

DEVELOPING A PVP SYSTEM IN TANZANIA

Presented at the UPOV/USPTO Training of Trainers Course on Plant Variety Protection under UPOV Convention.



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TANZANIA: Geographical facts

- ❑ Tanzania is located just south of the Equator and covers 947,300 Km² (surface area)
- ❑ A population of over 44 million people, making the largest nation in the Eastern African region both in land area and population
- ❑ Tanzania is a United Republic made up of the Mainland Tanzania and Zanzibar.
- ❑ It is bordering 8 countries in total



Agriculture & Economy

- Agriculture is a leading economic sector as it provides a livelihood to about 80% of the population in Mainland Tanzania and about 70 % in Zanzibar.
- It is the primary source of food and raw materials for processing industries

Agric. & Economy cont.

- Accounts for about 26.4 % of GDP in Mainland Tanzania and about 30% of GDP IN Zanzibar
- It is the second export sector after mining in terms of foreign earnings in Mainland Tanzania and is second export sector after Tourism in Zanzibar
- It contributes to about 95% of total food requirement in Mainland Tanzania and about 59% of the total food requirement in Zanzibar

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Agric. & Economy cont.

- Tanzania has great potential for seed production and agric. development in terms of arable land;
- Quality seeds of improved varieties of plants contribute greatly to high agriculture production.

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Research & Development

- Public Research: Ministry of Agriculture Food Security & Cooperatives (MAFC), Ministry of Agriculture and Natural Resources (Zanzibar)
- Universities: Sokoine University of Agriculture (SUA)
- PPP Research: Tanzania Coffee Research Institute (TaCRI), Tobacco Research Institute of Tanzania (TORITA), Tea (TRIT) etc.
- Private sector: Private seed companies & other

DEVELOPMENT OF PVP SYSTEM IN TANZANIA

- **Types of IP Rights:**
 - Industrial: Patent, Trademarks etc
 - Copyrights etc
 - **Plant Variety Protection (PVP/PBR):** a *sui generis* system of Intellectual Property System

PVP SYSTEM IN TANZANIA

WHY PVP SYSTEM IN TANZANIA:

1) Needed by stakeholders:

Revealed through studies, consultations and other contacts with various stakeholders

2) Necessary for complying with requirements of WTO's TRIPS Agreement, 1994:

TRIPS Agreement requires WTO member states (incl. TZ) to protect new varieties of plants using patent rights, an effective *sui generis* system or some combination thereof [Article 27.3(b)]

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ENACTMENT AND IMPLEMENTATION

THE PBR Act, 2002 (First Initiative)

- **7th of November 2002:** The PBR Act (for Mainland Tanzania) was passed by the Parliament.
- The system practically became operational in Feb. 2005.
- The law was not fully compliant to UPOV Convention of 1991

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IMPLEMENTATION

ADMINISTRATIVE ORGANS:

- PBR Office established within the Ministry of Agriculture since 2005



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IMPLEMENTATION OF THE LAW

- PBR Advisory Committee (PBRAC) formed in 2005 and is operational to-date
- PBR Development Fund (PBRDF) established as provided under the PBRA, 2002 (also provided in the new law)
- Its meant to assist implementation of the PBRA
- The Fund is now operational and is mainly funded by the Government through MAFC

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CHALLENGES AND SOLUTIONS

➤ CHALLENGES:

- **Number of applications were very low than expected**
- **Involvement of private breeders (local & international) was low than expected**
- **Reason:** Local and Foreign breeders and investors were **not confident** with the PBR Act, 2002 which although it had many features similar to UPOV Convention of 1991 it was not fully compliant.

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CHALLENGES AND SOLUTIONS

- **Other Reasons:** Lack of awareness and low level of funding for breeding work in the country (both public and private sectors)

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CHALLENGES AND SOLUTIONS

➤ SOLUTION

- To put in place a PBR SYSTEM which complies with the **most effective** International System of PBR (the UPOV SYSTEM)
- UPOV Membership Requirements:
 - Have a law which conforms to the UPOV Convention of 1991
 - Ask advice of the Council of UPOV
 - If advice positive: deposit instrument of accession

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SOLVING THE CHALLENGES

➤ ENACTING A UPOV COMPLIANT LAW

- **2nd Feb. 2010: Parliament of the United Republic of Tanzania made a Declaration** allowing Tanzania to accede UPOV Convention of 1991 and become UPOV member
- This is a Constitutional requirement and the decision applies to both parts of the Union (Mainland & Zanzibar)

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SOLVING THE CHALLENGES cont.

(i) MAINLAND TANZANIA

- On **1st Nov. 2012**: UPOV Council made a positive decision on conformity of the PBR Bill 2012 with the Convention of 1991
- On **5th Nov. 2012**: A new law (**The Plant Breeders' Rights Act, 2012**) was passed by the Union Parliament to cover Mainland Tanzania

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SOLVING THE CHALLENGES cont.

- On **22 March 2013**: UPOV Council reconfirmed its earlier decision on the draft law (of November 2012) that, changes made by the Parliament are in line with the provisions of its Convention of 1991

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SOLVING THE CHALLENGES cont.

(II) ZANZIBAR

- Agriculture and PVP is not a union matter according to the Constitution of the URT, 1977
- Each part of the Union must enact a separate law
- This law should be in harmony with the Mainland Law

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SOLVING THE CHALLENGES cont.

- ✓ On **22 March 2013**: Zanzibar draft Bill received a positive decision of the UPOV Council.
- ✓ On **22 January, 2014**: Zanzibar House of Representatives enacted a new PBR Act, 2014.
- ✓ On **16th Oct 2014**: UPOV Council reconfirmed its decision of March, 2013 that the Zanzibar PBR Act is in conformity with the Convention.
- ✓ **This decision allowed** UR of Tanzania to submit instrument of accession to UPOV Secretary General and become a **full member** of the UPOV

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ALMOST THERE!

- ✓ On 2 January 2015: The Minister of Agriculture and Natural Resources (Zanzibar) made a Notice in the Government *Gazette*, pronouncing the operationalization of the Zanzibar PBR Act, 2014.
- ✓ The United Republic has now fulfilled all UPOV conditions for FULL Membership.
- ✓ **The URT Government plans to submit instruments of accession and become UPOV member any time from now.**

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IMPORTANT PROVISIONS, PBRA 2012 (MAINLAND), PBRA 2014 (ZAN)

- The two laws sets conditions for PBR Grant:
 - **Novelty** (Newness): **12** months since start of commercialization in the country, **4** or **6** years if commercialized outside UR Tanzania)
 - **Distinctness, Uniformity and Stability (DUS) test** compliance

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IMPORTANT PROVISIONS Contn.

- Other conditions for protection: **payment of fees, filling in application forms and appropriate denomination**
- **NO MORE CONDITIONS!**
- ❑ The PBR Act also allows for other recognized testing options (eg. by breeders)
- ❑ DUS Test results may also be purchased from recognized Authorities outside URT

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IMPORTANT PROVISIONS Contn.

- ❑ PBRA (Mainland 2012) and (Zanzibar PBRA 2014) recognizes farmers privileges to save and use seeds of a protected variety on their own holdings within reasonable limits to safeguard legitimate interest of the breeder
- ❑ Both have clauses recognizing application/grant made by the other part of the Union to avoid double application/grant on the same variety in the same country

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IMPORTANT PROVISIONS Contrn.

- ❑ PBRA (Mainland 2012) and (Zanzibar PBRA 2014) allows for authorization (licensing) and collection of royalties
- ❑ Both laws defines a breeder as any person who bred, discovered and developed a variety...
- ❑ Such a person can also be a farmer/small scale farmer

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IMPORTANT LESSONS

- Having a non-UPOV 1991 compliant legal framework reduces confidence of local and foreign breeders and investors
- Having such law is a long process which requires patience and commitment
- All stakeholders must be involved at all stages and at the right time
- Awareness creation is very important
- All stakeholders including the policy/decision makers must have same understanding

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CONSULTATING HIGHER AUTHORITIES



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WELCOME TO TANZANIA
MT. KILIMANJARO - The Roof of Africa



Welcome to Zanzibar



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The haven of Red Colobus Monkeys



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The spice islands



To enjoy crystal white sand beaches



And to dive and explore over 200 species of corals and over 500 species of fish.

