9 of the ITPGRFA.

[6] See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation".

3.1 General Comments

ARIPO has developed the *Draft Legal Framework for the Protection of New Varieties of Plants* based primarily on the UPOV 1991 Convention. In some areas it goes beyond the Convention.

We are of the view that the proposed legal framework will not lead to the development of a sustainable system of agricultural production and nor will it provide farmers access to a wide range of varieties that will contribute to economic development and food security as noted in the preambular paragraphs of the legal framework. As discussed above, the policy objectives that are intended cannot be achieved by adopting the UPOV 1991 system.

The proposed legal framework by adopting the UPOV 1991 system presribes a one-size-fits-all PVP system that does not take into account the specificities of national agricultural systems.

In addition, neither the draft policy nor the legal framework incorporates elements pertaining to PBR and farmers rights agreed to in the OAU Model Law. The legal framework also does not acknowledge the contribution of farmers to the "conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world" as expressed in Article 9.1 of the ITPGRFA and nor does it contain provisions that realizes and strengthens farmers' rights to save, use, exchange and sell farm-saved seed/propagating material as expressed in the ITPGRFA. Instead the proposed legal framework weakens farmers' rights and marginalizes farmer-managed seed systems, although they are the backbone of agricultural systems in sub-Saharan African countries.

3.2 Purpose (Article 2):

Article 2 of the draft legal framework states that the purpose is "to grant and protect breeders' rights", "on the basis of one application be valid in all contracting states".

Although currently the seed sector in sub-Saharan Africa is dominated by farmer-managed seed systems, the legal framework ignores this fact and develops a legal framework that is focused on strengthening of breeders' rights, with no recognition of the contribution of farmers to the conservation and development of plant genetic resources for food and agriculture production. The draft legal framework also severely limits farmers' rights. It is clear that the legal framework is one-sided, i.e. heavily tilted in favor of commercial breeding. Such an inequitable approach cannot deliver the aim of sustainable agriculture production in ARIPO member states. Thus ARIPO should revise the legal framework to include a greater recognition of farmers' rights as found in Part V of the OAU Model Law.

3.3 Definitions:

The proposed legal framework does not recognise the role of women and their contribution to seed saving, selection and breeding as throughout the legal framework the language used is "his" (e.g. see definition of "authorization", Article 21 etc.)

3.4 Regional PVP System: one application, one grant system

It is being proposed in the latest draft legal framework that an application made to ARIPO office as well as its decision to grant or reject the application will automatically be valid in all Contracting states (Article 4). Further the ARIPO office is empowered to administer such rights on behalf of the contracting states (Article 4). In fact even the decision whether or not to grant compulsory licenses, in the public interest will now be taken by the ARIPO office and/or the Administrative Council (Article 24). ARIPO's organs will also decide which crops are deserving of the severely limited farmers rights (Art. 22(2). Even the right to nullify and cancel the breeder's right is given to the ARIPO office (Article 28 and 29).

What is being proposed is extremely problematic as it denies member state the right to make any decision concerning PVP even when it concerns national interests. Each ARIPO member state is at a different level of development and may wish to adopt different strategies with regard to balancing farmer seed systems and breeders' rights. However as the legal framework is currently drafted it denies individual member states the right to take decisions that are in their interests. All decisions will be made by the ARIPO office or the Administrative Council.

ARIPO argues that its proposal is inspired by the European Plant Variety Protection system and that a centralised system has great benefits for breeders particularly foreign breeders as there are fewer requirements that breeders have to comply with, administrative procedures are simplified compared to a situation where applications have to be made in many countries and languages.

The justification put forward is equally worrying. It is difficult understand how a system that works in developed countries can be equally applicable to the ARIPO region which has as its members the poorest and most vulnerable segment of the international community. In addition, agricultural and farming systems in Europe differ significantly from that found in ARIPO member states.

Moreover, a system that facilitates granting of rights to foreign breeders, makes a regional system less desirable, as it encourages domination of foreign private sector over local seeds systems and food security. There are also benefits if applications are translated into local languages as it will facilitate locals to better understand information on the development of the variety that should be contained in the application.

In a summary considering the potential impact of PVP systems on food security, on national agricultural systems, it is important for each ARIPO member state to retain significant flexibility in the domestic implementation of PVP systems.

Towards this end, it is proposed that if a regional PVP system is pursued, another proposal to consider is as follows: an application for a breeder's right should designate the Contracting State to the regional instrument for which the breeder's right is requested to be granted. However it should be left up to each Contracting member state to determine the specific procedural and substantive elements of its PVP law including whether or not to grant the applicant breeder's rights as well as the scope of such rights. This option sees ARIPO regional office playing a role in facilitating filing of applications, with each member state retaining maximum flexibility to implement PVP systems suitable to their individual needs.

3.5 Genera and Species to be Protected (Article 3):

Article 3 of the latest version of the draft legal framework states that the framework "shall be applied to all plant genera and species" once the legal framework enters into force. This is hugely problematic.

The genera and species to be protected follows UPOV 1991, in the sense that protection is to be granted to all plant genera and species. However it also goes beyond UPOV 1991. UPOV 1991 requires new members to provide protection to at least 15 plant genera and species and only requires them to extend to all plant genera and species after 10 years. But Article 3 of the legal framework extends the protection to all plant genera and species after the entry into force of the legal framework. This means that as soon as ARIPO members ratify the legal framework, they will have to immediately extend PBRs to all plant genera and species. In more specific terms, no transition period is provided to ARIPO members.

UPOV 1991 reduced the flexibility with regard to coverage of genera and species that should be subject to PBRs that was available before 1991. By following the UPOV 1991 standard, the draft legal framework also provides little flexibility in this regard.

Extension of the draft legal framework to all plant genera and species is problematic. It grants little flexibility to countries to determine what genera or species should be included and what should be excluded from the scope of national PVP law, bearing in mind the potential of erosion of genetic diversity and marginalisation of local varieties and farmer-managed seed systems. It also fails to make any provision for ARIPO countries that may not be able to provide such extensive protection due to the economic, ecological conditions or other special difficulties prevailing in the Member State. It is worth noting that Article 4 of UPOV 1978 makes provision for this.

We are of the view that the draft legal framework should not extend to all plant genera and species and that each country should have the flexibility to exclude specific plant genera and species particularly indigenous plants and those necessary to ensure food security, from the purview of the law.

3.6 Duration of PBR (Article 26):

The draft legal framework follows UPOV 1991 and grants PBR protection for a period of 20 years from the date of grant of the breeders' right and 25 years for trees and vine.

This period of protection is excessively long, particularly in view of the fact that the draft legal framework covers all plant genera and species.

The combined strategy of extended scope and longer protection makes little sense, since as the draft policy has noted, the agricultural landscape in ARIPO member states is dominated by farmer-managed seed systems. Allowing for extended protection does not in any way benefit these systems. It only benefits commercial seed breeders, which are likely to be multinational companies and allows such breeders to dominate seed production and to extract royalties from local farmers for the duration of protection. It also does little in terms of developing agricultural innovation, as the protected varieties are locked in for such a long period of time.

There is no logical explanation for ARIPO to simply adopt the UPOV standard with regard to the coverage of plant genera and species nor for the duration of the time prescribed. Since the

draft legal framework proposed is to be applicable to its 18 member states, these member states should be given the flexibility to decide according to its individual circumstances which genera/species should be included and for how long.

3.7 Conditions of Protection (Article 6-10):

According to Article 6 of the draft legal framework, breeders' rights shall be granted where the variety is new, distinct, uniform and stable. These conditions are also found in UPOV 1991 (Articles 7-10 define "Novelty", "Distinctness", "Uniformity", "Stability").

As with UPOV 1991, the draft legal framework defines novelty not in terms of the previous existence or not of a variety, but in relation to whether it has been commercialised or not. Further, a variety would satisfy the criteria of "distinctness" if the variety is clearly distinguishable from other variety whose existence is a matter of common knowledge at the time of the filing of the application, particularly it is not covered by an existing PVP application (which is subsequently allowed) or was not registered in an official register of varieties. The concepts of "novelty" and distinctness" are narrowly defined and could lead to misappropriation of farmers' varieties, which are often not commercialised as well as not registered.

In addition, the requirement of uniformity,-in any case a relative term- makes it impossible for farmer breeders to register any new varieties they develop as these varieties are inherently unstable and in permanent evolution. The level of uniformity is also a threat to food security as an increasingly narrow genetic base, equals genetic vulnerability, making crops vulnerable to pests and climate stress.

It is worrying to note that the draft legal framework is based on UPOV 1991, although the provisions of UPOV 1978 (Article 6) as well as the OAU model law (see Article 29) provide a much better approach to novelty and distinctness. In fact the OAU model law goes further and recognises farmer varieties shall also be granted protection although such varieties do not meet the criteria of distinction, uniformity and stability (see Article 25 of the OAU model law), the aim being to develop a legislation that strikes the right balance between breeders' rights and farmers rights and consequently developing a legal framework that is suitable to the needs of farmer-managed seed systems that dominate sub-Saharan Africa. It is unclear why ARIPO has chosen to be bound by the restrictive provisions of UPOV 1991, when ARIPO member states are free to develop *sui generis* systems suitable to their individual needs.

Table 1 below shows the main differences between the UPOV 1978 and 1991 in relation to key provisions.

Table 1

UPOV 1978: Novelty (Art. 6):	UPOV 1991: Novelty & Distinctness (Art. 6 & 7):
Varieties must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for.	Variety is new if the propagating or harvested material has not been sold or otherwise disposed of with the consent of the breeder, (i.e. commercial novelty).
Common knowledge may be established by	Variety is distinct if distinguished from

reference to various factors such as cultivation or marketing, entry in official register, inclusion in reference collection, precise description in a publication	varieties that are common knowledge in particular when the common variety is protected or registered.

3.8 Scope of Breeder's rights (Article 21) & Exceptions to Breeders' Rights (Article 22):

The scope of breeder's rights provided in Article 21 of the draft legal framework is based on Article 14 of UPOV 1991. UPOV 1991 vastly extends the rights of the breeders and severely restricts the scope of other breeders to innovate around the protected varieties. UPOV 1991 prohibits not only the production for the purposes of commercial marketing, and the sale and marketing of propagating material of the variety, but also "production or reproduction; conditioning for the purpose of propagation; offering for sale; selling or other marketing; exporting; importing; and stocking for the above purposes", without the authorization of the breeder (article 14 (1)); these prohibitions extend beyond the reproductive or vegetative propagating material, to the harvested material obtained through the illegitimate use of propagating material (article 14 (2)); to harvested products obtained through the illegitimate use of harvested material; and so-called "essentially derived" varieties and certain other varieties (article 14 (5): e.g varieties which are essentially derived from the protected variety, varieties which are not clearly distinguishable from the protected variety and varieties whose production requires repeated use of the protected variety.)

Effectively, the extensive scope of breeders' rights could restrict others from freely using protected varieties for research and breeding purposes and limits development of new varieties from the protected varieties. Under UPOV 1978, Article 5(3) allowed the use of a protected variety as an initial source of variation for the purposes of creating other varieties or for the marketing of such varieties. Breeder authorisation was only required in cases of repeated use of the protected variety. However, this option is not available under UPOV 1991 and under the draft legal framework.

See Table 2 for comparisons between UPOV 1978 and UPOV 1991.

Table 2

UPOV 1978: Breeders rights (Art. 5) :	**UPOV 1991: Breeders rights (Art. 14) Art. 15(2) is also relevant**
Production for commercial marketing; offering for sale; marketing; more extensive protection may be agreed among a group of members "Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for purposes of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however when the repeated use of the variety is necessary for the commercial production of another variety" section 5(3).	In relation to propagating material of the protected variety: Production, reproduction (multiplication), conditioning for propagation, offering for sale, selling, exporting, importing, stocking; The rights extend to harvested material, produce made from harvested material, essentially derived varieties, varieties not clearly distinguishable, varieties that need repeated use of the protected variety Article 15 (2): The breeder's right shall not

*Farmers & researchers were provided the space to carry on with their activities	extend to acts done for the purpose of breeding other varieties, and, except where it concerns an essentially derived variety or certain other variety as defined in Art. 14(5) *UPOV 91 vastly expands breeders' rights, restricts innovating around protected varieties

Article 15 of UPOV 1991 also prescribes restrictive exceptions to breeders rights. It contains compulsory exceptions to breeders rights: acts done privately and for non-commercial purposes, acts done for experimental purposes and acts done for the purpose of breeding other varieties except for essentially derived varieties as well as other varieties defined in Article 14(5) of UPOV 1991.

These limited exceptions tend to be interpreted narrowly. For instance according to an UPOV document, only "…propagation of a variety by a farmer exclusively for the production of a food crop to be consumed entirely by that farmer and the dependents of the farmer living on that holding, may be considered to fall within the meaning of acts done privately and for non-commercial purposes". This means that even consumption by the farmer and his neighbor or the village would not fall within this exception.[7] Further it is clear from the limited exceptions that commercial activities of rural agricultural populations, which are critical to improve rural standards, are also not allowed.

In relation to farmers' rights UPOV 1991 provides an "optional exception". Even this optional exception is severely limited in scope. It only allows an exception for farmers to use "for propagating purposes on their own holdings, the product of their harvest which they have obtained by planting on their own holdings" the protected variety, subject to the "safeguarding of the legitimate interests of the breeder".

So effectively under UPOV 1991, farmers are not even considered deserving of a mandatory exception. Moreover farmers are not allowed to freely exchange or sell farm-saved seeds, a practise that underpins agricultural systems in most developing countries, and in Africa in particular. Even rural trade is not allowed. Further even the limited exception provision in UPOV 1991 is subject to the safeguarding of the legitimate interests of the breeder that is subject to payment of royalty to the breeder.

On the issue of exceptions to PBRs, Article 22 of the draft legal framework is based on UPOV 1991 and thus suffers from the same shortcomings. In fact, in many ways the effect is worse. In an earlier draft legal framework, just like UPOV 1991, farmers' rights were treated as an optional exception. In the latest version of the draft legal framework, the limited farmer exception allowed under UPOV 1991 is recognised only for agricultural crops specified by the Administrative Council on condition royalty is paid by the farmer to the breeder. Fruits, ornamentals, vegetables and forest trees are explicitly excluded from the scope of the exception.

The resulting effect is that should member states wish to provide exceptions in the interests of farmers, they will have to limit the exception to the parameters set out in the draft legal framework. In addition, it will be the ARIPO Administrative Council (and not member states)

[7] Guidance for the preparation of Laws based on the 1991 Act of the UPOV Convention. UPOV/INF/6/2

that will determine which plants should benefit from the severely limited farmer's exception. And as for the scope of the exception ARIPO member states cannot provide an exception that is much broader than UPOV 1991. Further even when the exception is used, farmers will still have to pay royalties to the breeder.

It is rather perplexing to note that in the draft policy, the role of farmers is acknowledged and it repeatedly claims that farmers will be major beneficiaries of the draft legal framework. But there is simply no evidence to support this in the proposed legal framework. The draft legal framework does not recognise the contribution of farmers nor give them rights that will without paying royalties, enable them to develop new varieties on the basis of the protected varieties, and to exchange and sell the products of their harvest. The draft legal framework is premised only on strengthening breeders' rights and the marginalisation and exploitation of small-scale farmers in ARIPO member states.

ARIPO member states should revisit the entire premise of the draft legal framework and in particular, Articles 21 and 22. Elements that strengthen farmers' rights to freely save, use exchange and sell seeds and other propagating material without payment of royalties such as those found in Article 5(3) of UPOV 1978 as well as in Articles 30-31 of the OAU Model law should be incorporated in the draft legal framework.

There is simply no justification for ARIPO member states to base its draft legal framework on the basis of UPOV 1991, when that instrument is severely deficient in terms of addressing the needs and specificities of the ARIPO region. Further it is important that ARIPO member states retain maximum flexibility to determine the scope of farmers rights that should be granted nationally.

3.9 Filing of an Application (Article 12.3):

This Article prescribes procedures for filing applications. However, there is no requirement to specifically indicate whether the variety is genetically modified (GM), mutant, terminator or any other variety produced by modern biotechnology. In some countries (e.g. South Africa), an applicant would have to specify whether the variety is a GM or not, as this then serves as a check point that triggers other regulatory safety nets.

Also missing is the requirement that the applicant disclose complete passport data of the variety (e.g. the parental lines of the variety, the best method of developing the protected variety etc). Since the right holder is getting extensive protection, for the benefit of society, full disclosure must be mandatory. See below comment in paragraph 3.10. Full disclosure of information with regard to the variety is critical to prevent biopiracy as well as to ensure that once the PBR protection has ended, information needed to breed the variety is in the public domain to enable others to breed the variety.

Equally important is for any applicant wishing to register for PVP to provide information about the origin of the genetic material that the variety uses (disclosure of origin). African nations have championed mandatory disclosure of origin and yet it is absent from the proposed legal framework. See also below paragraph 3.17.

3.10 Publication of information (Article 15.2):

This article states that: "No confidential information, as indicated in the application form, shall be published without the written consent of the breeder of the variety".

This provision goes beyond UPOV 1991. It conveniently allows applicants of PBRs that do not wish to disclose important information with regard to development of the variety to hide behind "confidentiality".

In the patent system, patent holders are given protection for 20 years from the filing date and in return patent applications must be published and the applications must also disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a skilled person including the best way of working the invention. This is to ensure that once the protection period expires, others have the technological information necessary to develop the invention. The same should apply to PBRs. In return for PBRs, the applicant must be required to reveal all information with regard to the variety and development of the variety that is to be protected (e.g. the parental lines of the protected variety). Otherwise breeders that apply for PVP can keep their breeding methods (e.g. the parental lines of the protected variety) a trade secret even after expiry of their rights. Since breeders are getting certain rights, their application should be publicly available, with breeders required to make full disclosure including disclosure of origin of the genetic material used to develop the new varities.

Further, if the breeder is allowed to hide behind confidentiality, important information may be withheld, making it more difficult to challenge the application e.g. through pre-grant oppositon procedures.

3.11 Objection (Article 16):

This article in the draft legal framework allows pre-grant opposition. An initial draft legal framework limited the time period for submitting oppositions to 60 days. The latest draft legal framework seems to have amended this to "at any time prior to the refusal or to the grant of the right".

It is important to provide sufficient time for submission of a written and reasoned objection particularly as farmer and local communities have many constraints and little resources and therefore need time to mount an opposition. As the legal framework is currently drafted, its unclear at a minimum how much time will be available to mount an opposition. For e.g. if a right holder is given PBR rights 2 months after publication, this gives little time for anyone to mount an opposition.

Thus it is proposed that the draft legal framework provide a time frame of, "at least 9 months after publication of the application and any further time before the application is disposed of, for a written objection to be made with regard to published application".

Further provision should be made to waive payment of fees when objection is made by certain communities e.g. the local communities, farmers, civil society groups etc. as the fees may deter interested persons from making an objection. It is also important to make provision for objections to be made through national authorities as well as directly to the ARIPO office, as many local communities may not have the capacity to object directly to the ARIPO office.

The grounds for submitting an objection are also limited to Articles 6-11 and Article 27. It is thus important to expand the grounds of opposition to include for e.g. where granting PBR is

simply not in the public interest of ARIPO member states or where the variety may have an adverse effect on the environment.[8]

3.12 Restrictions on the exercise of the breeders' rights (Article 24):

An earlier version of the draft legal framework (ARIPO/CM/XIII/8) allowed breeders' rights to be restricted on grounds of public interests. This is again based on UPOV 1991. The latest version of the legal framework allows restrictions on breeders' rights for public interests by granting of compulsory licenses. However such licenses can only be granted by ARIPO office and/or the Administrative Council.

Noting the socio-economic challenges that currently prevail in ARIPO member states, and the potential abuse of PBR rights that are granted to breeders, it would have been more beneficial for the draft legal framework to elaborate in an open-ended way on circumstances that warrant restrictions of breeders' rights. Some such circumstances are: where it involves issues pertaining to food security or nutritional and health needs, where there are anti-competitive practises by the right holder; where a high proportion of plant variety offered for sale is being imported; where requirements of the farming community for propagating material of a particular variety are not met; for socio-economic reasons and for developing indigenous and other technologies. On this it is important for ARIPO member states to draw on Article 33 of the OAU Model law rather than blindly following UPOV 1991.

Further as has been noted above in paragraph 3.4, the CL can only be granted by the ARIPO Office and/or the Administrative Council. This essentially means that even when a government wishes to intervene by granting a CL, it will have to seek approval of ARIPO and/or the Administrative Council. This effectively undermines the sovereign right of each member state to take measures that are in its national interests. It is important that member states are given complete freedom to impose restrictions on the exercise of breeders' rights that it deems fit.

3.13 Nullity of the Breeder's right (Article 28) & Cancellation of the Breeder's right (Article 29):

Under these articles, the latest version of the legal framework, gives the ARIPO office the complete authority to nullify and cancel breeder's right. As mentioned above, member states' role is being set aside. Further these articles limit the grounds on which member states can nullify and cancel PBR. On this as well the draft legal framework has based its provisions on UPOV 1991.

It is important that each member state has full flexibility to nullify and cancel breeders' rights and to prescribe in their national PVP laws other grounds to nullify or cancel PBRs. Currently as the draft legal framework is drafted, this is not allowed as only the ARIPO office has authority to nullify and cancel breeders' rights. But the flexibility is important as member states may have specific national circumstances that may warrant the nullification and cancellation of PBRs.

[8] See Section 21 of the Indian Protection of Plant Varieties and Farmers' rights (PPVFR) 2001 available at http://www.plantauthority.gov.in/pdf/PPV&FRAct2001.pdf

For example, a member state may wish to allow for post-grant opposition proceedings i.e. allowing any interested person to challenge the granted PBRs. The draft legal framework as it is currently drafted does not allow this.

3.14 Enforcement (Articles 35 and 36)

A version of the draft legal framework (ARIPO/CM/XIII/8) allows granting of preliminary injunction and/or civil action. These provisions are general, vague and without proper safeguards against abuses by the right holder. For instance in certain circumstances (e.g. where the government intervenes to restrict breeders' rights), the granting of an injunction will not be appropriate and remedies should be limited to payment of reasonable remuneration. A similar provision (but in the context of patents) can be found in Article 44 (2) of the TRIPS Agreement.

The draft legal framework also allows suspension by the authorities of the release into free circulation, forfeiture, seizure or destruction of material produced in contravention of plant breeders' rights. Since the provision is vague, the exact nature cannot be determined. For instance, is this provision concerning border measures? If so, it needs to be stressed that customs authorities will not through visual inspection be able to determine infringements of PBRs. Thus extending border measures to PBR is simply not advisable.

It is also unclear the basis on which forfeiture, seizure or destruction of material will take place and safeguards that will be in place to prevent abuses of the enforcement system.

The extent to which these provisions will be incorporated in the latest version of the draft legal framework is unclear. It is however important that member states retain maximum flexibility at the national level with regard to enforcement of PBR.

3.15 Protection of Existing Varieties:

A version of the draft legal framework (ARIPO/CM/XIII/8) allowed PBRs to be granted for an existing variety that is not new on the date of entry into force of this legal framework, with licenses granted on reasonable terms to allow continuation of any exploitation initiated in good faith. This suggests that the draft legal framework will apply retrospectively to grant protection to existing varieties, even if they do not fulfill the criteria of novelty.

The value of this Article is not clear. If certain varieties are already being cultivated in a country, there seems to be little value in granting protection over an existing variety. In fact if this is allowed, there is likely to be a rush of applicants seeking breeder rights over existing varieties, consequently making it more difficult for farmer-managed systems to continue using the varieties.

The article also raises questions for institutions like Kenya Agricultural Research Institute (KARI), which has many varieties developed through publicly funded research, and who have licensing agreements with companies to use these for breeding. Who has rights over these and the varieties developed from it? It also raises questions around varieties developed through participatory breeding programmes with farmers.

It is unclear whether this provision will reappear in newer versions of the draft legal framework. However member states must ensure that the draft legal framework does not extend protection to existing varieties for reasons explained above.

3.16 Uniform Effect of Regional Breeders' Rights (Article 38):

Article 38 states that regional breeders' rights may not be granted, transferred or terminated otherwise than on a uniform basis. This has significant implications for the national interests of each member state. Effectively it prevents member states from taking any individual action with regard to PVP even if it is a matter of significant national interest. According to the legal framework any decision pertaining to PVP will be made by the ARIPO office or the Administrative Council. This has great implications for the sovereignty of ARIPO member states.

3.17 Sui Generis System: Practices of other countries

As noted above, it is disappointing the the draft legal framework is based entirely on UPOV 1991. Since ARIPO member states have the option of developing their own unique PVP system that meets the specificities of the ARIPO region, it would have been prudent to thoroughly investigate how other countries have developed sui generis PVP systems (that are not entirely based on UPOV 1991) and to identify elements that would be useful to the ARIPO region.

An interesting example of a sui generis PVP system, not based on UPOV 1991 is the Indian legislation on plant varieties protection.[9] This legislation aims to protect farmers' rights for their contribution in conserving, improving and making available plant genetic resources for the development of new varieties and the protection of PBRs to stimulate investment for R&D in the public and private sector. To strike a balance between plant breeders' and farmers' rights, this legislation contains several interesting provisions that should be considered in the development of the ARIPO draft legal framework. For example the legislation:

- The coverage does not extend to all plant genera and species and even if covered by the PVP, it can be removed from the scope of protection on grounds of public interest[10] ;
- Any applicant wishing to register for PVP needs to provide information about the origin of the genetic material that the variety uses (disclosure of origin)[11];

  Applicants for PBRs must also declare: that the variety for which protection is sought does not contain any gene or gene sequence involving terminator technology; that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; the complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken; all information about the contribution, if any, of any farmer, village community, institution or organisation in the breeding, evolution or development of the variety and also information on the use of genetic material conserved by any tribal or rural families in its breeding. The above conditions do not, however, apply to the registration of farmers' varieties.

[9] See http://www.plantauthority.gov.in/pdf/PPV&FRAct2001.pdf
[10] See sections 14, 23 and 29 of the Indian Protection of Plant Varieties and Farmers' rights (PPVFR) 2001
[11] See Section 18 of the Indian Protection of Plant Varieties and Farmers' rights (PPVFR) 2001

- On farmers' rights[12], it allows farmers to save, use, sow, re-sow, exchange share or sell his farm produce including seed of a variety protected under the legislation "in the same manner as he was entitled before the coming into force" of this legislation, with the condition that the seeds farmers are entitled to sell cannot be branded. The legislation also seeks to reward the farmer "who is engaged in the conservation and preservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation".

These are just examples of useful provisions that can be found in other legislations and that have not been taken into consideration. By following standards set by UPOV 1991 ARIPO is failing to put in place a legal framework that works for ARIPO member states. For instance, ARIPO member states have for years argued for a mandatory disclosure of origin requirement in the TRIPS Council of the WTO as well as in the Intergovernmental Committee on IP, Genetic Resources, Traditional Knowledge & Folklore, and yet this basic provision is absent from the draft legal framework. This is because such a provision is not recommended by UPOV[13].

4. CONCLUSION

The ARIPO draft legal framework is based on UPOV 91 and in some areas goes beyond it. The legal framework does not make any attempt to develop a regime that is suitable to the needs of the region. Its all about protecting the private sector on the pretext that this is in the interest of small-scale farmers. The legal framework, if adopted will bind countries to UPOV 91 and give ARIPO organs (the Secretariat and the Administrative Council) the authority to determine on all matters concerning PVP although such issues that have a direct impact on national socio-economic development. Accordingly any national legislation developed will have to work within the parameters established by the ARIPO legal framework, with member states having little authority to decide on matters concerning their own national interests. Elements/safeguards particularly that which protect community and farmers' rights found in the OAU Model law are disregarded in the ARIPO legal framework.

The extreme IP stance that ARIPO is taking, must be urgently reviewed and critiqued in the light of OAU Model Law. The Model Law provides for the protection of community rights in line with the customary laws of those communities, and protects farmers' rights to save, use, exchange and sell farm saved seed as well as to use the protected variety to develop farmers' varieties.

We are convinced that the draft legal framework was not written with the interests of sub-Saharan African states in mind, particularly ARIPO member states. This is because there is

[12] See Section 39 of the Indian Protection of Plant Varieties and Farmers' rights (PPVFR) 2001

[13] On October 23, 2003, the Council of UPOV adopted the "Reply of UPOV to the Notification of June 26, 2003, from the Executive Secretary of the Convention on Biological Diversity (CBD)" which stated: "..UPOV encourages information on the origin of the plant material, used in the breeding of the variety, to be provided where this facilitates the examination mentioned above, but could not accept this as an additional condition of protection since the UPOV Convention provides that protection should be granted to plant varieties fulfilling the conditions of novelty, distinctness, uniformity, stability and a suitable denomination and does not allow any further or different conditions for protection. Indeed, in certain cases, for technical reasons, applicants may find it difficult, or impossible, to identify the exact geographic origin of all the material used for breeding purposes" See http://www.upov.int/news/en/2003/pdf/cbd_response_oct232003.pdf

no attempt to develop a *sui generis* system suitable to the African context. It instead blindly copies and expands on UPOV 1991.

UPOV 1991 was developed by industrialised countries over 20 years ago for their needs. Its illogical to follow standards meant for industrialised countries, as those standards do not take into account the agricultural systems and the economic specificities of ARIPO member states. ARIPO member states did not even actively participate in the negotiations that led to UPOV 1991.

UPOV 1991 imposes a "one size fits all" and inflexible legal framework, that does not allow member countries to put in place a legislative framework that suit their particular needs. So why are ARIPO member states agreeing to be tied to the draft legal framework of UPOV 1991, when they have full flexibity to develop a "sui generis" system that is relevant to their individual conditions and needs?

The language used in the legal framework does not represent the position African countries have taken regionally and at international fora around issues on genetic resources, access and benefit sharing, indigenous knowledge, community and farmers' rights. It is based entirely on the positions of the industry, the UPOV Secretariat and foreign entities.

Most critically, it does not recognise the current practices of 80% + of African farmers but instead undermines and disregard the contribution of these farmer-breeders although they are the key contributors to breeding and food security.

We are of the view that the draft legal framework, in its current form as well as any draft legal framework that is based on UPOV 1991 will have a severe negative impact on agrobiodiversity, farmers and local communities and consequently on food security. This conclusion is also supported by the findings of the UN Special Rapporteur on the Right to Food.[14]

Finally we would like to stress that the process of developing the draft legal framework has not allowed for any civil society or farmer participation and as such is a gross violation of the human and customary rights of African communities.

[14] See UN General Assembly Document A/64/170 titled "Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation".