

Consejo

C/Developments/2021/1

Documento sobre novedades

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**NOVEDADES SOBRE LA LEY DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES
(LEY 1050 DE 2020) DE GHANA***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. El objetivo del presente documento es invitar al Consejo a examinar la “Ley de Protección de las Obtenciones Vegetales” (Ley 1050 de 2020) de Ghana (en adelante, Ley) y reafirmar su decisión positiva del 24 de octubre de 2013, relativa a la conformidad con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales.

PROCEDIMIENTO PARA REAFIRMAR UNA DECISIÓN DE CONFORMIDAD DEL CONSEJO 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. El documento UPOV/INF/13/2, “Orientación sobre cómo ser miembro de la UPOV”, establece el procedimiento para reafirmar una decisión de conformidad del Consejo por correspondencia, como se indica a continuación:

Aplicabilidad del procedimiento para reafirmar una decisión de conformidad del Consejo por correspondencia

e) *Decisión en la que consta la opinión del Consejo*

19. [...]

iii) La decisión del Consejo en la que conste la opinión se refiere a un proyecto de ley y es positiva; sin embargo, durante el procedimiento de aprobación de la ley se introducen cambios: si, en opinión de la Oficina de la Unión, esos cambios no afectan a las disposiciones sustantivas del Acta de 1991 del Convenio de la UPOV, la Oficina de la Unión elaborará un documento en el que se expongan las modificaciones y su opinión, y se invitará al Consejo a que reafirme su decisión de conformidad. Si el Consejo reafirma su decisión de conformidad, el Estado u organización intergubernamental podrá depositar su instrumento de adhesión al Convenio de la UPOV (véase la sección C, “Aplicación del Convenio”). El procedimiento de examen de la legislación por correspondencia se aplicará, *mutatis mutandis*, al procedimiento para reafirmar una decisión de conformidad del Consejo si se cumplen las condiciones indicadas en el párrafo 11;”

5. De conformidad con el párrafo 19.iii) del documento UPOV/INF/13/2, el procedimiento de examen de la legislación por correspondencia se aplicará, *mutatis mutandis*, al procedimiento para reafirmar una decisión de conformidad del Consejo si se cumplen las condiciones indicadas en el párrafo 11 del documento UPOV/INF/13/2.

“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.”

6. De conformidad con el párrafo 11 del documento UPOV/INF/13/2, la carta con la solicitud de reafirmar la decisión de conformidad del Consejo de 2013 fue recibida el 21 de abril de 2021, es decir, más de seis meses antes de la fecha de la quincuagésima quinta sesión ordinaria del Consejo. La Oficina de la Unión prevé una reafirmación de la decisión positiva y no se han señalado cuestiones importantes en relación con los cambios introducidos durante el procedimiento de aprobación de la Ley en lo que respecta a su conformidad con el Convenio de la UPOV.

Publicación del documento sobre novedades y la Ley de Protección de las Obtenciones Vegetales 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.”

7. De conformidad con el párrafo 14 del documento UPOV/INF/13/2, la Oficina de la Unión ha publicado el presente documento relativo a las novedades de la Ley de Ghana (documento C/Developments/2021/1) en el sitio web de la UPOV con el fin de brindar a los miembros y observadores del Consejo la oportunidad de formular comentarios (véase la Circular E21/077 de la UPOV, de 28 de mayo de 2021).

ANTECEDENTES

8. El Gobierno de Ghana inició el procedimiento de adhesión a la UPOV mediante una carta fechada el 25 de septiembre de 2012, dirigida al secretario general de la UPOV, en la que el Excmo. Dr. Benjamin Kunbuor, fiscal general y ministro de Justicia de la República de Ghana, solicitaba el examen del proyecto de Ley sobre los Obtentores para determinar su conformidad con el Acta de 1991 del Convenio de la UPOV. El Consejo, en su cuadragésima sexta sesión ordinaria, celebrada en Ginebra el 1 de noviembre de 2012, examinó el proyecto de Ley y decidió (véase el documento [C/46/19](#), “Informe”, párrafo 12):

- “a) tomar nota del análisis expuesto en el documento C/46/14 y de las siguientes modificaciones propuestas por la Delegación de Ghana respecto de la Ley de Ghana sobre los Obtentores (proyecto de Ley):
 - i) la supresión de la palabra “*conclusively*” (de forma concluyente) en el artículo 15.2);
 - ii) la sustitución de las palabras “*Plant Breeders Advisory Committee*” (Comité Asesor de Obtentores) por “*Plant Breeders Technical Committee*” (Comité Técnico de Obtentores) en el artículo 30; y
 - iii) la supresión de la palabra “*seed*” (semillas) en el artículo 43.g);
- b) tomar una decisión positiva sobre la conformidad del proyecto de Ley con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, que habilitará a Ghana, una vez que se introduzcan en el proyecto de Ley las modificaciones recomendadas en los párrafos 10, 18 y 24 del documento C/46/14, y en el apartado a) *supra*, sin ninguna modificación adicional, y se adopte el proyecto de Ley y la Ley entre en vigor, para depositar su instrumento de adhesión al Acta de 1991; y
- c) autorizar al Secretario General a informar al Gobierno de Ghana sobre tal decisión.”

9. Mediante carta fechada el 4 de septiembre de 2013 y dirigida al secretario general de la UPOV, la Excm. Sra. Marietta Brew Appiah-Opong, fiscal general y ministra de Justicia de Ghana, informó de que, durante la primera lectura del proyecto de Ley por el Parlamento de Ghana, en junio de 2013, se habían introducido cambios adicionales, que no formaban parte de la decisión del Consejo del 1 de noviembre de 2012, y solicitó la confirmación de la decisión del 1 de noviembre de 2012 por el Consejo de la UPOV. El Consejo, en su cuadragésima séptima sesión ordinaria, celebrada en Ginebra el 24 de octubre de 2013, decidió (véase el documento [C/47/20](#), “Informe”, párrafo 14):

“a) tomar nota de la información facilitada por la Delegación de Ghana respecto a que el texto del Artículo 10 del proyecto de Ley que figura en el Anexo II del documento C/47/18 se ha modificado del modo siguiente: “cuando el solicitante que presenta la solicitud es un causahabiente, éste debe apoyar dicho solicitante dicha solicitud aportando pruebas de sus derechos”;

b) tomar nota de que el proyecto de Ley de Ghana sobre los Obtentores, presentado al Parlamento, incorpora las modificaciones de la decisión del Consejo de 1 de noviembre de 2012 (véase el párrafo 12 del documento C/46/19 “Informe”, y el párrafo 2 del documento C/47/18);

c) acordar que las modificaciones adicionales, según constan en el Anexo II del documento C/47/18, incluido el cambio mencionado en el párrafo a) *supra*, no afectan a las disposiciones sustantivas del Acta de 1991 del Convenio de la UPOV;

d) confirmar la decisión del 1 de noviembre de 2012 sobre la conformidad del proyecto de Ley.”

10. Mediante carta fechada el 21 de abril de 2021 y dirigida al secretario general de la UPOV, el Honorable Sr. Godfred Yeboah Dame, fiscal general y ministro de Justicia, de la Fiscalía General y del Ministerio de Justicia de Ghana, informó de que el Parlamento de Ghana había aprobado la “Ley de Protección de las Obtenciones Vegetales” (Ley 1050 de 2020) de Ghana y que la Ley había sido promulgada por el presidente el 29 de diciembre de 2020. El fiscal general y ministro de Justicia, Sr. Yeboah Dame, también informó al secretario general de que, durante el trámite parlamentario, se introdujeron cambios en el proyecto de Ley de Ghana sobre los Obtentores que no formaban parte de la decisión del Consejo de la UPOV del 24 de octubre de 2013, y solicitó la confirmación de la decisión positiva de 2013 por parte del Consejo de la UPOV. La carta se reproduce en el Anexo I del presente documento. El texto completo de la Ley de Protección de las Obtenciones Vegetales (Ley 1050 de 2020) de Ghana que se adjunta a la carta está disponible en https://www.upov.int/meetings/es/details.jsp?meeting_id=60600.

CAMBIOS INTRODUCIDOS EN LA LEY DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES (LEY 1050 DE 2020) DE GHANA EN RELACIÓN CON EL TEXTO PRESENTADO AL CONSEJO EN 2013

11. La Ley incorpora los cambios previstos en las decisiones del Consejo de 1 de noviembre de 2012 y 24 de octubre de 2013 (véanse los apartados 8.a) y 9.a) anteriores). Dichas modificaciones, así como los cambios adicionales introducidos en el texto de la Ley como resultado del trámite parlamentario, en relación con el texto del proyecto de Ley presentado al Consejo en 2013, se presentan con marcas de revisión en el Anexo II del presente documento (solo en inglés).

12. El texto del artículo 19.6) de la Ley contiene las siguientes disposiciones relativas a las variedades esencialmente derivadas conforme al artículo 14.5) del Acta de 1991, que difieren de las disposiciones correspondientes del proyecto de Ley de 2013:

“Alcance y ~~duración~~ Duración del ~~derecho~~ Derecho de ~~obtener~~ Obtentor

Necesidad de autorización del titular de un derecho de obtentor para actos específicos

[Artículo] ~~19.20-~~ 1) [...]

6) Se puede obtener una variedad esencialmente derivada mediante la selección de un mutante o una variante que incluya

a) un mutante natural o inducido~~;~~

b) una variante somaclonal~~;~~

c) un individuo variante a partir de una planta de la variedad inicial, retrocruzamiento o transformación por ingeniería genética~~;~~ o

d) cualquier otro mutante o variante de una planta de la variedad inicial.”

13. El texto del artículo 22) de la Ley contiene las siguientes disposiciones relativas a la reglamentación económica conforme al artículo 18) del Acta de 1991, que difieren de las disposiciones correspondientes del proyecto de Ley de 2013:

“Reglamentación económica

~~22, 23.~~ El derecho de obtentor ~~será independiente de~~ está sujeto a toda medida adoptada por la República para regular, dentro de Ghana, la producción, certificación y comercialización del material de una variedad o la importación o exportación del material.”

14. En la carta del 21 de abril de 2021, dirigida al secretario general de la UPOV (véase el Anexo I), el fiscal general y ministro de Justicia, Sr. Yeboah Dame, aclaró que la referencia a “el derecho de obtentor” en el artículo 22, “Reglamentación económica”, de la Ley 1050 de 2020 debe entenderse como una referencia a “El material de la variedad incluida en el derecho de obtentor”.

Conclusión general

15. Con arreglo a lo que antecede y a juicio de la Oficina de la Unión, las modificaciones introducidas en la Ley durante el trámite parlamentario no afectan a las disposiciones fundamentales del Acta de 1991 del Convenio de la UPOV.

[Siguen los anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 21 de abril de 2021]

Enviada por: El Honorable Sr. Godfred Yeboah Dame,
fiscal general y ministro de Justicia, de la Fiscalía General y del Ministerio de Justicia de Ghana

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

Estimado Secretario General Tang:

RE: APROBACIÓN DE LA LEY DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES

Mediante carta fechada el 4 de septiembre de 2013, Ghana solicitó al Consejo de la UPOV que reafirmara su decisión de 2012 sobre la conformidad del proyecto de Ley de Ghana sobre los Obtentores con el Acta de 1991 del Convenio de la UPOV, y el Consejo, en su cuadragésima séptima sesión ordinaria, celebrada el 24 de octubre de 2013, decidió:

“a) tomar nota de la información facilitada por la Delegación de Ghana respecto a que el texto del Artículo 10 del proyecto de Ley que figura en el Anexo II del documento C/47/18 se ha modificado del modo siguiente: “cuando el solicitante que presenta la solicitud es un causahabiente, éste debe apoyar ~~dicho solicitante~~ dicha solicitud aportando pruebas de sus derechos”;

b) tomar nota de que el proyecto de Ley de Ghana sobre los Obtentores, presentado al Parlamento, incorpora las modificaciones de la decisión del Consejo de 1 de noviembre de 2012 (véase el párrafo 12 del documento C/46/19 “Informe”, y el párrafo 2 del documento C/47/18);

c) acordar que las modificaciones adicionales, según constan en el Anexo II del documento C/47/18, incluido el cambio mencionado en el párrafo a) *supra*, no afectan a las disposiciones sustantivas del Acta de 1991 del Convenio de la UPOV;

d) confirmar la decisión del 1 de noviembre de 2012 sobre la conformidad del proyecto de Ley.”

Tengo el placer de informarle de que el Parlamento de Ghana ha aprobado la “Ley de Protección de las Obtenciones Vegetales” (Ley 1050 de 2020), que ha sido promulgada por el presidente el 29 de diciembre de 2020. Durante el trámite parlamentario, se introdujeron unos cambios en el proyecto de Ley de Ghana sobre los Obtentores, que no formaban parte de la decisión del Consejo de la UPOV del 24 de octubre de 2013.

Con el fin de contribuir al examen por el Consejo de la UPOV, me gustaría aprovechar esta oportunidad para aclarar que la referencia a “el derecho de obtentor” en el artículo 22, “Reglamentación económica”, de la Ley 1050 de 2020 debe entenderse como una referencia a “El material de la variedad incluida en el derecho de obtentor”.

Con objeto de completar el procedimiento de adhesión, quisiera solicitar a la Oficina de la Unión que elabore un documento con las modificaciones del texto del proyecto de Ley que fue examinado por el Consejo de la UPOV en 2013, a fin de invitar a dicho Consejo a que ratifique su decisión de conformidad de 2013, por correspondencia. Se adjunta la Ley de Protección de las Obtenciones Vegetales (Ley 1050 de 2020) de Ghana para facilitar su consulta.

Aprovecho la oportunidad para saludarle atentamente.

Godfred Yeboah Dame FISCAL GENERAL Y MINISTRO DE JUSTICIA

[Sigue el Anexo II]

CHANGES INTRODUCED IN THE PLANT VARIETY PROTECTION ACT (ACT 1050 OF 2020) OF GHANA IN
RELATION TO THE TEXT PRESENTED TO THE COUNCIL IN 2013

The changes introduced in the text of the Act, as a result of the parliamentary procedure, in relation to the text of the Draft Law submitted to the Council in 2013 are presented in revision mode in this Annex.

~~**Strikethrough**~~ indicates deletion from the text presented to the Council in 2013.

Underlining indicates insertion to the text presented to the Council in 2013.

A
BILL
ENTITLED
PLANT BREEDERS ACT, 2013
PLANT VARIETY PROTECTION ACT, 2020 Act 1050

ARRANGEMENT OF SECTIONS

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BILL ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED

PLANT ~~BREEDERS~~VARIETY PROTECTION ACT, ~~2013~~2020

AN ACT to provide for the grant and protection of plant breeder rights and for related matters.

DATE OF ASSENT: 29th December, 2020.

PASSED by Parliament and assented to by the President:

Application and ~~econditions~~Conditions of ~~variety~~Variety

Scope of application

1. The provisions of this Act apply to all plant genera and plant species.

Meaning of variety

2. 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 plant breeder 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 characteristics that result from a given genotype or combination of genotypes; and
- (c) considered as a unit with regard to ~~its~~ the suitability of the variety for being propagated unchanged.

Conditions of variety for the protection of ~~a~~ plant breeder right

3. A variety shall not be deemed suitable for the purpose of the protection of a plant breeder right unless ~~it~~ the variety is

- (a) new;
- (b) distinct;
- (c) uniform; and
- (d) stable.

Novelty

4. A variety is new if at the date of filing the relevant application for registration as a variety or where applicable on the priority date, the 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 the purpose of exploitation of the variety

- (a) in Ghana, earlier than one year before the date of filing the application, or
- (b) ~~(b)~~ — in a foreign country, earlier than
 - (i) four years; or
 - (ii) six years in the case of trees or vines

before the date on which protection is applied for under this Act.

Distinctness

5. (1) ~~A~~ variety is distinct if ~~the variety~~ is clearly distinguishable from any other variety, the existence of which is a matter of common knowledge
- (a) at the date of filing the application for registration, or
 - (b) on the priority date of the application for registration.
- (2) For the purpose of subsection (1), the filing of an application for a plant breeder right, or for the entry of another variety into a catalogue of varieties admitted to trade in any country shall be deemed to render that other variety a matter of common knowledge from the date of the application, if the application leads to the grant of the plant breeder right or the entry in the catalogue.

Uniformity

6. A variety is uniform if, subject to the variation that may be expected from the particular features of ~~the~~ propagation, ~~it of the variety, that variety~~ is sufficiently uniform in ~~the~~ relevant characteristics ~~of the variety~~.

Stability

7. A variety is stable if ~~the~~ relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle or propagation, at the end of that cycle.

Application for ~~breeder right~~ Plant Breeder Right

Eligibility for a plant breeder right

8. (1) ~~A~~ breeder is eligible for a plant breeder right if that breeder duly makes an application for ~~the plant breeder right~~ in accordance with this Act.
- (2) The eligibility of a breeder to apply for a plant breeder right shall not be affected by the fact that, the same variety
- (a) has not been applied for, or
 - (b) has been refused in a foreign country.
- (3) Where two or more persons have jointly bred or discovered and developed a variety, ~~they the breeders~~ are eligible to ~~apply jointly~~ apply for a plant breeder right with respect to ~~that the~~ variety.
- (4) Where a variety has been bred or discovered and developed in the execution of a commission or a contract of employment, the person that commissioned the work or the employer has the right to apply for the ~~respective specific~~ plant breeder right except as otherwise provided in the contract of employment.
- (5) Where a variety has been bred or discovered and developed by ~~several two or more~~ persons independently of ~~each other one another~~, the person who makes an application with an earlier prior date for protection has the right to apply for the plant breeder right.

Application for a plant breeder right

9. (1) A person may apply to the Registrar for the grant of a plant breeder right if that person is eligible in accordance with section 8.
- (2) An application for the grant of a plant breeder right may be filed by the breeder of a new variety who is
- (a) ~~(a)~~ a citizen or ~~who is~~ resident in the country;
 - (b) a foreign citizen or ~~a~~ resident in the territory of a party to a treaty to which the Republic is ~~a~~ party;
 - (c) a legal entity that has ~~its a~~ registered office within the territory of ~~a~~ party to a treaty to which the Republic is ~~a~~ party; or
 - (d) a legal entity that has ~~its a~~ registered office in the country.

~~The application for a plant breeder right~~

- ~~(a) is subject to the payment of the prescribed fee; and~~
- ~~(b) shall contain the following details:~~

(3) The application for a plant breeder right shall contain the following details:

- (a) ~~(i)~~ the name and ~~the~~ address of the applicant;
- (b) ~~(ii)~~ the name and address of the person that ~~has~~ bred or discovered and developed ~~a~~ the variety if ~~it~~ that person is different from the applicant;
- (c) ~~(iii)~~ the identification of the botanical taxon and the Latin or common name, of the variety;
- (d) ~~(iv)~~ the generic designation proposed for the variety or a provisional designation;
- (e) ~~(v)~~ a technical description of the variety; and
- (f) ~~(vi)~~ any information, document or material required for the purposes of examination;

and is subject to the payment of the prescribed fee.

(4) Where the applicant is not resident in Ghana, the applicant shall appoint a legal representative or agent in ~~this country~~ Ghana to process the application.

(5) A person referred to in paragraph (b) or (c) of subsection (2), shall enjoy within Ghana the same treatment as is accorded by this Act to citizens.

Presumption of protection

10. (1) An applicant shall, in the absence of any proof to the contrary, be presumed to be entitled to the protection of a plant breeder right under this Act.

(2) A plant breeder right may devolve by succession, assignment or transfer.

(3) (2) Where the application is made by ~~an applicant who is~~ a successor in title of the plant breeder, the applicant shall support the application with ~~the~~ proof of the title of the successor's title.

Priority of application

11. (1) An applicant may claim the right of priority ~~of over~~ an earlier application that has been duly filed for the grant of a plant breeder right for the same variety by the applicant or the predecessor in title of the applicant with a State or intergovernmental organisation which is a party to a treaty to which ~~the Republic~~ Ghana is a party.

(2) Where the application filed with the Registrar is preceded by ~~several other~~ applications duly filed, priority shall be based only on the earliest application.

(3) The applicant shall claim the right of priority expressly in the application filed with the Registrar.

(4) The applicant may only claim the right of priority within a period of twelve months after the date on which the earliest application was filed except that the day of filing shall not be considered as part of the twelve month period.

Requirements for claim of right of priority of application

12. (1) Where an applicant claims the right of priority, ~~that the~~ applicant shall submit to the Registrar a certified true copy of the documents which constitute the first application, within three months after the date of filing the application in Ghana.

(2) The authority with which the first application was filed, shall certify the documents.

(3) The Registrar shall request the applicant to submit a sample or evidence to prove that the variety which is the subject matter of both applications is the same.

(4) Where the first application is in a foreign language, the Registrar shall request the applicant to produce a translation of the first application into English within three months after the date of receipt of the request.

(5) Where the Registrar determines that the requirements of ~~subsection~~ subsections (1) to (4) have not been met, the claim ceases to have effect.

Effect of priority of application

13. (1) The effect of priority of an application is that, the application filed is considered to have been filed at the date of the filing of the first application.
- (2) The applicant is entitled to furnish the Registrar with any necessary information, document or material required for the purpose of examination within
- (a) a period of two years after the expiration of the period of priority; or
 - (b) an appropriate time determined by the Registrar in the case of the rejection or withdrawal of the first application.

Examination of application

14. (1) The filing date of the application is the date on which the application was filed with the Registrar.
- (2) Where the application is incomplete or ~~incorrect~~ contains errors or inaccuracies, the Registrar shall request the applicant to complete ~~or correct it~~, or effect corrections in the application within thirty days after notification.
- (3) An application which is not completed or corrected within ~~the prescribed period~~ thirty days after prior notification shall be considered not to have been filed.
- (4) The Registrar shall examine the application to determine whether ~~the application~~ complies with the requirements of novelty, distinctness, uniformity and stability under section sections 3 to 7, and the requirements of sections 9 and 12 and section 34 sections 33 to 39 38.
- (5) ~~The Registrar may, in~~ examining the application, the Registrar may
- (a) enter into an arrangement with a relevant authority or person within the country and in Ghana or outside the country Ghana to carry out tests, or use the results of tests that have already been carried out to determine whether the variety is
 - ~~(i)~~ new,
 - ~~(ii)~~ distinct,
 - ~~(iii)~~ uniform; or
 - ~~(b)~~ (iv) stable; and
 - ~~(b) use the results of tests that have already been carried out.~~
- (6) An applicant shall submit to the Registrar any information, document or material requested by the Registrar for purposes of the examination of the application ~~and matters related to it.~~
- (7) Where the Registrar is satisfied that an application has been duly filed under this Act or the Regulations, the Registrar shall record the date of filing the application in the register established under section ~~44~~ 40.

Protection of ~~plant breeder rights~~ Plant Breeder Right

Provisional protection of a plant breeder rights right

15. (1) An applicant is entitled to ~~enjoy~~ provisional protection of a plant breeder right between the date of the publication of the notice of the application for the grant of a plant breeder right in the Gazette ~~or and~~ the Varieties Bulletin and the date of the grant of that right.
- (2) For the period of provisional protection, the applicant is deemed to be the holder of a plant breeder right in relation to any other person who, during the period ~~has carried~~, carries out an act which ~~would require~~ requires the ~~breeder's~~ authorisation of the breeder under section ~~19~~ 20.
- (3) An applicant may take measures to prove an infringement during the period of the provisional protection.
-

Objection to grant of a plant breeder right

16. (1) A person may object to the grant of a plant breeder right within sixty days after the publication in the Gazette ~~or and~~ the Varieties Bulletin.

(a) The objection shall be made in writing to the Registrar and supported by the grounds of objection.

Consideration of objections

17. (1) The Registrar shall, within ~~the prescribed period, fourteen days of receipt of an objection to the grant of a plant breeder right,~~ give notice, in writing, to the applicant of the objection ~~to the grant of the plant breeder right.~~

(2) The applicant shall, within ~~the prescribed period state a personal intention thirty days after receipt of a notice under subsection (1), indicate whether~~ to maintain, correct or withdraw the application.

(3) ~~On~~ The Registrar may, on request made by the applicant, ~~the Registrar may~~ extend the time for the submission of the statement or correction response of the applicant.

(4) Where the applicant ~~does not~~ fails to submit the statement a response within the prescribed period, the application shall be considered ~~to have been~~ withdrawn by the applicant.

(5) Where the applicant maintains or corrects the application, the Registrar shall give notice in writing to the person who objects to the grant of the plant breeder right.

(6) The person who objects to the grant of a plant breeder right shall, within ~~the prescribed period, respond to the statement of the applicant as seven days of receipt of the response to whether the person intends the objection under subsection (5),~~ submit a response to maintain or withdraw the objection.

(7) The Registrar may require the person who objects to the grant of a plant breeder right to submit further information and documents in support of the objection or any plant material which is necessary for a technical examination.

(8) The Registrar shall study the relevant documents or plant material and subsequently hear both parties before taking a decision as to whether to grant the plant breeder right or not.

~~(9) The Registrar may, on arriving at a decision in sub-clause (8), request the Minister to appoint a person to advise the Registrar for the purposes of the examination of an application in relation to the objection, having regard to the expert knowledge of that person in the area of plant breeding.~~

(9) The Registrar may, before taking a decision in subsection (8), appoint a person with knowledge in plant breeding to advise the Registrar.

Record of entries in register

~~18. The Registrar shall record in the register, each entry of the~~

~~(a) withdrawal or refusal of an application for a plant breeder right,~~

~~(b) decision on the nullification or cancellation of the registration of the plant breeder right.~~

Protection of varieties of recent creation

~~18. 19.~~ (1) A variety shall be deemed to be new in accordance with section 4 even where the sale or disposal of that variety to another person took place in ~~this country~~ Ghana within

(a) four years before the application for a plant breeder right; or

(b) six years before the application for a plant breeder right in the case of trees or of vines.

(2) This section applies only to an application for a plant breeder right that is made within one year after the commencement of this Act.

Scope and ~~duration~~ Duration of ~~plant breeder right~~ Plant Breeder Right

Requirement of authorisation of holder of a plant breeder right for specific acts

~~19, 20.~~ (1) ~~Subject to sections 21 and 22, the~~ The following acts in respect of propagating material of a protected variety require the authorisation of the breeder:

- (a) production or reproduction;
 - (b) conditioning for the purpose of propagation;
 - (c) an offer for sale;
 - (d) sale or marketing;
 - (e) exportation;
 - (f) importation; and
 - (g) stocking for any of the purposes mentioned in paragraph (a) to (f).
- (2) The breeder may make an authorisation subject to conditions and limitations.
- (3) ~~Subject to sections 21 and 22, the~~ The acts referred to in subsection (1) as regards harvested material, including the whole of a plant and part of a plant obtained through the unauthorised use of the propagating material of the protected variety, shall require the authorisation of the breeder, unless the breeder has had a reasonable opportunity to exercise the right in relation to the propagating material.
- (4) Subsections (1) and (2) apply ~~in relation to the following:~~ (a) — varieties — a variety
- (a) which ~~are~~ is not clearly distinguishable from the protected variety in accordance with section 5;
 - (b) ~~— a variety~~ which is essentially derived from the protected variety where the protected variety is not ~~itself~~ an essentially derived variety; and
 - (c) ~~a variety~~, the production of which requires the repeated use of the protected variety.
- (5) For the purposes of paragraph (b) of subsection (4) ~~(b)~~, a variety ~~shall be deemed~~ is considered to be essentially derived from ~~another variety being the~~ an initial variety if ~~the variety~~
- (a) 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 genotypes of the initial variety;
 - (b) is clearly distinguishable from the initial variety; and
 - (c) except for the differences which result from the act of derivation, 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) An essentially derived variety may be obtained by the selection of a mutant or variant including
- (a) a natural mutant or induced mutant;
 - (b) a somaclonal variant; ~~or~~
 - (c) a variant individual from a plant of the initial variety, back crossing or transformation by genetic engineering; or
 - (d) any other mutant or variant from a plant of the initial variety.

Exceptions to plant breeder right

~~20, 21.~~ (1) A plant breeder right shall not extend to cover any act done

- (h) privately and for non-commercial purposes;
 - (i) for experimental purposes; ~~and~~ or
 - (j) for the purpose of breeding other varieties; ~~and~~
 - (i) except where subsections (4), (5) and (6) of section ~~20~~ 19 apply; and
 - (ii) for acts referred to in subsections (1) and (2) ~~of section 20~~ 19 in respect of such other varieties.
- (2) The Minister shall make Regulations to restrict a plant breeder right in relation to any variety of agricultural plants within reasonable limits.

- (3) The Minister shall, in making the Regulations, take into account the need to
- safeguard the legitimate interests of breeders; and
 - permit farmers to make personal use ~~on~~ of their own holdings for purposes of propagation of the product of harvest which ~~they~~ the farmers have obtained by planting on ~~their own~~ the holdings the protected variety or a variety provided for under paragraphs (a) and (b) of subsection (4) of section ~~20~~ 19.

Exhaustion of plant breeder right

~~21. 22.~~ (1) A plant breeder right shall not extend to acts regarding any material of the protected variety or of a variety to which subsections (3), (4) and (5) of section ~~20~~ 19 apply, which has been sold or otherwise marketed in ~~the country~~ Ghana by the breeder or with the breeder's consent ~~of the breeder~~, or any material derived from the said material unless ~~that the~~ act involves ~~the~~

- the further propagation of the variety in question; or
 - 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 genera or species to which the variety belongs except where the exported material is ~~for final consumption.~~
- (2) For the purposes of subsection (1), ~~“material”~~ “material” in relation to a variety means
- propagating material of any kind;
 - harvested material including ~~entire plants~~ or parts of a plant; and
 - any product made directly from the harvested material.

Measures regulating commerce

~~22. 23.~~ A plant breeder right ~~shall be independent of~~ is subject to any measure taken by the Republic to regulate, within Ghana, the production, certification and marketing of material of a variety or the importation or exportation of the material.

Assignment

~~23. 24.~~ (1) A plant breeder right may be assigned or otherwise transferred to one or more successors in title.

- (2) The assignment or transfer shall be-
- in writing; and
 - signed by the parties concerned.
- (3) An assignment or transfer under this section does not affect a right acquired by a third party unless ~~the assignment or transfer~~ is recorded in the register and published in the Gazette ~~or~~ and Varieties Bulletin.

Contractual licence

~~24. 25.~~ (1) The holder of, ~~or the applicant for,~~ a plant breeder right, may grant to any person, a licence that relates to any of the rights provided for under this Act.

(2) A licence shall be in writing and include provisions on the

- scope of the licence;
 - period of time for which the licence is transferred; and
 - fee or royalty for the use of the licence if any.
- (3) The ~~applicant~~ holder of a plant breeder right may register a licence at the Registrar General's Department on payment of the prescribed fee.

~~(4)~~ The Registrar shall publish a notice of the registration in the Gazette and Varieties Bulletin.

~~(4)(5)~~ A licence is not binding on a third party that has acquired a right in good faith unless the licence was registered before ~~the~~ the acquisition of the licence.

~~(5)~~ ~~The Registrar shall publish a notice of the registration in the~~ Gazette and Varieties Bulletin.

Statutory declaration for payment of royalty

~~25, 26.~~ (1) A holder or an applicant for the grant of a plant breeder right, may make a statutory declaration ~~to declare that inviting~~ any person prepared to pay a royalty ~~is entitled~~ to carry out any of the acts referred to in section ~~24, 19~~, from the date on which the person concerned ~~informed~~ ~~informs~~ the holder or applicant of the intention to carry out the acts.

~~(2) The holder or applicant shall address the statutory declaration to the Registrar who shall enter a reference of the declaration in the register.~~

(2) ~~(3)~~ The holder or applicant shall state in the statutory declaration the royalty payable by the licensee.

~~(3) (4) The holder or applicant shall submit the statutory declaration to the Registrar who shall make an entry of the statutory declaration in the register.~~

~~(3)(4)~~ The Registrar may cancel the entry of the statutory declaration at the request of the holder, or applicant ~~if, with the consent of~~ the beneficiaries ~~concerned agree~~.

Compulsory licence

~~26, 27.~~ (1) A person may apply to the Registrar for the grant of a compulsory licence ~~as regards~~ ~~in respect of~~ a plant breeder right.

(2) Subject to subsection (3), the Registrar shall grant the applicant the compulsory licence only where the grant of the licence is in the public interest.

(3) The Registrar shall not grant a compulsory licence unless

- (a) the applicant is of a financially sound status;
- (b) the applicant can exploit the variety in a competent and efficient manner, and is willing to embark on the exploitation;
- (c) the holder has refused to grant the applicant a licence on reasonable terms;
- (d) three years have lapsed between the date of the grant of the plant breeder right and the date of the application for the grant of the compulsory licence; and
- (e) the applicant has paid the prescribed fee.

(4) A person to whom a licence is granted under this section shall pay the holder an equitable remuneration in the absence of an agreement on the amount.

~~(5) Where there is no agreement on the amount to be paid for the licence, the Registrar shall apply to a court of competent jurisdiction to determine~~

~~(a) the amount to be paid; and~~

~~(b) the method of payment as regards the remuneration.~~

~~taking into account the circumstances of each case.~~

~~(5) The method of payment in respect of the remuneration and the amount shall be determined by a competent court taking into account the circumstances of each individual case.~~

(6) The Registrar may require the holder to provide the licensee with the propagating material required for reasonable use to be made of the compulsory licence.

(7) A compulsory licence confers on the licensee a non-exclusive right to carry out the acts referred to in section ~~20, 19~~.

(8) The Registrar shall determine the term of the compulsory licence.

(9) The Registrar shall extend the term of a compulsory licence where the Registrar is satisfied, on the basis of a new examination, that the conditions for the grant of the licence continue to exist after the expiration of the first term.

(10) Where the Registrar is satisfied that the grounds on which any compulsory licence granted under this section have ceased to exist or that the licensee has failed to comply with the conditions under which the licence was granted, the Registrar may, on the application of any interested party, terminate the licence.

Duration of plant breeder right

~~27. 28.~~ (1) Subject to subsection (2), a plant breeder right ~~as regards, in respect of~~ varieties of trees and vines, expires twenty-five years after the grant of the plant breeder right.

(2) Protection for varieties of all other genera or species shall expire twenty years after ~~they have been granted the grant of the breeder right~~.

Nullity Nullification of right of holder

~~28. 29.~~ (1) The Registrar shall, on the advice of the Plant Breeders Technical Committee ~~established under section 43~~ declare the right of a holder's rightholder null and void

- (a) if the conditions laid down in section 4 or 5 were not complied with at the time of the grant of the plant breeder right;
- (b) where the grant of the right ~~has been was~~ essentially based on information and documents furnished by the holder, if the conditions laid down in section 6 or 7 were not complied with at the time of the grant of the plant breeder right; or
- (c) where the plant breeder right has been granted to a person, who is not entitled to ~~it~~ the right, except in the case of an assignment to a person who is so entitled.

(2) A plant breeder right which ~~has been is~~ declared null and void shall be considered never to have been granted.

(3) The Registrar shall-

- (a) enter in the register the decision of the nullification of the plant breeder right; and-
- (b) publish the decision in the Gazette ~~or~~ and Varieties Bulletin within seven days after entry in the register.

(4) An interested person may challenge the decision of the nullification, by a written objection lodged with the Registrar within thirty days after the date of the decision of the nullification.

(5) The Registrar may hold a hearing or ~~decide~~ determine the matter, based on written submissions of the interested parties within sixty days after receipt of the objection.

Cancellation of plant breeder right

~~29. 30.~~ (1) The Registrar shall, on the advice of the Plant Breeders Technical Committee, cancel a plant breeder right if the conditions ~~laid down in~~ of uniformity under section 6 ~~or~~ and stability under section 7 ~~are~~ no longer ~~fulfilled~~ prevail.

(2) The Registrar may cancel the registration of a variety in any of the following instances if after being requested to do so and within the prescribed period:

- (a) the breeder does not provide the Registrar with the information, documents or material necessary for the verification of the maintenance of the variety;
- (b) the breeder fails to pay the annual fee required; or
- (c) the breeder does not propose a suitable denomination for the protected variety where the denomination of the variety is cancelled after the registration.-

(3) The Registrar shall record in the register, the decision of the cancellation of the registration of the variety and publish the decision in the Gazette ~~or~~ and Varieties Bulletin.

Termination of plant breeder right

~~30. 31.~~ (1) A plant breeder right shall terminate before the term referred to in section ~~28~~ 27 duly expires

- (a) where the holder of the right renounces that right ~~renounces it~~ by a written notice or declaration ~~addressed submitted~~ to the Registrar; or
- (b) on the date of termination specified in the notice or declaration or, if ~~none~~ no date is specified, the date on which the notice or declaration is received by the Registrar.

(2) The Registrar shall enter in the register the decision on termination of the plant breeder right.

Fees for examination of variety and variety protection

~~31. 32.~~ The applicant for a plant breeder right or the holder of a plant breeder right shall bear the fees for the examination of the variety in the field or the laboratory and the annual fees for variety protection.

Maintenance of the protected variety

~~32. 33.~~ (1) A plant breeder or holder shall ensure the maintenance of the protected variety during the period of protection.

(2) At the request of the Registrar, the plant breeder or holder shall provide an appropriate quantity of samples of the propagating material of the protected variety necessary for the verification of the maintenance of the variety.

(3) At the request of the Registrar, the holder or plant breeder may keep or maintain the sample of the variety.

Variety ~~denomination~~ Denomination

Designation of varieties by denomination

~~33. 34.~~ (1) A variety shall be designated with a denomination, which shall be deemed considered to be its the generic designation of the variety.

(2) Subject to section ~~37. 36.~~, 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 plant breeder right.

Characteristics of variety denomination

~~34. 35.~~ (1) Subject to subsection (3), a variety denomination may be a word, a combination of words and numbers or a combination of letters and numbers for the purpose of the variety to be identified by the designation.

(2) A variety denomination shall be different from every denomination which designates an existing variety of the same plant species or closely related species in the country of any State Party to the Convention.

(3) A variety denomination shall not

- (a) consist solely of figures except where ~~it~~ the variety denomination is an established practice for designation of varieties, or
- (b) be misleading or cause confusion concerning
 - (i) the characteristics,
 - (ii) the value or identity of the variety, or
 - (iii) the identity of the breeder.

Registration of variety denomination

~~35. 36.~~ (1) A person who seeks to register a variety denomination shall apply in writing to the Registrar and propose in the application, the variety denomination for registration.

(2) The applicant shall submit a variety denomination under the same denomination that pertains in any State Party to the Convention.

(3) Subject to subsection (5), the Registrar shall register the variety denomination proposed under subsection (2), unless the Registrar considers the denomination unsuitable.

(4) Where the Registrar finds that the variety denomination does not meet the requirements of section ~~35. 34.~~, the Registrar shall

- (a) refuse to register the variety denomination; and-
- (b) require the breeder to propose another denomination within a prescribed period.

(5) Where the proposed denomination is appropriate the Registrar shall register the denomination at the same time that the plant breeder right is granted.

Prior rights of third persons

~~36. 37.~~ (1) The prior right of a third person shall not be affected. ~~If~~ if by reason of a prior right, the use of the denomination is prohibited for a person who is obliged to use ~~#~~ the denomination in accordance with subsection (1) of section ~~37.38~~, ~~the Registrar shall require the breeder concerned to submit another denomination in respect of the variety for registration~~
(2) The Registrar shall require the breeder concerned to submit another denomination in respect of the variety for registration.

Obligation to use variety denomination

~~37. 38.~~ (1) Subject to subsection (2), a person who offers for sale, sells or otherwise markets propagating material of a protected variety within ~~the country~~ Ghana shall use the denomination of that variety even after the expiration of the breeder right in respect of that variety.
(2) The obligation to use a variety denomination under subsection (1) shall not affect the prior rights of third parties provided for under section ~~37.36~~.
(3) The Registrar shall ensure that the authorities of the ~~members~~ member States to the Convention are informed of matters that concern variety denominations and in particular the submission, registration and cancellation of denominations.
(4) An authority of a member ~~state~~ State to the Convention may ~~address observations~~ submit an observation on ~~the registration of~~ a denomination to the Registrar. ~~prior to the registration of the denomination.~~
(5) The Registrar shall consider the observation before registering the denomination.

Indications in association with denomination

~~38. 39.~~ When a protected variety is offered for sale, ~~sold~~ or marketed, a trademark, trade name or other similar indication may be associated with the registered variety denomination if the denomination is easily recognisable.

Administrative and ~~financial provisions~~ Financial Provisions

Registry of varieties

~~39. 40.~~ (1) There is established by this Act a registry for plant varieties which shall be located at the Registrar-General's Department.
(2) (2) The registry shall be headed by the Registrar who shall be assisted by a person not below the rank of a Principal State Attorney.
(3) The Registrar may delegate a function of the office of the Registrar to ~~an Assistant~~ the person required to assist the Registrar under subsection (2).
(4) The Registrar is responsible for the registration of varieties.

Register of plant breeder rights

~~40. 41.~~ (1) There is established by this Act a register of plant breeder rights.
(2) The Registrar shall keep and maintain the register.
(3) The Registrar shall record in the register the following entries:
(a) applications for the grant of plant breeder rights;
(b) applications for variety denominations;
(c) grants of plant breeder rights;
(d) withdrawals of plant breeder rights;
(e) changes in the particulars of holders;
(f) lapses of the plant breeder rights;
~~(g) matters related to licences;~~
(g) withdrawal of an application for grant of a plant breeder right;
(h) refusal of application for grant of a plant breeder right;
(i) nullification of the registration of a plant breeder right;
(j) cancellation of the registration of a plant breeder right;

(k) termination of plant breeder rights;

~~(h)(1)~~ registration of new denominations for protected varieties;

~~(i)(m)~~ official announcements; ~~and~~

(n) matters related to licences; and

~~(j)(o)~~ any other particulars related to plant breeder rights required under this Act.

(4) The Registrar shall review the content of the register every four months in each year.

(5) The register shall be open to the public during normal working-hours.

(6) A person may, on payment of the prescribed fee, examine the register or obtain an extract from the register.-

Rectification of information

~~41. 42.~~ (1) The Registrar may correct or authorise the correction of any clerical error, omission, non-insertion or defect ~~as regards in respect of~~ the description of a new variety, ~~which that~~ appears in an application or other document lodged with the Registrar for purposes of entries in the register.

(2) A person aggrieved by reason of a clerical error, omission, non-insertion or defect regarding an entry of particulars in the register, may apply to the Registrar to effect the necessary rectification except that an application for rectification may not be made for a matter that affects the validity of the registration of a variety.

Plant Breeders Technical Committee

~~42. 43.~~ (1) There is established by this Act ~~a technical committee to be known as,~~ the Plant Breeders Technical Committee consisting of ~~the following members appointed by the Minister;~~

(a) the Registrar ~~who shall be an ex officio member;~~

(b) the Director of the Crops Research Institute;

(c) ~~the Director of the Crops Services Directorate~~ the Director of the Directorate of Crops Services of the Ministry responsible for Agriculture

(d) the Director of Plant Protection and Regulatory Services Directorate of the Ministry ~~of~~ responsible for Agriculture;

(e) one representative of one of the Faculties of Agriculture in one of the public universities in Ghana nominated on a rotational basis for a term of three years at a time by the public universities;

(f) the Director of the Savannah Agricultural Research Institute; ~~and~~

(g) one representative from the ~~plant breeding~~ private sector who is engaged in the plant breeding industry; ~~and~~

(h) ~~a person~~ one representative of the Office of the Attorney-General with expertise in intellectual property law not below the rank of a Principal State Attorney.

~~(2) The Registrar shall not vote on a matter for decision at a meeting.~~

~~(2) The chairperson of the Technical Committee and members of the Committee shall be appointed by the Minister.~~

Functions of the Technical Committee

~~43. (3)~~ The functions of the Technical Committee are to

(a) advise the Minister on the effective implementation of this Act;

(b) obtain from the Registrar reports ~~as regards the~~ with respect to applications for the protection of plant breeder rights and advise the Registrar on the grant of plant breeder rights;

(c) provide and verify the results of tests and examinations on an application for a plant breeder right; and

(d) give advise the Registrar ~~advice of on~~ a specific ~~and or~~ general nature matter.

~~(4) The Technical Committee may determine the procedure for its meetings.~~

~~(5) The Minister shall designate a member of the Technical Committee as the chairperson of the Technical Committee.~~

~~(6) In the absence of the chairperson, the members of the Technical Committee shall elect one of their members to act as chairperson.~~

New Section

Tenure of office of members of the Technical Committee

~~44.~~ (1) A member of the Technical Committee appointed otherwise than by reason of ~~that member's~~ the office of the member shall hold office for a period term of three years and is eligible for re-appointment but a member shall ~~not be reappointed~~ appointed for ~~one term only more than two terms~~.

(2) A member of the Technical Committee who is absent from three consecutive meetings of the Committee without sufficient cause ceases to be a member of the Technical Committee.

(3) A member of the Technical Committee may, at any time, resign from office in writing addressed to the Minister.

(4) Where a member of the Technical Committee is, for a sufficient reason, unable to act as a member, members of the Technical Committee shall inform the Minister who shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy:

(a) under subsection ~~(2)~~ (2) or (3) or ~~(4) or subsection (2)~~ of section 44(2), 46;

(b) as a result of a declaration under subsection ~~(5), (4);~~ (4); or

(c) by reason of the death of a member;

the Minister shall, in accordance with this Act, appoint a person to fill the vacancy for the unexpired term.

New Section

Meetings of members of the Technical Committee

~~45.~~ (1) The Technical Committee shall meet at least once every three months for the ~~dispatch~~ conduct of business at the times a time and in places place determined by the chairperson ~~in consultation with the Registrar~~.

~~(2) The quorum at a meeting of the Technical Committee is five members.~~

~~(3) The quorum at a meeting of the Technical Committee is four.~~

~~(3) (2)~~ The chairperson shall, at the request in writing of not less than one-third of the membership of the Technical Committee, convene an extraordinary meeting of the Technical Committee at the place a time and time place determined by the chairperson ~~in consultation with the Registrar~~.

~~(4)~~ The chairperson shall preside at meetings of the Technical Committee and in the absence of the chairperson, a member of the Technical Committee elected by the members present from among their number shall preside.

~~(5) Matters A matter~~ before the Technical Committee shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

~~(6) The Registrar shall not vote on a matter for decision at a meeting of the Technical Committee.~~

~~(7) (6)~~ The Technical Committee may co-opt a person to attend a meeting of the Technical Committee ~~meeting~~ but that person shall not vote on a matter for decision at the meeting.

~~(8) The proceedings of the Technical Committee shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.~~

~~(9) Subject to this section, the Technical Committee shall determine the procedure for the meetings of the Technical Committee.~~

Disclosure of interest

~~46. 44. (1) A member of the Technical Committee who has an interest in a matter for consideration by the Technical Committee~~

- (a) shall disclose in writing the nature of ~~that the~~ interest and the disclosure shall form part of the record of the consideration of the matter; and
- (b) ~~shall recuse himself or herself and shall not participate~~ is disqualified from being present at or participating in the deliberations of the Technical Committee ~~as regards the~~ in respect of that matter.

(2) A member ceases to be a member of the Technical Committee, if that member has an interest in a matter before the Technical Committee and

- (a) fails to disclose that interest, ~~or~~ and
- (b) is present at or participates in the deliberations of the Technical Committee in respect of the matter.

(3) Without limiting any further cause of action that may be instituted against a member, the Technical Committee shall recover the benefit derived by a member who contravenes subsection (1) in addition to the revocation of the appointment of the member.

(4) A member of the Technical Committee who fails to disclose an interest in a matter for consideration by the Technical Committee is liable to pay compensation to the Technical Committee for any loss incurred.

Allowances

~~47. 45.~~ Members of the ~~Plant Breeders~~ Technical Committee shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

Plant ~~Breeders~~ Variety Development Fund

~~48. 46. (1)~~ There is established by this Act, a Plant ~~Breeders~~ Variety Development Fund.

(2) The ~~object~~ objects of the Fund ~~is~~ are to finance activities to protect the rights of breeders of new varieties and to promote the breeding of new varieties.

(3) For the ~~purposes~~ purpose of achieving the ~~object~~ objects of the Fund, moneys ~~of~~ for the Fund shall be applied for the following activities:

- (a) the publication of information as regards
 - (i) applications for the grant of plant breeder rights; and
 - (ii) proposed and approved variety denominations;
- (b) the maintenance of variety collections for the purposes of examination;
- (c) the examination of ~~varieties~~; and
- (d) the maintenance of the register for the protection of plant breeder rights.

Sources of ~~money~~ moneys for the Fund

~~49. 47. (1)~~ The sources of ~~money~~ moneys for ~~of the~~ ~~Plant Breeders Development~~ Fund include

- (a) fees and charges paid for applications, ~~registration~~ registrations and other ~~relevant~~ services rendered in pursuance of this Act;
- (b) donations, grants and other voluntary contributions;
- (c) moneys approved by Parliament; and
- (d) any other moneys that are approved by the Minister responsible for Finance.

~~(2) The Registrar may apply a percentage of internally generated funds realised in the performance of functions for the purposes of this Act.~~

~~(3) The percentage of internally generated funds applied for by the Minister shall be as approved by Parliament.~~

Management of the Fund

~~50. 48.~~(1) The Registrar is responsible for the management and disbursement of the Fund and is answerable to the Minister.

(2) The Registrar shall, subject to the Public Financial Administration Management Act, 2003 (Act 654), 2016 (Act 921), make rules and procedures for the operation and management of the Fund subject to the approval of the Minister.

(3) Moneys in the Fund shall be paid into a bank account opened by the Registrar for the purpose of the Fund with the approval of the Minister responsible for Finance Controller and Accountant-General.

(4) ~~(4)~~The administrative expenses related to the management of the Fund shall be charged on the Fund.

Accounts and audit

~~51. 49.~~(1) The Registrar shall keep books of ~~account and accounts~~, records, returns and other documents relevant to the accounts in the form approved by the Auditor-General.

(2) The Registrar shall submit ~~its~~ the accounts of the Fund to the Auditor-General for audit ~~within three months after at~~ the end of the financial year.

~~(3)~~ The Auditor-General shall, within six months after the end of the immediately preceding financial year audit the accounts and forward a copy each of the audit report to the Minister and the Registrar.

~~(3) The Auditor General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.~~

~~(4)~~ The financial year of the Fund shall be the same as the financial year of Government.

Annual report and other reports

~~52. 50.~~(1) The Registrar shall, within one month thirty days after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month thirty days after the receipt of the annual report from the Registrar, submit the report to Parliament with any other comments a statement that the Minister considers necessary.

(4) The Registrar shall also submit to the Minister any other report which the Minister may require in writing.

Appeals

Appeals Board

~~53. 51.~~(1) There is established by this Act, an Appeals Board which shall consider and determine appeals provided under section ~~53 55~~.

(2) The Appeals Board consists of

(a) one ~~expert in~~ legal practitioner with expertise in intellectual property matters ~~who is as~~ the chairperson, and

~~(b) four experts qualified in agricultural sciences.~~

(b) four other persons with expertise in plant breeding at least one of whom is a woman.

(3) The Minister shall appoint the members of the Appeals Board.

(4) The provisions of ~~sections 44 and 45 section 46 as regards on~~ disclosure of interest and section 47 on allowances shall apply to a member of the Appeals Board.

(5) The Appeals Board may co-opt an expert to attend ~~its~~ meetings of the Appeals Board but ~~a that~~ co-opted member shall not vote on a matter for decision at the meeting.

(6) The Appeals Board shall have the power to

(a) summon and compel the attendance of witnesses, and

(b) order the production of documents.

- (7) The ~~Minister may by legislative instrument, make Regulations to govern~~ Appeals Board shall regulate the proceedings of the Appeals Board.
- (8) The Appeals Board shall record ~~its~~ the proceedings of the Appeals Board and shall submit the record to the Registrar.

Tenure of office of members of the Appeals Board

~~54. 52.~~ (1) A member of the Appeal Board shall hold office for a period of three years and is eligible for re-appointment for ~~one~~ another term only.

- (2) The quorum at a meeting of the Appeals Board is three ~~including the chairperson members.~~
- (3) A member may at any time resign from office in writing addressed to the Minister.
- (4) Where a member of the Appeals Board is, for a sufficient reason, unable to act as a member, generally or in relation to a particular proceeding, the Minister may appoint another person to perform the functions of that member generally or in relation to ~~those~~ the particular proceedings.
- (5) A person appointed under subsection (4), shall have, during the period of appointment or in relation to the proceedings in question, the same powers as the member in whose place that person is appointed.

Appeal from decision of the Registrar

~~55. 53.~~ (1) An order or decision of the Registrar is subject to an appeal to the Appeals Board.

(2) A person ~~who is~~ aggrieved by ~~any~~ a decision or order made by the Registrar may appeal to the Appeals Board, by submitting to the Appeals Board a notice of appeal within sixty days after the publication or the receipt of the notice of the decision.

- (3) The notice of appeal shall be made in writing and accompanied with the supporting evidence.
- (4) The Appeals Board may conduct investigations if ~~the Appeals Board~~ considers it necessary to do so and hold a hearing or make a decision based on written submissions.
- (5) The Appeals Board may affirm, set aside or vary a decision of the Registrar.
- (6) The Appeals Board shall give the reasons for its decision in writing.
- (7) The Appeals Board may, on application by an aggrieved person, review a decision made under subsection (6) ~~on an application by an aggrieved person~~, if the Appeals Board is of the view that because of new evidence or developments, the previous decision is inappropriate.
- (8) An aggrieved person may appeal to the High Court on a point of law against a decision taken by the Appeals Board within sixty days after the date of its notification that the aggrieved person is notified of the decision.
- ~~(9) The Appeals Board may by way of case stated, refer a question of law to the High Court for its opinion.~~
- ~~(10) The decision of the High Court, whether on an appeal or on a case stated is binding on the Appeals Board.~~

Miscellaneous ~~provisions~~ Provisions

Inspection and preservation of documents

~~56. 54.~~ (1) A person who has an interest in a variety may inspect

- (a) the documents relating to the relevant application,
- (b) the documents relating to a plant breeder right that has been granted, and
- (c) the growing tests and other tests as regards the variety provided for under this Act.
- (2) Where the production of a variety requires the repeated use of other varieties, an applicant may, when making the relevant application, request that the documents and tests relating to the other varieties be withheld from inspection.
- (3) The Registrar shall preserve the original or copies of every document for a period of five years after the withdrawal or rejection of the application or the lapse of a breeder right.

Varieties Bulletin

~~57. 55.~~ (1) There is established by this Act ~~an official bulletin to be known as the Varieties Bulletin which shall contain matters related to this Act.~~

- (2) The Registrar shall-
- (a) keep and maintain the Varieties Bulletin in an accurate form;
 - (b) ensure that the Varieties Bulletin is accessible in ~~both~~ the hard and ~~Electronic copy~~ electronic forms.
- (3) The Varieties Bulletin shall be maintained as a secured electronic database.
- ~~(4) the Varieties Bulletin shall contain only matters related to this Act.~~

Publication of notices and information

~~58. 56.~~ (1) The Registrar shall publish in the Gazette ~~or and~~ Varieties Bulletin the following notices:

- (a) applications for plant breeder rights and the respective ~~proposed~~ denominations;
 - (b) grants of plant breeder rights;
 - (c) grants of approved denominations;
 - (d) decisions on the nullification or cancellation of plant breeder rights;
 - (e) withdrawals or refusals of applications for plant breeder rights; and
 - (f) any other publication required under this Act.
- (2) The Registrar shall publish, every two months, the following information in the ~~Gazette or~~ Varieties Bulletin established under section ~~55 57~~:
- (a) applications for, and grants of, plant breeder rights;
 - (b) proposed and registered denominations;
 - (c) cancelled variety denominations; and
 - (d) the rectification of entries in the register.

Civil remedies

~~59. 57.~~ (1) Where a person is aggrieved by the infringement of a plant breeder right, that person may bring an action in the High Court for

- (a) an order of injunction to prevent the commission or continuation of the commission of the act of infringement or to prohibit the continuation of the infringement;
 - (b) the recovery of damages for the infringement;
 - (c) the forfeiture, seizure or destruction of propagating or harvested material which has been produced contrary to this Act;
 - (d) an order requiring the Customs Division of the Ghana Revenue Authority to detain goods that infringe on the right rights of a plant breeder imported or ready for export; and
 - (e) any other remedy that the court considers necessary.
- (2) Subsection (1) does not preclude an action being brought under any other enactment for the enforcement of the right rights of a person.

Offences

~~60. 58.~~ A person who wilfully

- (a) offers for sale, sells or markets the propagating material of a variety protected in Ghana;
 - (b) markets propagating material of a variety protected in Ghana without the registered variety denomination; or
 - (c) uses the registered variety denomination of a variety protected in Ghana for another variety of the same plant species or closely related species likely to cause confusion
- commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than eight thousand penalty units or a term of imprisonment of not less than ten years and not more than fifteen years.

Application of Convention

~~61. 59.~~ (1) The Minister shall ensure that the implementation of this Act does not affect the fulfilment of the ~~Government's~~ obligations of Ghana pertaining to the protection of plant breeder rights under the Convention to which ~~the country~~ Ghana is a party.

(2) The Minister may, on behalf of ~~the Republic~~ Ghana, enter into a bilateral or multilateral agreement with a foreign ~~government~~ country for the mutual recognition and protection of breeders rights.

Regulations

~~62. 60. (1)~~ The Minister ~~may~~ shall, within twelve months of the coming into force of this Act, make Regulations

- (a) to prescribe the procedure for:
 - (i) filing applications;
 - (ii) examination of applications made under this Act;
 - (iii) objections and oppositions;
 - (iv) cancellation of plant breeder rights; and
 - (v) cancellation of variety denominations;
- (b) to prescribe fees to be charged under this Act;-
- (c) to prescribe restrictions of plant breeder rights;—
- (d) for the administration of the register established under section ~~41~~ 40;
- (e) for publication requirements;
- (f) for the regulation of varieties;
- (g) for variety denominations;
- (h) for entries in the register;
- (i) to govern appeals; and ~~the proceedings of the Appeals Board; and~~
- (j) for any other matter necessary for the effective ~~and efficient~~ implementation of this Act.

Interpretation

~~61.~~ In this Act, unless the context otherwise requires,

“agent” in relation to an application for, or grant of, a plant breeder right, means a person that is duly authorised by the breeder to act on behalf of the breeder;

“authority” means the plant registry within the territory of a State which is a party to a treaty to which ~~the~~ Republic is a party;

“breeder” means

- (d) ~~(a)~~—the person who bred, or discovered and developed a variety;
- (e) ~~(b)~~—the employer of the person referred to in paragraph (a); or-
- (f) ~~(c)~~—the successor in title of the persons referred to in paragraphs (a) or (b);

“Convention” means the International Convention for the Protection of New Varieties of Plant of 1961;

“denomination” means the name by which a variety is identified; ~~“Fund” means the Plant Variety Development Fund established under section 48;~~
~~“Fund” means the Fund established under section 46;~~

“genome” means the entirety of the hereditary information of an organism;

“genotype” means the genetic constitution of a cell;

“growing test” means a test for the examination of distinctness, uniformity and stability;

- “harvested material” means ~~entire plants and parts of plants obtained through the use of propagating material; a plant or part of a plant~~
(a) ~~purposed for production or reproduction; or~~
(b) ~~conditioned for the purpose of propagation, marketing, sale, export or stocking;~~
- “holder” means the person who has protection of a breeder’s right;-
- “Minister” means the Attorney-General and Minister ~~responsible~~ for Justice;
- “natural mutant” means the variation produced in the genome without human intervention;
- “plant breeder right” includes the right granted to a breeder or a holder in this Act;
- “plant genera” means categories of classification of living beings, that is, groups of species closely related in structure and evolution origin which are situated below the family or sub-family and above the species;
- “plant species” means the basic concept in the classification of living organisms and are groups of organisms characterised by similar shape, size, behaviour and habitat with features that remain constant over time;
- “propagating material” means seeds, seedlings, grafts, stock and any other parts of a plant that is intended to be sown, planted or replanted;
- “protected variety” means a variety which is the subject matter of a breeder’s right;
- “Registrar” means the Registrar ~~General of Plant Variety~~;
- “register” means the register ~~of plant breeder rights~~ established under section ~~41~~ 40;
- “Regulations” means Regulations made under this Act;
- ~~“Republic” means the Republic of Ghana;~~
- ~~“somaclonal variant” means a clone propagated from the development of somatic or vegetation cells;~~
- “State Party” means a member of the Convention;
- “Technical Committee” means the ~~committee~~ Plant Breeders Technical Committee established under section ~~43~~ 42;
- “Varieties Bulletin” means the official publication of business proceedings and information established under section ~~55~~ 57;
- “variety” has the meaning assigned to it in section 2; and
- ~~“variety denomination” means the generic designation for a variety which serves as an identifier.~~

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