



## Ghana

On 9 November 2020, a Plant Variety Protection Bill 2020 to establish a legal framework to protect the rights of breeders of new varieties of plants or plant groupings and to promote the breeding of new varieties of plants in Ghana, was passed into law. We are awaiting the Presidential Assent and printing of law, and regulations for the implementation of the law. It may be some time before it is possible to file for PBR protection in Ghana.

## SADC – Protocol for the Protection of New Varieties of Plants

The Southern African Development Community (SADC) is an inter-governmental organization headquartered in Gaborone, Botswana. Its goal is to further regional socio-economic cooperation and integration as well as political and security cooperation among 16 countries in Southern Africa. The SADC member States are Angola, Botswana, Comoros, Congo (DR), Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

On 29 June 2020, Botswana signed the SADC Protocol for Protection of New Varieties of Plant (Plant Breeders' Rights). Botswana is the ninth SADC member to sign this Protocol (the other signatory States being Angola, Democratic Republic of Congo, Eswatini, Lesotho, Mozambique, Namibia, Tanzania and Zambia). In terms of Article 44 of the Protocol, it will come into force thirty days after signature by two-thirds of the SADC Member States. There are currently fifteen SADC Member States. The SADC Protocol will come in to force when ten member States have signed.

Once the SADC Protocol for the Protection of New Varieties of Plants comes into force, it will provide a regional system for protection of PBRs in the signatory States. Each member State will need to have national PBR legislation for the protection to be effective.

## ARIPO – Arusha Protocol

The African Regional Intellectual Property Organisation (ARIPO) is a regional system providing for patent, trade mark and registered design protection in member States. The current ARIPO member states are Botswana, Eswatini, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Mauritius, Namibia, Rwanda, Sao Tome e Principe, Sierra Leone, Somalia, the Sudan, the United Republic of Tanzania, Uganda, Zambia and Zimbabwe. It should be noted that not all the States have signed the Harare Protocol for patents and designs and/or the Banjul Protocol for trade marks. Even though a State is a member of ARIPO, patent, design and trade mark protection via ARIPO is only available if the State has acceded to the Harare and Banjul Protocols. Furthermore, unlike OAPI, where a single application automatically covers

all member States and it is not possible to designate the countries of interest, ARIPO applications specifically require the applicant to designate those member States where protection is required. A patent, design or trade mark granted by ARIPO has, in each designated State, the same effect as a patent, design or trade mark registered, granted or otherwise having effect under the applicable national law. Enforcement of a granted ARIPO patent, design or trade mark is undertaken nationally, in terms of the national law.

On 6 July 2015, The Arusha Protocol for the protection of New Varieties of Plants was adopted by a Diplomatic Conference of ARIPO Member States in Arusha, Tanzania. Sao Tome e Principe, Gambia, Ghana, and Mozambique signed the Arusha Protocol in on 6 July 2015, and Tanzania later signed the Protocol on 28 September 2015. Any State which is a member of ARIPO or any State to which membership of ARIPO is open may become party to the Arusha Protocol by signature followed by the deposit of an instrument of ratification; or by deposit of an instrument of accession. Membership of ARIPO is open to all Member States of the United Nations Economic Commission for Africa.

Rwanda deposited its instrument of accession to the Arusha Protocol on 7 June 2019, and Sao Tome e Principe deposited its instrument of ratification of the Protocol on 29 September 2020.

The Arusha Protocol will come into force twelve months after four States have deposited their instruments of ratification or accession.

Once the Arusha Protocol comes into force, it will also provide a regional system for protection of PBRs in the signatory States. Each member State will need to have national PBR legislation for the protection to be effective.

In summary, in 2020 there were developments with both the SADC Protocol for the Protection of New Varieties of Plants, and the Arusha Protocol for the protection of New Varieties of Plants. The SADC Protocol (signed by Angola, Botswana, Democratic Republic of Congo, Eswatini, Lesotho, Mozambique, Namibia, Tanzania and Zambia) requires just one more SADC member State; and the ARIPO Arusha Protocol (acceded to/ratified by Rwanda and Sao Tome e Principe) requires accession or ratification by two more States.

The advantage of the Arusha Protocol is that ARIPO already has an office in place for receiving, processing and granting patent applications and should be able to set up a similar system for PBRs (as has been done at OAPI). The Arusha Protocol also has Regulations in place for the implementation thereof. Provision is made for ARIPO rely on DUS test results from other PBR offices, or to 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. A challenge for the Arusha Protocol is that it has to date only acceded to/ratified by two States.

The advantage of the SADC Protocol is that it has already been signed by nine member States, and will come in to force when signed by one more member State. A challenge for the SADC Protocol is that a SADC PBR Office will need to be set in place for receiving, processing and granting PBR applications. Provision is made for a SADC PBR Office to enter into an arrangement with any relevant institutions or persons either in or outside SADC Region, to carry out DUS testing, or it may use the results of such tests that have already been carried out by such institution or person.

A further challenge for both systems is that those States that do not already have national laws for the protection of Plant Breeders' Rights will need to enact national PBR laws in order for protection to be effective.

It remains to be seen as to whether both the ARIPO Arusha and SADC Protocols will be implemented. Currently both systems are moving forward, and more countries are preparing laws for the protection of new plant varieties. In the future we expect to see more African countries that will provide protection for new plant varieties.

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