

Dr. Dos Santos

**Director General's OFFICE**

11 Natal Road, Belgravia, Harare, Zimbabwe

Phone: +263 4 794 065 /6/8/54

Mobile: +263 734904 522

Fax: +263 4 794072-3

Email: [mail@aripo.org](mailto:mail@aripo.org)

Website: [www.aripo.org](http://www.aripo.org)

21 November 2018

**OPEN LETTER**

**RE: United call to the African Regional Intellectual Property Organization (ARIPO) for the inclusion of African civil society organisations and public health interest groups in processes to advance access to diagnostics and communicable and non-communicable medicines in ARIPO member states**

We write this appeal as a group of concerned national, regional and continental African civil society organisations, intellectual property experts, and people living with and affected by communicable and non-communicable diseases in the ARIPO member states. As ARIPO convenes the 42nd Session of the Administrative Council this week, we remain resolute on our resolve to engage and meaningfully input in ARIPO reform processes, which impact on our citizens' access to public health commodities.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) sets the standards of intellectual property protection World Trade Organization (WTO) Member States are required to uphold. However, while TRIPS guarantees 20-year patents, it also guarantees a number of public health safeguards that can be freely and legally used to prevent the abuse of patents and protect public health. Yet, many of these public health safeguards are not implemented and are even undermined, due to existing gaps within the provisions of the Harare Protocol. This is highly problematic given the high burden of communicable and non-

communicable diseases affecting us. Many of our people continue to suffer and die because they cannot access early diagnosis nor can they afford the essential medicines needed to treat manageable and often curable conditions.

We welcome the processes that have been triggered by the Secretariat at this time, as urgent reforms are needed to facilitate a progressive Harare Protocol. We recognise the pressing need to take bold and progressive steps to ensure the implementation and use of TRIPS-compliant flexibilities within the Harare Protocol. These include, but not limited to; the exclusion of all least developed country (LDC) Members from the requirement to grant or enforce pharmaceutical patents until 2033; the adoption of more stringent standards of patentability that exclude patents on new uses, new formulations and new forms of known medicines and other health technologies and pre and post grant opposition systems. These reforms, will help improve access to many important medicines, ultimately saving the millions of lives in ARIPO member states.

As experts, public interest groups, and those affected, we have a well-established track record of constructive engagement with our governments to safeguard the right to health. Our joint collaborative efforts have contributed towards the strengthening of our national intellectual property legal and policy environments.

These have resulted in advancement of accessible and affordable essential health technologies, including for the treatment of HIV and Tuberculosis (TB). Our efforts have also constructively contributed towards meaningful regional and international efforts, thereby promoting policy coherence in the realisation of access to diagnostics and medicines. These have resulted in the adoption of “Resolution 141 on Access to Health and Needed Medicines in Africa” in 2008<sup>1</sup> by the African Commission for Human and Peoples’ Rights; as well as the 2016 United Nations Secretary-General’s High-Level Panel on Access to Medicines report on “Promoting Innovation and Access to Health Technologies”.

As outlined in the Communique of the 16th Session of the Council of Ministers of ARIPO on 23 November 2017, held in Lilongwe, Malawi;<sup>2</sup> ARIPO Member States

---

<sup>1</sup> 141: Resolution on Access to Health and Needed Medicines in Africa. Available at: <http://www.achpr.org/sessions/44th/resolutions/141/>

<sup>2</sup> Communique of the 16th Session of the Council of Ministers of ARIPO. Available at: <http://www.aripo.org/news-events-publications/news/item/222-communique-of-the-16th-session-of-the-council-of-ministers-of-aripo>

mandated the Secretariat to, amongst others; *“explore and formulate concrete proposals aimed at addressing policy and legal incoherencies that impact access to health technologies and in the Member States of ARIPO, take actions accordingly and report to the Governing Bodies of the Organization”*. Yet over the last year, there has been very limited engagement of a wide-range of technical partners, development allies, civil society organisations and public interest groups.

Despite numerous requests, including letters, emails and visits to the ARIPO office by interested parties, no formal engagement has taken place. The commitments made by the ARIPO Secretariat to constructively engage civil society organisations in processes, workshops and meetings; have unfortunately not resulted in extension of invitations to any civil society or interest groups. This has resulted in the exclusion of key voices in these deliberations.

There is also growing concern that the Secretariat appears to rely extensively or perhaps even exclusively on the World Intellectual Property Organization (WIPO). In addition, despite formal requests; there have been no access to WIPO-commissioned reports being developed on behalf of ARIPO member states. As public interest groups, civil society organisations and patient advocates; we see it as key for the Secretariat to leverage on existing expertise and capacity African member states and we are alarmed at this lack of transparency on matters which affect our citizens’ lives.

We therefore call on the ARIPO Secretariat to be accountable to the member states and to:

- Set out a clear, transparent and inclusive process for the implementation of Article 10 of the Malawi Ministerial Council Communique. This process should widen the space for engagements of civil society, national level experts, academics and public interest groups working on access to medicines in the ARIPO member states; to openly make proposals and provide inputs on proposals being considered;
- Progressively solicit inputs from other interested public interest groups on the drafts of the “Comparative Study of Industrial Property Laws of ARIPO Member States” by circulating these to a wider audience;
- Ensure transparency of data, including timely sharing of meeting reports, concluding observations and draft reports, and information about the process.

Ultimately, we urge the ARIPO Secretariat and our Member States to place respect for human life and the right to health at the forefront of these consultative ARIPO processes and that measures approved, safeguard their public health interests of citizens in ARIPO member states. We pledge to constructively engage our national patent offices and Ministries of Trade to ensure the highest level of involvement in processes which will see a reformed Harare Protocol and ARIPO Secretariat.

**Signed by;**

1. Action 4 Health Uganda. (A4HU)
2. Advocacy for Better Health | *Uganda*
3. Alliance for Integrated Development (AIDE)
4. The Action Group for Health, Human Rights and HIV/AIDS *Uganda*
5. African Centre for Global Health and Social Transformation (ACHEST) | *Uganda*
6. Associação de Reintegração dos Jovens/Crianças na Vida Social (SCARJoV) | *Angola (Observer status)*
7. BONELA- Botswana
8. Coalition for Health Promotion and Social Development (HEPS) | *Uganda*
9. CEDEP | *Malawi*
10. Center for Health, Human Rights and Development (CEHURD) | *Uganda*
11. Centre for Participatory Research and Development (CEPARD) | *Uganda*
12. Community Health and Information Network (CHAIN)
13. Communities' Holistic Initiative for Social Advancement (CHISA) | *Malawi*
14. Community Integrated Development Initiatives (CIDI)
15. DACASA (Dandora community Aids support ASSOCIATION)
16. Development for Peace Education (DPE) | *Lesotho*
17. International Community of Women Living with HIV/AIDS (ICW) East Africa
18. ICW KENYA (International community of women living with HIV, Kenya)
19. Initiative for Prisoners Health Rights
20. Hope After Rape | *Uganda*
21. Human Rights Awareness and Promotion Forum (HRAPF)
22. Human Rights Research Documentation Centre. HURIC
23. Health Rights Action Group (HAG) | *Uganda*
24. Global Coalition of Women against AIDS in Uganda
25. Kampala District Forum of PLHIV Networks (KADFO)
26. KELIN | *Kenya*
27. Kenya Treatment Access Movement (KETMA)
28. Kenya Sex Workers Alliance (KESWA) | *Kenya*
29. Makerere Women Development Association

30. Malawi Network of Religious Leaders Living with or Personally Affected by HIV and AIDS (MANERELA+) | *Malawi*
31. Mama's Club | *Uganda*
32. Mariam foundation
33. National Forum for People Living with HIV/AIDS (NAFOPHANU) | *Uganda*
34. SAMASHA
35. Support on AIDS and Life Through Telephone Helpline (SALT)
36. Uganda's Coalition on AEMI | *Uganda*
37. Uganda Harm Reduction Network (UHRN) | *Uganda*
38. Uganda Health Sciences Press Association | *Uganda*
39. Uganda National Health Consumers Organisation
40. Uganda Network of AIDS Services Organization (UNASO)
41. Uganda Network on Law Equality and Ethics (UGANET)
42. Uganda Youth Against AIDS Foundation
43. Uganda's Young Positive Networks (UNYPA)
44. Positive Men's Union | *Uganda*
45. Transbantu Association Zambia (TBZ) | *Zambia*
46. Trans Smart Trust (TST) | *Zimbabwe*
47. Treatment Advocacy & Literacy Campaign (TALC) | *Zambia*
48. Tusitukirewamu | *Uganda*
49. UNIDOS - Rede Nacional Sobre HIV/SIDA | *Mozambique*
50. Wings To Transcend | *Namibia*
51. Women's Coalition Against Cancer (WOCACA) | *Malawi*
52. Young Professionals Chronic Diseases Network (YPCDN)
53. Youth in Action Foundation (YAFU) | *Uganda*
54. Zimbabwe Civil Liberties and Drug Network | *Zimbabwe*
55. AIDS and Rights Alliance for Southern Africa (ARASA) | *Regional*
56. Eastern Africa National Networks of AIDS Service Organisations (EANNASO) | *Regional*
57. Pan African Treatment Access Movement (PATAM) | *Regional*
58. SAfAIDs | *Regional*
59. Southern and Eastern African Trade Information and Negotiations Institute (SEATINI) | *Regional*
60. Global Coalition of Women Against HIV | *Global*
61. *Third World Network*
62. Health Gap | *Global*