

# THE PROTECTION OF NEW PLANT VARIETIES (PLANT BREEDERS' RIGHTS) ACT, 2002

## ARRANGEMENT OF SECTIONS

*Section Title*

### PART I

#### PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.

### PART II

#### PLANT BREEDERS' REGISTRY

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

### PART III

#### VARIETIES THAT MAY BE PROTECTED

13. Specie to which Plant Breeders' Rights may apply.
14. Recognition of new variety.
15. Novelty.
16. Presumption of Qualifications.
17. Plant Breeders' Rights registration for strategic purposes.
18. Distinctness.
19. Stability.
20. Uniformity.

### PART IV

#### APPLICATION FOR PLANT BREEDERS' RIGHTS

21. Application for Plant Breeders' Rights.
22. Contents of an application.
23. Name or denomination of new variety.

PART V

CONSIDERATION AND DISPOSITION OF APPLICATIONS

24. Priority and re-dating of applications.
25. Amendment of application.
26. Publication of notice.
27. Objection to the proposed grant of plant breeders rights.
28. Grounds for objection.
29. Notice to the applicant and reply to objection.
30. Disposition of applications.

PART VI

PROVISIONAL, FINAL PROTECTION AND HOLDERS' DUTIES

31. Provisional protection.
32. Rights of holders of plant breeders' rights.
33. Varieties to which a plant breeders' rights applies.
34. Exceptions to plant breeders' rights.
35. Duration of plant breeding rights.
36. Damage for infringement of plant breeders' rights.
37. Maintenance of a variety.
38. Annual fees.

PART VII

TERMINATION AND SURRENDER OF PLANT BREEDERS' RIGHTS

39. Nullification or cancellation of Plant Breeders' Rights.
40. Surrender of plant breeders' rights.

PART VIII

LICENCES AND ASSIGNMENTS

41. Granting of licence.
42. Compulsory grant of licence.
43. Assignments.
44. Records in the register.

PART IX

APPEALS

45. Appeals Board.
46. Appeal from the decision of the Registrar.
47. Decision of the Appeals Board.

PART X

ESTABLISHMENT OF PLANT BREEDERS' RIGHTS  
DEVELOPMENT FUND

- 48. Establishment of Plant Breeders' Rights Development Fund.
- 49. Accounts and Audit.
- 50. Annual Reports to be submitted to Minister.

PART XI

OFFENCES AND PENALTIES

- 51. Offences and penalties.

PART XII

MISCELLANEOUS PROVISIONS

- 52. Collection of fees.
- 53. Confidentiality.
- 54. Action against the State.
- 55. Plant breeders' rights in respect of existing varieties.
- 56. Agreements with foreign Governments.
- 57. Protection of farmers rights and traditional cultivars and germplasm.
- 58. Agents.
- 59. Regulations.



THE UNITED REPUBLIC OF TANZANIA



No. 22 OF 2002

I ASSENT,

BENJAMIN W. MKAPA

*President*

31st December, 2002

**An Act to provide for the establishment of a registry of plant breeders' rights; promotion of plant breeding and facilitation of agricultural advancements through the grant and regulation of plant breeders' rights and for matters connected therewith.**

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Short title  
and Com-  
mence-  
ment

2. In this Act, unless the context otherwise requires—

“Act” means Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002,

Interpre-  
tation

“Appeals Board” means the Appeals Board established under section 45;

“agent”, in relation to an applicant or a holder of plant breeder's rights, means a person who is duly authorized by the applicant or holder to act, on behalf of the applicant or holder;

“applicant” means a person by or on behalf of whom an application for the grant of plant breeder's rights is made pursuant to section 21;

“assignee” means, in relation to a new variety -

“breeder” means—

- (a) the person who breed or discovered and developed, a variety.
- (b) the employer of the person who breed, or discovered and developed the variety, if that person was employed for the purpose of such activity or otherwise commissioned to perform such work;

“breeding line” means an assemblage of sexually reproductive individuals of uniform appearance propagated by seed, the stability of which is maintained by selection to standard;

“clone” means uniform material derived from a single individual and propagated entirely by vegetative means;

“cultivar” means an assemblage of cultivated individuals which, is designated by any characteristic, morphological, physiological, chemical, genetic or others, significant for the purpose of agriculture, and which, when reproduced sexually or asexually, retains its distinguishing feature;

“Fund” means the Fund established under section 48;

“holder”, in relation to plant breeder’s rights, means -

- (a) the person who is entitled to the plant breeders’ rights respecting that variety granted under section 32; and
- (b) an assignee of, or other successor in title to the rights granted under section 32 in respect to that variety.

“hybrid” means the first generation progeny of a cross produced under controlled pollination with parents sufficiently uniform to permit repeated production of the hybrid without change in uniformity or stability.

“legal representative” means -

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

“Minister” means the Minister responsible for agricultural matters;

“multiline” means an assemblage of individual breeding lines in a stated proportion;

“plant breeders’ rights” means plant breeders rights granted in terms of section 32;

“propagating material” means any reproductive or vegetative material for propagation, whether by sexual or other means, of a plant variety, and includes seeds for sowing and any whole plant or part thereof that may be used for propagation;

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

“Registrar” means the Registrar of Plant Breeders, Rights appointed in terms of 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 of for any consideration or transmit, convey or deliver in pursuance of the sale;

“variety” means -

(a) a botanical variety, cultivar, breeding line or clone which-

(i) is sufficiently homogeneous;

(ii) can be differentiated from another of the same kind by one or more characteristics which are capable of definition and recognition; and

(iii) is reasonably uniform and stable after repeated propagation;

or

(b) a hybrid; or

(c) a multilane.

## PART II

### PLANT BREEDERS' REGISTRY

3. There is hereby established within the Ministry responsible for agriculture, a Government office, which shall be known as the Plant Breeders' Rights Registry.

Establishment of Plant Breeders' Rights Registry

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

Appointment of Registrar

(2) The Minister shall appoint such deputies and other officers as may be necessary who shall, subject to the direction of the Registrar, assume some of the powers and privileges conferred to the Registrar pursuant to this Act.

5. The functions of the Registrar of plant breeders' rights shall be —

(a) to grant Plant Breeders' Rights, in its acronym PBR;

(b) to establish a documentation centre for the purposes of dissemination of information on Plant Breeders' Rights ;

(c) to maintain a register and provide information on Plant Breeder's Rights issued in Tanzania;

Functions of Registrar

- (d) to facilitate transfer and licensing of Plant Breeders' Rights ;
- (e) to collaborate with local and international bodies whose functions relate to Plant Breeders' Rights matters; and
- (f) to perform such 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 plant breeders' rights register in which shall be entered all information required to be registered under this Act.

(2) For each registered variety, information to be listed in the register shall include—

- (a) species and denomination of varieties;
- (b) the full name and address of—
  - (i) the original breeder;
  - (ii) any other holder of plant breeders' right; and
  - (iii) each person to whom such right has been transferred or assigned;
- (c) the date of inception of the plant breeders' rights;
- (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 regulation.

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

Correction  
of the  
register  
and  
registered  
information

7.—(1) The Registrar may correct or authorize the correction of any clerical error or any omission in the description of a new variety, which appear in any application or other document lodged in terms of this Act or in the register.

(2) A correction may be made either upon request in writing or without such a request.

(3) Where the correction is proposed by the Registrar or any interested person other than the applicant, and the holder of the Plant Breeders' Rights is affected by the correction, the Registrar shall give a notice of one month to the applicant or holder or that other interested person of his intention to correct the error.

(4) Any opposition to a proposal to correct or authorize the correction of a document or the register shall be dealt with by the Registrar in such manner as he considers desirable in the interests of justice.

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

Evidence  
of certain  
entries  
and  
docu-  
ments

(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 without further proof and without production of the original.

9.—(1) The register shall be open to inspection by any member of the public at all convenient times during business hours.

Inspection  
of register

(2) A certified copy of any entry in the register shall be given on payment of the prescribed fee to any person requiring it.

10.—(1). There is hereby established a standing committee to be known as the Plant Breeders Rights Advisory Committee, in its acronym PBRAC.

Establish-  
ment and  
composi-  
tion of  
Plant  
Breeders'  
Rights  
Advisory  
Committee

(2) The Standing 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 from plant breeders association;

(c) one representative from seed traders association;

(d) one representative from seed growers;

(e) one representative of farmers;

(f) one representative from a University or training institute dealing with plant breeding;

(g) one representative from a Government Agency or Authority responsible for registration of intellectual property rights;

(h) one legally qualified person representing the Office of the Attorney General; and

(i) the Registrar who shall be the secretary.

**Functions**

11. The functions of the Plant Breeders' Rights Advisory 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;
- (d) to advise the Registrar on the grant of Plant Breeders' Rights;

**Powers**

12. In fulfilling its functions the Plant Breeders' Rights Advisory Committee shall have the powers -

- (a) to make its own rules of procedure;
- (b) to give to the Registrar advice of specific and general nature;
- (c) to call applicants and other interested persons for hearing before the approval of a Plant Breeders' Rights applications.

### PART III

#### VARIETIES THAT MAY BE PROTECTED

**Species to which Plant Breeders' Rights may apply**

13. New variety may be protected by application for Plant Breeders' Rights if it is variety of a specie or sub-specie that have been designated by regulations made under this Act.

**Recognition of new variety**

14. Subject to section 13, a Plant Breeders' Rights may be granted with respect to any variety which is—

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

**Novelty**

15.—(1) A variety shall be deemed to be new for purpose of section 13 if—

- (a) it has not been sold, or otherwise disposed of to other breeders within Tanzania for trade or otherwise with the consent of the breeders, except for recognized and necessary testing purposes, made earlier than one year prior to the date of the application made under section 24; and

- (b) subject to section 22(e) and (f), the variety has not been sold or otherwise disposed of to other breeders in any other country with the consent of the breeder, except for recognized and necessary purposes, made earlier than four years before the date of the application in respect of varieties other than trees of vine, for which the effective period shall be six years before the date of application.

(2) The Minister may, by regulations, specify seed production activities that shall not be considered to be "disposal to others" for purpose of this section.

(3) Notwithstanding subsection (1) a Plant Breeders' Rights shall not be refused or invalidated by reason of the fact that the new variety was made available to the public prior to the date of application without the breeder's knowledge or consent, if the breeder proves that he applied for the grant or plant breeders rights with all reasonable diligence after learning of the variety's availability to the public or without knowing the fact.

(4) The provision of subsection (3) shall not apply in relation to a variety that has been commercially grown prior to the date of the application for any purpose other than field trials.

16. A new variety meets the requirements of paragraphs (b), (c) and (d) of section 14 if it —

- (a) is listed pursuant to the Seeds (Regulation of Standards) Act, 1973 as a variety of seeds that may be sold in Tanzania;
- (b) is recognized as a new variety by a foreign Government which shall enter into an agreement with the Government for the protection of breeders' rights on a reciprocal basis, and is listed in that Government's list of varieties that are authorized for commercial release in that country:

Provided that, the variety is—

- (i) not listed under the Seeds (Regulation of Standards) Act, 1973; and
- (ii) clearly distinguishable from any other variety of the same species or subspecies listed in the variety list of Tanzania.

17. Notwithstanding the provisions of section 16 and after the Plant Breeders' Rights Advisory Committee recommendations, the Minister may direct the Registrar to register a variety in accordance to the provisions of this Act.

Presump-  
tion of  
qualifica-  
tions  
Act No. 29  
of 1973

Plant  
Breeders'  
Rights  
registra-  
tion for  
strategic  
purposes

Distinc-  
tness

18.—(1) A variety shall be deemed distinct if it is clearly distinguishable from any other variety whose existence is common knowledge at the time of the filing of the application for the granting of Plant Breeders' Rights or for the entering of another variety in the official register of varieties in any country.

(2) The filing of an application for the grant of Plant Breeders' Rights or for entering of another variety in the official register shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that, the right or listing applied for is ultimately granted.

Stability

19. A variety shall be deemed to be stable, if it is able to retain its distinctive characteristics with a reasonable degree of reliability after repeated propagation or at the end of a particular cycle of propagation.

Uniformity

20. A variety shall be deemed uniform if variations within that variety are describable, predictable, and commercially acceptable.

#### PART IV

##### APPLICATION FOR PLANT BREEDERS' RIGHTS

Applica-  
tion for  
Plant  
Breeders'  
Rights

21.—(1). A breeder of a new variety, his assignee or agent may apply for a Plant Breeders' Rights covering that variety.

(2) The Minister may apply with regard to varieties developed by the Government.

Contents  
of an  
application

22. The application for Plant Breeders' Rights relating to a variety shall contain the following—

- (a) the name and address of the applicant;
- (b) if the applicant is an assignee or successor in title to the breeder of the new 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 breeder of the new variety;
- (c) the origin and denomination, along with other description of the characteristics and properties of the new variety, including whether it has been listed pursuant to section 16 of this Act or whether application for the listing has been made;
- (d) samples of propagation material in such quantities as the Registrar may require;
- (e) a list of all countries in which application for Plant Breeders' Rights has been made or in which Plant Breeders' Rights have been granted, specifying the number title, the effective dates of the application and the status or the disposition;
- (f) a list of all other countries in which the variety is listed or otherwise authorized for commercial release;
- (g) a location at which plants of the new variety will be available for inspection pursuant to this Act at any time during business hours; and
- (h) any additional information that may be specified by regulations.

23.—(1) At the time of application, the applicant shall propose a name for the new variety, which shall be subject to the approval of the Registrar.

Name or  
denomina-  
tion of the  
new  
variety

(2) After a name has been approved for a new variety, no other name or denomination may be used in connection with that variety, whether before or after the expiration of the plant breeder's rights with respect to that variety.

(3) The breeder shall not assert any right with regard to the denomination, which shall prevent or limit the right of another person to use the denomination in connection with the variety.

## PART V

### CONSIDERATION AND DISPOSITION OF APPLICATIONS

24.—(1) The effective date of an application shall be the date that application was received by the Registrar.

Priority  
and re-  
dating of  
applica-  
tions

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

(3) The applicant, having duly filed an application, shall be accorded priority over all subsequent applications with respect to the same variety for one year from the effective date of the application.

(4) Where, within twelve months prior to the effective date of its application under this Act, an applicant has filed an application for plant variety protection in any country that has entered into a bi-lateral or multilateral agreement concerning mutual recognition of such protection, the applicant may, in the application, claim a right of priority, under which the effective date of the application shall be the date of the earlier application.

(5) Any applicant who shall be prevented from obtaining a Plant Breeders' Rights by operation of subsection (4) of this section shall not claim any right against the Registrar or the successful applicant or any other person as a result of the disposition of the unsuccessful application.

Amendment of application

25.—(1) An applicant may amend his application at any time without affecting its effective date, so long as the amendment does not extend the application beyond the matters initially contained in it.

(2) If any amendment of an application occurs after publication of a notice under section 26, the applicant shall be liable to pay the cost of republication.

Publication of notice

26. The Registrar shall notify by a notice published in the *Gazette* of every filed application that relates to a variety that satisfies the requirements of section 11 and the notice shall specify:—

- (a) the name of the applicant;
- (b) the effective date of the application;
- (c) the proposed denomination of the variety; and
- (d) such information relating to the plant as may be necessary to describe the variety for purposes of public comment on the application, or as may be specified by regulations.

Objection to the proposed grant of Plant Breeders' Rights

27.—(1) Any person within two months of publication of a notice under section 26 may lodge with the Registrar a written objection to the matters specified in that notice.

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

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

28. An objection lodged pursuant to section 27, shall be based on allegations of one or more of the following grounds-

Grounds  
for  
objection

- (a) that the published notice is incomplete, or that it does not clearly describe the variety;
- (b) that the application does not comply with sections 21, 22 and 23 of this Act;
- (c) that the applicant infringes the rights of an interest in the variety or otherwise not entitled to make the application;
- (d) that the applicant is not the owner of an interest in the variety or otherwise not entitled to make the application;
- (e) that the application contains a material misrepresentation;
- (f) that the variety described in the application is not a new variety to which this Act applies within the meaning of sections 15 and 16;
- (g) that the plant concerned is not of a specie or a sub-specie designed by regulations made under section 13 of this Act;
- (h) that the proposed denomination should be rejected or altered;
- (i) that the variety has been reproduced by the repeated use of the reproductive material of another variety for which Plant Breeders' Rights have been granted to or applied for by a person other than the applicant, without licence or permission or in violation thereof;
- (j) that any claim of priority based on an application for, or grant of Plant Breeders' Rights under the law of another country is not valid or does not relate to the variety of the current application.

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

Notice to  
the appli-  
cant and  
reply to ob-  
jection

(2) The applicant may respond to the allegations of the objector, in a written reply that shall be lodged with the Registrar, within one month or such further period as the Registrar may allow from the date of notification made under subsection (1) of this section.

(3) The written reply shall set out the facts or other grounds set forth in the objection and a copy of the reply shall be provided to the objector.

(4) The Minister, on behalf of the Government, may lodge a reply to any objection lodged under section 27.

Disposition of applications

30.—(1) Upon—

- (a) completion of the notice requirements under section 26; and
- (b) the expiration of all time limits for objection and a reply under section 26,

the Registrar shall evaluate the application, based on the application itself, the objections, counter statements, if any, and the results of any tests and trials of the variety.

(2) The Minister may appoint one or more persons to advise the Registrar in the evaluation of applications and those persons shall be selected based on their special knowledge in areas of -

- (a) plant breeding; or
- (b) the legal aspects of administrative decision making.

(3) If the Registrar concludes that-

- (a) the application conforms to the requirements of this Act and the applicant is entitled to make the application;
- (b) the variety is a new variety;
- (c) no objection has been filed and;
- (d) there are no grounds for objection, and if an objection has been filed the objection does not state an impediment to the availability of Plant Breeders' Rights for the variety,

the Registrar shall grant the applicant a plant breeder's right in the new variety.

(4) For each variety for which Plant Breeders' Rights is granted, the Registrar shall—

- (a) issue a certificate of registration to the applicant;
- (b) enter the variety in the register as provided under section 6; and
- (c) publish a notice of the grant of Plant Breeders' Rights in the *Gazette*.

(5) If the Registrar cannot grant the applicant a Plant Breeders' Rights in the variety pursuant to subsection (3), he shall reject the application and provide the applicant with a written statement of reasons for the refusal to grant Plant Breeders' Rights within fourteen days.

## PART VI

### PROVISIONAL, FINAL PROTECTION AND HOLDERS' DUTIES

31.—(1) Subject to the provision of section 33 and relevant provisions of the Seed (Regulation of Standards) Act, 1973, during the period between the filing of the application and the final disposition of the application, an applicant for Plant Breeders' Rights shall have the sole right to sell, produce, reproduce and multiply propagating material of the variety or to stock the variety for any of these purposes.

Provisional  
protection  
Act No. 29  
of 1973

(2) Recovery for infringement of this right shall be limited to equitable remuneration for the holder with regard to acts in violation of the right granted under this Act.

32.—(1) Subject to the provisions of section 33 and relevant provisions of the Seed (Regulation of Standards) Act, 1973, the holder shall, during the term of that right have the sole right to sell, reproduce and multiply propagating material of the variety, or to stock the variety for any of these purposes.

Rights of  
holders of  
plant  
breeders'  
rights  
Act No. 29  
of 1973

(2) Where the holder of the Plant Breeders' Rights has not had a reasonable opportunity to exercise his right in relation to the propagating material, the holder may assert the same rights with respect to harvested material obtained through the unauthorized use of propagating material of the variety, and the products from it.

33.—(1) The provisions of section 31 and section 32 (2) shall apply to-

- (a) varieties that essentially are derived from the protected variety where the protected variety is not itself essentially derived from another variety;
- (b) varieties which are not clearly distinguishable from the variety; and
- (c) varieties whose production required the repeated use of the protected variety.

Varieties  
to which a  
plant  
breeders'  
rights  
apply

(2) For purposes of this section, 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 the genotypes of the initial variety;
- (b) it is not 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.

Exceptions  
to plant  
breeders'  
rights

34. The following acts shall not be infringements of the rights conferred under sections 31 and 32 namely—

- (a) acts done privately for non - commercial purposes;
- (b) acts done for the purpose of breeding other varieties;
- (c) acts done for the purpose of breeding varieties, unless section 33 is applicable to those acts; and
- (d) acts done by farmers with the purposes of propagating, on their own holdings, the product of the harvest which they have obtained by planting the protected variety or a variety to which section 33 applies.

Duration  
of plant  
breeding  
rights

35.—(1) Except as set forth in Part VII, the plant breeders rights granted under this Act shall expire—

- (a) in respect of tree crops and vines, twenty five years from the date of the grant;
- (b) in respect of other crops, twenty 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 Plant Breeders' Rights six months before the expiration of the original term.

Damage  
for  
infringe-  
ment of  
plant  
breeders  
rights

36.—(1) A suit by the holder of Plant Breeders' Rights against any person who infringes such rights may be brought in any court of competent jurisdiction.

(2) 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.

37.—(1) During the term of the Plant Breeders' Rights , the Registrar may at any time order the holder of that right to—

Mainte-  
nance of a  
variety

- (a) produce propagating material which is capable of producing the variety, with the morphological and physiological and other characteristics which the variety possessed at the time the Plant Breeders' Rights was granted;
- (b) provide information, documents or material for verifying the maintenance of the variety; and
- (c) satisfy the Registrar that the holder of Plant Breeders' Rights is able to comply with a request under paragraph (a), including facilities for the inspection by or on behalf of the Registrar, of the measures taken for the preservation of the variety concerned.

(2) Failure or inability to comply with an order of the Registrar made under this section shall be grounds for cancellation of the Plant Breeders' Rights .

38.—(1) In order to maintain the Plant Breeders' Rights , the holder shall pay an annual fee in advance, starting with the second year after the date of filing of the application.

Annual  
fees

(2) The holder who fails to pay annual fees on the due date may, upon payment of a surcharge, pay the fee at any time in the following six months without affecting the Plant Breeders' Rights .

(3) If the fee is not paid within the period specified under sub-section (2), the Plant Breeders' Rights shall lapse, and the Registrar shall cancel the right pursuant to section 39.

(4) At any time within twelve months following the expiration of the period specified in sub-section (2) the holder may petition to the Registrar for restoration of the Plant Breeders' Rights .

(5) The Registrar may grant a request for restoration of a Plant Breeders' Rights if he determines that the failure to pay was unintentional, and if the holder pays all annual fees and surcharges necessary to bring the Plant Breeders' Rights current.

(6) If the Plant Breeders' Rights is restored, the holder shall not bring any action for infringement of the right, where the infringement arises out of any action and event occurring after the lapse of the Plant Breeders' Rights and before the date of the order of restoration.

## PART VII

### TERMINATION AND SURRENDER OF PLANT BREEDERS' RIGHTS

Nullifica-  
tion or  
cancella-  
tion of  
Plant  
Breeders'  
Rights

39.—(1) The Registrar shall, upon advice by the Plant Breeders' Rights Advisory Committee, nullify a Plant Breeders' Right, upon—

- (a) discovery that the information submitted to the Registrar in the application for Plant Breeders' Rights was incorrect, and that, the disposition of the application would have been different if the correct information had been known;
- (b) receiving information invalidating the right or proving that it should not have been granted according to the terms of Part III of this Act;
- (c) being satisfied that the applicant was not entitled to the Plant Breeders' Rights, and that, another applicant should have been given priority for the grant in the same variety:

Provided that, termination shall be required where the Plant Breeders' Right is transferred to a person so entitled.

(2) The Registrar may cancel a Plant Breeders' Right, prior to the expiration of its term, if it appears to him that—

- (a) the holder of those rights—
  - (i) has failed to comply with any order made under section 37;
  - (ii) is no longer in a position to provide the propagating material or information regarding the variety referred to in section 37;
  - (iii) has failed to pay fees pursuant to section 38 and 55 as necessary to keep his right in force;
- (b) the variety is no longer capable of meeting the standards of uniformity and stability.

(3) The Registrar shall notify the holder of the Plant Breeders' Rights and any licensee of any decision made under subsection (1) or (2) of this section and of the grounds for it.

(4) Any person receiving notice under subsection (3) may contest the decision, by a written objection lodged with the Registrar within thirty days from the date of the decision.

(5) 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.

(6) If the Registrar terminates or cancels any Plant Breeders' Rights under this section, he shall publish the termination by a notice published in the *Gazette*, after expiration of thirty days from the date of the decision or following a decision made under subsection (5).

(7) The holder shall return to the Registrar, any certificate or the grant of a Plant Breeders' Rights that has been terminated or cancelled under this section.

40.—(1) Any holder of a Plant Breeders' Rights may, by notice in writing to the Registrar, surrender that right.

Surrender  
of plant  
breeders'  
rights

(2) The Registrar shall publish a notice in the *Gazette* of the intent to surrender that right within one month of giving a notice under subsection (1).

(3) Any person aggrieved by the proposed surrender may, within two months from the date of publication, object to the surrender of the Plant Breeders' Rights, by a written notice to the Registrar, specifying the grounds for the objection.

(4) If the holder is allowed to surrender that right, the Registrar, shall within one month of that decision, publish in the *Gazette* a notice of the revocation.

(5) In the event of an objection made under subsection (3), the Registrar shall decide whether the holder of Plant Breeders' Rights may surrender that right, and the Registrar shall revoke any right so surrendered.

#### PART VIII LICENCES AND ASSIGNMENTS

41.—(1) The holder of plant breeders rights may grant to any person, a licence to undertake any activity described or referred to in sections 31 and 32.

Granting of  
licence

(2) The licence may include conditions regarding -

(a) the quantity of propagating material of the relevant variety to be supplied to the licensee and its price;

- (b) the royalties payable;
- (c) the information to be furnished to the licensor regarding the licensee activities under the licence.
- (d) the duration of the licence, which shall not exceed the remaining term of the Plant Breeders' Rights ;
- (e) any limitation on the licensees' ability to transfer all or any part of his rights under the licence, or to enter into sub-licence arrangements;
- (f) the effect of failure to comply with any condition or covenant of the licence; and
- (g) any other matter to which the parties may agree.

(3) The licensor may grant permission to any third person to do, or may himself do, any activity described in sections 31 and 32.

(4) If the licence is exclusive, unless otherwise provided therein, the licensor may not grant such permission to the licensed activities.

(5) The existence of a licence shall not affect the decision of the Registrar regarding the granting, nullification, termination, or restoration of any Plant Breeders' Rights , or any other administrative action authorized under this Act.

**Compul-**  
sory grant  
of license

**42.—(1)** At any time after three years following the grant of Plant Breeders' Rights , any person may petition to the Registrar to issue a compulsory licence on the ground that the holder-

- (a) unreasonably refuses to grant him a licence; or
- (b) is imposing unreasonable conditions for the issue of such a licence, and that, on account of the refusal, the reasonable requirements of the public with regard to the new variety in question, are not being satisfied or will not be satisfied.

(2) A petition under sub-section (1)—

- (a) may be brought regardless of whether the holder has granted other licensees with respect to the variety;
- (b) shall set out the facts and allegations on which the petition is based and the Registrar may require the application to be substantiated by such proof as he may deem necessary.

(3) The Registrar shall furnish the holder of the Plant Breeders' Rights , and any licensees of the holder, with a copy of the petition and all annexes.

(4) If the holder of Plant Breeders' Rights wishes to contest the petition, he shall, within one month or such further period as the Registrar may allow, submit a counter statement setting out the grounds for his refusal to grant a licence or for the conditions imposed thereon, and the Registrar shall furnish the petitioner with a copy of the counter statement.

(5) The Registrar shall hold a hearing to consider the petition and if the Registrar is satisfied that the holder is unreasonably refusing the licence or imposing unreasonable conditions for the issue of a licence, and as a result the reasonable requirements of the public with regard to the new variety in question are not being satisfied or will not be satisfied, he may issue a compulsory licence, setting out the terms and conditions of the licence.

(6) In setting the terms of a compulsory licence, the Registrar shall endeavour to ensure that the propagating material of the variety in question shall be available to the public at reasonable prices, and that, the holder of a Plant Breeders' Rights derives a reasonable advantage from it.

(7) The terms of the compulsory licence shall not prevent the licensor from giving additional licences for the variety to other persons.

43. No *inter-vivos* transfer or assignment of a Plant Breeders' Rights shall be valid unless it is in writing, signed by the parties and notified to the Registrar.

Assign-  
ments

44.—(1) Each licensee shall, in not more than thirty one days from the effective date of the licence, notify the Registrar of the transaction and furnish the Registrar with a copy of that licence.

Records in  
the register

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

(3) Upon assignment or other transmission of all or part of a Plant Breeders' Rights, the assignee or recipient shall apply to the Registrar for the registration, in the register, of his title or interest in the Plant Breeders' Rights.

(4) The Registrar shall, upon proof of licences, assignment or other entitlement to his satisfaction, register such transaction or notice and the interest in title to the Plant Breeders' Rights conveyed or affected.

(5) Except for the purposes of an application to rectify the register under the provisions of this Act, if a document has not been entered in the register, no person may present that document as evidence of the title of that person to the Plant Breeders' Rights or a share of or interest in Plant Breeders' Rights unless the Appeals Board or a court of competent jurisdiction otherwise directs.

## PART IX

### APPEALS

Appeals  
Board

45.—(1) The Minister shall appoint an Appeals Board, consisting of three members, including one expert in legal matters and administrative law and two experts qualified in agricultural science.

(2) The Appeals Board shall have power to—

- (a) prescribe its own rules of procedure;
- (b) order and secure the attendance of witness;
- (c) compel discovery and the production of documents; and
- (d) administer oath or affirmation to any witness.

(3) The Appeals Board shall keep record of its proceedings.

(4) 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  
decision of  
Registrar

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

(2) A person who is aggrieved by any such decision may appeal to the Appeals Board by submitting a notice of 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

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

(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 appellant, the Registrar and any other interested party.

(4) Subject to the provisions of sub-section (5) a decision of the Appeals Board shall be final.

(5) The Minister may order the Appeals Board to review a decision made pursuant to sub-section (3), if he is of the opinion that, because of new evidence or developments the previous decision may change.

## PART X

### ESTABLISHMENT OF PLANT BREEDERS' RIGHTS FUND

48.—(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 paid.

Establish-  
ment of  
Plant  
Breeders'  
Rights  
Develop-  
ment fund

(2) The sources of money for the Fund shall include—

(a) Plant Breeders' Rights registration, maintenance and licence fees determined by the Minister for the purpose;

(b) any donations or grants from Government or individuals.

(3) The purpose of the Fund shall include financing the following activities—

(a) collection and dissemination of plant breeders' rights information;

(b) maintenance of new plant varieties bank;

(c) supporting any research or analysis on varieties before or after plant breeders' rights registration;

(d) such other activities relating to the development and promotion of plant breeders' rights.

(4) In addition to the functions entrusted to it under section 10, the Plant Breeders' Rights Advisory Committee shall operate as the Fund Committee, whereby—

(a) The Registrar shall be a member of the Fund Committee and shall serve as Secretariat 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 proper books of accounts and other records in respect of the moneys of the Fund shall be kept properly and maintained and shall be subject to audit.

Accounts  
and audit

49.—(1) The Plant Breeders' Rights Registry shall cause to be kept and maintain proper books of accounts with respect to—

- (a) all sums of money received and expended by the Plant Breeders' Rights Registry and matters in respect of which the receipt and expenditure take place;
- (b) all the assets and liabilities of the Plant Breeders' Rights Registry and the fund; and
- (c) the income and expenditure statement of the Plant Breeders' Rights Registry;

(2) The financial year of the Plant Breeders' Rights Registry and the Fund shall end on 30th June of each year.

(3) The books of accounts of the Plant Breeders' Rights Registry and the Fund shall be audited at the end of each financial year by the Controller and Auditor General.

Annual  
Reports to  
be  
submitted  
to Minister

50.—(1) The Plant Breeders' Rights Registry 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 Registry in respect of that 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 penal-  
ties

51.—(1) Any person who-

- (a) knowingly makes a false entry in the register;

- (b) knowingly 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) knowingly produces or tenders a false entry of copy as evidence;
- (d) knowingly submits a false document or makes a false statement or representation to the Registrar in regard to any action described under this Act;
- (e) knowingly 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 so 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) falsely represents that propagating material sold by him for the purpose of propagation or multiplication is propagating material of a variety in respect of which a plant breeders' right has been granted under this Act, or that the propagation material originates from such a variety;
- (i) at the sale of propagating material for the purposes of propagation or multiplication—
  - (i) uses a denomination which is different from the variety in question; or
  - (ii) uses the registered denomination of another variety of the same species or subspecies of plant; or
  - (iii) uses a denomination which corresponds so closely to a registered denomination that is misleading;
- (j) gives false information in any application or makes any false statement in evidence; or
- (k) causes another person to take any action described in this section, commits an offence.

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

## PART XII

### MISCELLANEOUS PROVISIONS

52. Notwithstanding any other provision of this Act, the Registrar shall assess and collect fees from the applicant or any other person filing

Collection  
of fees

a document or requesting process of administrative action under this Act, for each application, extension, filing, inquiry or other administrative process or service.

Confidentiality

53.—(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 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 Appeal Board, the Registrar or any other person for the purposes of carrying out his duties or the performance of his functions under this Act, or
- (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 two million shillings or to an imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Action against the State

54.—(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 Plant Breeders' Rights and other interests acquired or given in Plant Breeders' Rights, 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.

Plant breeders' right in respect of existing varieties

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

- (a) a person who has derived his title to that variety directly or indirectly from the breeder or owner by a sign writing or in heritage or operation of law; or
- (b) a legal representative of such person;

(2) If the Registrar determines that the applicant effectively controls the availability of the variety to the public and that the provisions of Part III are otherwise satisfied in respect of the variety, he may grant a Plant Breeders' Rights in respect of that variety.

(3) Applications made under this section shall comply with the application procedure, including publication, as set in Part IV.

56. The Minister may enter into bilateral or multilateral agreement with foreign Governments for the mutual recognition and protection of plant breeders' rights.

Agreements with foreign Governments

57.—(1) The Minister shall ensure that the implementation of this Act shall not affect the fulfillment of the Government obligations pertaining to the protection of farmers' rights to equitably share and access to traditional cultivars and germplasm; national and international commitments towards sustainable use of biological diversity taking into account the human health.

Protection of farmers rights and traditional cultivars and germplasm

(2) The Minister shall, after consultation with the Minister responsible for finance, direct that, a certain percent of the fees paid to the Registrar under this Act, be set aside for the benefits of traditional farmers and the preservation of traditional cultivars of agricultural products.

58.—(1) Where a holder of plant breeders' rights is a non-resident person or, in the case of a corporation, does not have its registered office in Tanzania, the holder shall have an agent who is resident in Tanzania in respect of those rights.

Agents

(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 an applicant or a holder of plant breeder's rights to act in the capacity of agent.

59.—(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally administer effectively and carry out the objects and purpose of this Act or to give force or effect to its provisions.

(2) Without prejudice to the generality of the sub-section (1), regulations made under this section may include—

- (a) the form of any notice, any licence or other transaction to be provided as a prerequisite for recordation of such transaction in the Register, and the certification or attestation of the validity of copies of any document to be provided to the Registrar;
- (b) the form of any application, description, objection, petition, counter - statement or other document to be lodged with the Registrar and the attestation to be provided on such document;
- (c) the procedure to be followed in any proceedings before the Registrar;
- (d) specific parameters of the information and facilities to be provided, and of the propagating and other material to be submitted with respect to a variety;
- (e) the tests, trials, examinations and other steps to be taken with respect to a variety, by the applicants or by the Registrar and the time within which any such steps are to be taken;
- (f) the records to be kept and the returns to be rendered relating to propagating material for sale, reproduction or export and the form and manner of such records and returns, and the time for filing.
- (g) the fees to be paid in respect of -
  - (i) applications for the grant of plant breeders' rights, for extension of its term and for restoration of lapsed rights;
  - (ii) requests for administrative review, including objections to termination of Plant Breeders' Rights, appeals from administrative decisions and other administrative actions;
  - (iii) the examination of samples of propagating material or any plant grown from;
  - (iv) the recordation in the register or a notice of licence, assignment, transfer or other transaction involving a Plant Breeders' Rights ;
  - (v) the inspection of the register or provision of a certified copy of any entry therein;
- (h) the rights and duties of the licensor with respect to licences granted under section 41 or 42, in connection with the institution of action for infringement of the licensor's plant breeders' rights where the licensor fails or refuses to institute such action;

- (i) requiring the publication *in journals* or newspapers of *prescribed* particulars respecting applications, approvals and changes of denominations Plant Breeders' Rights ; and
- (j) prescribing for anything that is to be prescribed under this Act.

Passed in the National Assembly on the 7<sup>th</sup> November, 2002.

KIPENKA M. MUSSA,  
*Clerk of the National Assembly.*

- (i) requiring the person to whom the newspaper of prescribed particulars relating to the activities, approvals and changes of denominations, plan, structure, rights, and
- (ii) prescribing for anything that is to be prescribed under this Act

Enacted by the National Assembly on the 11th November, 2002

KIPENKA M. MUSA,  
Speaker of the National Assembly