

## POSITION PAPER ON INTELLECTUAL PROPERTY RIGHTS

(Revised March 2019)

Seed is key to agricultural innovation and one of the most important input in crop production. The development of new plant varieties is critical to address the challenges that Africa faces in feeding an increasing population whilst at the same time sustainably conserving Africa's environment. The development of new plant varieties requires many years of risky investment in material and human resources and a lot of money, may it be from the public or the private sector.

AFSTA supports the establishment of strong and effective intellectual property rights (IPR) enabling developers of plant varieties to get a return on their investment, which ultimately encourage further breeding. The ability to sustain investments and to continue research is beneficial for farmers, growers, consumers and society as a whole.

The IPR should be enshrined in law to allow provisions for economic and legal mechanisms to stimulate innovation and sustain successful plant breeding. AFSTA underlines that infringements of IPR undermines the ability to innovate and places farmers' livelihoods and families at risk.

AFSTA is cognizant of the various IPR systems applied in plant breeding such as plant breeders' rights, trademarks, trade secrets, patents, etc.

AFSTA considers the *sui generis* system of UPOV (Union for the Protection of New Plant Variety) as the preferred form of intellectual protection of varieties, as balanced protection for incentive to innovation and access in order to enable others to further improve varieties. A PBR (plant breeders' right) granted according to UPOV criteria (i.e. novelty, distinctness, uniformity and stability - with the provision that the variety has a suitable denomination) contains the exception to breeders' right (allowing free access and use of protected varieties for further breeding) as well as the possibility for farmers to use farm saved seeds within reasonable limits and subject to safeguarding the legitimate interests of the breeder. AFSTA underlines the fact that UPOV 1991 Act allows subsistence farmers to use farm saved seeds of protected varieties without any payment to the holder of the PBR.

AFSTA believes granting of PBR is gaining importance in Africa and there is a need to educate stakeholders about its value, applicability, enforcement and understanding on resolving technical matters.

AFSTA recognizes the revised Bangui Agreement creating the OAPI (African Intellectual Property Organization) and the Arusha Protocol for the Protection of New Varieties of Plants (2015) from the ARIPO (African Regional Intellectual Property Organization) and encourages countries to ratify the UPOV Convention or one of these legal instruments for an effective implementation of IPR in Africa.

On essential derivation, AFSTA upholds the principal set out under Article 14 (5) (b) of UPOV 1991 Act: "*a variety shall be deemed to be essentially derived from another variety (the initial variety) when:*

- *It is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;*
- *It is clearly distinguishable from the initial variety*
- *Except for the differences, which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.”*

AFSTA strongly supports the concept of essential derivation, enhancing new technological developments by decreasing plagiarism. AFSTA recognizes and encourages its members to use internationally agreed-upon professional rules and usages for assessing essential derivation and for solving disputes for all crops (such as the guidelines developed by the International Seed Federation for EDV disputes related to perennial ray-grass, maize, oilseed rape, cotton and lettuce).

AFSTA recognizes that inventions relating to traits made by humans (generally described as traits linked to the modification of the plant genome by human actions such as human-made mutations or genetically modified (GM)-traits) and modern technologies for obtaining such modification, are eligible for patent protection.

AFSTA recognizes that all nations are strongly dependent on each other in terms of genetic resources for food and agriculture. Every nation grows or imports food crops whose origin lies outside their national boundaries, and are thus inherently dependent on multiple and foreign sources of germplasm. Access to genetic resources for food and agriculture is key to farmers and breeders developing varieties that will help address tomorrow's challenges.

In line with this, AFSTA fully supports the International Treaty on plant genetic Resources for Food and Agriculture (ITPGRFA) of the Food and Agriculture Organization (FAO) and its multilateral system as the preferred international instrument to govern access and benefit sharing (ABS) for plant genetic resources for food and agriculture.

AFSTA also takes note of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of benefits Arising from their Utilization, which recognizes the ITPGRFA as a specialized ABS instrument harmonized with the Convention on Biological Diversity and the ITPGRFA's standard material transfer agreement (SMTA) as a workable mechanism for facilitated and free access to germplasm from the MLS, which should serve as an internationally recognized certificate of compliance.

AFSTA recommends regular stakeholders consultations to implement the objectives of the ITPGRFA at the national level (such as Farmers' Rights) taking into account the international agreements on intellectual property. AFSTA urges African governments to implement IPR agreements (UPOV Convention for example) and the ITPGRFA in a mutually supportive way.

AFSTA highlights that the first right of farmers is to get access to quality seeds of his choice. Breeding methods are constantly evolving and offer improved varieties to address farmers' and consumers' challenges. AFSTA calls for breeders and other stakeholders (public research,

governments...) to not be left behind in experiencing the technology advancements opportunities.

In summary, AFSTA:

- supports UPOV 1991 Act as the most balanced system between remuneration of breeders and access to protected varieties for farmers;
- encourages African countries to ratify UPOV Convention or the Arusha Protocol or the revised Bangui Agreement;
- urges governments to implement and enforce IPR;
- recognizes the eligibility for patent protection of inventions relating to traits made by humans;
- calls for a coordinated action in Africa to provide quality seeds of improved varieties to farmers;
- considers that both plant breeder's rights (PBR) and patents are efficient systems for IPR protection.