

## **Questionnaire on Exceptions and Limitations to Patent Rights**

The answers to this questionnaire have been provided on behalf of:

Country: Republic of Djibouti .....  
Office: Djiboutian Office of Industrial and Commercial Property.....

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***NB: The Djiboutian Office of Industrial and Commercial Property is in the process of being set up. It has not yet received any application filings for industrial property titles. The responses to the questionnaire are taken from the Law on Industrial Property Protection. The exceptions and limitations provided for by this Law have not been implemented.***

### **Section I: General**

This section is intended to obtain general information on exceptions and limitations to patent rights that are provided under the applicable laws. For the purpose of this questionnaire, the term “applicable law” refers to relevant national and regional statutory law and, where applicable, case law.

The terms used in the questionnaire are drafted in a general way aiming at providing a broad understanding of each concept used, assuming that the exact wording of these exceptions and limitations might differ under the applicable laws. More detailed explanations of the various exceptions and limitations may be found in the following documents: SCP/13/3, SCP/15/3 and CDIP/5/4.

1. As background for the exceptions and limitations to patents investigated in this questionnaire, what is the legal standard used to determine whether an invention is patentable? If the standard for patentability includes provisions that vary according to the technology involved, please include examples of how the standard has been interpreted, if available. Please indicate the source of law (statutory and-or case law) by providing the relevant provisions and/or a brief summary of the relevant decisions.

The relevant standard is set by the articles thus cited from **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection**:

Article 22:

Any new invention involving an inventive step and which is industrially applicable shall be patentable.

Article 23:

An invention shall be considered to be new if it is not included in the prior art.

An invention shall be considered to involve an inventive step if, for a person skilled in the art, it is not obvious from the prior art.

The prior art shall consist of everything that has been made available to the public anywhere in the world by means of a written or oral description, use or any other means, before the patent application filing date in Djibouti or of a patent application filed abroad and priority for which is validly claimed.

The prior art shall also be considered to include the content of patent applications filed in Djibouti or of international applications, as filed, which have a filing date prior to that mentioned in the second paragraph of this Article and which have been published only at this date or at a later date.

Article 24:

An element of the prior art which may be opposed to an invention claimed in a patent application filed in Djibouti shall have no impact on the patentability of the invention in so far as this element would have been included in the prior art on a date falling during the 12 months preceding the date of application filing in Djibouti or the priority date claimed in the application, as a result of acts committed

- (i) by the applicant or his legal successor,
- (ii) by a patent office which appears to have unlawfully published or made available to the public a patent application filed by the applicant or his legal predecessor, or an application filed without the knowledge or consent of the applicant or his legal predecessor by a third party that has obtained the information directly or indirectly from the applicant or his legal predecessor, or
- (iii) by a third party that has obtained directly or indirectly from the inventor the information contained in the element of the prior art.

Article 25:

An invention shall be considered industrially applicable if its subject matter may be manufactured or used in any kind of industry, including agriculture.

Correspondingly, please list exclusions from patentability that exist in your law. Furthermore, please provide the source of those exclusions from patentability if different from the source of the standard of patentability, and provide any available case law or interpretive decisions specific to the exclusions.<sup>1</sup>

The source in question is the following articles of **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection**:

Article 26:

The following shall not be considered inventions:

- (a) discoveries, substances, materials and organisms as they exist in nature, and parts or elements thereof;
- (b) scientific theories and mathematical methods;

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<sup>1</sup> This question does not imply that the topic of exclusions from patentability is dealt with in this question exhaustively.

- (c) the human body and the materials of which the human body is made up, at the different stages of its constitution and development, together with elements thereof, including the sequence or partial sequence of a gene;
- (d) essentially biological processes for obtaining plants or animals;
- (e) literary and artistic works or any other aesthetic creation;
- (f) plans, principles and methods in the exercise of intellectual activities, games or in the field of economic activities;
- (g) computer programs;
- (h) information presentations.

Article 27:

The following shall not be patentable;

- (a) plants and animals other than microorganisms;
- (b) diagnostic, therapeutic and surgical methods for the treatment of persons or ... (TEXT INCOMPLETE);
- (c) inventions, the commercial exploitation or implementation of which would be contrary to *ordre public* or morality, or would harm the health or life of persons, animals, plants or the environment.

2. As background for the exceptions and limitations to patents investigated in this questionnaire, what exclusive rights are granted with a patent? Please provide the relevant provision in the statutory or case law. In addition, if publication of a patent application accords exclusive rights to the patent applicant, what are those rights?

The exclusive rights granted to the patent owner are listed in the following articles of **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection**:

Article 53:

An invention patent shall confer on its owner the right to prohibit unauthorized third parties from performing the following acts:

- (a) in the cases where the subject matter of the patent is a product, manufacturing, using, offering for sale, selling or importing the product for such purposes;
- (b) in the cases where the subject matter of the patent is a process, using the process and using, offering for sale, selling or importing for these purposes the product directly obtained by such a process.

Article 54:

Also prohibited shall be, failing the consent of the patent owner, the delivery or offer of delivery on Djiboutian territory to a person other than the person authorized to work the patented invention, of means of implementing, on that territory, the invention relating to an essential element thereof, where the third party knows or where the circumstances make it obvious that such means are suitable and intended for such implementation. The provisions of the above paragraph shall not apply where the means of implementation are products which are commonly found on sale, apart

from where the third party encourages the person to whom he delivers to commit acts prohibited by Article 53 above.

Persons performing the acts referred to in Article 55 below shall not be considered authorized to work the invention, as per the first paragraph above.

Or where a third party may exercise such influence over one or other of these persons;

Article 56:

The rights attached to a patent application or to a patent shall be transferable in full or in part. They may be subject, in full or in part, to an exclusive or non-exclusive working license grant, and also be pledged.

The rights conferred by the patent application or patent may be invoked against a licensee who infringes one of the limits of his license imposed under the previous paragraph. Subject to the provisions of Article 19 above, transfer of the rights referred to in the first paragraph of this Article shall not infringe the rights acquired by third parties before the date of transfer. The acts comprising a transfer or a license, referred to in the first two paragraphs above shall be recorded in writing, on pain of invalidity.

3. Which exceptions and limitations does the applicable law provide in respect to patent rights (please indicate the applicable exceptions/limitations):

- Private and/or non-commercial use;
- Experimental use and/or scientific research;
- Preparation of medicines;<sup>2</sup>
- Prior use;
- Use of articles on foreign vessels, aircrafts and land vehicles;
- Acts for obtaining regulatory approval from authorities;
- Exhaustion of patent rights;
- Compulsory licensing and/or government use;
- Exceptions and limitations related to farmers' and/or breeders' use of patented inventions.<sup>3</sup>

If the applicable law provides for any of the above-listed exceptions and limitations, please fill out those parts of Sections II to X that apply to you. If the applicable law does not contain all of the exceptions and limitations provided in Sections II to X, then you should respond only to the other parts of the questionnaire. If the applicable law includes other exceptions and limitations that are not listed above, please answer the questions under Section XI "Other Exceptions".

Where reference is made to case law, please indicate, if possible, the official source in which the case has been published (for example, the publication number, issue, title, URL, etc.).

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<sup>2</sup> For example, extemporaneous preparation of prescribed medicines in pharmacies.

<sup>3</sup> For example, in some countries where patent rights extend to propagated or multiplied material derived from patented biological material, certain uses by farmers of harvested plant material or of breeding livestock or other animal reproductive material under patent protection on his own farm do not constitute patent infringement. Similarly, in some countries, patent rights do not cover uses by breeders of patented biological material for the purpose of developing a new plant variety (see paragraphs 133 to 137 of document SCP/13/3).

**Section II: Private and/or non-commercial use**

4. If the exception is contained in statutory law, please provide the relevant provision(s):

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5. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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6. (a) What are the public policy objectives for providing the exception?

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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7. If the applicable law defines the concepts “non-commercial”, “commercial” and/or “private”, please provide those definitions by citing legal provision(s) and/or decision(s):

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8. If there are any other criteria provided in the applicable law to be applied in determining the scope of the exception, please provide those criteria by citing legal provision(s) and/or decision(s):

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9. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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10. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

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**Section III: Experimental use and/or scientific research <sup>4</sup>**

11. If the exception is contained in statutory law, please provide the relevant provision(s):

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12. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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13. (a) What are the public policy objectives for providing the exception?

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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14. Does the applicable law make a distinction concerning the nature of the organization conducting the experimentation or research (for example, whether the organization is commercial or a not-for-profit entity)? Please explain:

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15. If the applicable law defines the concepts “experimental use” and/or “scientific research”, please provide those definitions by citing legal provision(s) and/or decision(s):

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16. If the purpose of experimentation and/or research is relevant to the determination of the scope of the exception, please indicate what that purpose is:

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<sup>4</sup> Exceptions and limitations on acts for obtaining regulatory approval are dealt with in Section VII of the questionnaire.

Experimentation and/or research should aim to:

- determine how the patented invention works
- determine the scope of the patented invention
- determine the validity of the claims
- seek an improvement to the patented invention
- invent around the patented invention
- other, please specify: .....

17. If any of the following criteria is relevant to the determination of the scope of the exception, please indicate:

- Research and/or experimentation must be conducted on or relating to the patented invention (“research on”)
- Research and/or experimentation must be conducted with or using the patented invention (“research with”)
- Both of the above

Please explain by citing legal provision(s) and/or decision(s):

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18. If the commercial intention of the experimentation and/or research is relevant to the determination of the scope of the exception, please indicate whether the exception covers activities relating to:

- A non-commercial purpose
- A commercial purpose
- Both of the above
- The commercial intention of the experimentation and/or research is not relevant

19. If the applicable law makes a distinction between “commercial” and “non-commercial” purpose, please explain those terms by providing their definitions, and, if appropriate, examples. Please cite legal provision(s) and/or decision(s):

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20. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

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21. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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22. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

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**Section IV: Preparation of medicines**

23. If the exception is contained in statutory law, please provide the relevant provision(s):

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24. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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25. (a) What are the public policy objectives for providing the exception? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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26. Who is entitled to use the exception (for example, pharmacists, doctors, physicians, others)? Please describe:

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27. Does the applicable law provide for any limitations on the amount of medicines that can be prepared under the exception?

- Yes
- No

If yes, please explain your answer by citing the relevant provision(s) and/or decision(s):

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28. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

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29. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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30. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

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**Section V: Prior use**

31. If the exception is contained in statutory law, please provide the relevant provision(s):

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32. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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33. (a) What are the public policy objectives for providing the exception? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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34. How does the applicable law define the scope of “use”? Does the applicable law provide for any quantitative or qualitative limitations on the application of the “use” by prior user? Please explain your answer by citing legal provision(s) and/or decision(s):

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35. Does the applicable law provide for a remuneration to be paid to the patentee for the exercise of the exception? Please explain:

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36. According to the applicable law, can a prior user license or assign his prior user's right to a third party?

- Yes
- No

37. In case of affirmative answer to question 36, does the applicable law establish conditions on such licensing or assignment for the continued application of the prior use exception?

- Yes
- No

If yes, please explain what those conditions are:

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38. Does this exception apply in situations where a third party has been using the patented invention or has made serious preparations for such use after the invalidation or refusal of the patent, but before the restoration or grant of the patent?

- Yes
- No

If yes, please explain the conditions under which such use can continue to apply:

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39. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

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40. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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41. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

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**Section VI: Use of articles on foreign vessels, aircrafts and land vehicles**

42. If the exception is contained in statutory law, please provide the relevant provision(s):

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43. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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44. (a) What are the public policy objectives for providing the exception? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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45. The exception applies in relation to:

- Vessels
- Aircrafts
- Land Vehicles
- Spacecraft

46. In determining the scope of the exception, does the applicable law apply such terms as "temporarily" and/or "accidentally" or any other equivalent term in relation to the entry of foreign transportation means into the national territory? Please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

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47. Does the applicable law provide for any restrictions on the use of the patented product on the body of the foreign vessels, aircrafts, land vehicles and spacecraft for the exception to apply (for example, the devices to be used exclusively for the needs of the vessel, aircraft, land vehicle and/or spacecraft)? Please explain your answer by citing legal provision(s) and/or decision(s):

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48. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

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49. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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50. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

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**Section VII: Acts for obtaining regulatory approval from authorities**

51. If the exception is contained in statutory law, please provide the relevant provision(s):

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52. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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53. (a) What are the public policy objectives for providing the exception? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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54. Who is entitled to use the exception? Please explain:

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55. The exception covers the regulatory approval of:

- any products
- certain products. Please describe which products: .....

56. Please indicate which acts are allowed in relation to the patented invention under the exception?

- Making
- Using
- Selling
- Offering for sale
- Import
- Export
- Other. Please specify:.....

57. If the applicable law provides for other criteria to be applied in determining the scope of the exception, please describe those criteria. Please illustrate your answer by citing legal provision(s) and/or decision(s):

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58. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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59. Which challenges, if any, have been encountered in relation to the practical implementation of the exception in your country? Please explain:

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**Section VIII: Exhaustion of patent rights**

60. Please indicate what type of exhaustion doctrine is applicable in your country in relation to patents:

- National
- Regional
- International
- Uncertain, please explain.....

If the exception is contained in statutory law, please provide the relevant provision(s):

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If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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61. (a) What are the public policy objectives for adopting the exhaustion regime specified above? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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62. Does the applicable law permit the patentee to introduce restrictions on importation or other distribution of the patented product by means of express notice on the product that can override the exhaustion doctrine adopted in the country?

- Yes
- No
- Uncertain

Please explain your answer by citing legal provision(s) and/or decision(s):

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63. Has the applicable exhaustion regime been considered adequate to meet the public policy objectives in your country? Please explain:

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64. Which challenges, if any, have been encountered in relation to the practical implementation of the applicable exhaustion regime in your country? Please explain:

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**Section IX: Compulsory licenses and/or government use**

*Compulsory licenses*

65. If the exception is contained in statutory law, please provide the relevant provision(s):

The provision is contained in **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection, Article 61**: A request for a compulsory license shall be lodged with the courts. Such a request must be accompanied by the proof that the applicant has been unable to obtain from the patent owner a contractual license, in particular on reasonable commercial terms and conditions. Such proof shall not be required in the cases provided for in the following paragraph.

The courts may decide at any time that, even without the agreement of the patent owner, a State service or a third party designated by the courts may work the invention where:

- (i) public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy so requires,
- (ii) it is determined that the manner in which the patent owner or his licensee works the invention or otherwise uses the patent is anti-competitive or constitutes an abuse of the exclusive rights conferred by the patent. In the cases provided for in the previous paragraph and in any case of public use for non-commercial purposes, or in situations of national emergency, the patent owner shall nevertheless be informed of the decision as soon as it is reasonably possible.

66. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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67. What grounds for the grant of a compulsory license does the applicable law provide in respect to patents (please indicate the applicable grounds):

- Non-working or insufficient working of the patented invention
- Refusal to grant licenses on reasonable terms
- Anti-competitive practices and/or unfair competition
- Public health
- National security
- National emergency and/or extreme urgency
- Dependent patents
- Other, please specify: .....

68. (a) What are the public policy objectives for providing compulsory licenses in your country? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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69. If the applicable law provides for the grant of compulsory licenses on the ground of “non-working” or “insufficient working”, please provide the definitions of those terms by citing legal provision(s) and/or decision(s):

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70. Does the importation of a patented product or a product manufactured by a patented process constitute “working” of the patent? Please explain your answer by citing legal provision(s) and/or decision(s):

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71. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide for a certain time period to be respected before a compulsory license can be requested?



- Yes
- No

If yes, what is the time period? .....

72. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide that a compulsory license shall be refused if the patentee justifies his inaction by legitimate reasons?

- Yes
- No

If yes, what are "legitimate reasons"? .....

73. If the applicable law provides for the grant of compulsory licenses on the ground of refusal by the patentee to grant licenses on "reasonable terms and conditions" and within a "reasonable period of time", please provide the definitions given to those terms by citing legal provision(s) and/or decision(s):

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74. If the applicable law provides for the grant of compulsory licenses on the ground of anti-competitive practices, please indicate which anti-competitive practices relating to patents may lead to the grant of compulsory licenses by citing legal provision(s) and/or decision(s):

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75. If the applicable law provides for the grant of compulsory licenses on the ground of dependent patents, please indicate the conditions that dependent patents must meet for a compulsory license to be granted:

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76. Does the applicable law provide a general policy to be followed in relation to the remuneration to be paid by the beneficiary of the compulsory license to the patentee? Please explain:

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77. If the applicable law provides for the grant of compulsory licenses on the ground of "national emergency" or "circumstances of extreme urgency", please explain how the applicable law defines those two concepts and their scope of application, and provide examples:

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78. Please indicate how many times and in which technological areas compulsory licenses have been issued in your country:

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79. Is the applicable legal framework for the issuance of compulsory licenses considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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80. Which challenges, if any, have been encountered in relation to the use of the compulsory licensing system provisions in your country? Please explain:

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*Government use*

81. If the exception is contained in statutory law, please provide the relevant provision(s):

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82. If the exception is provided through case law, please cite the relevant decision(s) and provide its(their) brief summary:

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83. What grounds for the grant of government use does the applicable law provide in respect to patents (please indicate the applicable grounds):

- Non-working or insufficient working of the patented invention
- Refusal to grant licenses on reasonable terms
- Anti-competitive practices and/or unfair competition
- Public health
- National security
- National emergency and/or extreme urgency
- Dependent patents
- Other, please specify: .....

84. (a) What are the public policy objectives for providing government use in your country?

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This is public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy.....  
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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

The following is stated in **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection, Article 61**: A request for a compulsory license shall be lodged with the courts. Such a request must be accompanied by the proof that the applicant has been unable to obtain from the patent owner a contractual license, in particular on reasonable commercial terms and conditions. Such proof shall not be required in the cases provided for in the following paragraph.

The courts may decide at any time that, even without the agreement of the patent owner, a State service or a third party designated by the courts may work the invention where:

(i) public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy so requires,

(ii) it is determined that the manner in which the patent owner or his licensee works the invention or otherwise uses the patent is anti-competitive or constitutes an abuse of the exclusive rights conferred by the patent. In the cases provided for in the previous paragraph and in any case of public use for non-commercial purposes, or in situations of national emergency, the patent owner shall nevertheless be informed of the decision as soon as it is reasonably possible.

85. If the applicable law provides for the grant of government use on the ground of “national emergency” or “circumstances of extreme urgency”, please explain how the applicable law defines those two concepts and their scope of application, and provide examples:

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86. Please indicate how many times and in which technological areas government use has been issued in your country:

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87. Is the applicable legal framework for the issuance of government use considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

No. ....  
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88. Which challenges, if any, have been encountered in relation to the use of the government use mechanism in your country? Please explain:

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**Section X: Exceptions and limitations related to farmers' and/or breeders' use of patented inventions**

*Farmers' use of patented inventions*

89. If the exception is contained in statutory law, please provide the relevant provision(s):

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90. If the exception is provided through case law, please cite the relevant decision(s) and provide a brief summary of such decision(s):

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91. (a) What are the public policy objectives for providing the exception related to farmers' use of patented inventions? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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92. Please explain the scope of the exception by citing legal provision(s) and/or decision(s) (for example, interpretation(s) of statutory provision(s) on activities allowed by users of the exception, limitations on their use, as well as other criteria, if any, applied in the determination of the scope of the exception):

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93. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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94. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to farmers' use of patented inventions in your country? Please explain:

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*Breeders' use of patented inventions*

95. If the exception is contained in statutory law, please provide the relevant provision(s):

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96. If the exception is provided through case law, please cite the relevant decision(s) and provide a brief summary of such decision(s):

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97. (a) What are the public policy objectives for providing the exception related to breeders' use of patented inventions? Please explain:

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(b) Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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98. Please explain the scope of the exception by citing legal provision(s) and/or decision(s) (for example, interpretation(s) of statutory provision(s) on activities allowed by users of the exception, limitations on their use, as well as other criteria, if any, applied in the determination of the scope of the exception):

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99. Is the applicable legal framework of the exception considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen)? Please explain:

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100. Which challenges, if any, have been encountered in relation to the practical implementation of the exception related to breeders' use of patented inventions in your country? Please explain:

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**Section XI: Other Exceptions and Limitations**

101. Please list any other exceptions and limitations that your applicable patent law provides:

Another exception is contained in **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection, Article 75:**

The *ex officio* license shall be granted at the request of the Minister of Defense by Presidential Decree. This Decree shall fix the conditions for granting the license to the exclusion of those relating to the royalties to which it gives rise. The license shall take effect on the date on which the *ex officio* license is requested.

Failing an amicable agreement between the patent owner and the Minister of Defense, the amount of the royalties shall be fixed by the Civil and Commercial Chamber of the Court of First Instance.

102. In relation to each exception and limitation, please indicate:

(i) the source of law (statutory law and/or the case law) by providing the relevant provision(s) and/or a brief summary of the relevant decision(s):

For compulsory licenses the provision is Article 61 and for *ex officio* licenses it is Article 75 of the same **Law No. 50/AN/09/6<sup>th</sup> L on Industrial Property Protection.**

(ii) the public policy objectives of each exception and limitation. Where possible, please explain with references to the legislative history, parliamentary debates and judicial decisions:

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(iii) the entitlement and the scope of the exception and limitation by citing legal provision(s) and/or decision(s):

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In addition, in relation to each exception and limitation, please explain:

(i) whether its applicable legal framework is considered adequate to meet the objectives sought (for example, are there any amendments to the law foreseen?):

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(ii) if there have been any challenges encountered in the practical implementation of the exception in your country:

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103. If other mechanisms for the limitation of patent rights external to the patent system exist in your country (for example, competition law), please list and explain such mechanisms:

No .....

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[End of Questionnaire]