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FECHA: 8 de octubre de 2012

UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES

Ginebra

CONSEJO**Cuadragésima sexta sesión ordinaria
Ginebra, 1 de noviembre de 2012****EXAMEN DE LA CONFORMIDAD
DEL PROYECTO DE LEY SOBRE LOS DERECHOS DE OBTENTOR
DE LA REPÚBLICA UNIDA DE TANZANÍA
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV***Documento preparado por la Oficina de la Unión*

1. Mediante carta de fecha 1 de octubre de 2012, dirigida al Secretario General de la UPOV, el Secretario Permanente del Ministerio de Agricultura, Seguridad Alimentaria y Cooperativas de la República Unida de Tanzania solicitó que se examinara el proyecto de Ley sobre los Derechos de Obtentor, que se presentó por primera vez en el Parlamento en abril de 2012 (en adelante "proyecto de ley"), a los fines de determinar su conformidad con el Acta de 1991 del Convenio de la UPOV (en adelante "Acta de 1991"). La carta se reproduce en el Anexo I del presente documento. El Anexo II contiene una copia del proyecto de ley en inglés. El Anexo III, en Inglés solamente, contiene una copia de la lista de modificaciones que el Ministro de Agricultura, Seguridad Alimentaria y Cooperativas tiene previsto presentar en el Parlamento (en adelante "modificaciones del Ministro").

2. El 14 de junio de 2012, se informó a la Oficina de la Unión de que el Gobierno de la República Unida de Tanzania tenía previsto presentar, en primer lugar, el proyecto de ley para Tanzania continental a los fines de su examen por el Consejo y, posteriormente, el proyecto de ley o la Ley aprobada de Zanzíbar.

ANTECEDENTES

3. En el artículo 34.3) del Acta de 1991 se dispone que "[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión".

4. Desde 2007 la Oficina de la Unión ha comunicado, en varias ocasiones, sus observaciones sobre las modificaciones propuestas a la "Ley sobre la protección de las obtenciones vegetales (derechos de obtentor) de 2002" para Tanzania continental (Ley de 2002), en relación con el Acta de 1991 del Convenio de la UPOV. El 6 de septiembre de 2010, se informó a la Oficina de la Unión de que el proyecto de ley de modificación había pasado a ser un proyecto de ley que, tras ser examinado por la Fiscalía General del Estado, sería sometido a la aprobación del Parlamento. En esa ocasión, se informó a la Oficina de la Unión de que se promulgará una Ley para Zanzíbar con objeto de abarcar todo el territorio de la República Unida de Tanzania.

5. Los días 1 y 2 de junio de 2011, en Zanzíbar (República Unida de Tanzania), la Oficina de la Unión pronunció conferencias en el Taller para sectores interesados en los derechos de obtentor y se reunió con funcionarios gubernamentales de Tanzania continental y del Grupo de Trabajo responsable de redactar la

legislación sobre derechos de obtentor para Zanzíbar. El 20 de julio de 2011, la Oficina de la Unión presentó los comentarios sobre el proyecto de ley para Tanzania continental y el proyecto de ley para Zanzíbar en los que se reflejaban los debates y propuestas de las reuniones que tuvieron lugar en Zanzíbar los días 1 y 2 de junio de 2011. La Oficina de la Unión explicó que, para pasar a ser miembro de la Unión, ambos proyectos de ley deben someterse al examen del Consejo.

6. El 14 de junio de 2012, se informó a la Oficina de la Unión de que el Gobierno de la República Unida de Tanzania tiene previsto presentar, en primer lugar, el proyecto de ley para Tanzania continental a los fines de su examen por el Consejo y, posteriormente, el proyecto de ley o la Ley aprobada de Zanzíbar.

FUNDAMENTOS DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN LA REPÚBLICA UNIDA DE TANZANÍA

7. En la República Unida de Tanzania, la protección de las obtenciones vegetales se rige por la Ley de 2002 (véase el párrafo 4). Como la República Unida de Tanzania tiene previsto adherirse a la Unión, el Gobierno de ese país ha decidido modificar la Ley de 2002 mediante un proyecto de ley que ha sido presentado en el Parlamento (véase el Anexo II), con la incorporación de las modificaciones que el Ministro de Agricultura, Seguridad Alimentaria y Cooperativas tiene previsto presentar en el Parlamento (véase el Anexo III). A continuación se ofrece un análisis del proyecto de ley, con las modificaciones del Ministro, siguiendo el orden de las disposiciones sustantivas del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

8. El artículo 2 del proyecto de ley contiene definiciones de “obtentor” y “variedad” que están en conformidad con las definiciones que figuran en el artículo 1.iv) y vi) del Acta de 1991, respectivamente.

9. El artículo 2 del proyecto de ley contiene una definición del término que figura a continuación, que no se define en el Acta de 1991:

“por ‘vender’ se entiende ofrecer, anunciar, mantener, exponer, transmitir, transportar, entregar o preparar para vender, intercambiar o desprenderse, por cualquier contraprestación, o transmitir, transportar o entregar a los fines de la venta”;

10. El artículo 2 del proyecto de ley contiene una definición del término que figura a continuación, que no se define en el Acta de 1991 y no se utiliza en el proyecto de ley:

“*reproductive material*” means a plant or part of the plant used to multiply the plant; (“por ‘material de reproducción’ se entiende una planta o parte de una planta que se utiliza para multiplicar la planta”);).

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

11. El proyecto de ley se titula “Proyecto de ley que regula la concesión y la protección de los derechos de obtentor, el establecimiento de una Oficina de Derechos de Obtentor y cuestiones afines”, en conformidad con la obligación fundamental prevista en el artículo 2 del Acta de 1991.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

12. El artículo 12 del proyecto de ley establece que “[l]as disposiciones de esta Ley se aplican a todos los géneros y especies vegetales”, de conformidad con lo dispuesto en el artículo 3.2)ii) del Acta de 1991. Cabe observar que, de conformidad con el artículo 36.1)ii) del Acta de 1991, al depositar su instrumento de adhesión, la República Unida de Tanzania deberá efectuar una declaración en el sentido de que la Ley se aplica a todos los géneros y especies vegetales.

Artículo 4 del Acta de 1991: Trato nacional

13. En relación con el obtentor y la presentación de solicitudes, el proyecto de ley no establece restricciones respecto de la nacionalidad, el lugar de residencia de las personas naturales o el lugar de la sede de las personas jurídicas. El proyecto de ley está en conformidad con los requisitos del artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección, la novedad, la distinción, la homogeneidad y la estabilidad

14. Con la incorporación de las modificaciones del Ministro, el texto del artículo 15 del proyecto de ley será:

“15.1) Se considerará distinta la variedad si se distingue claramente de cualquier otra variedad cuya existencia, en la fecha de presentación de la solicitud, sea notoriamente conocida.

2) A los efectos del párrafo 1), el depósito, en cualquier país, de una solicitud de concesión de un derecho de obtentor para otra variedad o de inscripción de otra variedad en un registro oficial de variedades, se reputará que hace a esta otra variedad notoriamente conocida a partir de la fecha de la solicitud, si ésta conduce a la concesión del derecho de obtentor o a la inscripción de esa otra variedad en el registro oficial de variedades”.

15. En los artículos 13 a 17 del proyecto de ley, con la modificación anterior, se establecen disposiciones sobre las condiciones de protección que están en conformidad con las de los artículos 5 a 9 del Acta de 1991.

16. Con la incorporación de las modificaciones del Ministro, el texto del artículo 53 del proyecto de ley, relativo a la disposición facultativa del artículo 6.2) del Acta de 1991, será:

“53.1) En el plazo de 12 meses desde la entrada en vigor de esta Ley, el obtentor de una variedad existente de reciente creación podrá presentar una solicitud de protección de esa variedad en la Oficina de Registro.

~~2) No obstante lo dispuesto en el artículo 14, cuando la Oficina de Registro establezca que el solicitante tiene el control de la disponibilidad de la variedad por parte del público, y si se satisfacen otras disposiciones de la Parte III con respecto a la variedad, podrá conceder un derecho de obtentor con respecto a esa variedad”.~~

Artículo 10 del Acta de 1991: Presentación de solicitudes

17. En los artículos 18, 19 y 21 del proyecto de ley se establecen disposiciones sobre la presentación de solicitudes. No parece que el proyecto de ley contenga disposiciones que sean incompatibles con el artículo 10 del Acta de 1991.

18. Con la incorporación de las modificaciones del Ministro, el texto del artículo 21.3) del proyecto de ley será:

“Las solicitudes que se presenten ante la Oficina de Registro de Zanzibar la autoridad de Zanzibar encargada de los derechos de obtentor se tendrán el mismo efecto que considerarán solicitudes de la misma variedad presentadas ante el Director del Registro”.

Artículo 11 del Acta de 1991: Derecho de prioridad

19. Para mantener la conformidad con las disposiciones del artículo 11.3) del Acta de 1991, se recomienda modificar el artículo 22.4) del proyecto de ley del siguiente modo:

“3) El solicitante podrá, en un plazo de dos años tras el vencimiento del plazo de prioridad o cuando la primera solicitud sea rechazada o retirada, en un plazo apropiado tras dichos rechazo o retiro, presentar a la Oficina de Registro cualquier información, documento o material exigidos en esta Ley a los efectos del examen”.

20. A reserva de la modificación anterior, en el artículo 22 del proyecto de ley se establecen disposiciones sobre el derecho de prioridad que están en conformidad con las disposiciones del artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

21. En el artículo 28 del proyecto de ley se establecen disposiciones sobre el examen de la solicitud que están en conformidad con el artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

22. En el artículo 29 del proyecto de ley se establecen disposiciones sobre la protección provisional que están en conformidad con el artículo 13 del Acta de 1991. Se recomienda introducir la siguiente corrección en el artículo 29 del proyecto de ley:

“El titular de un derecho de obtentor tendrá derecho a una remuneración equitativa percibida de quien, en el intervalo transcurrido entre la publicación de la solicitud de concesión de un derecho de obtentor, en virtud del artículo ~~23~~ 24, y la fecha de concesión de ese derecho, haya realizado actos que, después de la concesión del derecho, requieran la autorización del obtentor de conformidad con lo dispuesto en el artículo 30”.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

23. En el artículo 30.3) se establece la disposición facultativa “Actos respecto de ciertos productos” del artículo 14.3) del Acta de 1991 que figura a continuación:

“4) A reserva de lo dispuesto en los artículos 31 y 32, los actos que se mencionan en los apartados a) a g) del párrafo 1) respecto de los productos fabricados directamente a partir de un producto de la cosecha de la variedad protegida cubierto por la disposición del párrafo 3), obtenido por la utilización no autorizada de dicho producto de la cosecha, requerirán la autorización del obtentor, a menos que el obtentor haya podido ejercer razonablemente su derecho en relación con dicho producto de la cosecha”.

24. Con la incorporación de las modificaciones del Ministro, el texto del artículo 30.6) y 7) del proyecto de ley será:

“6) A los fines del párrafo a) del apartado 4) ~~5)~~, se considerará que una variedad es esencialmente derivada de otra variedad si -
[...]

7) A los fines de este artículo, las variedades esencialmente derivadas pueden obtenerse, por ejemplo, por selección de un ~~mutante~~ mutante natural o inducido o de una ~~variedad~~ variante somaclonal, ~~sección de una variedad~~ selección de un individuo variante entre las plantas de la variedad inicial, retrocruzamientos o ~~por medio de~~ transformaciones por ingeniería genética.”

25. A reserva de las modificaciones contenidas en el párrafo precedente, en el artículo 30 del proyecto de ley se establecen disposiciones sobre el alcance del derecho de obtentor que están en conformidad con las disposiciones del artículo 14 del Acta de 1991.

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

26. Con la incorporación de las modificaciones del Ministro, el texto del artículo 31.1) del proyecto de ley será:

“31.-1) El derecho del obtentor no se extenderá -
a) a los actos realizados en un marco privado con fines no comerciales;
b) a los actos realizados a título experimental;
c) a los actos realizados a los fines de la creación de nuevas variedades, así como, a menos que las disposiciones del artículo 30.5) a 7) sean aplicables, a los actos mencionados en el artículo 30.1) y a 4) con tales variedades”.

27. A reserva de las modificaciones que figuran en el párrafo precedente, en el artículo 31.1) del proyecto de ley se establecen disposiciones sobre las excepciones obligatorias al derecho de obtentor que están en conformidad con las disposiciones del artículo 15.1) del Acta de 1991.

28. Con la incorporación de las modificaciones del Ministro, el texto del artículo 31.2) y 3) del proyecto de ley relativo a la excepción facultativa prevista en el artículo 15.2) del Acta de 1991 será:

“2) Con respecto a la lista de plantas agrícolas especificadas por el Ministro, en la que no se incluirán plantas frutales, plantas ornamentales, hortalizas ni árboles forestales, el derecho de obtentor no se extenderá a un agricultor que, dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del titular de los derechos de obtentor, utiliza para los fines de reproducción o de multiplicación, en su propia explotación, el producto de la cosecha que haya obtenido por el cultivo, en su propia explotación, de la variedad protegida o ~~por la plantación, en su propia explotación, de la variedad protegida o un~~ una variedad cubierta por el artículo 30.5)a) o b”).

“3) Los límites razonables y los medios de salvaguardar los intereses legítimos del titular del derecho de obtentor se especificarán en el Reglamento”.

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

29. En el artículo 32 del proyecto de ley se establecen disposiciones relativas al agotamiento del derecho de obtentor, que están en conformidad con las disposiciones del artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

30. En el artículo 41 del proyecto de ley se establecen disposiciones relativas a la limitación del ejercicio del derecho de obtentor, que se corresponden con las disposiciones del artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

31. No parece que el proyecto de ley contenga disposiciones que estén en contradicción con el artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

32. En el artículo 33 del proyecto de ley se establecen disposiciones relativas a la duración del derecho de obtentor que están en conformidad con las disposiciones del artículo 19 del Acta de 1991.

“33.- 1) Salvo en los casos previstos en la Parte VII, el derecho de obtentor concedido de conformidad con esta Acta expirará después de 20 años a contar desde de la fecha de su concesión, con la excepción de los árboles y las vides, respecto de los que el derecho de obtentor expirará después de 25 años a contar desde la fecha de su concesión.

“2). Ese plazo podrá prorrogarse cinco años adicionales por medio de una notificación por escrito enviada a la Oficina de Registro por el titular del derecho de obtentor seis meses antes de que expire el plazo original”.

Artículo 20 del Acta de 1991: Denominación de la variedad

33. Con la incorporación de las modificaciones del Ministro, el texto del artículo 20.2) y 8) del proyecto de ley será:

“2) La denominación;

~~y no podrá componerse únicamente de cifras, salvo cuando sea una práctica establecida para designar variedades.~~

a) deberá permitir la identificación de la variedad;

b) ~~y~~ no deberá ser susceptible de inducir a error o de prestarse a confusión sobre las características, el valor o la identidad de la variedad o sobre la identidad del obtentor [;].

~~(3) La denominación que designe~~ c) deberá ser diferente de toda otra denominación que designe, en el territorio de cualquier miembro de una organización internacional que se ocupe de cuestiones

relacionadas con los derechos de los obtentores vegetales en la que Tanzania sea parte, una variedad existente de la misma especie vegetal o de una especie vecina, ~~será distinta a la una de la otra; y~~ d) no podrá componerse únicamente de cifras, salvo cuando sea una práctica establecida para designar variedades.

“9)8) El Director del Registro informará por escrito a las autoridades de todos los miembros de una organización internacional que se ocupe de cuestiones relacionadas con los derechos de los obtentores en la que Tanzania sea parte, de las cuestiones relativas a las denominaciones de las variedades, concretamente de la propuesta, el registro y la cancelación de denominaciones”.

34. La incorporación de las modificaciones del Ministro señaladas *supra* requerirá la actualización de la numeración de los párrafos y de las remisiones en el artículo 20 del proyecto de ley. Con la incorporación de las modificaciones del Ministro, en el artículo 20 del proyecto de ley se establecen disposiciones sobre la denominación de las variedades que están en conformidad con lo dispuesto en el artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

35. En el artículo 36 del proyecto de ley se establecen disposiciones sobre la nulidad del derecho de obtentor que están en conformidad con las disposiciones del artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

36. En el artículo 37 del proyecto de ley se establecen disposiciones sobre la caducidad del derecho de obtentor. Con la incorporación de las modificaciones del Ministro, el texto del artículo 39.2) del proyecto de ley será:

“39-1) Todo titular de un derecho de obtentor podrá notificar por escrito a la Oficina de Registro su renuncia al derecho de obtentor.

2) En el plazo de un mes a contar desde la fecha en que reciba la notificación conforme a lo dispuesto en el apartado 1), el Director del Registro ~~extinguirá~~ declarará la caducidad el derecho de obtentor ~~al que se renuncia~~ y publicará en el Boletín un aviso de ~~la declaración de caducidad del derecho de obtentor~~ esa extinción”.

37. A reserva de la incorporación de las modificaciones del Ministro señaladas *supra* en el artículo 39.2) del proyecto de ley, en el artículo 37 del proyecto de ley se establecen disposiciones relativas a la caducidad del derecho de obtentor que están en conformidad con las disposiciones del artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

38. En lo que respecta a la obligación de “prever los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (artículo 30.1)i) del Acta de 1991), en el artículo 34 del proyecto de ley se estipula lo siguiente:

“34.1) Los derechos de obtentor están protegidos tanto por medidas de derecho civil como penal estipuladas en la legislación escrita.

2) El titular del derecho de obtentor podrá entablar un juicio contra toda persona que infrinja el derecho de obtentor en cualquier tribunal de la jurisdicción competente.

3) Además de las costas procesales, el tribunal podrá dictar un mandamiento judicial u ordenar el pago de una indemnización por daños y perjuicios, conforme a lo que se considere razonable en las circunstancias de cada caso”.

39. En lo que respecta a la obligación estipulada en el artículo 30.1)ii) del Acta de 1991, en el artículo 5.a) del proyecto de ley se estipula lo siguiente:

“5. Las funciones del Director del Registro comprenderán - a) la concesión de derechos de obtentor; [...]”

40. Con la incorporación de las modificaciones del Ministro, el texto del artículo 28.7) del proyecto de ley será:

"7) Toda concesión de un derecho de obtentor por ~~el Director del Registro de Zanzíbar~~ el Organismo responsable de los derechos de obtentor en Zanzíbar surtirá el mismo efecto que la concesión de un derecho de obtentor de la misma variedad por el Director del Registro."

41. Los artículos 24 y 28.6)c) del proyecto de ley se ajustan a la obligación de publicar información relativa a las solicitudes de derecho de obtentor y a los títulos concedidos, así como a las denominaciones propuestas y aprobadas, según se exige en el artículo 30.1)iii) del Acta de 1991.

Otras modificaciones del Ministro

42. Con las modificaciones del Ministro, el texto del artículo 6.2)a) y b) del proyecto de ley será:

"2) La información que deberá figurar de cada variedad inscrita en la Oficina de Registro comprenderá-

a) la especie y la denominación de la variedad;

b) el nombre completo y la dirección de-

i) el solicitante o el titular del derecho de obtentor;

ii) la persona que creó o descubrió y puso a punto la variedad, si esa persona es distinta del solicitante o del titular del derecho de obtentor; [...]"

43. Con la incorporación de las modificaciones del Ministro, la remisión que figura en el artículo 42.1) del proyecto de ley se corregiría del modo siguiente:

"42.-1) Toda persona autorizada de conformidad con lo dispuesto en los artículos 40 44 podrá, en un plazo no superior a 60 días a contar desde la fecha efectiva de la autorización, notificar [y al] Director del Registro la transacción y proporcionarle un ejemplar del acuerdo de autorización".

Conclusión general

44. En opinión de la Oficina de la Unión, una vez que se hayan introducido en el proyecto de ley las modificaciones del Ministro (véase el Anexo II), tal como constan en los párrafos 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 y 43 del presente documento, y las modificaciones recomendadas en los párrafos 19, 22 y 34 de este mismo documento, sin cambios adicionales, el proyecto de ley recogerá las disposiciones sustantivas del Acta de 1991.

45. *Se invita al Consejo a:*

a) *tomar nota del análisis expuesto en el presente documento;*

b) *tomar una decisión positiva en relación con la conformidad del proyecto de Ley sobre los Derechos de Obtentor para Tanzania continental (véase el Anexo II del presente documento) con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, a reserva de la incorporación en ese proyecto de ley de las modificaciones del Ministro (véase el Anexo III del presente documento) que constan en los párrafos 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 y 43 del presente documento, y las modificaciones recomendadas en los párrafos 19, 22 y 34 de este mismo documento, y sin cambios adicionales;*

c) *tomar nota de que la aprobación del proyecto de ley para Tanzania continental y del proyecto de ley para Zanzíbar es necesaria para que los derechos de obtentor comprendan la totalidad del territorio de la República Unida de Tanzania;*

d) *tomar nota de que el Gobierno de la República Unida de Tanzania tiene la intención de presentar, en una fecha posterior, el proyecto de ley o la ley que se apruebe para Zanzíbar con objeto de que sea examinada por el Consejo;*

e) *informar al Gobierno de la República Unida de Tanzania de que su instrumento de adhesión podrá depositarse tras la obtención de decisiones positivas del Consejo sobre las leyes para Tanzania continental y Zanzíbar; y*

f) *autorizar al Secretario General a informar de esa decisión al Gobierno de la República Unida de Tanzania.*

[Siguen los Anexos]

ANNEX I / ANNEXE I / ANLAGE I / ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 1 de octubre de 2012]

Enviada por: Sra. Sophia E. Kaduma, Secretario Permanente, Ministerio de Agricultura, Seguridad Alimentaria y Cooperativas de la República Unida de Tanzania

Destinatario: Sr. Francis Gurry, Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV)

[Objeto:][Ref.:] Solicitud de examen de la conformidad del proyecto de Ley sobre los Derechos de Obtentor de 2012

Le escribo en relación con la cuestión que se indica en el objeto de esta misiva y su carta con fecha 10 de mayo de 2012.

Me complace comunicarle que está en curso el proceso para la aprobación por el Parlamento de la República Unida de Tanzania de la Ley sobre los Derechos de Obtentor de 2012. Esta ley se presentó en el Parlamento en abril de 2012.

Tras su aprobación por el Parlamento, en febrero de 2010, la República de Tanzania tiene intención de adherirse al Convenio Internacional para la Protección de las Obtenciones Vegetales de 2 de diciembre de 1961, revisado en Ginebra el 10 de noviembre de 1972, el 23 de octubre de 1978 y el 19 de marzo de 1991.

De conformidad con las disposiciones del artículo 34.3) del Convenio de la UPOV, le agradecería que el Consejo de la UPOV examine la conformidad del proyecto de ley que se adjunta con las disposiciones del Convenio de la UPOV. Junto al proyecto de ley, le envió una lista de modificaciones que el Ministro de Agricultura, Seguridad Alimentaria y Cooperativas tiene previsto presentar en el Parlamento durante su próximo período de sesiones.

(Firmada)

[Sigue el Anexo II]

THE UNITED REPUBLIC OF TANZANIA

BILL SUPPLEMENT

No. 2

23rd March, 2012

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THE PLANT BREEDERS' RIGHTS ACT, 2012

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.

PART II

PLANT BREEDERS RIGHTS OFFICE

3. Establishment of Plant Breeders' Rights Office.
4. Appointment of Registrar.
5. Functions of Registrar.
6. Register of plant breeders' rights.
7. Evidence of certain entries and documents.
8. Inspection of Register.
9. Plant Breeders' Rights Advisory Committee.
10. Functions of the Committee.
11. Powers of the Committee.

Plant Breeders' Rights

PART III
VARIETIES THAT MAY BE PROTECTED

12. Genera and species to be protected.
13. Conditions of protection.
14. Novelty.
15. Distinctness.
16. Uniformity.
17. Stability.

PART IV
APPLICATION FOR PLANT BREEDER'S RIGHT

18. Application for breeder's right.
19. Contents of an application.
20. Variety denomination.

PART V
CONSIDERATION AND DISPOSITION OF APPLICATION

21. Filing date of an application.
22. Right of priority.
23. Amendment of application.
24. Publication of notice of application.
25. Objection to the proposed grant of breeder's right.
26. Grounds for objection.
27. Notice to the applicant and reply to an objection.
28. Disposition of applications.

PART VI
PROVISIONAL AND FINAL PROTECTION

29. Provisional protection.
30. Scope of the breeder's right, essentially derived certain other varieties.
31. Exceptions to the breeder's right.
32. Exhaustion of the breeder's right.
33. Duration of plant breeder's right.
34. Protection and damages for infringement of breeder's right.
35. Annual fees.

Plant Breeders' Rights

PART VII

NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

36. Nullity of the breeder's right.
37. Cancellation of the breeder's right.
38. Notification of nullification and cancellation.
39. Surrender of breeder's right.

PART VIII

AUTHORIZATION AND ASSIGNMENTS

40. Authorization and assignment of Breeder's right.
41. Restrictions on the exercise of the breeder's right.
42. Information on Authorization, assignment and transmission.

PART IX

APPEALS

43. Appeals Board.
44. Appeal from the decision of the Registrar.
45. Decision of the Appeals Board.

PART X

PLANT BREEDERS' RIGHTS FUND, ACCOUNTS, AUDIT AND ANNUAL REPORT

46. Plant Breeders' Rights Development Fund.
47. Accounts and Audit.
48. Annual reports to be submitted to the Minister.

PART XI

OFFENCES AND PENALTIES

49. Offences and penalties.

PART XII

GENERAL PROVISIONS

50. Collection of fees.
51. Confidentiality.

Plant Breeders' Rights

52. Action against the State.
53. Breeders' right in respect of existing varieties of recent creation.
54. Agreements with foreign governments.
55. Agents.
56. Repeal and savings.
57. Registrar to make guidelines.
58. Regulations.

Plant Breeders' Rights

NOTICE

This Bill to be submitted to the National Assembly is published for the general information to the general public together with its statement of objects and reasons.

Dar es Salaam,
22nd March, 2012

OMBENI Y. SEFUE,
Secretary to the Cabinet

A BILL
for

An Act to provide for the grant and protection of plant breeders' rights, for establishment of Plant Breeders' Rights Office and for related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title
and
Commencement

1. This Act may be cited as Plant Breeders' Rights Act, 2012 and shall come into force on such date as the Minister may, by notice in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires-
"Appeals Board" means the Appeals Board established under section 43;
"agent", in relation to an applicant or a holder of plant breeder's right, means a person who is duly authorized by the applicant or holder to act, on behalf of the applicant or holder;

Plant Breeders' Rights

“applicant” means the breeder entitled to file an application for the grant of a breeder’s right in accordance with the definition of “breeder” provided for in this Act;

“breeder” means-

- (a) a person who bred or discovered and developed a variety;
- (b) a person who is the employer of the person who bred or discovered and developed a variety or who has commissioned the employer’s work; or;
- (c) a successor in title of a person mentioned in paragraph (a) or (b) as the case may be;

“breeder’s right” means the right of the breeder provided for under this Act;

“Committee” means a Plant Breeders’ Rights Advisory Committee established under section 9;

“Fund” means the Fund established under section 46;

“legal representative” means-

- (a) a liquidator or receiver of a company;
- (b) a representative of any person who-
 - (i) has become insolvent or bankrupt;
 - (ii) has assigned his estate;
 - (iii) is an infant or minor;
 - (iv) is of unsound mind;
 - (v) is otherwise under a disability; or
 - (vi) has died;

“Minister” means the Minister responsible for agriculture;

“Register” means the Register of plant breeders’ rights kept in terms of section 6;

“Registrar” means the Registrar of Plant Breeders Rights appointed in accordance with Section 4;

“reproductive material” means a plant or part of the plant used to multiply the plant;

“sell” means to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or dispose off for any consideration or transmit, convey or deliver in pursuance of the sale;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s

Plant Breeders' Rights

right are fully met, can be-

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged;

PART II

PLANT BREEDERS' RIGHTS OFFICE

Establishment of plant breeders' right office,

3. There is established within the Ministry responsible for Agriculture, an office to be known as the Plant Breeders' Rights Office.

Appointment of Registrar

4.-(1) The Minister shall, by notice published in the *Gazette*, appoint a person or an officer to be a Registrar who shall perform the functions conferred to or imposed on the Registrar of Plant Breeders' Rights under this Act.

(2) The Minister shall, where necessary, appoint deputy Registrars and other officers who, subject to the direction of the Registrar, shall assume some of the powers and privileges conferred to the Registrar pursuant to this Act.

Functions of Registrar

5. The functions of the Registrar shall be-

- (a) to grant breeders' right;
- (b) to maintain a register and provide information on plant breeder's rights issued in Tanzania;
- (c) to facilitate transfer and licensing of plant breeders' rights;
- (d) to collaborate with local and international bodies whose functions relate to plant breeders' rights matters; and
- (e) to perform any other functions as are necessary for the furtherance of the objects of this Act.

Register of plant breeders' rights

6.-(1) The Registrar shall maintain an official breeders' rights register in which all information required to be registered under this Act shall be entered.

Plant Breeders' Rights

(2) The information to be listed in the Register for each registered variety, shall include-

- (a) species and denomination of a variety;
- (b) the full name and address of-
 - (i) the holder of the breeder's right;
 - (ii) the person who bred or discovered and developed the variety, in case such person is different from the holder of the breeder's right;
- (c) the date of inception of the breeders' right;
- (d) all other matters which-
 - (i) are required by this Act or any other written law to be entered in the Register,
 - (ii) otherwise, affect the validity or ownership of plant breeders' rights; and
- (e) any other information, which may be required by Regulations made under this Act.

(3) The Register shall be a *prima facie* evidence of any matter entered therein.

Evidence of certain entries and documents

7.-(1) A certificate purporting to be signed by the Registrar certifying that any entry under this Act, has or has not been made or that any other requirement has not been fulfilled shall be a *prima facie* evidence of the matter so certified.

(2) A copy of -

- (a) an entry in the Register or of any document lodged in terms of this Act; or
- (b) an extract from the Register or from any document lodged in terms of this Act,

which purports to be certified by the Registrar shall be admitted in evidence.

Inspection of Register

8.-(1) The Register shall be open for inspection by any member of the public at all convenient times during business hours.

(2) A certified copy of any entry in the Register shall be given upon request and payment of the prescribed fee.

Plant Breeders' Rights

Plant
Breeders'
Rights
Advisory
Committee

9.-(1) There is established a committee to be known as the Plant Breeders' Rights Advisory Committee.

(2) The Committee shall be composed of the following members who shall be appointed by the Minister-

- (a) one representative from the Ministry, who shall be the Chairman to the Committee-
- (b) one representative of plant breeders association;
- (c) one representative of seed traders association;
- (d) one representative from registered farmers association;
- (e) one representative of a University offering a course on plant breeding;
- (f) one representative of an authority responsible for registration of intellectual property rights;
- (g) one representative of the Attorney General; and
- (h) a person responsible for granting breeders' right in Tanzania Zanzibar;

(3) The Registrar shall be the Secretary of the Committee.

Functions of
the
Committee

10. The functions of the Committee shall be-

- (a) to advise the Minister on efficient enforcement of this Act;
- (b) to receive reports of plant breeders' rights applications from the Registrar;
- (c) to make expert consideration on the plant breeders' rights reports and on the Registrar's tests results; and
- (d) to manage the operations of the Fund.

Powers of the
Committee

11. The Committee shall, in fulfilling its functions, have powers-

- (a) to make its own rules of procedure;
- (b) to give the Registrar directives of specific and general nature;
- (c) to call applicants and other interested persons for

Plant Breeders' Rights

hearing before the approval by the Registrar of a
plant breeder's right application.

PART III
VARIETIES TO BE PROTECTED

Genera and
species to
be
protected

12. The protection of varieties under this Act shall apply to
all plant genera and species.

Conditions
of
protection

13.-(1) The breeder's right shall be granted with respect to
a variety which is new distinct, uniform and stable.

(2) The grant of the breeder's right shall not be subject to
any further or different conditions, provided that the variety is
designated by a denomination in accordance with the provisions of
Section 20 and the applicant complies with the formalities
provided for under this Act and that he pays the required fees.

Novelty

14.-(1) The variety shall be deemed to be new if at the
date of filing of the application for a breeder's right, propagating
or harvested material of the variety has not been sold or otherwise
disposed off to any person by or with the consent of the breeder for
purposes of exploitation of the variety-

- (a) in the territory of the United Republic of Tanzania,
earlier than one year before the date of filing the
application;
- (b) in a territory other than that of the United Republic of
Tanzania in which the application has been filed-
 - (i) earlier than four years; or
 - (ii) in the case of trees or of vines, earlier
than six years before the said date.

(2) Subject to subsection (1), the following acts shall not
be considered to result in the loss of novelty-

- (a) trials of the variety not involving sale or disposal of
to others for purposes of exploitation of the variety;
- (b) sale or disposal off to others without the consent of
the breeder;
- (c) sale or disposal off to any person that forms part of an
agreement for the transfer of rights to the successor in
title;

Plant Breeders' Rights

- (d) sale or disposal off to any person that forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder, provided that:
 - (i) the property in the multiplied material reverts to the breeder,
 - (ii) the multiplied materials is not used for the production of another variety;
- (e) sale or disposal off to any person that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale processing trials with a view of evaluating the variety;
- (f) sale or disposal off to any person that forms part of the fulfillment of a statutory or administrative obligation concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade;
- (g) sale or disposal off to any person of harvested material which is a by-product or a surplus product of the creation of the variety or of the activities referred to in paragraphs (e) and (f), provided that the said material is sold or disposed off without variety identification for the purposes of consumption; and
- (h) disposal off to any person due to or in consequence of the fact that the breeder had displayed the variety at an official or officially recognized exhibition.

Distinctness

15.-(1) A variety shall be deemed distinct where it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

(2) The filing of an application for the granting of breeder's right or for the entering of another variety in the official register of variety 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 breeder's right or to the entering of the said other variety in the official register of variety.

Plant Breeders' Rights

Uniformity 16. A variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Stability 17. A variety shall be deemed to be stable; where its relevant characteristics remain unchanged after repeated propagation or in the case of a particular cycle of propagation, at the end of each cycle.

PART IV
APPLICATION FOR PLANT BREEDERS' RIGHTS

Applica-
tion for
breeder's
right 18. A breeder of a new variety may apply for the grant of a breeder's right for that variety.

Contents of
an
application 19. The application for breeder's right relating to a variety shall contain the following-

- (a) the name and address of the applicant;
- (b) where the applicant is the successor in title of the person who bred, or discovered and developed, the variety:
 - (i) proof of title or authority in the form and content satisfactory to the Registrar or as may be specified by Regulations establishing the existence and validity of the assignment or succession; and
 - (ii) the name and address of the person who bred, or discovered and developed, the variety;
- (c) the proposed denomination, along with the description of the characteristics of the variety as the Registrar may require;
- (d) samples of propagating material in such quantities as the Registrar may require; and
- (e) additional information, documents and material that may be required in connection with the application as may be prescribed in the Regulations.

Plant Breeders' Rights

Variety
denomina-
tion

20.-(1) The variety shall be designated by a denomination which shall be its generic designation and subject to subsection (6), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety even after the expiration of the breeder's right.

(2) The denomination shall enable the variety to be identified and it may not consist solely of figures unless where it is an established practice for designating varieties and it shall not be liable for misleading or causing confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.

(3) The denomination which designate, in the territory of any member of an international organization dealing with plant breeder's rights matters to which Tanzania is a party and an existing variety of the same plant species or of a closely related species shall, be different from each other.

(4) The denomination of the variety shall be submitted by the applicant to the Registrar and where the Registrar finds that the denomination does not satisfy the requirements of this section, he shall refuse to register it and require the applicant to propose another denomination within the period to be prescribed in the Regulations.

(5) The denomination shall be registered by the Registrar at the time the breeder's right is granted.

(6) Prior rights of third persons shall not be affected and where, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of subsection (10), is obliged to use it, the Registrar shall require the applicant to submit another denomination for the variety.

(7) Where the variety is already protected by a member of an international organization dealing with the plant breeders' rights matters to which Tanzania is a party or an application for the protection of the same variety is filed in a member of such organisation, the variety denomination which has been proposed or registered in that other member of the organisation shall be submitted by the applicant to the Registrar.

(8) The Registrar shall register the denomination submitted, unless he considers the denomination unsuitable within

Plant Breeders' Rights

the territory of the United Republic of Tanzania and in case the denomination is unsuitable he shall require the applicant to submit another denomination.

(9) The Registrar shall, in writing, inform all members of an international organization dealing with the plant breeders' rights matters to which Tanzania is a party concerning the submission, registration and cancellation of denominations.

(10) Any person who, within the territory of the United Republic of Tanzania, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, prior rights prevent such use.

(11) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination and where such an indication is so associated, the denomination shall nevertheless be easily recognizable.

PART V

CONSIDERATION AND DISPOSITION OF APPLICATION

Filing date
of an
application

21.-(1) The filing date of an application shall be the date, which the application was received by the Registrar.

(2) For purposes of this section, an application shall be deemed to have been received on the date that the required parts of the application are received in the form sufficient for consideration under this Act.

(3) An application filed with the Registrar of Zanzibar shall have the same effect of an application for the same variety filed with the Registrar.

Right of
priority

22.-(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of an international organization dealing with plant breeders' rights matters which Tanzania is a party shall enjoy a right of priority for a maximum period of twelve months which shall be computed from the date of filing the first application and the filing date shall not be included in the later application.

Plant Breeders' Rights

(2) The applicant shall, in order to benefit from the right of priority, in the subsequent application in the United Republic of Tanzania, claim within twelve months the priority of the first application.

(3) The Registrar may require the applicant to furnish, within a period of not less than three months from the filing date, a copy of the documents which constitute the first application certified to be a true copy by the authority with which that application was filed and samples or other evidence indicating that the variety which is the subject matter of both applications is the same.

(4) The applicant shall, within a period of two years after the expiration of the period of priority or where the first application is rejected or withdrawn, be allowed to furnish to the Registrar any necessary information, document or material required in this Act for the purpose of the examination.

Amendment
of
application

23.-(1) An applicant may amend his application for the grant of a breeder's right for a variety at any time without affecting its filing date, provided that, the amendment does not affect the variety which is the subject of the application.

(2) Where any amendment of an application occurs after publication of a notice under section 24, the applicant shall be liable to pay the cost of republication.

Publication
of notice of
application

24. The Registrar shall, publish in the *Gazette* and in a news paper of vast circulation, a notice of every filed application for plant breeders' right that satisfies the requirements of the Act specifying -

- (a) the name and address of the applicant;
- (b) the filing date of the application;
- (c) the proposed denomination; and
- (d) such other information as may be specified in the Regulations.

Objection
to the
proposed
grant of
breeder's
right

25.-(1) Any person may, within two months of publication of a notice under section 24, lodge with the Registrar a written objection to the matter specified in that notice.

Plant Breeders' Rights

(2) The Minister may, on behalf of the Government, lodge an objection under this Section.

(3) A notice of objection made under sub-section (1) shall-

- (a) specify the ground on which the objection is based;
- (b) include a statement of the facts alleged in support of the grounds stated under paragraph (a); and
- (c) be supported by an affidavit or other proof, if required by the Registrar.

Grounds
for
objection

26. An objection lodged pursuant to Section 25 shall be based on allegation of one or more of the following grounds-

- (a) that the applicant is not entitled to file the application;
- (b) that the application contains a material misrepresentation;
- (c) that the contents of the application do not comply with this Act or the Regulations;

Notice to
the
applicant
and reply
to an
objection

27.-(1) The Registrar shall notify the applicant of an objection under Section 25 and provide him with a copy of the notice of an objection and all supporting documents that are lodged with the objection within two weeks from the date of filing the objection.

(2) The applicant may respond to the allegation of the objector, in a written reply which shall be lodged to the Registrar and copied to the objector, within one month or such further period as the Registrar may allow from the date of notification made under sub-section (1).

(3) The Minister may, on behalf of the Government, lodge a reply to any objection lodged against the Government under section 25.

Disposition
of
applications

28.-(1) The Registrar shall, upon completion of the notice requirements under section 24 and the expiration of time limits for objections and replies, examine the application and a reply.

(2) Upon any decision to grant a breeder's right which require an examination for compliance with the conditions specified under this Act, the Registrar may, in the course of the examination, grow or cause to be grown the variety or carry out

Plant Breeders' Rights

other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

(3) The Registrar may, for the purposes of examination, require the breeder to furnish all the necessary information, document or material.

(4) The Minister may appoint one or more persons based on their special knowledge to advise the Registrar in the examination of applications.

(5) Where the Registrar concludes that-

(a) the application conforms to the requirements of this Act;

(b) the applicant is entitled to file the application;

(c) no objection has been filed;

(d) in respect of objections filed, there are no grounds for objection; and

(e) the objection filed does not state an impediment to the granting of the breeder's right for the variety, he shall grant a breeder's right.

(6) For each variety for which breeder's right is granted, the Registrar shall-

(a) issue a certificate of registration to the applicant;

(b) enter the variety in the register as provided for under Section 6; and

(c) publish a notice of the grant of breeder's right and the approved denomination in the *Gazette*.

(7) Any grant of breeder's right made by the Registrar of Tanzania Zanzibar shall have the same effect as the grant of breeder's right of the same variety made by the Registrar.

PART VI

PROVISIONAL AND FINAL PROTECTION

Provisional
protection

29. The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period between the publication of the application under section 23 for the grant of a breeder's right and the date of the grant of that right, has carried out acts which, once the right is granted, require the breeder's authorization as provided for under section 30.

Plant Breeders' Rights

Scope of
the
breeder's
right,
essentially
derived and
certain
other
varieties

30.-(1) Subject to Section 31 and 32, the following acts in respect of the propagating material of the protected variety shall require the authorization of the holder of the breeder's right-

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or marketing;
- (e) exporting;
- (f) importing; and
- (g) stocking for any purposes mentioned in paragraphs (a) to (f).

(2) The holder of the breeder's right may make his authorization subject to conditions and limitations.

(3) Subject to the provisions of Section 31 and 32, the acts referred to in paragraph (a) to (g) of sub-section (1) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the holder of the breeder's right, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in relation to the said propagating material.

(4) Subject to Section 31 and 32, the acts referred to in paragraph (a) to (g) of sub-section (1) in respect of products made directly from harvested material of the protected variety falling within the provision of sub-section (3) through the unauthorized use of the said harvested material, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

(5) The provisions of sub-sections (1),(2),(3) and (4) shall apply to-

- (a) varieties that are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety;
- (b) varieties which are not clearly distinguishable in accordance with section 15 from the protected

Plant Breeders' Rights

- variety; and
- (c) varieties whose production requires the repeated use of the protected variety.
- (6) For the purposes of paragraph (a) of subsection (1), a variety shall be deemed to be essentially derived from another variety when-
- (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotype of the initial variety;
 - (b) it is clearly distinguishable from the initial variety; and
 - (c) except for the difference, which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (7) For the purposes of this section, essentially derived varieties may be obtained by section of a natural or induced *mutant* or *somaclonal* variety, the section of variety individual from plants of the initial variety, backcrossing or through transformation by genetic engineering.

Exceptions
to the
breeder's
right

- 31.-(1) The breeder's right shall not extend to-
- (a) acts done privately and for non-commercial purposes;
 - (b) acts done for experimental purposes; and
 - (c) acts done for the purpose of breeding other varieties and, except where the provisions of section 30(5) apply, acts referred to in section 30(1) and (4) in respect of such other varieties;
- (2) For the list of agricultural crops specified by the Minister, which shall not include fruits, ornamentals, vegetables or forest trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the

Plant Breeders' Rights

harvest which he has obtained by planting on his own holding, the protected variety or by planting on his own holding, the protected variety or a variety covered by section 30(5)(a) or (b).

(3) The reasonable limits and the means of safeguarding the legitimate interests of the holder of the breeder's right shall be specified in the Regulations.

Exhaustion
of the
breeder's
right

32.-(1) The breeder's right shall not extend to acts concerning any material of the protected variety or of a variety covered by the provisions of section 30(5), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the United Republic of Tanzania or any material derived from the said material, unless such acts-

- (a) involve further propagation of the variety in question; or
- (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) In this section "material" means, in relation to a variety-

- (a) propagating material of any kind;
- (b) harvested material, including entire plants and parts of plants; and
- (c) any product made directly from the harvested material.

Duration of
plant
breeder's
right

33.-(1) Except as set forth in Part VII, the breeders' right granted under this Act shall expire after twenty years from the date of the grant except for trees and vines whose breeder's right shall expire after twenty five years from the date of grant.

(2) The term may be extended for an additional five years, by a written notice to the Registrar given by the holder of the breeder's right six months before the expiration of the original term.

Plant Breeders' Rights

Protection
and
damages
for
infringeme
nt of
breeder's
right

34.-(1) Breeders' rights are protected by both civil and criminal measures stipulated in any written law.

(2) A suit by the holder of breeder's right against any person who infringes the breeder's right may be brought in any court of competent jurisdiction.

(3) The court may in addition to the cost of the action, grant an injunction or damages or both, as it may appear to be reasonable in the circumstances of the case.

Annual
fees

35. The holder of breeder's right shall pay maintenance fee at time and rate specified in the Regulations.

PART VII

NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

Nullity of
the
breeder's
right

36.-(1) The Registrar shall declare a breeder's right granted by him null and void when it is established that-

- (a) the conditions laid down in sections 14 and 15 were not complied with at the time of the grant of the breeder's right;
- (b) where the grant of the breeder's right has been essentially based upon information and documents furnished by the applicant, the conditions laid down in section 16 or 17 were not complied with at the time of the grant of the breeder's right; or
- (c) the breeder's right has been granted to a person who is not entitled to it unless it is transferred to the person who is so entitled.

(2) The breeder's right shall not be declared null and void for reasons other than the reasons referred to in sub-section (1).

Cancellat
ion of the
breeder's
right

37.-(1) The Registrar may cancel a breeder's right granted by him where he has established that the conditions laid down in sections 16 or 17 are no longer fulfilled.

(2) Without prejudice to sub-section (1), the Registrar

Plant Breeders' Rights

may cancel a breeder's right granted by him, within the prescribed period provided in the Regulations, where-

- (a) the holder of the breeder's right does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (b) the holder of the breeder's right fails to pay such fees as may be payable to keep his right in force; or
- (c) the holder of the breeder's right does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(3) The breeder's right shall not be declared cancelled for reasons other than the reasons referred to in sub-section (1) and (2).

Notification of nullification and cancellation

38.-(1) The Registrar shall notify the holder of the breeder's right and any licensee of any decision made under section 36 or 37 of this Act and grounds for such decision.

(2) Any person receiving notice under sub-section (1) may contest the decision, by a written objection lodged to the Registrar within thirty days from the date of the decision.

(3) The Registrar may hold, within a reasonable time after receipt of an objection, a hearing or may decide the matter based on written submissions of all interested parties.

(4) Where the Registrar nullifies and cancels any breeder's right under this section, he shall publish the nullification or cancellation by a notice in the *Gazette*, after expiration of thirty days from the date of the decision or following a decision made under sub-section (3).

(5) The holder shall return to the Registrar any certificate of the grant of a breeder's right that has been nullified or cancelled under this section.

Surrender of breeder's right

39.-(1) Any holder of a breeder's right may, by written notice to the Registrar, surrender the breeder's right.

(2) The Registrar shall, within one month after receiving

Plant Breeders' Rights

the notice under sub-section (1), cancel the surrendered right and publish in the *Gazette* a notice of the cancellation of the breeder's right.

PART VIII

AUTHORIZATION AND ASSIGNMENTS

Authoriza-
tion or
assignment
of
Breeder's
right

40. The holder of breeder's right may assign or authorize any person, to undertake any activity described or referred to in section 30.

Restrictions
on the
exercise of
the breeder's
right

41.-(1) The free exercise of a breeder's right shall, unless where expressly provided in this Act, not be restricted for reasons other than of public interest.

(2) When any such restriction has the effect of the Registrar granting of a compulsory authorization in respect of a breeder's right on the ground that it is necessary to safeguard the public interest, the person to whom the compulsory authorization is granted shall pay the holder of the breeder's right an equitable remuneration.

Informa-
tion on
Authoriza-
tion
assignment
and
transmit-
sion

42.-(1) A person authorized under sections 40-41 may, in not more than sixty days from the effective date of the authorization, notify the Registrar of the transaction and furnish the Registrar with a copy of that authorization agreement.

(2) The Registrar may prescribe the form and manner of notification to be made under sub-section (1).

(3) Upon assignment or other transmission of all of a breeder's right, the assignee or recipient shall notify the Registrar for the purposes of making changes in the Register.

Plant Breeders' Rights

PART IX
APPEALS

Appeals
Board

43.-(1) The Minister shall appoint an Appeals Board consisting of three members in which one member shall be an expert in legal matters and two other members shall be experts qualified in agricultural science.

(2) The Minister shall appoint one person from amongst members of the Appeals Board to be the chairman.

(3) The Appeals Board shall have power to-

(a) prescribe its own rules of procedure;

(b) order and secure the attendance of witnesses;

(c) compel discovery and the production of documents;
and

(d) administer oath or affirmation to any witness.

(4) The Appeals Board shall keep records of its proceedings.

(5) The Appeals Board may appoint one or more persons with expert knowledge to serve the Appeals Board in an advisory capacity, either generally or with regard to a specific case or cases.

Appeals
from the
decision of
Registrar

44.-(1) An appeal from the decisions of the Registrar made under this Act shall lie to the Appeals Board.

(2) A person who is aggrieved by any such decision may appeal to the Appeals Board by submitting a notice of the appeal within sixty days following the publication or of the receipt of the individual notice of such decision by the person whose interest is the source or subject of the appeal.

Decision of
the
Appeals
Board

45.-(1) The Appeals Board may conduct investigation, if it deems necessary to do so, and may hold a hearing of the appeal or make a decision based on written submissions.

(2) The Appeals Board may confirm, set aside or vary any decision or action of the Registrar; and may order the Registrar to carry out the decision of the Appeals Board.

(3) The Appeals Board shall give the reasons for its decision in writing, and copies thereof shall be furnished to the

Plant Breeders' Rights

appellant, the Registrar and any other interested party.

(4) Subject to the provisions of this section, a decision of the Appeals Board shall be final.

PART X

PLANT BREEDERS' RIGHTS DEVELOPMENT FUND, ACCOUNTS,
AUDIT AND ANNUAL REPORT

Plant
Breeders'
Rights
Develop-
ment
Fund

46.-(1) The Minister shall, after consultation with the Minister responsible for finance, establish a Fund to be known as the "Plant Breeders' Rights Development Fund" into which moneys realized under this Act shall be kept.

(2) The sources of moneys for the Fund shall include-

- (a) fees payable under this Act;
- (b) any donations or grants from the government or any person.

(3) The purposes of the Fund shall include financing of the following activities-

- (a) development and promotion of the plant breeders' rights;
- (b) training of plant breeders on matters concerned with plant breeders' rights;
- (c) establishment and maintenance of the variety collections and data base; and
- (d) such other activities relating to administration of the Act.

(4) In addition to the functions entrusted to it under Section 10, the Committee shall operate as the Fund Committee, whereby-

- (a) the Registrar shall be a member of the Fund Committee and shall serve as Secretary of the Fund;
- (b) the Fund Committee shall make rules and procedures for the operations and management of the Fund provided that such rules and procedures shall not be operative unless approved by the Minister.

(5) Separate books of accounts and other records in respect of the moneys of the Fund shall be kept properly and maintained and be subject to audit.

Plant Breeders' Rights

Accounts
and audit

- 47.-(1) The Plant Breeders' Rights Office shall cause to be kept and maintained proper books of accounts with respect to-
- (a) all sums of moneys received and expended by the Plant Breeders' Rights Office and matters in respect of which the receipt and expenditure take place;
 - (b) all the assets and liabilities of the Plant Breeders' Rights Office and the Fund; and
 - (c) the income and expenditure statement of the Plant Breeders' Rights Office.
- (2) The financial year of the Plant Breeders' Rights Office and the Fund shall end on 30th June of each year.
- (3) The books of accounts of the Plant Breeders' Rights Office and the Fund shall be audited at the end of each financial year by the Controller and Auditor General.

Annual
report to be
submitted
to the
Minister

- 48.-(1) The Plant Breeders' Rights Office shall, not later than six months after the end of each financial year, submit to the Minister a copy of the audited accounts and annual report on the activities of the Plant Breeders' Rights Office in respect of that particular year.
- (2) The Minister shall within a period of six months or such longer period as the National Assembly may by resolution appoint after the accounts have been audited, lay the audited accounts and audit report before the National Assembly.

PART XI
OFFENCES AND PENALTIES

Offences and
penalties

49. -(1) Any person who knowingly-
- (a) makes a false entry in the Register;
 - (b) makes a writing which falsely purports to be a copy of an entry in the Register or of a document lodged with the Registrar;
 - (c) produces or tenders a false entry of copy as evidence;
 - (d) submits a false document or makes a false statement or representation to the Registrar in regard to any action described under this Act;

Plant Breeders' Rights

- (e) obstructs or hinders the Registrar or any officer in the exercise of his powers or the carrying out of his functions under this Act;
- (f) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse to appear;
- (g) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
- (h) contravenes the obligation to use the denomination as required by section 20 (10);
- (i) gives false information in any application or makes any false statement in evidence; and
- (j) violates breeder's right,
commits an offence.

(2) Any person who commits an offence referred to under this Act shall upon conviction, be liable to a fine not exceeding ten million shillings or to an imprisonment for a period not exceeding one year or to both.

PART XII
GENERAL PROVISIONS

Collection of
fees

50. Notwithstanding any other provision of this Act, the Registrar shall collect fees from the applicant or any other person filing a document or requesting access of administrative action under this Act, for each application, extension, filing, inquiry or other administrative process or service.

Confide-
ntiality

51.-(1) The contents of any licence or assignment shall be confidential unless both parties agreed to permit access thereto by third parties and only to the extent of the permission so granted.

(2) The applicant may declare some portion of the application to be confidential, and where declared so, the Registrar shall determine whether the application can be processed without publication or other violation of that

Plant Breeders' Rights

confidentiality, and give the applicant the option of altering his statement of confidentiality or withdraw the application.

(3) Except as otherwise provided for in this Act, any person who discloses any information made available under this Act, except to-

- (a) the Minister, the Appeals Board, the Registrar or any other person for the purposes of carrying out his duties or the performance of his functions under this Act;
- (b) a police officer for the purposes of an investigation or inquiry relating to the enforcement of the provisions of this Act; or
- (c) any other person when required to do so by any court or under any written law,

commits an offence and upon conviction shall be liable to a fine not exceeding five million shillings or an imprisonment for a period not exceeding one year or to both.

Action
against the
State

52.-(1) Subject to the existing law on taking action against the State, this Act shall be binding on the Government with regard to its applications for breeder's right and other interests acquired or given in breeder's right to the same extent and with the same effect as it applies to any other person.

(2) No claim shall lie against the State, the Minister, the Registrar or any other officer for anything done in good faith in the discharge of duties under the powers conferred by this Act.

Breeder's
right in
respect of
existing
varieties of
recent
creation

53.-(1) Within twelve months from the date of commencement of this Act, the breeder of an existing variety of recent creation may apply to the Registrar in respect of that variety.

(2) Notwithstanding the provisions of section 14, where the Registrar determines that the applicant effectively controls the availability of the variety to the public and if other provisions of Part III are otherwise satisfied in respect of the variety, he may grant a breeder's right in respect of that variety.

Plant Breeders' Rights

- Agreement with foreign governments
54. The Minister may enter into bilateral or multilateral agreements with states and intergovernmental or non-governmental organizations in order to facilitate cooperation in testing.
- Agents
- 55.-(1) Where the breeder is a non-resident or in the case of a corporation, does not have its registered office in United Republic of Tanzania, he shall have an agent who is resident in United Republic of Tanzania.
- (2) The Registrar may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Registrar to be sufficient, refuse to recognize or to continue to recognize any person as authorized by the breeder to act in the capacity of agent.
- Repeal and savings
- 56.-(1) The Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002 is hereby repealed.
- (2) All Regulations, rules, directions and decisions made under the repealed Act which are in force, on the effective date of this Act shall be deemed to be Regulations and rules made or direction given under this Act unless revoked or cancelled.
- (3) All grants or certificates issued under the repealed Act and contract of service in force at the commencement of this Act shall continue to be in force and shall be deemed to have been made under this Act unless cancelled.
- Registrar to make guidelines
57. The Registrar shall make guidelines for the proper implementation of this Act and Regulations made under this Act.
- Regulations
- 58.-(1) The Minister may make Regulations prescribing anything which under this Act may be prescribed.
- (2) Without prejudice to the generality of the sub-section (1), Regulations made shall prescribe-
- (a) various forms to be used under this Act;
 - (b) the procedure to be followed in any proceedings before the Registrar;
 - (c) specific information and facilities to be provided, and of the propagating and other material to be submitted with respect to a variety;
 - (d) the tests, trials, examinations and other steps to be

Plant Breeders' Rights

- taken with respect to a variety, by applicants or by the Registrar and the time within which any such steps are to be taken;
- (e) the fees to be paid in respect of-
- (i) application for the grant of breeder's right, for extension of its term;
 - (ii) maintenance of breeder's right;
 - (iii) requests for administrative review, including objections to nullity and cancellation of breeder's right, appeals from administrative decisions and other administrative actions;
 - (iv) technical examination;
 - (v) the inspection or obtained records in the Register or other transaction involving a breeder's right;
 - (vi) provision of certified of copy of any entry therein;
 - (vii) any other fees to be paid under this Act.

ANNEX III / ANNEXE III / ANLAGE III / ANEXO III

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

SCHEDULE OF AMENDMENTS WHICH THE MINISTER FOR AGRICULTURE FOOD SECURITY AND COOPERATIVES INTENDS TO SUBMIT TO THE PARLIAMENT

SECTION No.	CURRENT PROVISIONS OF THE PBR BILL, 2012	PROPOSED AMMENDMENTS	REASON(S)
<u>Section 6 of the PRB Act: Register of plant breeders' rights</u>	6.- (2)The information to be listed in the Register of each registered variety, shall include- (a)species and denomination of a variety; (b)full name and address of- (i) the holder of the plant breeders' right; (ii) a person who bred or discovered and developed the variety, incase such person is different from the holder of the breeders' right;	6.- (2)The information to be listed in the Register of each registered variety, shall include- (a)species and denomination of a variety; (b)full name and address of- (i) the applicant or holder of the plant breeders' right; (ii) a person who bred or discovered and developed the variety, incase such person is different from the applicant or holder of the breeders' right;	The words "the applicants" have been added to cover information of the person (s) at the stage of application and as a holder.
<u>Section 15 of the PRB Act: Distinctness</u>	15.- (2) The filing of an application for the granting of breeders' right of for the entering of another variety in the official register of variety 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 breeders' right of to the entering of the said other variety in the official register of variety.	15.- (2) For the purposes of subsection (1) , the filing of an application for the granting of breeders' right or for the entering of another variety in the official register of variety 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 breeders' right or to the entering of the said other variety in the official register of variety varieties.	While complying with Article 7 of the UPOV 1991 and for clarity, the section has been reworded using Tanzania's acceptable drafting system.
<u>Section 20 of the PBR Act: Variety Denomination</u>	20.- (2) The denomination shall enable the variety to be identified and it may not consists solely of figures unless where it is an established practice for designating varieties and it shall not be liable for misleading or causing confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. (3) The denomination which designate, in the territory of any member of an international	20.- (2) The denomination :- a) shall enable the variety to be identified; b) shall not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. c) shall be different from every denomination which designates, in the territory of any member of international organization dealing with plant breeder's rights matters to which Tanzania is a	Subsection (2) and (3) have been combined to create a new subsection (2) in order to keep all the provisions concerning the characteristics on variety denomination in one sub-section. The characteristics for variety denomination have been clearly stated to comply with

	organization dealing with plant breeder's rights matters to, which Tanzania is a party and an existing variety of the same plant species or of a closely related species shall be different from each other.	party, an existing variety of the same plant species or of a closely related species; and d) may not consist solely of figures except where this is an established practice for designating varieties.	the provisions of Article 20 (2) of UPOV Convention
	(9) The Registrar shall inform in writing all members of an international organization dealing with the plant breeders' rights matters to which Tanzania is a party concerning the submission, registration and cancellation of denominations.	(8)The Registrar shall, in writing, inform the authorities of the members of an international organization dealing with plant breeder's rights matters to which Tanzania is a party, matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.	The Section has been reworded to provide for particularity on matters concerning variety denomination for informing other authorities as provided in Article 20 (6) of UPOV Convention of 1991. However, appropriate wording for Tanzania drafting principles have been observed.
<u>Section 21 of the PBR Act: Filing date of an application</u>	21.- (3) An application filled with the Registrar of Zanzibar shall have the same effect of an application for the same variety filled with the Registrar.	21.- (3) Any application filed with the Registrar of Authority responsible for breeder's rights in Zanzibar shall be deemed to be an application, for the same variety, filed with the Registrar.	The section has been reworded in consideration of the fact that presently there is no PBR Registrar in Zanzibar. It has also been amended by replacing the words "be deemed" with the words "have the same" to avoid interpretation of words to mean double filling of the application within the United Republic of Tanzania.

<p><u>Section 28 of the PBR Act: Disposition of applications</u></p>	<p>28.- (7) Any grant of breeder's right made by the Registrar of Tanzania Zanzibar shall have the same effect as the grant of the breeder's right of the same variety made by the Registrar.</p>	<p>28.- (7) Any grant of breeder's right made by the Registrar of Tanzania authority responsible for granting breeders' rights in Zanzibar shall have the same effect as the grant of the breeder's right of the same variety made by the Registrar.</p>	<p>The section has been re-worded in consideration of the fact that presently there is no PBR Registrar in Zanzibar</p>
<p><u>Section 30 of the PBR Act: Scope of the breeder's right essentially derived and certain other varieties</u></p>	<p>30.- (6) For the purposes of paragraph (a) of subsection (1), a variety shall be deemed to be essentially derived from another variety when-</p>	<p>30.- (6) For the purposes of paragraph (a) of subsection (4) (5), a variety shall be deemed to be essentially derived from another variety when-</p>	<p>Corrections on cross reference</p>
<p><u>Section 30 of the PBR Act: Scope of the breeder's right essentially derived and certain other varieties</u></p>	<p>30.- (7) For the purpose of this section essentially derived varieties may be obtained by section of a natural or induced <i>mutant</i> or <i>somaclonal</i> variety, the section of variety individual from plants of the initial variety, backcrossing, or through transformation by genetic engineering.</p>	<p>30.- (7) For the purpose of this section essentially derived varieties may be obtained through means such as the selection of a natural or induced mutant mutant or of a <i>somaclonal variant</i>, the section selection of a variety variant individual from plants of the initial variety, backcrossing, or through transformation by genetic engineering.</p>	<p>Words "through means such as" have used to capture the fact that the mentioned methods are not the only means of obtaining essential derived varieties.</p>
<p><u>Section 31 of the PRB Act: Exceptions to the breeder's right</u></p>	<p>31.-(1) The breeder's right shall not extend to- (a) acts done privately and for non-commercial purposes; (b) acts done for experimental purposes; and (c) acts done for the purpose of breeding other varieties, and, except where the provisions of section 30 (5) to (7) apply, acts referred to in section 30(1) and (4) in respect of such other varieties;</p>	<p>31.-(1) The breeder's right shall not extend to- (a) acts done privately and for non-commercial purposes; (b) acts done for experimental purposes; and (c) acts done for the purpose of breeding other varieties, and, except where the provisions of section 30 (5) to (7) apply, acts referred to in section 30(1) and to (4) in respect of such other varieties;</p>	<p>Corrections on cross reference Repeated words on subsection (2) are deleted</p>

	(2) For the list of agricultural crops specified by the Minister, which shall not include fruits, ornamentals, vegetables or forests trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or by planting on his own holding, the protected variety or a variety covered by Section 30 (5) (a) or (b).	(2)For the list of agricultural crops specified by the Minister, which shall not include fruits, ornamentals, vegetables or forests trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or by planting on his own holding, the protected variety or a a variety covered by Section 30 (5) (a) or (b).	
<u>Section 39 of the PBR Act: Surrender of breeder's right</u>	39.-(2) The Registrar shall within one month after receiving the notice under sub-section (1) cancel the surrendered right and publish in the Gazette a notice of the cancellation of the breeder's right.	39.-(2) The Registrar shall within one month after from the date of receiving the notice under sub-section (1) cancel the surrendered terminate breeder's right and publish in the Gazette a notice of the cancellation of the breeder's right of such termination .	Drafting corrections have been made to imply that the Registrar is responsible for terminating the surrendered right and not cancelling.
<u>Section 42 of the PBR Act: Information on Authorization, assignment and transmission</u>	42.-(1) A person authorized under sections 40 41 may, in not more than sixty days from the effective date of the authorization, notify and Registrar of the transaction and furnish the Registrar with a copy of that authorization agreement.	42.-(1) A person authorized under sections 40-44 may, in not more than sixty days from the effective date of the authorization, notify and Registrar of the transaction and furnish the Registrar with a copy of that authorization agreement.	Corrections on cross reference
<u>Section 53 of the PBR Act: Breeder's right in respect of existing varieties of recent creation</u>	53.-(2) Notwithstanding the provisions of section 14, where the registrar determines that the applicant effectively controls the availability of the variety to the public and if other provisions of Part III are otherwise satisfied in respect of the variety, he may grant a breeder's right in respect of that variety.	53.-(2) Deleted	Subsection (2) is deleted because such provisions are covered clearly under Sub-section (1). Section (2) tries to qualify sub-section (1) unnecessary.