

AFSTA POSITION PAPER ON INTELLECTUAL PROPERTY RIGHTS
(Adopted by AFSTA General Assembly on 18th March 2005 in Yaoundé, Cameroon)

The members of the African Seed Trade Association (AFSTA) recognize that there have been new technical, legal, economic and political developments, which have taken place globally in the recent past, that have a tremendous effect on food self-sufficiency and security.

AFSTA members are unanimously in favour of a strong intellectual property protection system, which will ensure an acceptable return on research investment and encourage further research efforts in plant breeding, which are essential in meeting the challenges Africa faces in the coming years, particularly in feeding an increasing population whilst at the same time sustainably conserving Africa's environment.

AFSTA considers that it would be premature to develop protection of plant varieties through utility patents, but recommends development of a suitable "sui generis" system with novelty, distinctness, uniformity, stability and a suitable denomination as the pre-requisites for grant of protection. This system of protection should be based on WTO's TRIP's agreement and closely related to the 1991 Act of the UPOV Convention, which, among other things, has farmer's privilege that provides for use of farm-saved seed within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

At the moment, most AFSTA members are not in favour of the patenting of life-forms, and acknowledge that when a commercially available plant variety protected by PVP contains patented traits, it should remain freely available for further breeding, according to the breeder's exception provided for in the UPOV or UPOV-like systems. This will enhance breeding.

On essential derivation, AFSTA upholds the principal set out under the UPOV 1991 Convention i.e. "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 and
- 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 further reiterates its stand on the motion on efficient *sui generis* system for protecting new plant varieties adopted by its General Assembly in Cairo in 2001, which stipulates that some elements in the African Union's Model Law on plant variety protection do not fully encourage plant breeding.

AFSTA subscribes fully to the recommendations of the International Treaty on Plant Genetic Resources for Food and Agriculture of Food and Agriculture Organization.