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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**

Genève

**CONSEIL****Quarante-sixième session ordinaire  
Genève, 1<sup>er</sup> novembre 2012****EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI SUR LES DROITS D'OBTENTEUR  
DE LA RÉPUBLIQUE-UNIE DE TANZANIE AVEC L'ACTE DE 1991  
DE LA CONVENTION UPOV***Document établi par le Bureau de l'Union*

1. Par une lettre datée du 1<sup>er</sup> octobre 2012, adressée au secrétaire général de l'UPOV, le secrétaire permanent du Ministère de l'agriculture, de la sécurité alimentaire et des coopératives de la République-Unie de Tanzanie, a demandé l'examen du projet de loi sur les droits d'obteneur qui a fait l'objet d'une première lecture au Parlement en avril 2012 (ci-après dénommé "projet de loi"), du point de vue de sa conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La lettre est reproduite dans l'annexe I du présent document. L'annexe II contient une copie en anglais du projet de loi. L'annexe III (en anglais seulement) contient une copie du tableau des amendements que le ministre de l'agriculture, de la sécurité alimentaire et des coopératives prévoit de soumettre au Parlement (ci-après dénommés "amendements du ministre").

2. Le 14 juin 2012, le Bureau de l'Union a été informé que le Gouvernement de la République-Unie de Tanzanie avait l'intention de soumettre dans un premier temps le projet de loi pour la Tanzanie continentale aux fins de son examen par le Conseil et, ultérieurement, le projet de loi ou la loi adoptée pour Zanzibar.

**RAPPEL**

3. L'article 34.3) de l'Acte de 1991 dispose que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de sa législation avec les dispositions de la présente Convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé".

4. Depuis 2007, le Bureau de l'Union a fait à plusieurs reprises des observations sur les propositions de modification de la "loi de 2002 sur la protection des obtentions végétales (droits d'obteneur)" pour la Tanzanie continentale (Loi de 2002) par rapport à l'Acte de 1991 de la Convention UPOV. Le 6 septembre 2010, le Bureau a été informé que le projet de loi modificative avait été transformé en un projet de loi consolidé qui se trouvait au bureau du procureur général avant d'être présenté au Parlement. À cette occasion, il a été informé qu'un texte législatif distinct serait promulgué pour Zanzibar afin de couvrir tout le territoire de la République-Unie de Tanzanie.

5. Les 1<sup>er</sup> et 2 juin 2011, à Zanzibar (République-Unie de Tanzanie), le Bureau de l'Union a donné des conférences lors d'un atelier des parties prenantes sur les droits d'obteneur et a rencontré des représentants du Gouvernement de la Tanzanie et du groupe de travail chargé de rédiger la législation sur les droits d'obteneur de Zanzibar. Le 20 juillet 2011, le Bureau de l'Union a fait des observations sur le projet de loi pour la Tanzanie continentale et le projet de loi pour Zanzibar en rendant compte des discussions et des propositions issues des réunions tenues les 1<sup>er</sup> et 2 juin 2011 à Zanzibar. Le Bureau de

l'Union a expliqué que, pour devenir membre de l'Union, la République-Unie de Tanzanie devait soumettre pour examen au Conseil les deux documents législatifs.

6. Le 14 juin 2012, le Bureau de l'Union a été informé que le Gouvernement de la République-Unie de Tanzanie avait l'intention de soumettre dans un premier temps le projet de loi pour la Tanzanie continentale aux fins de son examen par le Conseil et, ultérieurement, le projet de loi ou la loi adoptée pour Zanzibar.

## BASE DE LA PROTECTION DES OBTENTIONS VÉGÉTALES EN RÉPUBLIQUE-UNIE DE TANZANIE

7. En République-Unie de Tanzanie, la protection des obtentions végétales est régie par la loi de 2002 (voir le paragraphe 4 ci-dessus). Étant donné que la République-Unie de Tanzanie a l'intention de devenir membre de l'Union, son gouvernement a décidé de modifier la loi de 2002 au moyen du projet de loi présenté au Parlement (voir l'annexe II) après incorporation des amendements que le ministre de l'agriculture, de la sécurité alimentaire et des coopératives prévoit de soumettre au Parlement (voir l'annexe III). On trouvera ci-dessous une analyse du projet de loi tel qu'il serait modifié par les amendements du ministre, dans l'ordre des dispositions de fond de l'Acte de 1991.

### Article premier de l'Acte de 1991 : Définitions

8. L'article 2 du projet de loi contient des définitions d'obtenteur et de variété correspondant aux définitions figurant dans l'article premier iv) et vi) de l'Acte de 1991, respectivement.

9. Le projet de loi contient dans son article 2 une définition du terme ci-après qui n'est pas défini dans l'Acte de 1991 :

“par ‘vendre’, on entend offrir, annoncer, garder, exposer, transmettre, informer, livrer ou préparer à des fins de vente ou d'échange ou céder pour n'importe quelle raison ou transmettre, informer ou livrer pour la vente;”

10. Le projet de loi contient dans son article 2 une définition du terme ci-après qui n'est pas défini dans l'Acte de 1991 et n'est pas utilisé dans le projet de loi :

“*reproductive material*’ means a plant or part of the plant used to multiply the plant;” (“par ‘matériel de reproduction’, on entend une plante ou partie d'une plante utilisée pour multiplier la plante;”).

### Article 2 de l'Acte de 1991 : Obligation fondamentale des parties contractantes

11. Le projet de loi est intitulé “Un projet de loi *pour* Une Loi destinée à prévoir l'octroi et la protection de droits d'obtenteur, pour la création d'un Office des droits d'obtenteur et pour des questions connexes”, correspondant à l'obligation fondamentale prévue par l'article 2 de l'Acte de 1991.

### Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

12. L'article 12 du projet de loi dispose : “[l]es dispositions de la présente loi s'appliquent à tous les genres et espèces végétaux”. Ces dispositions sont conformes à l'article 3.2)ii) de l'Acte de 1991. Il convient de noter que, conformément à l'article 36.1)ii) de l'Acte de 1991, lors du dépôt de son instrument d'adhésion, la République-Unie de Tanzanie devra notifier dans une déclaration que la loi s'applique à tous les genres et espèces végétaux.

### Article 4 de l'Acte de 1991 : Traitement national

13. En ce qui concerne l'obtenteur et le dépôt des demandes, le projet de loi n'impose aucune restriction quant à la nationalité ou au domicile des personnes physiques ou au siège des personnes morales. Le projet de loi correspond aux dispositions de l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

14. Avec les amendements du ministre, l'article 15 du projet de loi lirait comme suit :

"15.-1) Une "variété est réputée distincte si elle se distingue nettement de toute autre variété dont l'existence, à la date de dépôt de la demande, est notoirement connue".

2) Aux fins de l'alinéa 1), le dépôt, dans tout pays, d'une demande d'octroi d'un droit d'obtenteur pour une autre variété ou d'inscription d'une autre variété sur un registre officiel de variétés est réputé rendre cette autre variété notoirement connue à partir de la date de la demande, si celle-ci aboutit à l'octroi du droit d'obtenteur ou à l'inscription de cette autre variété sur le registre officiel de variétés.

15. Les articles 13 à 17 du projet de loi, compte tenu de la modification ci-dessus, prévoient les conditions de la protection qui correspondent aux dispositions des articles 5 à 9 de l'Acte de 1991.

16. Avec les amendements du ministre, l'article 53 du projet de loi concernant la disposition facultative de l'article 6.2) de l'Acte de 1991 lirait comme suit :

"53.-1) Dans les 12 mois qui suivent la date de l'entrée en vigueur de la présente loi, l'obtenteur d'une variété existante de création récente peut faire une demande au directeur de l'enregistrement concernant cette variété.

~~"2) Nonobstant les dispositions de l'article 14, selon lesquelles le directeur de l'enregistrement détermine que le demandeur contrôle effectivement la mise à disposition de la variété au public et si d'autres dispositions de la partie III sont satisfaites concernant la variété, il peut octroyer un droit d'obtenteur pour ce qui est de cette variété".~~

Article 10 de l'Acte de 1991 : Dépôt de demandes

17. Les articles 18, 19 et 21 du projet de loi contiennent des dispositions relatives au dépôt des demandes. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 10 de l'Acte de 1991.

18. Avec les amendements du ministre, l'article 21.3) du projet de loi lirait comme suit :

~~"Une demande déposée auprès du directeur de l'enregistrement de Zanzibar~~ service chargé des droits d'obtenteur à Zanzibar aura le même effet sera considérée comme une demande pour la même variété déposée auprès du directeur de l'enregistrement".

Article 11 de l'Acte de 1991 : Droit de priorité

19. Pour qu'elle corresponde aux dispositions de l'article 11.3) de l'Acte de 1991, il est recommandé de modifier l'article 22.4) du projet de loi comme suit :

"3) Le demandeur devra, dans un délai de deux ans après l'expiration du délai de priorité ou, lorsque la première demande est rejetée ou retirée, dans un délai approprié à compter du rejet ou du retrait, fournir au directeur de l'enregistrement tout renseignement, document ou matériel requis dans cette loi en vue de l'examen".

20. Sous réserve de cette modification, l'article 22 du projet de loi contient des dispositions sur le droit de priorité qui correspondent aux dispositions de l'article 11 de l'Acte de 1991.

Article 12 de l'Acte de 1991 : Examen de la demande

21. L'article 28 du projet de loi contient des dispositions relatives à l'examen de la demande qui correspondent aux dispositions de l'article 12 de l'Acte de 1991.

#### Article 13 de l'Acte de 1991 : Protection provisoire

22. L'article 29 du projet de loi contient des dispositions sur la protection provisoire qui correspondent aux dispositions de l'article 13 de l'Acte de 1991. Il est recommandé d'apporter la correction suivante dans l'article 29 de ce projet de loi :

"Le détenteur d'un droit d'obtenteur aura le droit de recevoir une rémunération équitable de toute personne qui, durant la période qui s'écoule entre la publication de la demande d'octroi d'un droit d'obtenteur en vertu de l'article ~~23-24~~ et la date de l'octroi de ce droit, s'est livrée à des actes qui, une fois le droit octroyé, nécessitent l'autorisation de l'obtenteur comme le prévoit l'article 30".

#### Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

23. L'article 30.3) du projet de loi contient comme suit la disposition facultative "Actes à l'égard de certains produits" de l'article 14.3) de l'Acte de 1991 :

"4) Sous réserve des articles 31 et 32, les actes dont il est fait mention au paragraphe a) à g) de l'alinéa 1), l'autorisation de l'obtenteur est requise pour les actes à l'égard des produits fabriqués directement à partir d'un produit de récolte de la variété protégée couvert par les dispositions de l'alinéa 3) par utilisation non autorisée dudit produit de récolte, à moins que l'obtenteur ait raisonnablement pu exercer son droit en relation avec ledit produit de récolte".

24. L'article 30.6) et 7) du projet de loi avec les amendements du ministre lirait comme suit :

"6) Aux fins du paragraphe a) de l'alinéa ~~4~~ 5), une variété sera considérée comme essentiellement dérivée d'une autre variété lorsque-  
[...]

7) Aux fins du présent article, des variétés essentiellement dérivées peuvent être obtenues par des moyens comme la sélection d'un ~~mutant~~ mutant naturel ou induit ou ~~d'une variété~~ d'un variant somaclonal, la sélection d'un individu variant parmi les plantes de la variété initiale, des rétrocroisements ou ~~à travers~~ la transformation par génie génétique".

25. Sous réserve des modifications apportées au paragraphe ci-dessus, l'article 30 du projet de loi contient des dispositions sur l'étendue du droit d'obtenteur qui correspondent aux dispositions de l'article 14 de l'Acte de 1991.

#### Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

26. Avec les amendements du ministre, l'article 31.1) du projet de loi lirait comme suit :

"31.-1) Le droit d'obtenteur ne s'étend pas -

- a) aux actes accomplis dans un cadre privé à des fins non commerciales;
- b) aux actes accomplis à titre expérimental; et
- c) aux actes accomplis aux fins de la création de nouvelles variétés ainsi que, à moins que les dispositions de l'article 30.5) à 7) ne soient applicables, aux actes mentionnés à l'article 30.1) ~~et à 4)~~ accomplis avec de telles variétés;"

27. Sous réserve des modifications apportées au paragraphe ci-dessus, l'article 31.1) du projet de loi contient des dispositions relatives aux exceptions obligatoires au droit d'obtenteur qui correspondent aux dispositions de l'article 15.1) de l'Acte de 1991.

28. Avec les amendements du ministre, l'article 31.2) et 3) du projet de loi concernant l'exception facultative prévue à l'article 15.2) de l'Acte de 1991 lirait comme suit :

"2) Pour la liste des plantes agricoles précisées par le Ministre, qui ne comprendra pas de fruits, de plantes ornementales, de plantes potagères ou d'arbres forestiers, le droit d'obtenteur ne s'applique pas à un agriculteur qui, dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes du détenteur du droit d'obtenteur, utilise à des fins de reproduction ou de multiplication, sur sa propre exploitation, le produit de la récolte qu'il a obtenu par la mise en culture, sur sa propre exploitation, de la variété protégée ou ~~par la mise en culture sur sa propre exploitation, de la variété protégée ou~~ d'une variété couverte par l'article 30.5)a) ou b)".

"3) Les limites et moyens raisonnables pour sauvegarder les intérêts légitimes du détenteur du droit d'obtenteur seront précisés dans le règlement".

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

29. L'article 32 du projet de loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui correspondent aux dispositions de l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

30. L'article 41 du projet de loi contient des dispositions relatives à la limitation de l'exercice du droit d'obtenteur qui correspondent aux dispositions de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

31. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

32. L'article 33 du projet de loi contient des dispositions sur la durée du droit d'obtenteur qui correspondent aux dispositions de l'article 19 de l'Acte de 1991.

"33.-1) Sauf comme le stipule la partie VII, le droit d'obtenteur octroyé en vertu de la présente loi vient à expiration vingt années à compter de la date d'octroi du droit à l'exception des arbres et des vignes dont le droit d'obtenteur arrivera à expiration vingt-cinq années à compter de cette date.

"2) La durée peut être prolongée de cinq années additionnelles, sous la forme d'un avis donné par écrit au directeur de l'enregistrement par le détenteur du droit d'obtenteur six mois avant l'expiration de la durée originale".

Article 20 de l'Acte de 1991 : Dénomination de la variété

33. Avec les amendements du ministre, l'article 20.2) et 8) du projet de loi lirait comme suit :

"2) La dénomination :

~~et elle ne peut pas se composer "uniquement de chiffres", sauf lorsqu'il s'agit d'une "pratique établie" pour désigner des variétés.~~

a) permettra l'identification de la variété;

b) ~~et elle~~ ne doit pas être susceptible d'induire en erreur ou de prêter à confusion en ce qui concerne les caractéristiques, la valeur ou l'identité de la variété ou en ce qui concerne l'identité de l'obtenteur [;]

3) ~~La dénomination qui désigne c) sera différente de chaque dénomination qui désigne~~, dans le territoire d'un membre d'une organisation internationale traitant de questions relatives aux droits d'obtenteur à laquelle la Tanzanie est une partie, une variété préexistante de la même espèce végétale ou d'une espèce voisine ~~doit être différente l'une de l'autre; et~~

d) Elle ne peut se composer uniquement de chiffres sauf lorsque c'est une pratique établie pour désigner des variétés.

"9)8)Le directeur de l'enregistrement informera par écrit les services des de tous les membres d'une organisation internationale traitant de questions relatives aux droits d'obtenteur à laquelle la Tanzanie est une partie [des] questions relatives aux dénominations variétales, notamment de la proposition, de l'enregistrement et de la radiation de dénominations".

34. L'incorporation de ces amendements exigerait l'actualisation de la numérotation des paragraphes et des renvois dans l'article 20 du projet de loi. Avec les amendements du ministre, cet article contient des dispositions sur les dénominations variétales qui correspondent aux dispositions de l'article 20 de l'Acte de 1991.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

35. L'article 36 du projet de loi contient des dispositions sur la nullité du droit d'obtenteur qui correspondent aux dispositions de l'article 21 de l'Acte de 1991.

#### Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

36. L'article 37 du projet de loi contient des dispositions sur la déchéance de l'obtenteur. Avec les amendements du ministre, l'article 39.2) du projet de loi lirait comme suit :

"39.-1) Tout détenteur d'un droit d'obtenteur peut, en informant le directeur de l'enregistrement par écrit, renoncer à ce droit.

2) Le directeur de l'enregistrement, dans le mois qui suit la date de réception de l'avis en vertu de l'alinéa 1) ~~déchoira le droit d'obtenteur cédé~~ déclarera l'expiration du droit d'obtenteur et publiera un avis dans le Journal officiel de ~~la déchéance du droit d'obtenteur~~ cette expiration."

37. Sous réserve de l'incorporation de ces amendements dans l'article 39.2) du projet de loi, l'article 37 dudit projet de loi relative à la déchéance de l'obtenteur contient des dispositions qui correspondent à celles de l'article 22 de l'Acte de 1991.

#### Article 30 de l'Acte de 1991 : Application de la Convention

38. En ce qui concerne l'obligation de "prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), l'article 34 du projet de loi prévoit ce qui suit :

"34.1) Les droits d'obtenteur sont protégés par les mesures civiles et pénales stipulées dans une loi écrite.

"2) Une action en justice par le détenteur du droit d'obtenteur contre une personne qui viole ce droit peut être intentée auprès de n'importe quel tribunal ayant la juridiction compétente.

"3) Le tribunal peut, outre le coût de l'action, prononcer une injonction ou accorder des dommages et intérêts ou les deux, si cela semble raisonnable dans les circonstances de l'affaire".

39. En ce qui concerne l'obligation qui relève de l'article 30.1)ii) de l'Acte de 1991, l'article 5.a) du projet de loi prévoit ce qui suit :

"5. Les fonctions du directeur de l'enregistrement sont- a) octroyer un droit d'obtenteur; [...]"

40. Avec les amendements du ministre, l'article 28.7) du projet de loi lirait comme suit :

"7) L'octroi d'un droit d'obtenteur par le ~~directeur de l'enregistrement de Zanzibar~~ service chargé des droits d'obtenteur à Zanzibar aura le même effet que l'octroi d'un droit d'obtenteur de la même variété par le directeur de l'enregistrement".

41. Les articles 24 et 28.6)c) du projet de loi reprennent l'obligation de publier les renseignements sur les demandes de droits d'obtenteur, les droits d'obtenteur délivrés et les dénominations proposées et approuvées, telle qu'elle est énoncée à l'article 30.1)iii) de l'Acte de 1991.

#### Autres amendements du ministre

42. Avec les amendements du ministre, l'article 6.2)a) et b) du projet de loi lirait comme suit :

"(2) Les renseignements qui doivent figurer dans le registre de chaque variété enregistrée comprennent les suivants-

a) espèce et dénomination d'une variété;

b) nom complet et adresse-

i) du demandeur ou du détenteur du droit d'obtenteur;

ii) de la personne qui a créé ou qui a découvert et mis au point une variété, au cas où cette personne est différente du demandeur ou du détenteur du droit d'obtenteur; [...]"

43. Avec les amendements du ministre, le renvoi dans l'article 42.1) du projet de loi serait corrigé comme suit :

"42.-1) Une personne autorisée en vertu ~~des~~ de l'articles 40-44 peut, dans les soixante jours maximum qui suivent la date de l'autorisation, notifier ~~[et-le]~~ directeur de l'enregistrement de la transaction et lui fournir une copie de cette autorisation".

## Conclusion générale

44. De l'avis du Bureau de l'Union, une fois que les amendements du ministre (voir l'annexe II), tels qu'ils sont énoncés dans les paragraphes 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 et 43 du présent document, et les modifications recommandées dans les paragraphes 19, 22 et 34 du même document, auront été introduits dans le projet de loi, sans aucune modification additionnelle, le projet de loi comprendrait les dispositions de fond de l'Acte de 1991.

45. *Le Conseil est invité à :*

a) *prendre note de l'analyse faite dans le présent document;*

b) *sous réserve de l'incorporation dans le projet de loi sur les droits d'obteneur pour la Tanzanie continentale (voir l'annexe II du présent document) des amendements du ministre (voir l'annexe III du présent document), tels qu'énoncés dans les paragraphes 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 et 43 du présent document, ainsi que des modifications recommandées dans les paragraphes 19, 22 et 34 du présent document, et sans aucune modification additionnelle, rendre une décision positive sur la conformité du projet de loi sur les droits d'obteneur pour la Tanzanie continentale avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales;*

c) *prendre note que l'adoption du projet de loi pour la Tanzanie continentale et du projet de loi pour Zanzibar est nécessaire pour que les droits d'obteneur couvrent tout le territoire de la République-Unie de Tanzanie;*

d) *prendre note que le Gouvernement de la République-Unie de Tanzanie a l'intention de soumettre ultérieurement au Conseil pour examen le projet de loi ou la loi adoptée pour Zanzibar;*

e) *informer le Gouvernement de la République-Unie de Tanzanie qu'il peut déposer son instrument d'adhésion après que le Conseil a rendu des décisions positives sur les lois pour la Tanzanie continentale et pour Zanzibar; et*

f) *autoriser le secrétaire général à informer le Gouvernement de la République-Unie de Tanzanie de cette décision.*

[Les annexes suivent]

LETTRE DU SECRÉTAIRE PERMANENT AU SECRÉTAIRE GÉNÉRAL DE L'UPOV

**Traduction d'une lettre datée du 1<sup>er</sup> octobre 2012 (référence No AF/287/698/01)**

**adressée par :** Le Secrétaire permanent  
Ministère de l'agriculture, de la sécurité et des coopératives  
République-Unie de Tanzanie

**à :** M. Francis Gurry  
Secrétaire général de l'Union Internationale  
pour la Protection des Obtentions Végétales (UPOV)  
34, chemin des Colombettes  
CH-1211 Genève 20  
Suisse

**Objet :** DEMANDE D'EXAMEN DE CONFORMITÉ DU PROJET DE LOI 2012 SUR LES DROITS D'OBTENTEUR

Monsieur le Secrétaire général,

Prière de vous référer à l'en-tête ci-dessus et à votre lettre du 10 mai 2012.

J'ai le plaisir de vous informer que le Parlement de la République-Unie de Tanzanie est sur le point d'adopter le projet de loi 2012 sur les droits d'obtenteur, lequel a fait l'objet d'une première lecture en avril 2012.

Comme suite à l'approbation donnée par le Parlement en février 2010, la République-Unie de Tanzanie a l'intention d'adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, telle qu'elle a été révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991.

Conformément aux dispositions de l'article 34.3) de cette convention, je saurais gré au Conseil de l'UPOV d'examiner la conformité du projet de loi ci-joint avec les dispositions de la Convention UPOV. Outre le projet de loi, vous trouverez également en pièce jointe un tableau des amendements que le ministre de l'agriculture, de la sécurité alimentaire et des coopératives prévoit de soumettre au Parlement à sa prochaine session.

Veillez agréer, .....

(Signé :)  
Sophia E. Kaduma  
Secrétaire permanent

[L'annexe II suit]

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THE UNITED REPUBLIC OF TANZANIA

***BILL SUPPLEMENT***

*No. 2*

*23<sup>rd</sup> March, 2012*

*to the Gazette of the United Republic of Tanzania No. 12 Vol. 93 dated 23<sup>rd</sup> March, 2012*

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THE PLANT BREEDERS' RIGHTS ACT, 2012

ARRANGEMENT OF SECTIONS

*Section*

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NOTICE

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

Dar es Salaam,  
22<sup>nd</sup> March, 2012

OMBENI Y. SEFUE,  
*Secretary to the Cabinet*

**A BILL**  
*for*

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

ENACTED by Parliament of the United Republic of Tanzania.

**PART I**  
**PRELIMINARY PROVISIONS**

Short title  
and  
Commencement

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

Interpretation

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

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

“breeder” means-

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

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

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

“Fund” means the Fund established under section 46;

“legal representative” means-

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

“Minister” means the Minister responsible for agriculture;

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

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

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

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

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

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right are fully met, can be-

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

PART II

PLANT BREEDERS' RIGHTS OFFICE

Establishment of plant breeders' right office,

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

Appointment of Registrar

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

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

Functions of Registrar

5. The functions of the Registrar shall be-

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

Register of plant breeders' rights

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

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

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

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

Evidence of certain entries and documents

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

(2) A copy of -

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

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

Inspection of Register

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

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

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Plant  
Breeders'  
Rights  
Advisory  
Committee

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

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

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

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

Functions of  
the  
Committee

10. The functions of the Committee shall be-

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

Powers of the  
Committee

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

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

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

PART III  
VARIETIES TO BE PROTECTED

Genera and  
species to  
be  
protected

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

Conditions  
of  
protection

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

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

Novelty

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

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

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

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

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

*Distinctness*

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

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

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

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

PART IV  
APPLICATION FOR PLANT BREEDERS' RIGHTS

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

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

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

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Variety  
denomina-  
tion

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

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

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

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

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

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

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

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

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

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

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

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

PART V

CONSIDERATION AND DISPOSITION OF APPLICATION

Filing date  
of an  
application

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

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

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

Right of  
priority

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

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

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

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

Amendment  
of  
application

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

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

Publication  
of notice of  
application

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

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

Objection  
to the  
proposed  
grant of  
breeder's  
right

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

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

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

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

Grounds  
for  
objection

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

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

Notice to  
the  
applicant  
and reply  
to an  
objection

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

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

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

Disposition  
of  
applications

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

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

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

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

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

(5) Where the Registrar concludes that-

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

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

(c) no objection has been filed;

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

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

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

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

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

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

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

PART VI

PROVISIONAL AND FINAL PROTECTION

Provisional  
protection

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

*Plant Breeders' Rights*

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

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

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

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

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

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

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

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

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

Exceptions  
to the  
breeder's  
right

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

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

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

Exhaustion  
of the  
breeder's  
right

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

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

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

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

Duration of  
plant  
breeder's  
right

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

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

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Protection  
and  
damages  
for  
infringeme  
nt of  
breeder's  
right

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

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

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

Annual  
fees

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

PART VII

NULLITY, CANCELLATION AND SURRENDER OF BREEDER'S RIGHT

Nullity of  
the  
breeder's  
right

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

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

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

Cancellat  
ion of the  
breeder's  
right

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

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

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

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

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

Notification of nullification and cancellation

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

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

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

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

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

Surrender of breeder's right

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

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

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

PART VIII

AUTHORIZATION AND ASSIGNMENTS

Authoriza-  
tion or  
assignment  
of  
Breeder's  
right

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

Restrictions  
on the  
exercise of  
the breeder's  
right

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

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

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

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

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

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

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PART IX  
APPEALS

Appeals  
Board

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

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

(3) The Appeals Board shall have power to-

(a) prescribe its own rules of procedure;

(b) order and secure the attendance of witnesses;

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

(d) administer oath or affirmation to any witness.

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

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

Appeals  
from the  
decision of  
Registrar

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

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

Decision of  
the  
Appeals  
Board

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

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

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

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appellant, the Registrar and any other interested party.

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

PART X

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

Plant  
Breeders'  
Rights  
Develop-  
ment  
Fund

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

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

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

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

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

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

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

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

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Accounts  
and audit

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

Annual  
report to be  
submitted  
to the  
Minister

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

PART XI  
OFFENCES AND PENALTIES

Offences and  
penalties

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

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

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

PART XII  
GENERAL PROVISIONS

Collection of  
fees

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

Confide-  
ntiality

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

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

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

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

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

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

Action  
against the  
State

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

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

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

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

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

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Agreement  
with foreign  
governments

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

Agents

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

(2) The Registrar may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Registrar to be sufficient, refuse to recognize or to continue to recognize any person as authorized by the breeder to act in the capacity of agent.

Repeal and  
savings

56.-(1) The Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002 is hereby repealed.

(2) All Regulations, rules, directions and decisions made under the repealed Act which are in force, on the effective date of this Act shall be deemed to be Regulations and rules made or direction given under this Act unless revoked or cancelled.

(3) All grants or certificates issued under the repealed Act and contract of service in force at the commencement of this Act shall continue to be in force and shall be deemed to have been made under this Act unless cancelled.

Registrar to  
make  
guidelines

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

Regulations

58.-(1) The Minister may make Regulations prescribing anything which under this Act may be prescribed.

(2) Without prejudice to the generality of the sub-section (1), Regulations made shall prescribe-

- (a) various forms to be used under this Act;
- (b) the procedure to be followed in any proceedings before the Registrar;
- (c) specific information and facilities to be provided, and of the propagating and other material to be submitted with respect to a variety;
- (d) the tests, trials, examinations and other steps to be

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

## ANNEX III / ANNEXE III / ANLAGE III / ANEXO III

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

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

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

	(3) The denomination which designate, in the territory of any member of an international organization dealing with plant breeder's rights matters to, which Tanzania is a party and an existing variety of the same plant species or of a closely related species shall be different from each other.	breeder's rights matters to which Tanzania 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.	clearly stated to comply with the provisions of Article 20 (2) of UPOV Convention
	(9) The Registrar shall inform in writing all members of an international organization dealing with the plant breeders' rights matters to which Tanzania is a party concerning the submission, registration and cancellation of denominations.	(8)The Registrar shall, in writing, inform the authorities of the members of an international organization dealing with plant breeder's rights matters to which Tanzania is a party, matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.	The Section has been reworded to provide for particularity on matters concerning variety denomination for informing other authorities as provided in Article 20 (6) of UPOV Convention of 1991. However, appropriate wording for Tanzania drafting principles have been observed.
<u>Section 21 of the PBR Act: Filing date of an application</u>	21.- (3) An application filled with the Registrar of Zanzibar shall have the same effect of an application for the same variety filled with the Registrar.	21.- (3) Any application filed with the <del>Registrar</del> of Authority responsible for breeder's rights in Zanzibar shall be deemed to be an application, for the same variety, filed with the Registrar.	The section has been reworded in consideration of the fact that presently there is no PBR Registrar in Zanzibar.  It has also been amended by replacing the words "be deemed" with the words "have the same" to avoid interpretation of words to mean double filling of the application within the United Republic of Tanzania.

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

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