



C/32/12

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Second Ordinary Session
Geneva, October 28, 1998

**EXAMINATION OF THE CONFORMITY OF THE PLANT BREEDERS RIGHTS ACT
OF ZIMBABWE WITH THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. By letter dated April 16, 1998, which was written in the context of correspondence on other matters, the Office of the Union drew to the attention of the Government of Zimbabwe the fact that the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act") would be closed to further accessions on April 24, 1998. By letter dated April 23, 1998, in response to the letter from the Office of the Union (received in the Office of UPOV on May 6, 1998), Dr. N.R. Gata, Director of the Department of Research and Specialist Services of the Ministry of Agriculture of Zimbabwe, explained that Zimbabwe wished to accede to the 1978 Act. By letter dated May 8, 1998, the Office of UPOV informed Dr. Gata that it was interpreting his letter as a request for the Council of UPOV to advise his country pursuant to Article 32(3) of the 1978 Act on the conformity of its Plant Breeders Rights Act, 1973 with the 1978 Act. By letter dated May 19, 1998, the Hon. K.M. Kangai (MP), Minister of Lands and Agriculture of Zimbabwe, confirmed the contents of the letter dated April 23 of Dr. Gata. Copies of the letters are contained in Annex I.
2. A copy of the Plant Breeders Rights Act (Chapter 115), which was enacted in 1973, is set out in Annex II.

3. Dr. Bellah Mpofu, the present Registrar of Plant Breeders' Rights in Zimbabwe, reported to a Briefing Workshop co-organized by UPOV in Cambridge in June 1998 that Zimbabwe now protects 31 kinds of plants and that in 1997, 130 applications for protection were received.

4. Zimbabwe did not sign the 1978 Act. Under Article 32(1)(b) of that Act, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive. However, the 1991 Act of the UPOV Convention came into force on April 24, 1998. Article 37(3) of the 1991 Act provides that no instrument of accession to the 1991 Act may be deposited after the entry into force of the 1991 Act. The Council of UPOV, in its fourteenth extraordinary session on April 29, 1997, adopted (see paragraph 16 of the report of the session, document C(Extr.)/14/7) the following decision:

“... ”

even after the coming into force of the 1991 Act of the Convention pursuant to Article 37(1) of that Act, any State which has

“(a) asked the Council of UPOV, pursuant to Article 32(3) of the 1978 Act, for its advice in respect of the conformity of its laws with that Act prior to the coming into force of the 1991 Act, and

“(b) received positive advice from the said Council or, if that advice recommended certain changes in its laws, changed its laws accordingly to the satisfaction of the Office of the Union

“may deposit an instrument of accession to the 1978 Act in accordance with that Act at any time prior to the first anniversary of the coming into force of the 1991 Act.”

5. The practical effect of this decision for Zimbabwe is that having sought the advice of the Council of UPOV pursuant to Article 32(3) of the 1978 Act prior to April 24, 1998, it has until April 24, 1999, in which to implement any advice of the Council of UPOV and deposit an instrument of accession.

6. The Registrar of Plant Breeders' Rights of Zimbabwe has seen a draft of this document and made comments and proposed the inclusion of provisions to create a right for certain farmers to use farm-saved seed and to incorporate the essential derivation principle in proposals for revision.

Basis for the Protection of New Plant Varieties in Zimbabwe

7. The protection of new plant varieties is governed in Zimbabwe by the Plant Breeders Rights Act (Chapter 115) and the Plant Breeders Rights Regulations 1998 (hereinafter jointly referred to as “the Law”). An analysis of the conformity of the Law with the 1978 Act follows in the order of the substantive law provisions of the 1978 Act.

Article 1(1) of the 1978 Act: Purpose of the Convention

8. The preamble to the Law states that it is an Act “to provide for the registration of plant breeders’ rights in respect of certain varieties of plants and the protection of the rights of persons who are registered as the holders of such rights ...” The Law is thus in accordance with the purposes of the Convention.

Article 2 of the 1978 Act: Forms of Protection

9. Section 14 of the Law provides for the grant of a right entitled a “plant breeders right” in respect of plant varieties which satisfy the conditions set out in the Section. The Law thus establishes a “special title of protection” within the meaning of Article 2(1) of the 1978 Act.

10. The patent law of Zimbabwe contains no exclusion of plant varieties from patenting.

Article 3 of the 1978 Act: National Treatment, Reciprocity

11. Section 3(1) of the Law states that “Subject to the provisions of this Section and of Sections 34 and 48, the provisions of this Act shall apply only in respect of a plant which has its origin in [Zimbabwe] ...” Section 34 enables the Minister to extend the availability of protection to new varieties of species for which protection is available in Zimbabwe which *have their origin* in countries which, in the opinion of the Minister, grant rights similar to Zimbabwean plant breeders’ rights. The provisions of the Law, based as they are on the country of origin of varieties rather than the nationality or residence of applicants, do not conform with Article 3 of the 1978 Act. Section 34(2) would also seem to confer rights to apply for protection to persons resident in Zimbabwe which would not be available to non-residents. Modifications to the Law must be made to secure conformity with the 1978 Act. Suggestions for possible modified texts for Sections 3 and 34 are set out in Annex III.

Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

12. Section 3(2) of the Law provides that plant breeders rights shall only be granted for new varieties of a prescribed “kind.” “Kind” is defined in Section 2 of the Law to mean in relation to a plant, “all related species, subspecies and varieties of any plant that are known by the same common name.” Zimbabwe currently provides protection for varieties of 31 kinds of plants. Section 47(1) of the Law empowers the Minister to make regulations prescribing anything which must be prescribed under the Law. The provisions of the Law accordingly satisfy the requirements of Article 4 of the 1978 Act.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

13. Section 17(1) of the Law establishes the scope of breeders rights as the “sole right to sell, reproduce and multiply reproductive material of the plant concerned.” It is at present drafted as a positive right to do the specific acts rather than a right to exclude others. Section 2 of the Law defines “reproductive material” and “sell” broadly. Section 17(2) also

excludes from the breeders right the use of the protected variety as an initial source of variation to produce another variety with a proviso concerning the repeated use of the protected variety for the reproduction or multiplication of another variety. The Law accordingly provides a scope of protection which more than satisfies the requirements of Article 5 of the 1978 Act.

14. However, Section 17(2)(b) is problematic. It would seem to be designed to cover certain cases of innocent infringement. Its drafting, however, could provide a possible loophole for deliberate infringers. The existing expression “or otherwise acquired” could cover a broad range of infringing transactions while the use of the word “seed” is rather strange. How can one sell “seed” other than for reproduction? It is suggested that the provision be redrafted on the following lines:

“(2) It shall not be an infringement of the rights ... for a person ...

“(a) ...

“(b) if he has purchased the plant concerned or reproductive material thereof from the holder of the rights or from a person authorized by the holder of the rights, to grow or to re-sell the plant or reproductive material or, if he has planted it, to sell the plant or harvested material thereby obtained for a purpose other than reproduction or multiplication.”

15. In correspondence with the Office of UPOV, the Registrar proposes to extend protection to essentially derived varieties and to create a privilege to save seed for small farmers (farmers cultivating less than ten hectares). Suggested provisions adapted to the drafting style of the Law are contained in a revised Section 17, drafting the plant breeders rights as rights to exclude and incorporating the suggested revised text of 17(2)(b), are set out in Annex III.

Article 6 of the 1978 Act: Conditions Required for Protection

16. Article 6(2) of the 1978 Act provides that if the applicant complies with the formalities provided for in a country’s law, including the payment of fees, the grant of protection may not be made subject to conditions other than those set out in Article 6(1). The Law imposes different or additional conditions for the grant of protection as follows:

Section 3(1): “the provisions of this Act shall apply only in respect of a plant which has its origin in Rhodesia.” This is an additional condition.

Section 3(1)(a): The variety must not have been *available to the public in trade or otherwise* before the date of application. Article 6(1)(b) of the 1978 Act requires that the variety must not have been *offered for sale or marketed with the consent of the breeder*. It also establishes grace periods of four and six years in respect of certain sales outside the country of application. The grace periods are omitted from the Law while *availability to the public* is conceptually slightly different from *offering for sale or marketing*.

Section 3(1)(b): Under this paragraph, the variety must not have been *generally known* prior to the date of application. This is an additional condition. See also Section 39 of the Law which modifies this condition.

Section 10(1)(d): This provision entitles the Registrar of Plant Breeders' Rights to refuse an application if "the growing of the plant concerned would be contrary to the general interests of agriculture, forestry or horticulture in [Zimbabwe]." This constitutes an additional condition. The corresponding provision in Section 13(1)(j) and the provisions of Section 13(1)(k) also constitute additional conditions.

17. The conditions for the grant of protection are to be found in various provisions of the Law, for example, in the definitions of "breeding line," "clone," "cultivar," "hybrid," "stable," "uniform," and "variety" in Section 2 and in Sections 3, 10 and 13. Elements of some of the above-mentioned definitions are duplicated in Section 3(1). It is suggested

(a) that the above-mentioned definitions and the above-mentioned provisions of Articles 10, 13 and 39 be deleted;

(b) that a new definition of "variety" be introduced (it is suggested that the definition in the 1991 Act of the UPOV Convention be used); this will make the separate reference to breeding line, clone, cultivar and hybrid unnecessary;

(c) that a new text for Section 3 be proposed that will eliminate the lack of conformity with the 1978 Act and bring all conditions for the grant of protection into one Section. A possible new text is set out in Annex III.

18. Section 48 contains provisions permitting the protection on a transitional basis of existing varieties as envisaged by Article 38 of the 1978 Act. However, its effects were exhausted six months after the Law came into force in 1974. It could be deleted.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

19. Section 14(1) of the Law provides for the examination of the application for protection. The Law makes provision for provisional protection in Section 12(2). It should be noted that changes should be made to Section 12(3)(b) corresponding to those suggested for Section 17(2)(b) (see paragraph 14 above).

20. The Law satisfies the requirements of Article 7 of the 1978 Act.

Article 8 of the 1978 Act: Period of Protection

21. Section 17 of the Law provides for the period of protection of twenty years which exceeds the minimum period of protection specified in Article 8 of the 1978 Act.

Article 9 of the 1978 Act: Restrictions on the Exercise of Rights Protected

22. Section 19 of the Law makes provision for the grant of compulsory licenses. Section 19(2) includes a requirement that applications for compulsory licenses shall only be entertained if accompanied by a certificate from the Minister stating that it is in the public interest that the variety in question be made freely available to the public. This satisfies

Article 9(1) of the 1978 Act. Article 19(5)(b) requires the Appeal Board, which is charged with adjudicating applications for compulsory licenses, to fix the amount and method of payment of royalties, thus satisfying Article 9(2) of the 1991 Act. The Law accordingly satisfies the requirements of Article 9 of the 1978 Act.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

23. Article 10 of the 1978 Act distinguishes between circumstances in which protection must be declared null and void *ab initio*, that is with effect from the date of grant, and circumstances in which protection is to be forfeited (canceled) with effect from a date after the date of the grant of protection. Article 10 limits the circumstances in which the protection can be declared null and void or forfeited. Section 15 of the Law does not provide for protection to be mandatorily declared null and void in the circumstances in which this is called for by Article 10(1). A possible text for Section 15 to remedy this deficiency is set out in Annex III. It follows the more modern drafting style of Article 21 of the 1991 Act.

24. Section 16 makes provision for the cancellation (forfeiture) of the plant breeders' rights in terms which satisfy paragraphs (2) and (3) of Article 10 of the 1978 Act.

Article 11 of the 1978 Act: Free Choice of the Member State in which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

25. Article 34(3) would seem to require that applications for protection in Zimbabwe must be made within twelve months of an application for plant breeders' rights outside Zimbabwe for the same variety. This is contrary to Article 11 of the 1978 Act which required the grant of protection in a UPOV member State to be independent from the grant of protection in other member States. A possible new text for Article 34 is set out in Annex III. Section 13(1)(k) should be deleted as a consequence of the new text.

Article 12 of the 1978 Act: Right of Priority

26. At present the Law contains no provisions concerning priority. Appropriate provisions are contained in the suggested new text for Section 7(3) to (8) which is set out in Annex III. The Law will not conform with the 1978 Act unless provisions conforming with Article 12 of the 1978 Act are added.

Article 13 of the 1978 Act: Variety Denomination

27. Section 9 of the Law contains provisions on variety denominations. They do not, however, satisfy all the requirements of Article 13 of the 1978 Act. Possible alternative provisions for Section 9 are set out in Annex III.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

28. The Law contains no provision whereby protection is made subject to measures regulating production, certification or marketing. It accordingly satisfies the requirements of Article 14 of the 1978 Act.

Article 30(1) of the 1978 Act: Implementation of the Convention on the Domestic Level

29. Section 44 of the Law provides for the availability to the holder of plant breeders' rights of all remedies for infringement available under the civil law including the right to damages and injunction. The Law accordingly conforms with Article 30(1)(a) of the 1978 Act.

30. Section 4 of the Law provides for the appointment of a Registrar of Plant Breeders' Rights to be responsible for the administration of plant breeders' rights. The Law accordingly satisfies the requirement of Article 30(1)(b) of the 1978 Act.

31. Section 45 of the Law provides for the publication of information relating to applications, grants, and cancellation or surrender of plant breeders' rights. The Law thus fully satisfies Article 31(1)(c) of the 1978 Act.

General Conclusion

32. The Law incorporates most of the general principles of the UPOV Convention. However it will not conform fully with the 1978 Act of the UPOV Convention until the following amendments are introduced:

(a) delete Sections 3 and 34 and replace them with texts on the lines of those proposed in Annex III;

(b) amend Sections 17(2)(b) and 12(3)(b) as suggested in paragraph 13 above;

(c) delete Sections 10(1)(d), 13(1)(j) and (k) and the definitions in Section 2 of "breeding line," "clone," "cultivar," "hybrid," "stable," "uniform" and "variety" and include a new definition of "variety" as suggested in paragraph 15(b) above;

(d) delete Section 15 of the Law and replace it with suitable provisions concerning nullity on the lines of those suggested in Appendix III;

(e) introduce provisions concerning priority on the lines of the new text for Section 7(3) to (8) suggested in Appendix III;

(f) incorporate more fully the provisions of Article 13 of the 1978 Act concerning denominations as suggested in the proposed new Section 9 set out in Annex III with the retention, at the request of the Government of Zimbabwe, of the substance of Section 9(2)(a)(i) and (ii) of the Law;

(g) delete Section 48 which is now redundant and Section 39 which will become redundant if a new Section 3 is adopted, as suggested.

33. The Office of the Union suggests that the Council may wish

(a) to decide that the Law, after the incorporation of the substance of the changes suggested in this document, will conform with the 1978 Act;

(b) to request the Secretary-General to advise the Government of Zimbabwe that after the incorporation into the Law of such suggested changes to the satisfaction of the Office of the Union it may, at any time prior to April 24, 1999, deposit an instrument of accession to the 1978 Act.

34. *The Council is invited to take note of the information given above and to adopt the decisions set out in the preceding paragraph.*

[Three Annexes follow]

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ANNEX I

INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

GENÈVE, SCHWEIZ



UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

GENÈVE, SUISSE

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW VARIETIES OF PLANTS

GENEVA, SWITZERLAND

ZW 98

April 16, 1998

Dear Director Gata,

In 1991, I had the pleasure of visiting Zimbabwe and meeting Mrs. Mtindi, the then Registrar of Plant Breeders' Rights. These contacts were followed by the representation of Zimbabwe in Seminars held in Nairobi in 1993 and Pretoria in 1995. On all occasions, the representative of Zimbabwe expressed interest in acceding to the 1978 Act of the UPOV Convention.

A revised text of the UPOV Convention was adopted in March 1991. This 1991 Act of the Convention comes into force when five countries have adhered to it. When it comes into force, the 1978 Act is closed to new accessions and countries can only become member States thereafter on the basis of the 1991 Act. Six States have now adhered to the 1991 Act which comes into force on April 24, 1998. The 1978 Act will close on the same date.

However, the Council of UPOV has decided that if a country starts the accession procedure before April 24, it can take advantage of a grace period of one year and will have until April 24, 1999, in which to complete the accession process.

/...

Dr. N.R. Gata
Director
Research and Specialist Services
Department of Research and Specialist Services
Ministry of Lands, Agriculture and Water Development
P.O. Box 8108, Causeway
Fifth Street Extension
Harare
Zimbabwe

Fax 00263-4 - 728 317 (6 pages)

cc: Dr. B. Mpfu, Registrar, Plant Breeders' Rights - **Fax 00263-4-791223**

Dr. N.R. Gata, Director, Research and Specialist Services, Department of Research and Specialist Services, Ministry of Lands, Agriculture and Water Development, Harare -
April 16, 1998

To start the accession process, a country needs to write to the Secretary-General of UPOV asking the Council of UPOV to examine the conformity of its plant variety protection law with the 1978 Act of the UPOV Convention. If such a letter is received before April 24, 1998, Zimbabwe would then have until April 24, 1999, to complete, if it so wishes, the accession procedure.

I have been prompted to write this letter to you by another letter of today's date on training opportunities. I realize that time is probably impossibly short. However, the rather simple letter that is necessary would create an option for your country to take, if it so wishes, the further steps necessary to accede to the 1978 Act.

Sincerely yours,

Barry Greengrass
Vice Secretary-General

LETTER DATED APRIL 23, 1998, FROM DR. N.R. GATA, DIRECTOR,
DEPARTMENT OF RESEARCH AND SPECIALIST SERVICES,
MINISTRY OF AGRICULTURE, HARARE,
TO THE VICE SECRETARY-GENERAL OF UPOV

INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

GENÈVE, SCHWEIZ



UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

GENÈVE, SUISSE

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW VARIETIES OF PLANTS

GENEVA, SWITZERLAND

853 ZW 98

May 8, 1998

Dear Dr. Gata,

Thank you for your letter of April 23, 1998, replying to my letter of April 16. I am interpreting your letter as a request for the Council of UPOV to advise your country on the conformity of The Plant Breeders' Rights Act, 1973 of Zimbabwe with the 1978 Act of the UPOV Convention.

The Council of UPOV has established an expedited procedure whereby the advice of the Council can be obtained through correspondence. The Office of UPOV will produce a document analyzing the provisions of your law and make suggestions to the Council concerning its conformity including, if appropriate, any suggestions for amendments that might be necessary to secure conformity. We would propose to adopt this procedure to secure the advice of the Council at an early date in order that you may then have some time to adjust your statute and deposit an instrument of accession before April 24, 1999.

/...

Dr. N.R. Gata
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Fax 00263-4 - 728 317, 791223 (2 pages)

Dr. N.R. Gata, Director, Department of Research and Specialist Services, Ministry of
Agriculture, Harare - May 8, 1998

It would be helpful if the Secretary-General of UPOV could receive a letter signed by your Minister confirming that your letter of April 23 is the formal request of Zimbabwe for the advice of the Council of UPOV pursuant to Article 32(3) of the 1978 Act of the UPOV Convention on the conformity of The Plant Breeders' Rights Act, 1973 with the 1978 Act.

The Office of UPOV looks forward to receiving your further communications on this subject.

Sincerely yours,

Barry Greengrass
Vice Secretary-General

LETTER DATED MAY 19, 1998, FROM THE HON. K.M. KANGAI (MP), MINISTER
OF LANDS AND AGRICULTURE, MINISTRY OF LANDS AND AGRICULTURE,
HARARE, TO THE SECRETARY-GENERAL OF UPOV

[Annex II follows]

C/32/12

ANNEX II

THE PLANT BREEDERS RIGHTS ACT

and

THE PLANT BREEDERS RIGHTS REGULATIONS, 1974

[REPRODUCED BUT NOT ATTACHED HERE]

[Annex III follows]

ANNEX III

SUGGESTED NEW TEXT FOR SECTION 3

3.(1) The provisions of this Act shall apply only in respect of a plant which is a new variety in that

(a) it has not been offered for sale or marketed with the consent of the breeder or his assignee in Zimbabwe prior to the date of application and in any country other than Zimbabwe for longer than four years, or in the case of trees and grapevines, for longer than six years, prior to the date of application; and

(b) it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of the application; and

(c) it is sufficiently uniform in its relevant characteristics, subject to the variation that can be expected from the particular features of its propagation; and

(d) it is stable in that its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(2) Plant breeders' rights shall only be granted in respect of new varieties of a prescribed kind and to applicants satisfying the requirements of Section 34.

(3) For the purposes of paragraph (b) of sub-section (1):

(a) the filing of an application for the granting of protection or for the entering of another variety in an official register of varieties in any country shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

(b) common knowledge can also be established by reference to plant varieties which are already in cultivation or accepted for commercial purposes; included in any commercial or botanical reference collection; or described precisely in any magazine, journal or other publication.

SUGGESTED REPLACEMENT TEXTS FOR SECTIONS 7(3), (4) AND (5)
OF THE LAW AND SUGGESTED NEW SUBSECTIONS (6), (7) AND (8)
CONCERNING PRIORITY

Delete paragraphs (3), (4) and (5) of Section 7 and replace by the following:

(3) An application in terms of subsection (1) shall –

(a) indicate the origins of the plant concerned and give the full name of the breeder; and

- (b) where the applicant or one of the applicants is not the breeder of the plant concerned, contain a declaration that the applicant believes the person named as the breeder to be the breeder of the plant concerned; and
 - (c) specify any foreign country where an application for the grant of rights similar to plant breeders rights was made; and
 - (d) specify the number or title of such application, if any; and
 - (e) specify the effective date of such application, if any.
- (5) The effective date of an application in Zimbabwe in terms of this section shall be the date on which the application is received by the Registrar.
- (6) Where the applicant has duly filed an earlier application for a grant of protection for the plant concerned in a state which is party to the International Convention for the Protection of New Varieties of Plants (“the first application”), the applicant shall be entitled to a right of priority in respect of the application in Zimbabwe for a period of 12 months computed from the date of filing of the first application. Where the application in Zimbabwe is preceded by several earlier applications, the earliest such application shall be the first application.
- (7) In order to benefit from the right of priority, the applicant shall, in the application in Zimbabwe, claim the priority of the first application and shall within three months from the effective date of the application in Zimbabwe submit to the Registrar a copy of the documents which constituted the first application, certified to be a true copy by the authority with which the application was filed.
- (8) The effect of the right of priority shall be that the application in Zimbabwe shall be treated for the purposes of paragraphs (a) and (b) of subsection one of section three and of paragraph 5 of this subsection as if it were made on the date of filing of the first application.

SUGGESTED NEW TEXT FOR SECTION 9

9. (1) The name of the plant concerned shall be proposed by the person who applies for the grant of plant breeders’ rights but such name shall be subject to the approval of the Registrar.
- (2) The Registrar may at any time before the grant of plant breeders’ rights, after consideration of any representation made by the applicant or an objector, reject any name proposed if, in the Registrar’s opinion, the name proposed does not satisfy the conditions of this section.
- (3) The name proposed shall be the generic name of the plant concerned. It may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without an existing meaning, provided that such signs allow the variety to be identified. It may not affect the existing rights of third parties.
- (4) Where a name has already been used for the plant concerned in Zimbabwe or in a State party to the International Convention for the Protection of New Varieties of Plants, or is proposed or registered in such a State, only that name shall be approved by the Registrar.

(5) For as long as the plant concerned is exploited, it shall be prohibited to use, in Zimbabwe, a name that is identical or confusingly similar to the approved name of that plant in relation to another plant of the same or a closely related species. The prohibition shall remain in force after the plant has ceased to be exploited where the name has acquired special significance in relation to the plant.

(6) Any person who offers for sale, sells or otherwise markets reproductive material of a plant which is the subject of plant breeders' rights shall be obliged to use the approved name of that plant. This obligation to use the approved name shall continue after the termination of the plant breeders' rights in respect of the plant.

(7) When the plant concerned is offered for sale or otherwise marketed, the use of the approved name in association with a trademark, trade name or other similar indication shall be permitted, subject to the denomination remaining easily recognizable.

SUGGESTED NEW TEXT FOR SECTION 15

15. (1) The Registrar shall declare a grant of plant breeders rights null and void if he is satisfied

(a) that when the rights were granted, the plant concerned was not a new variety in that it did not meet a condition specified in paragraph (a) or (b) of subsection (1) of section three,

(b) where the grant of the rights was essentially based upon information and documents furnished by the applicant, that when the rights were granted the plant concerned was not a new variety, in that it did not meet a condition specified in paragraph (c) or (d) of subsection (1) of section three,

(c) that the person to whom the rights were granted was not the person entitled to the grant of the rights and the rights have not subsequently been transferred to the person so entitled, or his assignee.

(2) The Registrar shall, when appropriate, take action under this section on the Registrar's own motion.

(3) Where a grant of plant breeders' rights is declared null and void under this section, it shall be deemed never to have had effect.

SUGGESTED NEW TEXT FOR SECTION 17

17(1) The holder of plant breeders' rights shall be entitled during the period specified in subsection (5) to prevent anyone selling, reproducing or multiplying reproductive material of the plant concerned, or (where the plant concerned is not itself an essentially derived plant) of a plant which is essentially derived from the plant concerned, without the holder's authority.

(2) For the purposes of subsection (1), a plant shall be deemed to be essentially derived from the plant concerned when

- (i) it is predominantly derived from the plant concerned, or from a variety that is itself predominantly derived from the plant concerned, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the plant concerned,
 - (ii) it is clearly distinguishable from the plant concerned, and
 - (iii) except for the differences which result from the act of derivation, it conforms to the plant concerned in the expression of the essential characteristics that result from the genotype or combination of genotypes of the plant concerned.
- (3) Essentially derived plants may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the plant concerned, backcrossing, or transformation by genetic engineering.
- (4) It shall not be an infringement of the rights conferred by subsection (1) for a person
- (a) to use the plant concerned as an initial source of variation for the purpose of creating any other new variety:

Provided that the provisions of this paragraph shall not apply where the plant concerned is repeatedly used for the reproduction or multiplication of another variety;
or
 - (b) if he has purchased the plant concerned or reproductive material thereof from the holder of the rights or a person authorized by the holder to grow and re-sell the plant or harvested material thereby obtained for a purpose other than reproduction or multiplication;
 - (c) if he is a farmer cultivating less than ten hectares of land, to use for propagating purposes on the said land, the product of the harvest which he has obtained by planting on the said land the plant concerned or a plant which is essentially derived from the plant concerned.
- (5) Same text as existing Section 17(3) of the Law.
- (6) Same text as existing Section 17(4) of the Law.

SUGGESTED NEW TEXT FOR SECTION 34

34. The Registrar shall grant plant breeders' rights pursuant to section fourteen to persons
- (a) who are citizens of Zimbabwe or which have their registered office in Zimbabwe;
or
 - (b) who are nationals of a State party to the International Convention for the Protection of New Varieties of Plants or to any other multilateral treaty concerning plant

variety protection to which Zimbabwe is also party or which have their residence or registered office in such State; or

(c) who are nationals of any State which, without being a party to the said Convention or to any such multinational treaty, grants effective plant variety protection to the citizens of Zimbabwe and to persons having their place of residence or registered office in Zimbabwe.

[End of document]