

THE PLANT BREEDER'S RIGHTS ACT, 2007

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GOVERNMENT OF ZAMBIA

ACT

No.18 of 2007

Date of Assent: 30th August, 2007

**An Act to provide for the protection of plant breeder's rights;
the registration of plant varieties; and for matters
connected with or incidental to the foregoing.**

[31st August, 2007

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Plant Breeder's Rights Act, 2007.

Short title

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

“Appeals Board” means the Appeals Board established under section *fifty-five*;

Interpretation

“assignee” in relation to a variety, means a person who has derived a title to the variety, directly or indirectly, from a breeder or owner thereof, or the legal representative of that person;

“breeder” in relation to a protected variety means—

(a) the person who or organisation which has bred, discovered and developed the plant variety;

(b) the employer of the person referred to in paragraph (a) if that person is an employee whose duties are such that the variety was bred, discovered and developed in the performance of the employee's duties; or

(c) the successor in title of the person referred to in paragraph (a) or the employer referred to in paragraph (b);

- “denomination” means the name of a variety in relation to an approved variety;
- “derivative” means a product developed or extracted from a plant genetic resource;
- “essential characteristics” in relation to a plant variety, means heritable traits that are determined by the expression of one or more genes, or other heritable determinants, that contribute to the principal feature, performance or value of the variety;
- “farmer” means—
- (a) any person who cultivates crops for subsistence or commercial purposes, directly or through another person; or
 - (b) any person who conserves or reserves, severally or jointly with any person, any wild species or traditional variety or adds value to any wild species or traditional variety through the selection or identification of their useful properties;
- “genera” means any small group of plants which have in common many fundamental features;
- “genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity;
- “genetic resource” means any genetic material of actual or potential value;
- “genotype” means the combination of genes that a plant possesses;
- “grantee” in relation to a plant breeder’s right in a plant variety means—
- (a) the person currently entered on the Register as the holder of the right in the variety; and
 - (b) where the plant variety is declared to be an essentially derived variety of another plant variety, the person currently on the Register as the holder of the right in relation to that other variety;
- “holder” in relation to a plant breeder’s right means a person to whom a right has been granted in terms of section *thirty*;
- “Institute” means the Seed Control and Certification Institute;
- “kind” in relation to a plant, means a related species, sub-species or variety of any plant which is known by a common name;

- “ licence ” means a licence issued under Part V of this Act;
- “ National Biosafety Authority ” means the National Biosafety Authority established under the Biosafety Act, 2007; Act No. 10 of 2007
- “ owner ” in relation to a variety, includes any person having for the time being the possession of that variety;
- “ plant ” includes any fungi and algae but does not include any bacteria, bacteroid, mycoplasma, virus, viroid or bacteriophage;
- “ plant breeder's right ” means a right granted in terms of section *seven*;
- “ plant genetic resource ” means any material of plant origin and the reproductive propagating material that contains functional units of heredity of actual or potential value to food and agriculture;
- “ propagation ” in relation to a living organism or its components, means the growth, culture or multiplication of that organism or component whether by sexual or asexual means;
- “ propagating material ” in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced;
- “ protected variety ” means a variety in respect of which a grant of a plant breeders' right is made;
- “ Registrar ” means the Registrar of the Institute appointed under section *five*;
- “ royalty ” means the amount of money, in Kwacha equivalent, payable for the utilisation of a plant breeder's right;
- “ seed ” means the part of a plant, customarily referred to as a seed, intended for planting and includes a seed potato;
- “ sell ” includes to exchange, barter, offer, hire, advertise, keep, expose, transmit, convey or deliver for or in pursuance of a commercial purpose;
- “ species ” means a natural plant grouping that is capable of breeding within itself but does not interbreed with a member of another plant species;
- “ successor ” means—
- (a) in relation to a breeder of a plant variety, a person to whom the right of the breeder to make an application for a breeder's right in the variety is assigned or transmitted by will or by operation of law; and

- (b) in relation to a grantee of a plant breeder's right, a person to whom the right has been assigned, or transmitted by will or by operation of law;

"taxonomy" means a classified group of plants; and

"variety" means a plant grouping that is contained within a single botanical taxon of the lowest known rank and that, irrespective of whether the conditions for the grant of a breeder's right are fully met—

- (a) can be defined by the expression of the characteristics resulting from the genotype or combination of genotypes;
- (b) can be distinguished from another plant grouping by the expression of at least one of the characteristics; and
- (c) can be considered as a functional unit because of its suitability for being propagated unchanged.

PART II

ADMINISTRATION

Designation
of plant
variety
protection
authority

3. The Seed Control and Certification Institute within the Ministry responsible for agriculture is hereby designated as the plant variety protection authority and shall be responsible for the administration of this Act.

Functions of
Institute

4. The functions of the Institute are to—

(a) register plant varieties;

(b) promote and encourage the development of new plant varieties;

(c) protect the rights of plant breeders with respect to varieties of plants;

(d) document the characterisation of varieties;

(e) maintain catalogues of registered varieties of plants, seeds and germplasm;

(f) issue licences in accordance with this Act;

(g) compile and maintain statistics with regard to plant varieties, seeds and germplasm; and

(h) do all such things connected with or incidental to the foregoing.

5. (1) There shall be a Registrar of the Institute who shall be a public officer and who shall be responsible for the carrying out of the provisions of this Act. Registrar of Institute

(2) There shall be a Deputy Registrar who shall be a public officer and who shall exercise such functions and duties as are delegated to the Deputy Registrar by the Registrar.

PART III

PLANT BREEDER'S RIGHTS

6. The Institute shall recognise and protect the plant breeder's rights enumerated under this Part. Protection of plant breeder's

7. (1) A plant breeder's right in respect of a plant variety is the exclusive right, subject to the other provisions of this Act, to do, or to licence another person to do, any of the following acts in relation to propagating material of the variety: Rights of plant breeder

- (a) produce or reproduce the material;
- (b) condition the material for the purpose of propagation;
- (c) offer the material for sale;
- (d) sell the material;
- (e) import the material;
- (f) export the material; or
- (g) stock the material for any purposes described in paragraphs (a) to (f).

(2) The provisions of subsection (1) shall apply to—

- (a) any variety which is essentially derived from the protected variety, where the protected variety is not in itself an essentially derived variety;
- (b) any variety that is not clearly distinguishable from the initial variety;
- (c) any variety that cannot be reproduced except by the repeated use of the initial variety or of a variety referred to under paragraph (b).

(3) A variety shall be deemed to be essentially derived from another variety if—

- (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 does not exhibit any important features that differentiate it from that other variety;
- (c) it is clearly distinguishable from the initial variety; and
- (d) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(4) An essentially derived variety may be obtained by the selection of a natural or induced mutant or of a somaclonal variant, the selection of any variant individual from any plant of the initial variety, back crossing, or transformation by genetic engineering.

Exemptions
to rights of
breeder

8. (1) Notwithstanding the existence of a plant breeder's rights in respect of a plant variety, any person or farmer may—

- (a) propagate, grow and use any plant of the variety for purposes other than commerce;
- (b) sell any plant or propagating material of the variety as food or for another use that does not involve the growing of the plant or the propagation of that variety;
- (c) sell within a farm or any other place at which any plant of the variety are grown, any plant or propagating material of the variety at that place;
- (d) use any plant or propagating material of the variety as an initial source of variation for the purposes of developing another new plant variety except where the person makes repeated use of the plant or propagating material of the first mentioned variety for the commercial production of another variety;
- (e) sprout the protected variety as food for home consumption or for the market;
- (f) use the protected variety for further breeding, research or teaching; and
- (g) obtain, with the conditions of utilisation, the protected variety from a gene bank or plant genetic resource centre.

(2) A farmer may save, exchange or use part of the seed from the first crop of a plant which the farmer has grown for sowing in the farmer's farm to produce a second and subsequent crop.

(3) Any act done in relation to a plant variety covered by a plant breeder's right that is done for any of the following purposes does not infringe any plant breeder's right:

- (a) privately and for a non-commercial purpose;
- (b) for any experimental purpose; or
- (c) for the purpose of breeding another variety.

9. (1) A plant breeder's right is personal property and, subject to any conditions imposed under this Act, is capable of assignment or of transmission by will or by operation of law.

Nature of
plant
breeder's
rights

(2) An assignment of a plant breeder's right does not have effect unless it is in writing, signed by or on behalf of the assignor.

(3) If a grantee of a plant breeder's right in a plant variety gives another person a licence in that right, the licence binds any successor in title to the interest of the grantee to the same extent as it bound the grantee.

10. (1) A plant breeder may assign the plant breeders rights to any person.

Assignment
of plant
breeder's
rights

(2) Where a plant breeder's rights are assigned or transmitted to any person, the person shall, within thirty days after acquiring them, inform the Registrar in writing that the person has acquired the plant breeders rights, giving particulars of the manner in which the rights are acquired.

(3) The Registrar shall, where satisfied that any rights are assigned or transmitted, enter the name of the person to whom the rights are assigned or transmitted on the Register as the grantee of the plant breeders rights.

(4) The Registrar shall, where the Registrar enters on the Register as the grantee of a plant breeder's rights the name of a person who claims to have acquired the plant breeder's rights, within thirty days after entering the name in the Register, give written notice to the person newly entered and to the person who was the grantee before the new entry was made stating that the entry has been made.

(5) Where the Registrar is not satisfied that a plant breeder's rights are assigned or transmitted to a person who has informed the Registrar in accordance with subsection (1), the Registrar shall—

- (a) give written notice to the claimant—
 - (i) stating that the Registrar is not satisfied; and
 - (ii) setting out the grounds on which the Registrar is not satisfied; and
- (b) give written notice to the person entered on the Register as the holder of the right—

- (i) setting out particulars of the information given by the claimant;
- (ii) telling the claimant that the Registrar is not satisfied; and
- (iii) setting out the grounds on which the Registrar is not satisfied.

(6) A person who informs the Registrar in accordance with subsection (2) that a plant breeder's rights have been assigned or transmitted to that person, shall give written notice to the Registrar of an address in Zambia for the service of any documents.

(7) Where the Registrar enters the name of the grantee on the Register in accordance with subsection (1) and the address is different from the address entered in the Register, the Registrar shall amend the Register so that the address so given is entered in the Register as the address for the service of any documents on the grantee for purposes of this Act.

(8) Where the Registrar is not satisfied that the rights have been assigned or transmitted to another person, the notice to the person under paragraph (a) of subsection (5) shall be given by post.

Duration of
plant
breeder's
rights

11. (1) A plant breeder's rights in respect of a plant variety shall exist for a period of twenty years in the case of any annual crop and twenty five years in the case of any tree and any other perennial commencing on the date on which the successful application for a plant breeder's rights in respect of the plant variety is granted in accordance with this Act.

(2) Any plant breeder's right in a plant variety that is a dependant plant variety of another plant variety commences on—

- (a) the day that the grant of a right in the other plant variety is made; or
- (b) the day that dependant variety comes into existence whichever occurs last, and ends when a plant breeder's right in the other variety ceases.

Restrictions
to plant
breeder's
rights

12. (1) The Institute may, where it considers it necessary in the public interest, subject a plant breeder's rights in respect of a new variety to conditions restricting the realisation of the rights.

(2) A plant breeder's rights on a new variety may be subject to restriction with the objective of protecting food security, health, biological diversity and any other requirement of the farming community for propagating material of a particular variety.

- (3) Restrictions may be imposed where—
- (a) problems with competitive practices of a rights holder are identified;
 - (b) food security or public nutritional or health needs are adversely affected;
 - (c) a high proportion of the plant variety offered for sale is being imported;
 - (d) the requirements of the farming community for propagating material of a particular variety are not met; and
 - (e) where it is considered important to promote the public interest for socio-economic reasons and for developing indigenous and other technologies.

(4) The Institute shall, where restrictions are imposed on a plant breeder's rights within fourteen days thereof—

- (a) give the grantee a copy of the instrument setting out the conditions of the restriction and the reasons therefor;
- (b) give a public notice to that effect; and
- (c) specify the compensation to be awarded to the holder of the affected rights.

(5) Any rights holder affected by any restriction under subsection (1) or (2) may appeal against the decision to the Appeals Board.

(6) The Institute may convert any exclusive plant breeder's rights granted under this Act to non-exclusive plant breeder's rights.

13. (1) A plant breeder's right does not extend to any act concerning the propagation of material of any protected variety, or of a variety covered under sub-section (2), which has been sold or otherwise marketed by the breeder or with the breeder's consent in Zambia, or any material derived from the propagating material, unless the act—

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

(2) For purposes of sub-section (1), "material" means, in relation to a variety—

Exhaustion
of plant
breeder's
right

- (a) propagating material of any kind;
- (b) harvested material, including an entire plant or any part of a plant; and
- (c) any product made directly from any harvested material.

PART IV

REGISTRATION OF PLANT BREEDER'S RIGHTS

Application
for plant
breeder's
rights

14. (1) A breeder of a new plant variety may apply to the Institute for a plant breeder's right in respect of the variety in the prescribed manner and form upon payment of a prescribed fee.

(2) A breeder of a new variety, or the breeder's successor, may apply for a plant breeder's right in respect of the variety, whether or not the breeder is a citizen or foreigner, is resident in Zambia or not and whether the variety was bred locally or abroad.

(3) Where two or more persons are entitled to apply for a plant breeder's rights in respect of a new variety whether by reason that they bred the plant variety jointly or independently or otherwise, the persons or some of those persons may make a joint application for the rights.

(4) Where two or more persons breed a new plant variety jointly, one of the breeders or a successor of one of the breeders shall not make an application for a plant breeder's rights in respect of the variety otherwise than jointly with, or with the consent in writing of, the other person, or each of the other persons, entitled to an application for those rights.

(5) Where an applicant is a public financed or private institution, the applicant shall make the application in the name of the institution.

Plant variety
denomination

15. (1) An applicant shall assign a single and distinct denomination to a variety in respect of which an application is made, in the prescribed manner and form.

(2) No right in the designation registered as the denomination of any variety shall prevent a person from using the denomination in connection with the variety, even after the expiration of the applicant's rights.

(3) The Registrar shall not register any denomination that fails to meet the requirements of this Act.

(4) The Registrar may, where the Registrar rejects a plant variety denomination, request the applicant to submit another denomination within a prescribed period.

(5) If by reason of a prior right, the use of any denomination of a variety is prohibited by a person who, in accordance with subsection (1), is obliged to use it, the Registrar shall require an applicant to submit another denomination.

(6) Any person who offers for sale or markets a propagating material of a protected variety may use the denomination of the variety after the expiration of any applicant's right in that variety, except where, in accordance with sub-section (5), a prior right prevents such use.

(7) Where a variety is offered for sale or otherwise marketed, the use of the registered variety denomination in association with a trademark, trade name or other similar indication shall be permitted, subject to the denomination remaining easily recognisable.

16. (1) The effective date of an application is the date on which the application is lodged with the Registrar.

Priority of application

(2) If two or more applications are made in respect of the same plant variety, the Registrar shall first consider the application having the earlier priority date.

17. (1) Where an application for the protection of a variety is filed in a country which is a party to a bilateral or multilateral agreement concerning plant variety protection to which Zambia is a party and, an application in respect of the same variety is filed within twelve months of the date of the earlier application, the application filed with the Registrar shall enjoy a right of priority and its effective date shall be the date of lodgement of the foreign application.

Priority dates arising from foreign application

(2) The Registrar shall treat the date of lodgement of any foreign application as the priority date for the purposes of any local application if—

(a) the applicant submits to the Registrar, within three months of making the local application, a copy of the document constituting the foreign application, certified by the relevant Authority that received the foreign application, to be a true copy of the document; and

(b) the applicant provides such further particulars in relation to the plant variety as are required to complete the consideration of the local application.

18. (1) Subject to the other provision of this Act, the Registrar shall, within twenty one days from the date an application is lodged in a plant variety, accept or reject the application.

Acceptance or rejection of application

(2) The Registrar shall accept an application if—

(a) no other application has or would have an earlier priority date in the variety;

(b) the application complies with the requirements of this Act; and

(c) the application establishes a prima facie case for treating the plant variety as distinct from other varieties.

(3) The Registrar shall reject an application which does not meet the preliminary requirements referred to under subsection (2).

(4) The Registrar shall if the Registrar accepts or rejects the application—

(a) give written notice to the applicant informing the applicant that the application has been accepted or rejected; and

(b) within seven days of notifying the applicant, give public notice of the acceptance or rejection of the application, as the case may be.

(5) The Registrar shall, where the Registrar rejects an application under this section, give reasons therefor to the applicant.

Amendment
of
application

19. (1) An applicant may, with the approval of the Registrar, at any time after the acceptance of the application but before the conclusion of the examination of the application and of any objection to the application, amend the application or the proposed denomination of the plant variety.

(2) Where, before the conclusion of the examination of any application, the right of an applicant to apply for a plant breeder's right in a particular plant variety is assigned to, or is transmitted by will or operation of law to another person, the other person may apply to the Registrar, in the prescribed manner and form, to vary the application so that person is shown as the applicant.

(3) The Registrar shall vary an application where upon an application made under subsection (2), it is shown that the right to apply for a plant breeder's right in any particular plant variety has been assigned to, or has been transmitted by will or operation of law to another person so that that person is shown as the applicant.

(4) The Registrar shall, where the Registrar rejects any application under this section, inform the applicant and give reasons for the rejection.

(5) The Registrar shall, where the Registrar varies an application under this section, give written notice to the applicant that the application has been so varied.

- 20.** (1) An applicant may withdraw an application at any time. Withdrawal
of
application
- (2) The Registrar shall, where an application is withdrawn after its publication in the Gazette, but before the grant of any breeder's rights, publish the withdrawal.
- 21.** (1) Where an application for the grant of a plant breeder's right is accepted, the Registrar shall, within fourteen days from the date of the application, publish in the *Gazette* a notice calling for any objection from the members of the public. Publication
of notice
- (2) The publication under subsection (1) shall give a detailed description of the plant variety to which the application relates.
- (3) The detailed description referred to under subsection (2) shall contain—
- (a) particulars of the characteristics that distinguish the variety from other plant varieties the existence of which is a matter of common knowledge;
 - (b) particulars of—
 - (i) any test growing carried out to establish that the variety is distinct, uniform and stable; and
 - (ii) any test growing carried out as required for essential derivation;
 - (c) if the variety was bred outside Zambia, particulars of any test growing outside Zambia that establish that the variety will, if grown in Zambia, be distinct, uniform and stable; and
 - (d) a certificate in the prescribed form verifying the particulars of the detailed description, completed by the applicant.
- 22.** (1) Any person may, within sixty days from the date of publication of the notice referred to under section *twenty-one*, object, in writing, to the application for a plant breeder's rights on any of the following grounds: Objection to
application
for plant
breeder's
right
- (a) that the person's commercial interest would be negatively affected by the grant of the rights to the applicant;
 - (b) that the person objecting to the application is entitled to the plant breeder's rights as against the applicant;
 - (c) that the variety does not meet the requirements for granting a plant breeder's rights; or
 - (d) that the grant of the right would negatively impact on the public interest.

(2) The Registrar shall, where an objection to the grant of a plant breeder's rights is lodged under this section, cause a copy of the objection to be given to the applicant.

(3) An applicant for a plant breeder's rights may contest any of the grounds of objection and shall, within thirty days, or such further period as the Registrar may permit from the date of the receipt of the objection, lodge with the Registrar a counter statement setting out the particulars of the grounds upon which the applicant contests the objection.

(4) The Registrar shall serve a copy of the counter statement on the person who gives the notice of objection.

Hearing of
objection

23. (1) The Registrar shall, within fourteen days of receipt of any objection under section *twenty-two*, inform the person who filed the notice of objection and the applicant of the date and place for the hearing of the objection.

(2) The Registrar may for the purpose of hearing an objection—

(a) summon any person who, in the Registrar's opinion, may give material information concerning the subject of the hearing or who the Registrar believes has in the person's possession, custody or control any document which has any bearing upon the subject of hearing, to appear before the Registrar at a time and place specified in the summons and to produce any document;

(b) administer an oath to any person or accept an affirmation from any person called as a witness at the hearing; and

(c) call any person present at the hearing as a witness and request that person to produce any document in that person's possession, custody or control.

(3) The procedure at the hearing of an objection shall be as prescribed under regulations made under this Act.

(4) Any party to the hearing may be represented by an advocate.

(5) The Registrar shall, after the hearing of an objection, inform the person who filed a notice of objection and the applicant for the grant of a plant breeder's right, in writing of the decision and the grounds on which the decision is made by the Registrar.

(6) An application in respect of which the Registrar upholds an objection shall lapse, and the Registrar shall, by notice in the Gazette, publish such particulars relating to the lapse as may be prescribed.

24. Any person may inspect an application or any objection lodged, at any reasonable time and shall, upon payment of a prescribed fee, be given a copy of the application or of the objection by the Registrar.

Inspection of application and objection

25. (1) The Institute may carry out a trial—

Plant variety trials

(a) for the purpose of determining whether any plant variety is distinct, uniform or stable; and

(b) for the purpose of determining whether the variety will, if grown in Zambia, exhibit the claimed distinctiveness, uniformity and stability.

(2) The Institute may, for purposes of sub-section (1), require the applicant to supply sufficient seed or propagating material of the variety, as the case requires, and with any necessary information, to enable the variety to be test grown for the purpose so specified.

(3) After the completion of the trials on a plant variety, any plant or propagating material of any plant used in, or resulting from, the trials that are capable of being transported shall be removed by the applicant.

(4) The Institute shall protect any genetic material of a new variety under testing so as to prevent its use for any non-research purposes.

26. (1) The Institute shall determine the quantity of seed or planting material that should be made available by an applicant for any trial or testing.

Uniformity testing and assessment procedures

(2) The Institute shall arrange to get statistically any valid trials conducted to evaluate the suitability of any variety for national release.

(3) The assessment criteria for any trial or evaluation for suitability shall include important economic, physiological, ecological and nutritive quality attributes.

(4) The fees with respect to a plant breeder's rights shall be fixed on the basis of the administrative and examination costs incurred.

(5) Where the Institute determines that a plant variety is genetically modified, the Institute shall refer the variety to the National Biosafety Authority and the provisions of the Biosafety Act, 2007, shall apply to the variety.

Act No. 10 of 2007

27. For the purpose of this Act, where a plant variety in respect of which an application is made originates from outside Zambia, the variety shall not be taken to have a particular characteristic unless—

Characteristics of plant varieties originating from outside Zambia

- (a) statistically valid, multi-locational, variety trials carried out in the country for at least three growing seasons demonstrate that the variety has the specific characteristic as claimed by the applicant; or
- (b) an exceptional crisis in food production so requires and the Institute is satisfied that—
 - (i) statistically valid trials on the variety carried out outside the country demonstrate that the variety has that specified characteristic; and
 - (ii) the natural environment outside the country under which the statistically valid trials were carried out is similar to the environment in Zambia.

Provisional
protection

28. (1) The Institute shall grant provisional protection to a plant breeder's variety from the date of acceptance of an application, to the date of grant or rejection of the application whichever occurs first.

(2) The Institute may notify an applicant, in writing, that this section shall cease to apply to a variety in respect of which an application is made on the date specified in the notice where—

- (a) the plant breeders rights will not be granted or are not likely to be granted to the applicant giving reasons therefor;
- (b) the Institute has, in the public interest, taken a decision not to proceed with the application; or
- (c) the application has been withdrawn.

(3) The Institute shall, within fourteen days from the date that any person ceases to hold any provisional protection under this section, give public notice of the fact.

Registrable
plant varieties

29. (1) A plant breeder's rights shall be granted in respect of any variety which is—

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

(2) For purposes of subsection (1), a plant variety is—

- (a) new, if at the date of the filing of an application for the registration of the right in the variety, the propagating or harvested material of the variety has not been sold or otherwise disposed of, to another person by or with the consent of its breeder, or the breeder's assignee for purposes of the exploitation of the variety—

- (i) in Zambia, for more than one year;
- (ii) outside Zambia, for more than six years in the case of any tree or vine; or
- (iii) outside Zambia, for more than four years in the case of other varieties;

before the date of filing an application for the registration of a plant breeder's right;

- (b) distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge at the time of the application;
- (c) uniform, if subject to the variation that may be expected from the particular features of its propagation, the variety is uniform in its relevant characteristics on propagation; and
- (d) stable, if a variety's relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(3) The disposal of a propagating or harvested material of a variety referred to in paragraph (a) of subsection (2)—

- (a) to a person for statutory purposes, or on the basis of a contractual or other legal relationship solely for production, reproduction, active multiplication, conditioning or storage shall not be considered to be a disposal within the meaning of subsection (2):

Provided that the breeder reserves the exclusive right to dispose of the material, and no further disposal is made;

- (b) shall be deemed to be a disposal if the material is repeatedly used in the reproduction of a hybrid variety or there is a disposal of propagating or harvested material of the hybrid; and
- (c) shall not be deemed to be an exploitation of the variety unless reference is made to the variety for purposes of the disposal, where the variety has been produced from plants grown for the purposes of testing or trials or which is a surplus to the plant breeder's requirements and is not used for further reproduction or multiplication.

(7) No variety of any genera or species which involves any technology that is injurious to the life or the health of human beings, animals or plants shall be registered under this Act.

Grant of
plant
breeder's
rights

30. (1) The Institute shall grant a plant breeder's rights in respect of a plant variety where it is satisfied that—

- (a) there is such a plant variety and the application conforms to the requirement of this Act;
- (b) the plant variety is a registrable plant variety within the meaning of section *twenty-nine*;
- (c) the applicant is entitled to make the application;
- (d) the grant of the rights to the applicant is not prohibited by this Act;
- (e) the rights have not been granted to another person;
- (f) the application is not subject to any objection;
- (g) there has been an earlier application for the rights that has not been withdrawn or otherwise disposed of; and
- (h) all fees payable under this Act in relation to the application have been paid.

(2) Where the Institute is not satisfied that the conditions in subsection (1) are met, the Institute shall not grant any plant breeder's rights to the applicant.

(3) The Institute shall not grant any plant breeder's rights in respect of a plant variety unless a period of six months has elapsed since the publication of the application in the gazette, or if the application has been varied in any manner that the Institute considers to be significant, a period of six months has elapsed since the publication of any particulars of the variation, or of the last variation.

(4) The Institute shall not refuse to grant a plant breeder's rights unless it has given the applicant a reasonable opportunity to make a written submission in relation to the application.

(5) Where an objection to the grant of a plant breeder's rights is lodged, the Institute shall not grant the plant breeder's rights unless it gives the person who lodged the objection a reasonable opportunity to make a written submission in relation to the objection.

(6) A plant breeder's rights shall be granted and issued by the Institute to the applicant in a prescribed form.

(7) Where the Authority refuses to grant a plant breeder's rights in respect of a plant variety, the Institute shall, within thirty days give written notice of the refusal to the applicant clearly setting out the grounds for the refusal.

Joint holders
of breeder's
rights

31. (1) Where a plant breeder's rights over one variety is granted to a group of persons, the plant breeder's rights shall be granted to those persons jointly and the rights of each person shall be subject to any written agreement between them.

(2) Where a plant breeder's rights are granted to a public or private institution, the rights shall accrue to the institution represented by the designated person or persons.

(3) The agreement referred to under subsection (1), shall be submitted by the joint holders to the Registrar at the time of grant of the plant breeder's rights.

32. (1) A plant breeder's right shall only be granted in respect of *genera* and *species* of a prescribed kind.

Genera and species to be protected

(2) The Minister may, by notification in the *Gazette*, extend the application of this Act to genera and species of any kind of plant specified in the notification.

33. (1) The Registrar shall keep a Register for purposes of this Act.

Register

(2) Where the Institute grants a plant breeder's rights in respect of a plant variety, it shall enter into the Register—

(a) a description, or a description and photograph, of the plant variety and the denomination of the variety;

(b) the name and other particulars of the variety;

(c) the pedigree of the variety;

(d) the name of the grantee;

(e) the name and address of the breeder or holder of the plant breeder's right;

(f) the name and address of the person to whom any plant breeder's rights have been transferred;

(g) the address for the service of documents on the grantee for the purpose of this Act, which is shown on the application for the rights;

(h) the date on which the plant breeder's rights are granted and the date of expiry; and

(i) such other particulars relating to the grant as the Institute considers necessary.

(3) The Register shall be available for inspection by the public upon payment of the prescribed fee.

(4) The Register shall be *prima facie* evidence of any matter entered in the Register.

34. Where a plant breeder's rights are granted, the Institute shall, within thirty days after granting the rights, publish the plant breeder's rights in the *Gazette*.

Publication of grant of plant breeder's right

Payment of annual fee	<p>35. Any holder of a plant breeder's right shall, for the duration of the plant breeder's right, pay to the Registrar the prescribed annual fee.</p>
Effect of grant on certain persons	<p>36. (1) Where the plant breeder's rights in respect of a plant variety have been granted to a person, another person who was entitled to make an application for that plant breeder's rights, whether or not a person who developed that variety independently of the breeder, or the successor of the other person, is not entitled to any interest in that plant breeder's rights because of the entitlement to make the application or because of the grounds of the entitlement, but nothing in this section prevents a person from applying to the Institute for the revocation of that plant breeder's rights or from instituting proceedings before a court in respect of that plant breeder's rights.</p> <p>(2) Where a plant breeder's rights in respect of a new plant variety are granted to a person and another person (in this paragraph referred to as the "eligible person") is entitled, in law or in equity to make the application for the plant breeder's rights assigned to the eligible person, then the eligible person may have the plant breeders rights assigned to that person.</p>
Plant Genetic Resource Centre	<p>37. The Institute may designate a Plant Genetic Resource Centre as a centre for storage and maintenance of germplasm material for the purpose of this Act.</p>
Supply of propagating material	<p>38. (1) A plant breeder's rights in respect of a plant variety is subject to the condition that the grantee of the rights shall comply with any notice given to the grantee by the Institute.</p> <p>(2) Where a plant breeder's rights are granted in respect of a plant variety, the Institute may give the grantee of the plant breeder's rights written notice requiring the grantee, within fourteen days of the giving of the notice or any other time that is allowed, to cause a specified quantity of propagating material of that variety to be delivered, at the expense of the grantee, to a specified plant genetic resource centre or a herbarium.</p> <p>(3) The quantity of the propagating material of a variety specified in a notice under subsection (2) shall be the quantity that the Institute considers would be sufficient to enable that variety to be kept in existence if there were no other propagating material of that variety.</p> <p>(4) Where the propagating material is delivered to a plant genetic resource centre in accordance with the conditions imposed on the plant breeder's rights by subsection (1), the Institute shall, subject to subsection (6), cause that material to be stored at a specified plant genetic resource centre.</p>

(5) Any delivery or storing of any propagating material in accordance with this subsection does not affect the ownership of the material and the material shall not be dealt with otherwise than for the purposes of this Act.

(6) The Institute may use any propagating material stored at a plant genetic resource centre for the purposes set out in this Act.

(7) Without limiting subsections (5) and (6), where any propagating material is stored at a plant genetic resource centre, the material shall not form part of the national collection, and shall not be used for the purposes of that collection, until a decision on the application for a plant breeder's rights is taken.

(8) Where a variety is accorded recognition, the propagating material may be provided for purposes of any further research and breeding under the intimation of the depositor of the material.

39. (1) A plant breeder's right in a plant variety is infringed by any person who—

Infringement
of right

(a) not being the breeder of the plant variety registered under this Act, or a registered agent or licensee of that variety, undertakes any act stipulated under sub-section (1) of section *seven* in relation to the variety without the permission of the variety's breeder, or within the scope of a registered agent or licensee without permission of the registered agent or licensee as the case may be;

(b) uses, sells, exports, imports or produces any other variety or gives a variety a denomination identical with or deceptively similar to the denomination of a variety registered under this Act, in such a manner that may cause confusion in the mind of the general public in identifying the variety that is registered.

(2) A person who infringes a plant breeder's right may be sued in any court of competent jurisdiction by the holder of a plant breeder's right for an injunction or damages or both.

(3) A court may, in addition to the costs of an action under this Act, grant an injunction or damages or both as may appear to be reasonable or just in the circumstances of the case.

(4) Any action or proceeding for an infringement of a plant breeder's rights may be instituted in writing in a court or, where agreeable to both parties, be submitted to arbitration in accordance with the Arbitration Act.

Act No. 11 of
2000

(5) A defendant in an action or proceeding for an infringement of plant breeder's rights in respect of a variety may apply by way of counter-claim for the revocation of that plant breeder's rights on the grounds that—

- (a) the variety was not a new plant variety; or
- (b) facts exist which, if known to the Institute before the grant of that plant breeder's rights, would have resulted in the refusal of the grant.

(6) The court may, where it is satisfied that a grant for revocation of a plant breeder's right exists, make an order revoking that right.

(7) The court shall, where it makes an order under subsection (6), order the defendant to serve on the Registrar a copy of the order revoking that right.

Revocation
of plant
breeder's
right

40. (1) The Institute shall revoke a plant breeder's rights in respect of a plant variety where—

- (a) it is satisfied that the plant variety was not new or that facts exist which, if known before the grant of the plant breeder's right would have resulted in the refusal of the grant;
- (b) the grant of the plant breeder's right is based on incorrect information furnished by the applicant;
- (c) the grant of the plant breeder's right has been granted to a person who is not eligible for protection under this Act;
- (d) the breeder did not provide the Registrar with the information, documents or material required for registration under this Act;
- (e) the breeder did not provide the necessary seed or propagation material to the person to whom a compulsory licence has been issued under this Act regarding the variety in respect of which the plant breeder's right has been issued to a breeder;
- (f) a person to whom the plant breeder's rights are assigned or transmitted has failed to comply with the provisions of this Act;
- (g) the breeder has not complied with any provision of this Act;
- (h) the breeder has failed to provide the passport data of the parent lines from which the variety, in respect of which the plant breeder's right has been issued to a breeder, is derived;
- (i) the breeder has failed to comply with the directions of the Registrar issued under this Act;
- (j) the grant of the plant breeder's right is against public interest; and
- (k) the breeder has not paid the prescribed annual fees.

(2) The Institute shall not revoke a plant breeder's right unless the breeder is given a reasonable opportunity to file an objection within thirty days before being heard in the matter.

(3) Where the Institute revokes a plant breeder's rights in respect of a plant variety in accordance with this section, it shall, within seven days after the decision is taken, give written notice of the revocation.

(4) The Institute shall not revoke a plant breeder's rights unless it has given the grantee and any person to whom it believes that plant breeder's rights has been assigned or transmitted, particulars of the grounds for the proposed revocation and given the grantee and the person a reasonable opportunity to make a written submission in relation to the proposed revocation.

(5) The revocation of a plant breeder's rights in respect of a plant variety takes effect--

(a) subject to subsection (3), at the expiration of the period within which an application may be made to a court for a review of the revocation; or

(b) where an application is made to the court, at the time when the application is withdrawn or finally determined by a court.

(6) Any person whose interests are affected by the grant of a plant breeder's rights in respect of a plant variety may apply to the Institute for the revocation of that plant breeder's rights in accordance with this section.

(7) The Institute shall consider any application made under subsection (6) for the revocation of a plant breeder's rights.

(8) The decision of the Institute not to revoke the plant breeder's rights shall be communicated to the applicant by a written notice within seven days after the decision is taken, setting out the grounds for the decision.

41. (1) A holder of any plant breeder's right who intends to surrender a plant breeder's right may apply, in writing, to the Registrar for the surrender of the plant breeder's right.

Surrender of
plant
breeder's
right

(2) Where an offer to surrender a right is made under subsection (1), the Registrar shall, within thirty days, give notice in the *Gazette* to any interested person, registered agent or licensee of the plant breeder's right.

(3) Any person who is aggrieved by the proposed surrender of a plant breeder's right, may within sixty days from the date of the notice in the *Gazette*, give notice to the Registrar specifying, in writing, the grounds for the objection.

(4) The Registrar may, after giving public notice of the offer to surrender and giving all interested parties an opportunity to be heard, accept the offer and revoke the right to which the offer relates.

(5) The Registrar shall, where the Registrar revokes any right under subsection (4)—

(a) note in the Register that the right has been revoked;

(b) call upon the holder to surrender the certificate of registration issued in terms of this Act; and

(c) publish the revocation of the plant breeder's right in the *Gazette*.

(6) Where an action or any proceeding in respect of any plant breeder's right is pending in a court, the Registrar shall not accept any offer for the surrender of, or revoke, the plant breeder's right, except by way of leave of the court or by consent of the parties to the action or proceeding.

Transfer of
plant
breeder's
right

42. (1) A holder of a plant breeder's right who intends to transfer the right shall—

a) notify the Registrar;

(b) indicate the name and address of the person to whom the plant breeder's right or any part thereof is a subject of a transfer; and

(c) furnish the Registrar with proof that a notice of a transfer of a plant breeder's right has been served on any person who is licenced in respect of that plant breeder's right.

(2) The Registrar shall, upon receipt of any notice of transfer of any plant breeder's right, by notice in the *Gazette*, publish the particulars relating to the transfer of a plant breeder's right.

PART V

LICENCES

Licensing of
plant
breeder's
rights

43. (1) A holder of plant breeder's rights may licence the rights to another person.

(2) An application for a licence under this section shall be made in the prescribed manner and form.

(3) A licence shall contain the following information:

(a) the quantity of the propagating material of the relevant variety to be supplied to the holder of the licence, and the price thereof;

- (b) the royalty payable in respect of the exploitation of the licence;
- (c) the information to be furnished to the holder of the relevant plant breeder's rights regarding the extent to which the licence is being exploited;
- (d) the period of validity of the licence, which shall not exceed the term of the relevant breeder's rights;
- (e) the punitive measures applicable with reference to any conditions which is not complied with; and
- (f) any other matter which the parties may agree to.

(4) The holder of a plant breeder's rights shall, within fourteen days of the grant of a licence, notify the Registrar of the details and particulars of the licence and shall furnish the Registrar with a copy of the licence.

44. (1) A person may apply to the Registrar for the grant of a compulsory licence to a plant breeder's rights where—

Application
for
compulsory
licence

- (a) the person is aggrieved with the refusal by the holder of the plant breeder's rights to grant that person a licence;
- (b) the holder of the plant breeder's rights has imposed an unreasonable condition for the issuance of a licence; or
- (c) the person has reasonable grounds to believe that the reasonable requirements of the public for seed or other propagating material of the variety are not being met or will not be met.

(2) An application for a compulsory licence shall be made in the prescribed manner upon payment of a prescribed fee.

(3) The Registrar shall, within seven days of receipt of an application under subsection (1), furnish the holder of the plant breeder's right in respect of which the application is made with a copy of the application and the particulars accompanying the application.

(4) The holder of any plant breeder's rights in respect of which an application is made under subsection (1) may object to the application within fourteen days of the notification of the application.

(5) The Registrar shall, where a holder of the plant breeders rights lodges an objection under subsection (4)—

- (a) furnish the applicant for a compulsory licence with a copy of the objection;
- (b) set a date for the hearing of the application and notify the applicant and the holder of the plant breeder's rights.

Grant of compulsory licence

45. (1) The Registrar shall issue a compulsory licence to an applicant where after giving the holder of the plant breeder's rights an opportunity to be heard, the Registrar has reasonable grounds to believe that—

- (a) the holder of the plant breeder's right has unreasonably refused to grant the licence, to the applicant;
- (b) the holder of the plant breeder's rights has imposed unreasonable conditions for the issue of the licence; and
- (c) the reasonable requirements of the public with regard to the new variety are not being met or will not be met.

(2) The Registrar shall not grant a compulsory licence unless the applicant is financially competent to perform and comply with the obligations of the compulsory licence.

(3) A compulsory licence may be granted to any person whether or not the holder of the plant breeder's right has granted a licence to another person.

(4) The issue of a compulsory licence does not prevent the holder of the plant breeder's rights from granting an additional licence.

(5) The Registrar shall, where a compulsory licence is granted, provide the licensee with information on the reproductive material of the variety relating to the compulsory licence.

Royalty

46. The Registrar shall, in determining the terms and conditions of a compulsory licence, secure a royalty and other remuneration for the holder of the plant breeder's rights having regard to the following:

- (a) the nature of the plant variety;
- (b) the expenditure incurred by the plant breeder in breeding or developing the variety; and
- (c) any other relevant factors.

Condition of licence

47. (1) The Registrar shall determine the terms and conditions of a compulsory licence issued under this Part.

(2) Without limiting the generality of subsection (1), the conditions of a compulsory licence may include—

- (a) requiring the payment to the Institute and the plant breeder of a fee on the grant of the compulsory licence and of any annual or other periodic licence fees;
- (b) requiring the licensee to comply with the directions of the Institute and the plant breeder in relation to specified matters;

- (c) providing for the arbitration of disputes in connection with the terms and conditions of the compulsory licence; and
- (d) requiring the licensee to refer specified matters to the Institute for determination.

48. (1) A compulsory licence remains in force for the period specified in the licence and may be renewed or varied on payment to the Institute of such fees as may be prescribed. Duration of compulsory licence

(2) The Registrar shall, in determining the duration of a licence have regard to the gestation period of a variety and any other factors relevant for purposes of this Act.

49. A licence is not capable of being bought, sold, leased, mortgaged or charged or in any manner assigned, demised or encumbered. Licence not transferable

50. (1) The Registrar may revoke a licence or reject an application where— Revocation of licence

- (a) the licensee contravenes any terms or conditions of the licence;
- (b) it is not appropriate to grant or continue the licence in the public interest; or
- (c) the licence is a subject of any complaint by the public and affects the national food security, public health and the environment.

(2) The Registrar shall not revoke a licence without giving the licensee an opportunity of being heard before the revocation.

51. A licensee may, by notice in writing to the Registrar, surrender a licence. Surrender of licence

52. The Registrar shall where the Registrar grants, renews, rejects or revokes a licence notify the public in the *Gazette*. Publication of grant, renewal, etc

PART VI APPEALS

53. (1) A person who is aggrieved by any decision of the Registrar or the Institute under this Act may, within thirty days of the receipt of the decision of the Registrar or the Institute as the case may be, appeal to the Appeals Board. Appeal against decision of Registrar or Institute

(2) An appeal under subsection (1) shall be made in the prescribed manner and form.

54. (1) Subject to subsection (2), the Minister shall, for the purpose of hearing and determining an appeal, appoint an Appeals Board comprising of three members of whom— Appeals Board

- (a) one member, who shall be the chairperson, shall be a legal practitioner; and
- (b) two other members which persons shall be experts with not less than five years experience and knowledge in matters relevant to this Act.

(2) The Minister shall not appoint an Appeals Board unless the appellant deposits with the Minister such sum as the Minister considers will be sufficient to pay the costs, including the allowances payable to the members of the Appeals Board, likely to be incurred in connection with the appeal.

(3) The powers, rights and privileges of an Appeals Board shall be the same as those conferred upon Commissioners by the Inquiries Act, and the provisions of that Act shall, with the necessary modifications apply in relation to the hearing and determination of an appeal by the Appeals Board in terms of this section and to a person summoned to give evidence before the Appeals Board.

(4) The Minister shall, on the determination of an appeal, refund to the appellant the sum deposited by the appellant in terms of subsection (2) less the amount of the costs, if any, payable by the appellant in terms of subsection (5).

(5) If an appeal is dismissed, the Appeals Board may order the appellant to pay to the Government the costs incurred by the Government in connection with the appeal.

(6) A member of the Appeals Board shall be paid out of moneys appropriated for the purpose by Parliament, such allowances to meet the reasonable expenses incurred by the member in connection with an appeal as the Minister may prescribe.

(7) The Appeals Board shall, within fourteen days of determining the appeal, inform the appellant and the Institute in writing of its decision and the reasons therefor.

(8) A determination by the Appeals Board under subsection (2) shall not prejudice the right of any aggrieved party to seek recourse in a court of competent jurisdiction within thirty days of the determination.

PART VII
GENERAL

55. (1) A person who—

Offences and
penalties

- (a) makes a false entry in the Register or causes a false entry to be made in the Register;
- (b) produces, tenders or causes to be produced or tendered as evidence any false entry or any false copy purporting to be an entry in the Register;
- (c) provides false, misleading or deceptive information to secure a licence or registration under this Act;
- (d) for the purpose of obtaining, whether for that person or another person, the registration of the plant breeder's rights or the issuance of a licence, makes a false declaration or statement which the person knows to be false in any material particular or does not believe to be true or knowingly makes use of a declaration, statement or document containing the same; or
- (e) willfully interferes with, obstructs or hinders the Registrar or any officer of the Institute in the discharge of the Registrar's or officer's duties under this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding forty thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(2) A person who—

- (a) in the sale of propagating material for the purpose of propagation or multiplication, uses a denomination which is not registered or that is different from the denomination registered under this Act;
- (b) uses the registered denomination of another variety of the same kind of plant or uses a denomination which corresponds so closely to a registered denomination in a manner that is misleading in a material particular; or
- (c) holds out to be the holder of any plant breeder's rights or a licence issued under this Act;

commits an offence and is liable, on conviction, to a fine not exceeding one hundred and ten thousand penalty units or to imprisonment for a term not exceeding ten years, or to both.

Regulations

56. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

(2) Without derogating from the generality of sub-section (1), the regulations may provide for—

- (a) the form of any application, description, drawing, objection, counter statement or other document which may be lodged with the Registrar and the furnishing of copies of any such document;
 - (b) the procedure to be followed in connection with any application, request or any proceedings before the Registrar, Institute or the Appeals Board;
 - (c) the information and facilities to be afforded by an applicant and the reproductive material and other plant material to be submitted to the Registrar for any application under this Act;
 - (d) the tests, trials, examinations and other steps to be taken by the applicant or the Registrar before any plant breeder's rights are granted and the time within which any such steps are to be taken;
 - (e) the keeping of records, the form and manner of making any returns for purposes of this Act;
 - (f) the fees to be paid in respect of—
 - (i) applications for or the grant of a plant breeder's rights or any licence;
 - (ii) the examination of a sample of a reproductive material or any plant grown from the sample of a reproductive material; and
 - (iii) the inspection of the Register or the provision of a certified copy of any entry in the register;
 - (g) the rights and duties of any holder of a licence or any plant breeder's rights in connection with the institution of an action for infringement of the plant breeder's rights; and
 - (h) the prevention of the use of a false or misleading statement in any advertisement of a variety or the plant breeder's rights granted in respect of the variety under this Act; and
 - (i) anything required to be prescribed under this Act.
-