



C(Extr.)/30/4 Rev.
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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
Geneva

COUNCIL

Thirtieth Extraordinary Session
Geneva, March 22, 2013

EXAMINATION OF THE CONFORMITY
OF THE PLANT BREEDERS' RIGHTS BILL FOR ZANZIBAR
WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

1. By letter dated February 18, 2013, addressed to the Secretary-General of UPOV, the Acting Permanent Secretary, Ministry of Agriculture Food Security and Cooperatives, of the United Republic of Tanzania, requested the examination of the Plant Breeders' Rights Bill for Zanzibar (hereinafter referred to as the "Draft Law"), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a copy of the Draft Law in English.
2. On November 1, 2012, the Delegation of the United Republic of Tanzania thanked the Council, at its forty-sixth ordinary session, for the positive decision on the conformity of the Plant Breeders' Rights Bill for Mainland Tanzania with the provisions of the 1991 Act of the UPOV Convention. The Delegation informed the Council that the Government of the United Republic of Tanzania had the intention to submit the legislation for Zanzibar for the examination by the Council in 2013 (see document C/46/18 "Report on the decisions", paragraph 16).

BACKGROUND

3. Article 34(3) of the 1991 Act provides that "[a]ny State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."
4. Since 2007, the Office of the Union has, on various occasions, provided comments on proposed amendments to the "Protection of New Plant Varieties (Plant Breeders' Rights) Act 2002" for Mainland Tanzania (Act of 2002) in relation to the 1991 Act of the UPOV Convention. On September 6, 2010, the Office of the Union was informed that the Draft Amendment Act had been transformed into a consolidated Bill and that the Bill was at the Office of the Attorney General prior to its submission to the Parliament. On that occasion, the Office of the Union was informed that a separate piece of legislation would be enacted for Zanzibar in order to cover the whole territory of the United Republic of Tanzania.
5. On June 1 and 2, 2011, in Zanzibar, United Republic of Tanzania, the Office of the Union gave lectures at a Stakeholders' Workshop on Plant Breeders' Rights and met with governmental officials from Mainland Tanzania and from the Working Group responsible for drafting the plant breeders' rights legislation for Zanzibar. On July 20, 2011, the Office of the Union provided comments on the Draft Law for Mainland Tanzania and the Draft Law for Zanzibar reflecting the discussions and proposals at the meetings

on June 1 and 2, 2011, in Zanzibar. The Office of the Union explained that in order to become a member of the Union both pieces of legislation would need to be submitted for examination by the Council.

6. On June 14, 2012, the Office of the Union was informed that the Government of the United Republic of Tanzania had the intention to submit, in the first instance, the Draft Law for Mainland Tanzania for examination by the Council and, at a later stage, the Draft Law or adopted Law for Zanzibar.

7. The Council, at its forty-sixth ordinary session, held in Geneva on November 1, 2012, decided to:

“(a) note the analysis in document C/46/15 and that the Plant Breeders’ Rights Bill for Mainland Tanzania (Draft Law) would incorporate in Section 2 the text “Ministry’ means Ministry responsible for agriculture”;

“(b) subject to the incorporation in the Draft Law (see Annex II to document C/46/15) of the Minister’s Amendments (see Annex III to document C/46/15), as set out in paragraphs 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 and 43 of document C/46/15, the modifications recommended in paragraphs 22 and 34 of document C/46/15, and in subparagraph (a) above, and the following proposals agreed with the Delegation of the United Republic of Tanzania in Section 14 and Section 22(1) and (4) of the Draft Law:

‘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 of 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.’

‘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. This period which shall be computed from the date of filing the first application. ~~The day of filing date shall not be included in the later application latter period.~~

[...]

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

“and with no additional changes, take a positive decision on the conformity of the Plant Breeders’ Rights Bill for Mainland Tanzania with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants;

“(c) note that the adoption of the Draft Law for Mainland Tanzania and of the Draft Law for Zanzibar are necessary for breeders’ rights to cover the whole territory of the United Republic of Tanzania;

“(d) note that the Government of the United Republic of Tanzania has the intention to submit, at a later stage, the Draft Law or adopted Law for Zanzibar for examination by the Council;

“(e) inform the Government of the United Republic of Tanzania that its instrument of accession may be deposited after positive decisions of the Council on the Laws for Mainland Tanzania and Zanzibar; and

“(f) authorize the Secretary-General to inform the Government of the United Republic of Tanzania of that decision.”

(see document C/46/18 “Report on the decisions”, paragraph 15)

8. The Delegation of the United Republic of Tanzania thanked the Council, at its forty-sixth ordinary session, for the positive decision on the conformity of the Plant Breeders’ Rights Bill for Mainland Tanzania with the provisions of the 1991 Act of the UPOV Convention. The Delegation informed the Council that the

Government of the United Republic of Tanzania had the intention to submit the legislation for Zanzibar for the examination by the Council in 2013 (see document C/46/18 "Report on the decisions", paragraph 16).

9. On November 5, 2012, the Parliament of the United Republic of Tanzania adopted the Plant Breeders' Rights Bill for Mainland Tanzania (see Annex I to this document). On March 5, 2013, the Office of the Union has received a copy of the Plant Breeders' Rights Act for Mainland Tanzania (the full text of the Act for Mainland Tanzania can be viewed on the C(Extr.)/30 page of the UPOV website).

10. On December 21, 2012, the Office of the Union provided comments on the Draft Law for Zanzibar reflecting the recommendations of the Council in its decision of November 1, 2012, on the Draft Law for Mainland Tanzania (see paragraph 7, above).

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN THE UNITED REPUBLIC OF TANZANIA

11. In the United Republic of Tanzania, the protection of new plant varieties will be governed by the Plant Breeders' Rights Act for Mainland Tanzania and by the Draft Law for Zanzibar, once adopted by the House of Representatives of Zanzibar. An analysis of the Draft Law for Zanzibar follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

12. Section 2 of the Draft Law contains definitions of breeder and variety corresponding to the definitions in Article 1(iv) and (vi) of the 1991 Act, respectively.

13. The Draft Law in its Section 2 contains a definition of the following term which is not defined in the 1991 Act:

"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;"

14. The Draft Law in its Section 2 contains a definition of the following term, which is not defined in the 1991 Act and not used in the Draft Law:

"Reproductive material' means a plant or part of the plant used to multiply the plant;"

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

15. The Draft Law is entitled "A Bill for An Act to provide for the grant and protection of plant breeders' rights, for establishment of Plant Breeders' Rights Registry and for related matters", corresponding to the basic obligation provided by Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

16. Section 12 of the Draft Law provides that "[t]he protection of varieties under this Act shall apply to all plant genera and species". This conforms with Article 3(2)(ii) of the 1991 Act. It should be noted that, in accordance with Article 36(1)(ii) of the 1991 Act, when depositing its instrument of accession, the United Republic of Tanzania must notify in a declaration that the Act applies to all plant genera and species.

Article 4 of the 1991 Act: National Treatment

17. In relation to the breeder and the filing of applications, the Draft Law does not place any restriction on the nationality, place of residence of natural persons or place of registered offices for legal entities. The Draft Law corresponds to the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

18. Sections 13 to 17 of the Draft Law contain the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

19. Section 53 of the Draft Law concerning the optional provision of Article 6(2) of the 1991 Act reads as follows:

“53. 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.”

Article 10 of the 1991 Act: Filing of Applications

20. Sections 18, 19 and 21 of the Draft Law contain provisions on the filing of applications. The Draft Law does not seem to contain provisions which conflict with Article 10 of the 1991 Act.

21. Section 21(3) of the Draft Law would read as follows:

“(3) Any application filed with the Registrar of Plant Breeders’ Rights of Mainland Tanzania, shall be recognized as an application, for the same variety, filed with the Registrar.”

Article 11 of the 1991 Act: Right of Priority

22. Section 22 of the Draft Law contains provisions on the right of priority corresponding to the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

23. Section 28 of the Draft Law contains provisions concerning the examination of the application corresponding to the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

24. Section 29 of the Draft Law contains provisions on provisional protection corresponding to the provisions of Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder’s Right

25. Section 30(4) of the Draft Law contains the optional provision “Acts in respect of certain products” of Article 14(3) of the 1991 Act, as follows:

“(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.”

26. In order to correspond to the provisions of Article 14(5)(b) and (c) of the 1991 Act, it is recommended to modify Section 30 (6) and (7) of the Draft Law as follows:

“(6) For purposes of paragraph (a) of subsection (5), 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 differences¹, 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 through means such as the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant² individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.”

27. Subject to the above modifications, Section 30 of the Draft Law contains provisions on the scope of the breeder's right corresponding to the provisions of Article 14 of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

28. Subject to the modification in revision mode below, Section 31(1) of the Draft Law contains provisions concerning the compulsory exceptions to the breeder's right corresponding to the provisions of Article 15(1) of the 1991 Act.

“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)² apply, acts referred to in section 30 (1) to (4) in respect of such other varieties;”

29. Section 31(2) and (3) of the Draft Law contains provisions concerning the optional exception under Article 15(2) of the 1991 Act as follows:

“(2) For the list of agricultural crops specified by the Minister, which shall not include fruits, ornamentals, vegetables or forests trees, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or 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.”

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

30. In order to correspond to the provisions of Article 16 of the 1991 Act, it is recommended to modify Section 32 (1) of the Draft Law as follows:

“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 Zanzibar 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.”

¹ The Plant Breeders' Rights Act for Mainland Tanzania, Section 30(6)(c), reads as follows:

“(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.” (emphasis added).

The text in Article 14(5)(b)(iii) of the 1991 Act reads “except for the *differences* which result from the act of derivation [...]”

The above observation was not presented in the recommendations of the Council in its decision of November 1, 2012 (see paragraph 7 of this document).

² The Plant Breeders' Rights Act for Mainland Tanzania, Section 31(1)(c), reads as follows:

“(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) to (4) in respect of such other varieties.” (emphasis added)

In Article 15(1)(iii) of the 1991 Act reference to Article 14(5) corresponds to Section 30(5) to (7) in the Plant Breeders' Rights Act for Mainland Tanzania.

The above observation was not presented in the recommendations of the Council in its decision of November 1, 2012 (see paragraph 7 of this document).

31. Subject to the above modification, Section 32 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which correspond to the provisions of Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

32. Section 41 of the Draft Law contains provisions concerning the restrictions on the exercise of the breeder's right which correspond to the provisions of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

33. The Draft Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

34. Section 33 of the Draft Law contains provisions concerning the duration of the breeder's right which correspond to the provisions of Article 19 of the 1991 Act.

"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."

Article 20 of the 1991 Act: Variety Denomination

35. In order to correspond to the provisions of Article 20 of the 1991 Act, it is recommended to modify Section 20(7) of the Draft Law to read as follows:

"(7) The Registrar shall register the denomination submitted, unless he considers the denomination unsuitable within ~~Zanzibar~~ the territory of the United Republic of Tanzania and in case the denomination is unsuitable he shall require the applicant to submit another denomination."

36. Subject to the above modification, Section 20 of the Draft Law contains provisions on variety denominations corresponding to the provisions of Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

37. Section 36 of the Draft Law contains provisions on the nullity of the breeder's right corresponding to the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

38. Section 37 of the Draft Law contains provisions on the cancellation of the breeder's right corresponding to the provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

39. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), Section 34 of the Draft Law provides as follows:

"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."

40. In relation to the obligation under Article 30(1)(ii) of the 1991 Act, Section 5(a) and Section 28(7) of the Draft Law provide as follows:

“5. The functions of the Registrar shall be- (a) to grant plant breeders right; [...]”

“(7) Any grant of breeder's right made by the Registrar of Mainland Tanzania shall be recognized as the grant of breeder's right of the same variety made by the Registrar.”

41. Sections 24 and 28(6)(c) of the Draft Law correspond to the obligation to publish information concerning applications for and grant of breeders' rights, and proposed and approved denominations as required in Article 30(1)(iii) of the 1991 Act.

General Conclusion

42. In the opinion of the Office of the Union, once the modifications recommended in paragraphs 26, 28, 30 and 35 of this document, have been introduced in the Draft Law, with no additional changes, the Draft Law would incorporate the substantive provisions of the 1991 Act. The Office of the Union confirms that, subject to the modifications recommended in paragraphs 26, 28, 30 and 35 of this document, the substantive provisions of the 1991 Act contained in the Draft Law for Zanzibar are the same as the substantive provisions of the 1991 Act contained in the text of the Draft Law for Mainland Tanzania for which there was a positive decision of the Council on November 1, 2012 (see paragraph 7, above).

43. *The Council is invited to:*

(a) *note the analysis in this document;*

(b) *subject to the incorporation in the Plant Breeders' Rights Bill for Zanzibar of the modifications recommended in paragraphs 26, 28, 30 and 35 of this document, and with no additional changes, take a positive decision on the conformity of the Plant Breeders' Rights Bill for Zanzibar with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants;*

(c) *note that the Draft Law of Plant Breeders' Rights for Mainland Tanzania was adopted on November 5, 2012, and that the adoption of the Draft Law for Zanzibar is necessary for breeders' rights to cover the whole territory of the United Republic of Tanzania;*

(d) *inform the Government of the United Republic of Tanzania that, subject to*

(i) *the recommendations of the Council, as set out in document C/46/18 "Report on the decisions", paragraph 15(b) (see paragraph 7 of this document), having been incorporated in the Plant Breeders' Rights Act for Mainland Tanzania adopted on November 5, 2012, with no additional changes (see document C(Extr.)/30/4 Add.), and*

(ii) *the modifications recommended by the Council, at its thirtieth extraordinary session, held in Geneva on March 22, 2013 (see paragraph (b) above), being incorporated in the Plant Breeders' Rights Bill for Zanzibar and the adoption of the Bill with no additional changes,*

the instrument of accession of the United Republic of Tanzania may be deposited; and

(e) *authorize the Secretary-General to inform the Government of the United Republic of Tanzania of that decision.*

[Annexes follow]

THE UNITED REPUBLIC OF TANZANIA

MINISTRY OF AGRICULTURE FOOD SECURITY AND COOPERATIVES

Telegram: *KILIMO Dar es Salaam*
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In reply please quote:



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P. O. Box 9192,
DAR ES SALAAM.*

Ref: No AF/287/698/01

18th February 2013

Mr. Francis Gurry
Secretary-General
International Union for the
Protection of New Varieties of
Plants (UPOV)
34, chemin des Colombettes
1211 Geneva 20
Switzerland

Dear Secretary-General Gurry,

**RE: REQUEST FOR EXAMINATION OF CONFORMITY OF TZ ZANZIBAR
DRAFT PBR BILL 2013**

Please make reference to the above heading.

I have the pleasure to inform you that the Revolutionary Government of Zanzibar is in the process of adopting the Plant Breeders' Rights Bill of 2013. The Ministry responsible for agriculture in Zanzibar has informed our office that the said draft Bill has been discussed and passed through the Cabinet Secretariat (Inter-ministerial Technical Committee – IMTC and is ready to be tabled to the Cabinet before it can be read and discussed in the House of Representatives at a later date.

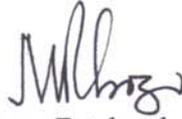
As noted by UPOV Council at its forty sixth sessions when considering request to examine conformity of a draft law for Tanzania Mainland, the United Republic of Tanzania has the intention to submit a draft law for Zanzibar. This submission is intended to allow Tanzania to meet conditions for depositing instruments of accession after a positive decision of the Council on the laws of Tanzania Mainland and Zanzibar.

Following the approval of the Parliament in February 2010, the United Republic of Tanzania intends to adhere to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991

Pursuant to the provisions of Article 34(3) of the UPOV Convention, I would appreciate it if the Council of UPOV could examine the conformity of the attached draft Bill with the provisions of the UPOV Convention. As you will note the draft Bill for Zanzibar has some provisions that slightly differ from that of the draft Bill of the Mainland which received

a positive decision of the Council on conditions, due to some existing drafting and administrative differences. Other differences with the Mainland Bill are based on the changes made on the Bill by the Parliament of The United Republic of Tanzania on 5th November 2012 which passed the same into a law.

Sincerely yours,



Eng. Mbogo Futakamba
Acting PERMANENT SECRETARY

- cc** Permanent Secretary,
Ministry of Agriculture and Natural Resources
Revolutionary Government of Zanzibar
ZANZIBAR

- cc** Permanent Mission of the United Republic of Tanzania
Geneva - Switzerland

C(Extr.)/30/4

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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



**REVOLUTIONARY GOVERNMENT OF ZANZIBAR
MINISTRY OF AGRICULTURE AND NATURAL RESOURCES**

A DRAFT BILL

FOR

AN ACT TO ESTABLISH THE PLANT BREEDERS' RIGHT ACT

2013

DRAFT BILL FOR
THE PLANT BREEDERS' RIGHTS ACT, 2013

ARRANGEMENT OF SECTIONS

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A BILL

for

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

**PART I
PRELIMINARY PROVISIONS**

1. This Act may be cited as Zanzibar Plant Breeders' Rights Act, 2013 and shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint. **Short title and Commencement**
2. In this Act, unless the context otherwise requires-
- "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;
- "Appeals Board" means the Appeals Board established under Section 43.
- "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) the person who bred or discovered and developed a variety;
 - (b) the 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) the 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;
- "*Gazette*" means Zanzibar Government Official Gazette;
- "Fund" means the Fund established under Section 46;
- "legal representative" means-
- a. a liquidator or receiver of a company;
 - b. administrator of the estate of the deceased;
 - c. 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; or
 - (v) is otherwise under any disability.
- "Minister" means the Minister responsible for agriculture;
- "Ministry" means the Ministry responsible for agriculture;
- "Register" means the Register of plant breeders' rights kept in terms of Section 6;
- "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 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;
- Interpretation**

PART II
PLANT BREEDERS' RIGHTS REGISTRY

- 3.** There is hereby established within the Ministry responsible for agriculture a unit to be known as the Plant Breeders' Rights Registry. **Establishment of the Registry**
- 4.** –(1)The Minister shall, by notice published in the *Gazette*, appoint a person or an officer who has relevant qualification and experience to perform the functions conferred to or imposed on the Registrar of Plant Breeders' Rights under this Act. **Appointment of Registrar**
(2) The Minister may appoint deputy Registrars and other officers with relevant qualification and experience who shall perform some of the powers and privileges conferred to the Registrar pursuant to this Act.
(3) For the purpose of this section relevant qualification shall include at-least Masters degree from any recognized institution in the field of agricultural science, law or related field with a minimum experience of five years in the said field.
- 5.** The functions of the Registrar shall be- **Functions of Registrar**
(a) to grant breeders' rights;
(b) to maintain a register and provide information on plant breeders' rights issued in Zanzibar;
(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.
- 6.** –(1)The Registrar shall maintain an official plant breeders' rights register in which all information required to be registered under this Act shall be entered. **Register of plant breeders' rights**
(2) The information to be listed in the Register for each registered variety, shall include-
(a) species and denomination of a variety;
(b) the full name and address of-
(i) the applicant or 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 applicant or holder of the breeder's right;
(c) the date and time of inception of the breeder's 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 breeder's right; and
(e) any other information, which may be required by Regulations made under this Act.
(3) The Register shall be *prima facie* evidence of any matter entered therein.
- 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 *prima facie* evidence of the matter so certified. **Evidence of certain entries and documents**
(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 as evidence.
- 8.** - (1) The Register shall be open for 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 upon request and payment of the prescribed fee.

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

(2) The members of the Committee shall be appointed by the Minister in consultation with relevant authorities at-least three among them should be female, they are:-

- (a) one representative from the Ministry, who shall be the Chairperson to the Committee;
 - (b) one representative from plant breeders association;
 - (c) one representative from registered seed trade association;
 - (d) one representative from registered farmers association;
 - (e) one representative from an institution teaching plant breeding;
 - (f) one representative of an authority responsible for registration of intellectual property rights;
 - (g) one representative of the Attorney General;
 - (h) One representative from the institute responsible for agricultural research; and
 - (i) the Registrar of Plant Breeders' Rights in Tanzania Mainland;
- (3) the Registrar shall be the Secretary of the Committee.

10. The functions of the Committee shall be-

Functions of the Committee

- (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.

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

Powers of the Committee

- (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 by the Registrar of a plant breeder's right application.

PART III VARIETIES TO BE PROTECTED

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

Genera and species to be protected

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

Conditions of protection

(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.

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-

Novelty

- 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 :-
 - 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 off 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;
 - (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 of 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.

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.

Distinctness

(2) For the purposes of subsection (1), the filing of an application for the granting of breeder's right or for the entering of another variety in the official register of varieties in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application provided that the application leads to the granting of breeder's right or to the entering of the said other variety in the official register of varieties.

16. 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.

Uniformity

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.

Stability

PART IV APPLICATION FOR PLANT BREEDERS' RIGHTS

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

Application for breeder's right

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

Contents of an application

- (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.

20. - (1) The variety shall be designated by a denomination which shall be its generic designation and subject to subsection (5), 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.

**Variety
denomination**

(2) The denomination:

- (a) shall enable the variety to be identified;
- (b) shall not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
- (c) shall be different from every denomination which designates, in the territory of any member of an international organization dealing with plant breeders' 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.

(3) 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.

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

(5) 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 (9), is obliged to use it, the Registrar shall require the applicant to submit another denomination for the variety.

(6) Where the variety is already protected by a member of an international organization dealing with the plant breeders' rights matters to which United Republic of 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.

(7) The Registrar shall register the denomination submitted, unless he considers the denomination unsuitable within Zanzibar and in case the denomination is unsuitable he shall require the applicant to submit another denomination.

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

(9) 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.

(10) 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

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

**Filing date of
application**

(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) Any application filed with the Registrar of Plant Breeders' Rights of Mainland Tanzania, shall be recognized as an application, for the same variety, filed with the Registrar.

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 United Republic of Tanzania is a party shall enjoy a right of priority for a maximum period of twelve months. This period shall be computed from the date of filing the first application. The day of filing shall not be included in the latter period.

Right of priority

(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 a period of six months 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.

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.

Amendment of 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.

24. - (1) The Registrar shall, publish in the *Gazette*, and in a newspaper of vast circulation, a notice of every filed application for breeder's right that satisfies the requirements of the Act specifying -

Publication of notice of application

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

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.

Objection to the proposed grant of breeder's right

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

(3) A notice of objection made under subsection (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.

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

Grounds for objection

- (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.

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.

Notice to the applicant and reply to an 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 subsection (1).

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

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

Disposition of applications

(2) Upon any decision to grant a breeder's right which requires an examination for compliance with the conditions specified under this Act, the Registrar may in the course of the examination, grow or cause to be grown the variety or carry out other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

(3) The Registrar may, for the 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 Mainland Tanzania shall be recognized as the grant of breeder's right of the same variety made by the Registrar.

PART VI PROVISIONAL AND FINAL PROTECTION

29. The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period between the publications of the application under section 24 for the grant of a breeder's right and the date of 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.

Provisional protection

30. - (1) Subject to Sections 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-

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

- (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 Sections 31 and 32, the acts referred to in paragraph (a) to (g) of subsection (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 Sections 31 and 32, the acts referred to in paragraph (a) to (g) of subsection (1) in respect of products made directly from harvested material of the protected variety falling within the provision of subsection (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 subsections (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 variety; and
- (c) varieties whose production requires the repeated use of the protected variety.

(6) For purposes of paragraph (a) of subsection (5), 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 through means such as the selection of a natural or induced *mutant*, or of a *somaclonal* variant, the selection of variant, individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

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;
- 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) to (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 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 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.

Exceptions to 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 Zanzibar 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.

Exhaustion of the breeder's right

- (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.

33. - (1) Except as set forth in Part VII, the breeder’s 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. **Duration of plant breeder’s right**

(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.

34. - (1) Breeders’ rights are protected by both civil and criminal measures stipulated in any written law. **Protection and damages for infringement of breeder’s right**

(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.

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

PART VII NULLITY, CANCELLATION AND SURRENDER OF BREEDER’S RIGHT

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

- (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 subsection (1).

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

(2) Without prejudice to subsection (1), the Registrar 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 subsections (1) and (2).

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. **Notification on nullification and cancellation**

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

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

Surrender of breeder's right

(2) The Registrar shall, within one month from the date of receiving the notice under subsection (1), terminate the breeder's right and publish a notice in the *Gazette* of such termination.

PART VIII AUTHORIZATION AND ASSIGNMENTS

40. - (1) The holder of breeder's right may assign or authorize any person, to undertake any activity described or referred to in Section 30.

Authorization or assignment of 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.

Restrictions on the exercise of the breeder's right

(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.

42. - (1) A person authorized under section 40 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.

Information on authorization, assignment and transmission

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

PART IX APPEALS

43. - (1) The Minister shall appoint an Appeal's 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.

Appeal's Board

(2) the Minister shall appoint one person from amongst members of the Appeal's Board to be the Chairperson.

(3) The Appeal's 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 Appeal's Board shall keep records of its proceedings.

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

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

Appeals from the decision of

(2) A person who is aggrieved by any such decision may appeal to the Appeal's 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. **Registrar**

45. - (1) The Appeal's 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. **Decision of the Appeals Board**

(2) The Appeal's 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 Appeal's Board.

(3) The Appeal's Board shall give 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 this section, a decision of the Appeal's Board shall be final.

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

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. **Plant Breeders' Rights Development Fund**

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

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

47. - (1) The Plant Breeders' Rights Registry shall cause to be kept and maintained proper books of accounts with respect to- **Accounts and audit**

- (a) all sums of moneys 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.

48. - As soon as the accounts of the Registry has been audited, and in any case not later than six months after the close of each financial year, the Registrar shall submit to the Minister such audited statement of accounts and a copy of the report made by the Controller and Auditor General on the statement of the account. **Annual report to be submitted to the Minister**

**PART XI
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;
 - (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) contravene the obligation to use the denomination as required by Section 20 (9);
 - (i) gives false information in any application or makes any false statement in evidence; and
 - (j) violates breeder's right
- commits an offence.

Offences and penalties

(2) Any person who commits an offence referred to under this Act shall upon conviction, be liable to a fine not less than two millions and not exceeding ten millions Tanzanian shillings or to an imprisonment for a term not less than one year and not exceeding three years or to both.

**PART XII
GENERAL PROVISIONS**

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.

Collection of fees

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.

Confidentiality

(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's 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 less than one million and not exceeding five million Tanzanian shillings or an imprisonment for a period not less than six months and not exceeding one year or to both.

- 52.** - (1) Subject to the existing law on taking action against the Government, 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. **Action against the Government**
- (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.
- 53.** 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. **Breeder's right in respect of existing varieties of recent creation**
- 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. **Agreement with foreign governments**
- 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. **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 the breeder to act in the capacity of agent.
- 56.** The Registrar shall make guidelines for the proper implementation of this Act and Regulations made under this Act. **Registrar to make guidelines**
- 57.** - (1) The Minister may make Regulations prescribing anything which under this Act may be prescribed. **Regulations**
- (2) Without prejudice to the generality of subsection (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 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) applications for the grant of breeder's right and extension of its term;
 - (ii) maintenance of a breeder's right;
 - (iii) requests for administrative review; including objections to nullity and cancellation of breeder's right, appeals from administrative decision and other administrative actions;
 - (iv) technical examination;
 - (v) inspection or obtaining records in the Register or other transaction involving a breeder's right;
 - (vi) provision of a certified copy of any entry therein;
 - (vii) any other fees to be paid under this Act