

Consejo

C/Analysis/2019/1

Documento analítico

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DOCUMENTO ANALÍTICO QUE SIRVE DE BASE DEL PROCEDIMIENTO DE EXAMEN POR CORRESPONDENCIA DEL PROYECTO DE LEY DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES DE NIGERIA EN CUANTO A SU CONFORMIDAD CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV*Documento preparado por la Oficina de la Unión**Descargo de responsabilidad: el presente documento no constituye un documento de política u orientación de la UPOV*

1. Mediante una carta fechada el 19 de abril de 2019, dirigida al Secretario General de la UPOV, su Excelencia el Sr. Audu Ogbeh, Ministro de Agricultura y Desarrollo Rural de Nigeria, solicitó que se examine el proyecto de Ley de Protección de las Obtenciones Vegetales de Nigeria (en adelante, "proyecto de Ley") a fin 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. En el Anexo II figura una copia en inglés del proyecto de Ley.

PROCEDIMIENTO DE EXAMEN DE LEYES O PROYECTOS DE LEY POR CORRESPONDENCIA

2. 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."

3. En el contexto de la organización de una única serie de sesiones a partir de 2018 y con objeto de facilitar el examen de la legislación de los futuros miembros, el Consejo, en su quincuagésima primera sesión ordinaria, celebrada en Ginebra el 26 de octubre de 2017, aprobó las propuestas de modificación del documento UPOV/INF/13/1 "Orientación sobre cómo ser miembro de la UPOV" a fin de establecer un procedimiento para el examen de la legislación por correspondencia, y aprobó asimismo la revisión del documento UPOV/INF/13/1 (documento UPOV/INF/13/2) (véase el párrafo 20.g) del documento C/51/22 "Informe").

4. Con arreglo a lo que antecede, en el procedimiento de examen de leyes o proyectos de ley por correspondencia que consta en el documento [UPOV/INF/13/2](#) "Orientación sobre cómo ser miembro de la UPOV" se establece lo siguiente:

Condiciones de aplicación del procedimiento de examen de la legislación por correspondencia

"11. Podrá aplicarse el procedimiento de examen de la legislación por correspondencia si:

i) la solicitud se recibe con menos de cuatro semanas de antelación a la semana en que se celebre la sesión ordinaria más inmediata del Consejo y más de seis meses antes de la fecha de la siguiente sesión ordinaria del Consejo; y

ii) en el análisis de la Oficina de la Unión se prevé una decisión positiva y no se señalan cuestiones importantes en cuanto a la conformidad de la legislación con el Convenio de la UPOV."

5. De conformidad con el párrafo 11 del documento UPOV/INF/13/2, la carta con la solicitud de examen del proyecto de Ley se recibió el 29 de abril de 2019, es decir, más de seis meses antes de la fecha de la quincuagésima tercera sesión ordinaria del Consejo de la UPOV. La Oficina de la Unión prevé una decisión positiva y no se han señalado cuestiones importantes en cuanto a la conformidad del proyecto de Ley con el Convenio de la UPOV.

Publicación del documento analítico y del proyecto de Ley en el sitio web de la UPOV

“14. [...]

i) el documento analítico y la ley se publicarán en el sitio web de la UPOV en un plazo de seis semanas tras la recepción de la solicitud y se informará en consecuencia a los miembros y observadores del Consejo; y

ii) los miembros y observadores dispondrán de un plazo de 30 días, contados desde la fecha de publicación del documento analítico en el sitio web de la UPOV, para formular comentarios.”

6. De conformidad con el párrafo 14 del documento UPOV/INF/13/2, la Oficina de la Unión ha publicado el presente documento analítico (documento C/Analysis/2019/1) relativo a Nigeria para ofrecer a los miembros y observadores del Consejo la oportunidad de formular comentarios, a más tardar el 27 de junio de 2019 (véase la circular E-19/080 de la UPOV, del 28 de mayo de 2019). En el Anexo II del documento analítico figura el proyecto de Ley de Nigeria.

ANTECEDENTES

7. El 23 de junio de 2017, el Sr. Phillip Olosegun Ojo, Director General del Consejo Nacional de Semillas Agrícolas (NASC) de Nigeria, solicitó la asistencia de la Oficina de la Unión en la elaboración de legislación sobre la protección de las obtenciones vegetales y en el procedimiento de adhesión a la UPOV. Desde 2017, la Oficina de la Unión ha formulado varios comentarios acerca de distintas versiones del proyecto de Ley.

8. El 17 de septiembre de 2018, su Excelencia el Sr. Ogbeh solicitó la concesión a Nigeria de la condición de observador ante el Consejo, el Comité Administrativo y Jurídico (CAJ) y el Comité Técnico (TC) y manifestó la intención de dicho país de adherirse a la UPOV.

9. En el transcurso de las reuniones bilaterales con la delegación de Nigeria mantenidas en Ginebra del 28 al 30 de enero de 2019, en el marco del “Taller sobre la elaboración de legislación de conformidad con el Convenio de la UPOV” (Taller sobre legislación), la Oficina de la Unión presentó comentarios sobre una versión anterior del proyecto de Ley, señalando las disposiciones que no guardaban conformidad con el Acta de 1991.

10. El 15 de abril de 2019, la Oficina de la Unión participó en la “Seed Connect Conference” en Abuja (Nigeria) y, asimismo, en una reunión bilateral para explicar sus últimos comentarios en relación con las disposiciones pertinentes del Acta de 1991. El 16 de abril de 2019, la Oficina de la Unión recibió la confirmación de que en la versión actualizada del proyecto de Ley se recogen los últimos comentarios y las conclusiones de la reunión mantenida en Abuja.

BASE DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN NIGERIA

11. En Nigeria, la protección de las obtenciones vegetales de conformidad con el Acta de 1991 se regirá por el proyecto de Ley, una vez que este haya sido aprobado. A continuación, se ofrece un análisis del proyecto de Ley siguiendo el orden de las disposiciones sustantivas del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

12. El artículo 56 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.

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

13. En los artículos 1.c) y 5.a) del proyecto de Ley se establecen disposiciones que están 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

14. En el artículo 12 del proyecto de Ley se dispone que “[l]a protección de las variedades en virtud de la presente Ley se aplicará a todos los géneros y especies vegetales”, de conformidad con lo dispuesto en el artículo 3.2)ii) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

15. En relación con los artículos 17, 18 y 20 del proyecto de Ley, referentes a la presentación de solicitudes, no se establecen restricciones respecto de la nacionalidad, el lugar de residencia de las personas naturales o el lugar de la sede de las personas jurídicas. El artículo 21 “Derecho de prioridad” del proyecto de Ley cumple los requisitos en lo que atañe a los miembros de la Unión. 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

16. En los artículos 13 a 16 del proyecto de Ley se establecen disposiciones sobre las condiciones de protección que están en conformidad con las de los artículos 5 a 9 del Acta de 1991.

17. En el artículo 51 se establecen disposiciones relativas a la disposición facultativa del artículo 6.2) “Variedades de reciente creación” del Acta de 1991, en los términos siguientes:

“1) Cuando, de conformidad con el artículo 12, la presente Ley se aplique a un género o especie vegetal al que no se aplicase anteriormente, se considerará que las variedades pertenecientes a ese género o especie vegetal satisfacen la condición de novedad definida en el párrafo 1) del artículo 14, incluso si la venta o la entrega a terceros descrita en dicho párrafo hubiese tenido lugar en Nigeria dentro del plazo de cuatro años antes de la fecha de presentación o, en el caso de árboles y vides, dentro del plazo de seis años antes de esa fecha.

2) En el plazo de doce meses desde la entrada en vigor de la presente Ley, el obtentor de una variedad existente de reciente creación podrá presentar una solicitud de protección de esa variedad al Director del Registro para beneficiarse de las disposiciones del párrafo 1 de este artículo.”

Artículo 10 del Acta de 1991: Presentación de solicitudes

18. En el artículo 20 del proyecto de Ley se establecen disposiciones relativas a la presentación de solicitudes. No parece que el proyecto de Ley contenga disposiciones que sean incompatibles con el artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

19. En el artículo 21 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

20. En el artículo 27 del proyecto de Ley se establecen disposiciones sobre el examen de la solicitud que están en conformidad con las disposiciones del artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

21. En el artículo 28 del proyecto de Ley se establecen disposiciones sobre la protección provisional que están en conformidad con las disposiciones del artículo 13 del Acta de 1991.

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

22. En el artículo 29 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.

23. En el artículo 29.3)b) del proyecto de Ley se establecen disposiciones relativas a la disposición facultativa prevista en el artículo 14.3) "Actos respecto de ciertos productos" del Acta de 1991, en los términos siguientes:

"3) A reserva de lo dispuesto en los artículos 30 y 31 de la presente Ley, los actos que se mencionan en los apartados a) a g) del párrafo 1) de este artículo respecto de:

[...]

b) los productos fabricados directamente a partir de un producto de cosecha de la variedad protegida cubierto por la disposición del apartado a) de este párrafo, obtenido por la utilización no autorizada de dicho producto de cosecha, requerirán la autorización del obtentor, a menos que el obtentor haya podido ejercer razonablemente su derecho en relación con dicho producto de cosecha."

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

24. En el artículo 30.1) del proyecto de Ley se establecen disposiciones relativas a las excepciones obligatorias al derecho de obtentor que están en conformidad con las disposiciones del artículo 15.1) del Acta de 1991.

25. En el artículo 30.2) y 3) del proyecto de Ley se establecen las siguientes disposiciones sobre la excepción facultativa prevista en el artículo 15.2) del Acta de 1991:

"2) Con respecto a la lista de plantas agrícolas especificadas por el ministro, 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, utilice con 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 de una variedad cubierta por el artículo 29.4)a) o b) de la presente Ley.

3) Los límites razonables y los medios de salvaguardar los intereses legítimos del titular del derecho de obtentor se especificarán en el Reglamento de aplicación de la presente Ley."

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

26. En el artículo 31 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

27. En el artículo 40 del proyecto de Ley se establecen disposiciones sobre la limitación del ejercicio del derecho de obtentor que están en conformidad con las disposiciones del artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

28. 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

29. En el artículo 32 del proyecto de Ley se establecen las siguientes disposiciones relativas a la duración del derecho de obtentor, que están en conformidad con las disposiciones del artículo 19 del Acta de 1991:

“1) Salvo en los casos previstos en la parte VII de la presente Ley, el derecho de obtentor concedido en virtud de esta Ley expirará 20 años después de la fecha de concesión del derecho, con la excepción de los árboles y las vides, respecto de los cuales el derecho de obtentor expirará 25 años después de la fecha de su concesión.

2) El Director del Registro podrá prorrogar cinco años adicionales el plazo establecido en el párrafo 1) de este artículo si recibe una notificación por escrito del titular del derecho de obtentor seis meses antes de que expire el plazo original.”

Artículo 20 del Acta de 1991: Denominación de la variedad

30. En el artículo 19 del proyecto de Ley se establecen disposiciones sobre las denominaciones de las variedades que están en conformidad con las disposiciones del artículo 20 del Acta de 1991.

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

31. En el artículo 35 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

32. En el artículo 36 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

33. 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 33 del proyecto de Ley se estipula lo siguiente:

“1) El derecho de obtentor está protegido por disposiciones, tanto civiles como penales, establecidas en la legislación escrita.

2) El titular del derecho de obtentor podrá interponer ante los tribunales una demanda contra quien infrinja su derecho.”

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

“Las funciones de la Oficina consistirán en:

- a) conceder derechos de obtentor;
- b) mantener un registro de los derechos de obtentor concedidos en Nigeria y proporcionar información sobre ellos;
- c) facilitar la transferencia y la concesión de licencias de derechos de obtentor;
- d) colaborar con aquellos organismos locales e internacionales cuyas funciones comprenden cuestiones relativas a los derechos de obtentor; y
- e) desempeñar cualquier otra función que sea necesaria para la consecución de los objetivos de la presente Ley.”

35. Los artículos 23 y 27.5)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.

Conclusión general

36. En opinión de la Oficina de la Unión, el proyecto de Ley recoge las disposiciones sustantivas del Acta de 1991. A la luz de lo antedicho, una vez que el proyecto de Ley haya sido aprobado sin modificación alguna y la Ley haya entrado en vigor, Nigeria estará en condiciones de “dar efecto” a las disposiciones del Acta de 1991, como se estipula en su artículo 30.2).

[Siguen los Anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 19 de abril de 2019]

Enviada por: Sr. Audu Ogbeh
Ministro de Agricultura y Desarrollo Rural de Nigeria

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

[Objeto:][Ref.:] Presentación al Consejo de la UPOV de una solicitud oficial de examen por correspondencia del proyecto de Ley de Protección de las Obtenciones Vegetales de Nigeria

Me complace comunicarle que el Parlamento de Nigeria está en vías de aprobar un proyecto de Ley de Protección de las Obtenciones Vegetales.

Nigeria tiene previsto 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 (Convenio de la UPOV).

Según lo dispuesto en el artículo 34.3) del Convenio de la UPOV, agradecería al Consejo de la UPOV que examine la conformidad del adjunto proyecto de Ley de Nigeria con las disposiciones del Convenio de la UPOV.

Aprovecho la oportunidad para expresarle el testimonio de mi más alta consideración.

(Firmada)

[Sigue el Anexo II]

PLANT VARIETY PROTECTION (PVP) BILL, 2019

- A bill for an Act for the Protection of Plant Varieties, to establish a Plant Variety Protection office for the promotion of increased staple crop productivity for smallholder farmers in Nigeria and for related matters.

[] Commencement

PART I

Preliminary provisions

1. Objectives

The objectives of this Act are to –

- a) Promote increased staple crop productivity for smallholder farmers in Nigeria and encourage investment in Plant Breeding and crop variety development
- b) Promote increased mutual accountability in Seed sector
- c) Protection of new varieties of plants

2. Application

This Act applies to

- a) A breeder
- b) Any plant genera and species.

PART II

Plant Variety Protection Office

3. Establishment of Plant Variety Protection rights office

There is established an office to be known as the Plant Variety Protection Office (herein after referred to as the Office) which shall be domiciled in the National Agricultural Seeds Council

4. Appointment of Registrar

1. The Director General of the National Agricultural Seeds Council shall be the Registrar of the Plant Variety Protection Office and he shall appoint an officer as Deputy Registrar. –
 - (a) The Deputy Registrar shall have at least a Masters Degree in Plant Breeding, Seed Science, Agronomy or in related fields with a minimum of 7 years cognate experience who shall perform the functions assigned to him by the Registrar ; and
 - (b) There shall for the purpose of this Act be appointed such other grades of assistants as the Registrar may consider necessary for the enforcement of the provisions of this Act.
2. The Deputy Registrar shall be responsible for the day to day management and administration of the Office and answerable to the Registrar.

5. Functions of the Office

The functions of the Office shall be to -

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

6. Register of Plant Variety Protections' rights

- (1) The Registrar shall maintain a breeders' rights register in which the information required to be registered under this Act shall be entered.
- (2) The information to be listed in the register for each registered variety shall include -
 - (a) the species and denomination of a variety;
 - (b) the full name and address of the -
 - (i) applicant or holder of the breeder's right, and
 - (ii) person who bred or discovered and developed the variety, in case such person is different from the applicant or holder of the breeder's right;
 - (c) the date and time of inception of the breeder's right;
 - (d) any other matter which -
 - (i) is required by this Act or any other written law to be entered in the Register, and
 - (ii) may affect the validity or ownership of plant breeders' rights; and
 - (e) any other information which may be required by Regulations made pursuant to this Act.
- (3) The Register shall be a prima facie evidence of any matter entered therein.

7. Register to be evidence

- (1) The register shall be *prima facie* evidence of all matters directed or authorized by the Act to be noted therein.
- (2) A certificate by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorized by this Act to be done, has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or an extract from the register, certified by the registrar, shall be admitted in evidence in any court without further proof or production of the register.

8. Inspection of Register

- (1) The Register shall be open for inspection by any member of the public during business hours.
- (2) A certified copy of any entry in the Register shall be given upon request and payment of the fees prescribed in the regulations made pursuant to this Act .

9. Plant Variety Protection Advisory Committee

- (1) An ad-hoc committee to be known as the Plant Variety Protection' Advisory Committee (hereinafter referred to as the Committee) may from time to time be established to perform the functions specified in section 10 of this act.

- (2) The Director General shall, subject to gender consideration, appoint members of the Committee and it shall be composed of one representative each from-
- (a) the Council, who shall be the Chairman of the Committee;
 - (b) the Ministry;
 - (c) a registered Plant Breeder Association;
 - (d) a registered Seed Traders Association;
 - (e) the registered farmers' association;
 - (f) a University offering a course on Plant Breeding;
 - (g) the Attorney General of the Federation's office;
 - (h) the National Office for Technology Acquisition and Promotion;
 - (i) the National Quarantine Services;
 - (j) the National Biotechnology Development Agency;
 - (k) the National Biosafety Management Agency;
 - (l) the National Crop Variety Release Committee;
 - (m) Registrar of Trademarks,
 - (n) Registrar of Patents and Design; and.
 - (o) the deputy Registrar
- (3) The Legal unit of the Council shall be the secretary of the Committee.

10. Functions of the Committee

The Committee shall -

- (a) through the Director General of NASC advise the Minister on efficient enforcement of this Act;
- (b) receive reports of plant breeders' rights applications from the Registrar;
- (c) receive information on the plant breeders' rights reports and on the Registrar's tests results; and
- (d) manage the operations of the Fund.

11. Powers of the Committee

The Committee shall -

- (a) make its own rules of procedure;
- (b) give the Registrar directives of a specific and general nature; and

call on breeders and any other interested person for hearing on plant variety protection matters .

PART III

Varieties to be protected

12. Genera and Species to be protected

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

13. Conditions of Protection

- (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 –
- (a) variety is designated by a denomination in accordance with the provisions of section 19 of this Act; and
 - (b) applicant complies with the provisions of this Act and that he pays the fees prescribed in the Regulations made pursuant to this Act.

14. Novelty

- (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 of to any person by or with the consent of the breeder, for purposes of exploitation of the variety in -
- (a) Nigeria, earlier than one year before the date of filing the application; and
 - (b) a territory other than Nigeria earlier than -
 - (i) four years, or
 - (ii) six years before the said date in the case of a tree or vine.
- (2) Subject to subsection (1) of this section, the following acts shall not be considered to result in the loss of novelty -
- (a) a trial of the variety not involving sale or disposal of to others for purposes of exploitation of the variety; and
 - (b) sale or disposal of to –
 - (i) others without the consent of the breeder,
 - (ii) any person that forms part of an agreement for the transfer of rights to the successor in title,
 - (iii) 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 the property in the multiplied material reverts to the breeder and the multiplied material is not used for the production of another variety,
 - (iv) 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,
 - (v) 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,
 - (vi) 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 (iii) to (v) provided that the said material is sold or disposed of without variety identification for the purposes of consumption, and
 - (vii) any person due to or in consequence of the fact that the breeder had displayed the variety at an official or officially recognized exhibition.

15. Distinctness

- (1) A variety shall be deemed to be 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) For purposes of subsection (1) of this section, the filing of an application for the granting of breeder's right or for the entering of another variety in the official register of varieties in any country, shall be deemed to render that other variety a matter of a 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 varieties.

16. Uniformity and stability

A variety shall be deemed to be –

- (a) 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; and
- (b) 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 such cycle.

PART IV

Application for Plant Variety Protection rights

17. Application for Plant Variety Protection's right

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

18. The Contents of an application

The application for breeder's right relating to a variety shall contain -

- (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 and the description of the characteristics of the variety as the Registrar may require;
- (d) samples of the propagating material in such quantities as the Registrar may require; and
- (e) any additional information, documents and material that may be required in connection with the application as may be prescribed in the Regulations.

19. Variety Denomination

- (1) The variety shall be designated by a denomination which shall be its generic designation.
- (2) Subject to subsection (6) of this section, the rights in the designation registered as the denomination of the variety shall not hamper the free use of the denomination in connection with the variety even after the expiration of the breeder's right.
- (3) The denomination -
 - (a) shall enable the variety to be identified;
 - (b) shall not mislead or 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 an international organization dealing with plant breeders' rights matters to which Nigeria is a 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.

- (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 –
 - (a) refuse to register it; and
 - (b) direct the applicant to propose another denomination within the period to be prescribed in the Regulations made pursuant to this Act.
- (5) The Registrar shall register the denomination 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) of this section, is obliged to use it, the Registrar shall direct 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 Nigeria 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 organization shall be submitted by the applicant to the Registrar.
- (8) The Registrar shall –
 - (a) register the denomination submitted, unless he considers the denomination unsuitable within Nigeria; and
 - (b) direct the applicant to submit another denomination where the denomination is unsuitable.
- (9) The Registrar shall in writing, inform the authorities of the members of UPOV on matters concerning variety denominations, in particular the submission, registration and cancellation of the denominations.
- (10) Any person who, within Nigeria, 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 of 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

20. The filling date of an application

- (1) Shall be the date which the application was filed at the Registry by the applicant .
- (2) For the purposes of this section, an application shall be deemed to have been submitted in the form prescribed under this Act.

21. Right of Priority

- (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 breeder's right matters which Nigeria is a party shall enjoy a right of priority for a maximum period of twelve months.
- (2) The period referred to in subsection (1) of this section shall be computed from the date of filing the first application and the day of filing shall not be included in the latter period.
- (3) The applicant shall, in order to benefit from the right of priority in the subsequent application in Nigeria, claim within twelve months the priority of the first application.
- (4) The Registrar may, direct the applicant to furnish, within a period of not less than three months from the filing date, a certified true copy of the documents which constitute the first application

that was filed and samples or other evidence indicating that the variety which is the subject matter of both applications is the same.

- (5) The applicant may submit to the Registrar any necessary information, document or material required in this Act for the purpose of the examination within a period of two years after the expiration of the period of priority or a period of six months where the first application is rejected or withdrawn.

22. Amendment of application

- (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 23 of this Act, the applicant shall be liable to pay the cost of re-publication.

23. Publication of Notice of Application

The Registrar shall publish in the Federal Government Gazette or in two national daily newspapers of wide circulation, a notice of every filed application for plant breeder's 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.

24. Objection to the proposed grant of breeder's right

- (1) Any person may submit to the Registrar a written objection to the matter specified in the notice under section 23 of this Act within one month of its publication.
- (2) A notice of objection made under sub-section (1) of this section shall -
 - (a) specify the grounds on which the objection is based;
 - (b) include a statement of the facts alleged in support of the grounds stated under paragraph (a) of this sub-section; and
 - (c) be supported by an affidavit or other proof, where required by the Registrar.

25. Grounds for Objection

An objection submitted pursuant to section 24 of this Act shall be based on the allegation that the -

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

26. Notice to the applicant and reply to an objection

- (1) The Registrar shall, within two weeks from the date on which an objection has been filed –
 - (a) notify the applicant that an objection has been made pursuant to section 24 of this Act; and
 - (b) provide the applicant with a copy of the notice of objection and all the supporting documents that have been submitted with the objection.

- (2) The applicant may submit a written response to the objection to the Registrar within two weeks or such further period as the Registrar may allow from the date of the notification made under sub-section (1) of this section.
- (3) Where the applicant submits a response in pursuance to sub-section (2) of this section, he shall send a copy to the person making the objection.
- (4) The Minister may reply to any objection made against the Federal Government.

27. Disposition of applications

- (1) The Registrar shall examine an application and reply upon –
 - (a) completion of the notice requirements under section 23 of this Act; and
 - (b) the expiration of time limits for objections and replies.
- (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 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 purpose of an examination, direct the breeder to provide the necessary information, document or material.
- (4) The Registrar shall grant the breeder's right where he concludes that -
 - (a) the applicant is entitled to file the application;
 - (b) the application conforms to the requirements of this Act;
 - (c) no objection has been filed;
 - (d) where an objection has been filed, there are no grounds for objection; and
- (5) For each variety for which breeder's right is granted, the Registrar shall-
 - (a) issue a certificate of registration to the holder;
 - (b) enter the variety in the register as provided for under section 6 of this Act; and
 - (c) publish a notice of the grant of breeder's right and the approved denomination in the Gazette.

PART VI

Provisional and final protection

28. Provisional protection

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 of this Act 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 29 of this Act.

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

- (1) Subject to sections 30 and 31 of this Act, 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 the paragraphs (a) to (f) of this subsection.
- (2) The holder of the breeder's right may give his authorization subject to conditions and limitations.
- (3) Subject to the provisions of sections 30 and 31 of this Act, the acts referred to in paragraphs (a) to (g) of sub-section (1) of this section in respect of –
- (a) 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; and
 - (b) products made directly from harvested material of the protected variety falling within the provision of paragraph (a) of this subsection 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.
- (4) The provisions of sub-sections (1), (2) and (3) of this section shall apply to a variety -
- (a) that is essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - (b) which is not clearly distinguishable in accordance with section 15 of this Act from the protected variety; and
 - (c) whose production requires the repeated use of the protected variety.
- (5) For the purposes of paragraph (a) of subsection (4), a variety shall be deemed to be essentially derived from another variety (initial 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 differences 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.
- (6) For the purpose of this section, an essentially derived variety may be obtained through –
- (a) the selection of a natural or induced mutant or of somaclonal variant;
 - (b) the selection of a variant individual from plants of the initial variety; and
 - (c) backcrossing, or transformation by genetic engineering.

30. Exceptions to the breeder's right

- (1) The Breeder's right shall not extend to any act carried out -
- (a) privately and for non-commercial purposes;
 - (b) for experimental purposes; and
 - (c) for the purpose of breeding any other variety, and, except where the provisions of section 29 (4) to (6) of this Act apply, any act referred to in section 29 (1) to (3) in respect of such other varieties.
- (2) For the list of agricultural crops specified by the Minister, 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 a variety referred to in section 29 (4)(a) or (b) of this Act.
- (3) The reasonable limits and the means of safeguarding the legitimate interest of the holder of the breeder's right shall be specified in the regulations made pursuant to this Act.

31. Exhaustion of the breeder's right

- (1) The breeder's right shall not extend to an act concerning any material of the protected variety or of a variety covered by the provisions of section 29(4) to (6) of this Act, which has been sold or otherwise marketed by the breeder or with his consent in Nigeria, or any material derived from the said material, unless the act involves-
 - (a) further propagation of the variety in question; or
 - (b) 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.

32. Duration of a plant breeders' right

- (1) Except as specified in part VII of this Act, the breeders' rights granted under this Act shall expire after 20 years from the date of the grant except for trees and vines whose breeders' rights shall expire after 25 years from the date of grant.
- (2) The Registrar may extend the duration referred to in subsection (1) of this section for an additional five years where he receives a six month written notice from the holder of the Breeder's Right before the expiration of the original term.

33. Protection and damages for infringement of a breeder's right

- (1) A breeder's right is 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 the court.

34. Fees

The holder of breeder's right shall pay fees at time and rate specified in the Regulations made pursuant to this Act.

PART VII

Nullity, cancellation and surrender of breeder's right

35. Nullity of the breeder's right

- (1) The Registrar shall declare a breeder's right granted by him null and void where it is established that -
 - (a) the variety did not comply with the conditions specified in sections 14 or 15 at the time the breeder's right was granted;
 - (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 paragraphs (a) or (b) of section 16 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.

36. Cancellation of the breeder's right

- (1) The Registrar may cancel a breeder's right granted by him where he has established that the conditions specified in paragraphs (a) or (b) of section 16 of this Act are no longer fulfilled.
- (2) Without prejudice to sub-section (1) of this section, the Registrar may cancel a breeder's right granted by him, within the prescribed period provided in the Regulations made pursuant to this Act, where the holder of the breeder's right -
 - (a) does not provide the Registrar with the information, documents or materials deemed necessary for verifying the maintenance of the variety;
 - (b) fails to pay the fees which may be payable to keep his right in force; or
 - (c) does not propose another suitable denomination where the denomination of the variety is cancelled after the grant of the right.

37. Notification of nullification and cancellation

- (1) The Registrar shall notify the holder of the breeder's right of any decision made pursuant to sections 35 and 36 of this Act and the grounds for such decision.
- (2) A person who receives the notice referred to in sub-section (1) of this section may send a written objection to the Registrar within thirty days from the date of receipt of the notification.
- (3) The Registrar may hold, within a reasonable time after receipt of an objection, a hearing or may decide the matter based on the written submission of the 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 or two daily national newspapers of wide circulation*, after the expiration of thirty days from the date of the decision or following a decision made under sub-section (3) of this section.
- (5) The holder of the breeder's right shall return to the Registrar any certificate of the grant of a breeder's right that has been nullified or cancelled under this section.

38. Surrender of breeder's right

- (1) A holder of a breeder's right may, by written notice to the Registrar, surrender the right.
- (2) The Registrar shall, within one month from the date of receiving the notice referred to sub-section (1) of this section, terminate the breeder's right and publish a notice in the *Gazette or two daily national newspapers* of the termination.

PART VIII

Authorization and assignments

39. Authorization or assignment of breeder's right

The holder of breeder's right may assign or authorize any person, to undertake any activity described or referred to in section 29 of this Act.

40. Restrictions on the exercise of breeder's right

- (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 authorizing a third party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

41. Information on authorization or assignment of breeder's right

- (1) A person authorized under section 39 of this Act may, in not more than sixty days from the effective date of the authorization –
 - (a) notify the Registrar of the transaction; and
 - (b) submit a copy of the authorization agreement to the Registrar.
- (2) The Registrar may prescribe the form and manner of the notification to be made under subsection (1) of this section.
- (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.

PART IX

Appeals

42. Appeals from decision of Registrar

- (1) An appeal from the decisions of the Registrar made under this Act shall lie to the Minister.
- (2) A person who is aggrieved by any of the decisions of the Registrar may appeal to the Minister 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.

43. Decisions of the Minister on Appeals

- (1) The Minister –
 - (a) may conduct an investigation, if it deems it necessary to do so, and may hold a hearing of the appeal or make a decision based on written submissions;
 - (b) may confirm, set aside or vary any decision or action of the Registrar and may order the Registrar to carry out his decision; and
 - (c) shall give the reasons for his decision in writing, and copies of the decision shall be given to the appellant, the Registrar and any other interested party.
- (2) Subject to the provisions of this section, a decision of the Minister shall be final.

PART X

Plant breeders' rights development fund, accounts, audit and annual report

44. Plant Breeders Rights Development Fund

- (1) The Minister shall, after consultation with the Minister responsible for finance matter, establish a fund to be known as the "Plant Breeders' Rights Development Fund" into which money realized under this Act shall be kept.
- (2) The sources of moneys for the fund shall include –
 - (a) fees payable under this Act; and
 - (b) any donation or grant from the government or any other person.
- (3) The purposes of the fund shall be for the financing of -
 - (a) development and promotion of the plant breeders' rights;
 - (b) training of plant breeders on matters concerning plant breeders' rights;
 - (c) establishment and maintenance of the variety collection and data base; and

- (d) any other activity relating to administration of the Act.
- (4) In addition to the functions entrusted to it under section 10 of this Act, the committee shall operate as the fund committee, whereby –
 - (a) the registrar shall be a member of the fund committee and shall serve as the secretary of the fund; and
 - (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 fund shall be kept properly and maintained and be subject to audit.

45. Accounts and audit

- (1) The plant breeders' rights office shall cause to be kept and maintain proper books of accounts with respect to –
 - (a) all sums of money 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 31th December 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 Accountant General and Auditor General.

46. Annual report to be submitted to The Minister

- (1) The Registrar shall, submit to the Minister a copy of the audited accounts and annual report on the activities of the Plant Breeders' Office in respect of that particular year not later than six months after the end of each financial year.
- (2) The Registrar 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

47. Offences and penalties

- (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;
 - (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 r 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 subsection 10 of section 19 of this Act;
 - (i) gives false information in any application or makes any false statement in evidence,
 - (j) violates breeders right,
 - (k) any person who violates the provisions of section 29; and
 - (l) Contravenes any other provisions of this Act
- commits an offence.
- (2) Any person who commits an offence referred to under this Act shall be liable upon conviction
- (a) as a first offender, to imprisonment for a term not exceeding one year or a fine not exceeding N1,000,000; and
 - (b) in the event of such person having been previously convicted under this section, he is liable to imprisonment for a term not exceeding two years or a fine of N2,000,000 or both.

PART XII

General provisions

48. Collection of fees

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

49. Confidentiality and Disclosure

- (1) The contents of any license or assignment shall be confidential unless both parties agreed to permit access to a third party and only to the extent of the permission so granted.
- (2) The applicant may declare some portion of the application to be confidential, where declared so, the Registrar shall determine whether the application can be processed without the publication or other violation of that 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 the Act, except to-
 - a) The Minister, the Registrar or any other person for the purposes of carrying out his duties or the performance of his function under this Act;
 - b) A police officer for the purposes of an investigation or inquiry relating to the enforcement of the provision 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 N5,000,000 or an imprisonment for a period not exceeding one year or to both.

50. Action against the state

- (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 its applies to any other person.

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

51. Breeders right in respect of existing varieties of recent creation

- (1) Where, according to Section 12, this Act applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) of Section 14 even where the sale or disposal of to others described in that paragraph took place in Nigeria within four years before the filing date or, in the case of trees or of vines, within six years before the said date.
- (2) 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 to benefit from the provisions under paragraph 1 of this Section

52. Agreement with foreign governments

The Minister may enter into bilateral or multilateral agreements with the states and intergovernmental or non-governmental organizations in order to facilitate cooperation in testing.

53. Agents

- (1) When the breeder is a non-resident or in the case of a corporation, does not have its registered office in Federal Republic of Nigeria, he shall have an agent who is resident in Federal Republic of Nigeria.
- (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.

54. Registrar to make guidelines

The Registrar shall make guidelines for the proper implementation of this Act and Regulations made under this Act.

55. Regulations

- (1) The Registrar shall with the approval of the Minister make Regulations under this Act.
- (2) Without prejudice to the generality of the sub-section (1) of this section, 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 materials to be submitted with respect to a variety;
 - d) the test, trials, examinations and other steps to be taking with respect to a variety, by applicants or by the Registrar and the time within with any such steps are to be taken; and
 - e) the fees to be paid in respect of-
 - (i) Application for the grants of breeder's right, for extension of its terms,
 - (ii) Maintenance of breeder's right,
 - (iii) Request for administrative review, including objections to nullity and cancelation of breeder's right, appeals from administrative decisions and other administrative actions,
 - (iv) Technical examination,

- (v) The inspection of obtained record in the Registrar or other transaction involving a breeder's right,
- (vi) Provision of certified copy of any entry therein, and
- (vii) Any other fees to be paid under this Act.

56. Interpretation

In this Act -

"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;

"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) person who is the employer of the person who bred or discovered and developed, a variety or who has commissioned the latter'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 in this Act;

"Business hours" means 9am-3pm Mondays –Fridays, excluding public holidays;

"Council" means the national agricultural seed council (NASC)

"Director General" means the director general of national agricultural seed council (NASC).

"Fund" means the Fund established under section 44 of this Act;

"Gazette" means the Federal Government Gazette;

"Minister" means the Minister responsible for agriculture;

"Ministry" means the Ministry responsible for Agriculture;

"Register" means the Register of plant breeders' rights kept in terms of section 6 of this Act;

"Registrar" means the Registrar of Plant Breeders' Rights appointed in accordance with section 4 of this Act;

"Propagating 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

- (a) prepare for sale or exchange or dispose of for any consideration or
- (b) 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 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.

57. Short title

This Act may be cited as the Plant Varieties Protection Act, 2019.