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BILLS
SUPPLEMENT No. 2 **22nd February, 2010.**

BILLS SUPPLEMENT

to the Uganda Gazette No. 12 Volume CIII dated 22nd February, 2010.

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Bill No. 2 *Plant Variety Protection Bill* **2010**

THE PLANT VARIETY PROTECTION BILL, 2010

MEMORANDUM

1. Policy and principles

The policy behind this Bill is to recognize and protect the rights of breeders over plant varieties developed by them; and to provide for other related and incidental matters including institutional mechanisms for its effective implementation.

The Bill also seeks to create incentives for plant breeders to engage in the development of new plant varieties.

2. Defects in the existing law

In Uganda there is absence of a law to protect plant breeders. The lack of such a law is an obstacle to the country's participation in multilateral trade in crop varieties especially the seed industry and transfer of materials from and to Uganda.

3. Remedies proposed to deal with defects in the existing law

To remedy this situation therefore, this Bill is intended to—

(a) recognise and protect the rights of breeders over the varieties developed by them;

(b) promote appropriate mechanisms for a fair and equitable sharing of benefits arising from the use of plant varieties, knowledge and technologies;

(c) provide appropriate institutional mechanisms for the effective implementation and enforcement of the rights of breeders;

(d) promote improvements in the productivity, profitability, stability and sustainability of cropping systems through yield enhancement and maintenance of plant varieties;

(e) promote the supply of good quality seed or planting material to farmers in order to strengthen the food security of Uganda.

4. Object of the Bill

The object of the Bill is to provide for the promotion of the development of new plant varieties and their protection as a means of enhancing breeders innovations and rewards through granting of plant breeders rights and for related matters.

Provisions of the Bill

Part I of the Bill—Preliminary

This Part deals with preliminary matters such as application, purpose and interpretation.

Part II of the Bill—Administration

This Part deals with administration—

Clause 4 provides for the establishment of a plant variety protection office in the Ministry responsible for agriculture.

Clause 6 provides for the functions of the office.

Clause 7 provides for designation of officers by the Minister to perform the functions of the plant variety protection office.

Clauses 8 and 9 provides for the establishment and functions of the Plant Variety Protection Committee.

Part III of the Bill—Plant breeders rights

This Part provides for the rights of plant breeders and registration of rights.

Clause 13 provides for the rights of plant breeders.

Clause 15 provides for the exemptions to the rights of breeders.

Clause 17 empowers the Minister to impose restrictions on plant breeders' rights in public interest.

Clause 18 according to this clause, the plant breeder's right does not extend to acts concerning any material of a protected variety or a variety that requires authorisation of the owner.

Clause 19 provides for the term of breeders' rights in respect of a plant variety.

This is as follows—

(a) for a period of twenty years in case of annual crops; or

(b) for a period of twenty five years for vines and other perennials commencing on the date of filing the application.

Clause 20 provides for the remedies for infringement of a plant breeders' right. This involves an action in court to enforce the rights.

Clause 21 Naming of protected plant varieties
Clause 22 Filing of applications
Clause 23 Assessment procedures
Clause 24 New varieties
Clause 25 Distinct variety
Clause 26 Uniform variety
Clause 27 Stable variety
Clause 28 Grant not limited to protection of same variety
Clause 29 Characteristics of plant varieties originating from outside Uganda
Clause 30 Test growing of plant varieties
Clause 31 Withdrawal of application
Clause 32 Provisional protection
Clause 33 Objection to grant of rights
Clause 34 Grant of rights
Clause 35 Entry of rights into register
Clause 36 Appeal against the decision of the office
Clause 39 Assignment of rights
Clause 42 Revocation of rights
Clause 46 Genetic resource centres

Part IV of the Bill - Miscellaneous

This Part provides for miscellaneous matters including contraventions of the Act, dispute settlement and regulations.

HOPE R. MWESIGYE (M.P),
Minister of Agriculture, Animal Industry and Fisheries.

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THE PLANT VARIETY PROTECTION BILL, 2010

ARRANGEMENT OF CLAUSES

Clause

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2. Purpose of the Act
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A Bill for an Act

Entitled

THE PLANT VARIETY PROTECTION ACT, 2010

An Act to provide for the promotion of development of new plant varieties and their protection as a means of enhancing breeders innovations and rewards through granting of plant breeders rights and for related matters.

BE IT ENACTED by Parliament as follows—

PART I—PRELIMINARY

1. Application of the Act

(1) This Act applies to—

(a) plant varieties under both in situ and ex situ conditions;

(b) derivatives of the plant varieties;

(c) plant breeders; and

(d) export of seeds of plant varieties.

(2) This Act does not affect the following—

(a) the traditional method of access, use or exchange of knowledge, technologies and plant varieties by local and between local communities;

(b) the sharing of benefits based upon the customary practices of the local communities concerned, except that paragraph 2 (a) shall not apply to any person or persons not living in the traditional and customary way of life relevant to the conservation and sustainable use of biodiversity; and

(c) the access to plant varieties, indigenous knowledge, innovation or technology solely for educational purposes.

2. Purpose of the Act

The purpose of this Act shall be to—

(a) recognize and protect the rights of breeders over the varieties developed by them;

(b) promote appropriate mechanisms for a fair and equitable sharing of benefits arising from the use of plant varieties, knowledge and technologies;

(c) provide appropriate institutional mechanisms for the effective implementation and enforcement of the rights of breeders;

(d) promote improvements in the productivity, profitability, stability and sustainability of cropping systems through yield enhancement and maintenance of plant varieties;

(e) promote the supply of good quality seed or planting material to farmers in order to strengthen the food security of the nation.

3. Interpretation

In this Act, unless the context otherwise requires—

(a) "assignee" means the person to whom rights have been assigned by a breeder;

(b) "breeder" means—

(i) a person who bred or discovered in relation to the use of a plant variety and developed the plant variety;

(ii) the employer of the person to whom paragraph (b) (i) applies or any person who has commissioned the person's work; or

(iii) the successor in title of the first person mentioned in paragraph (b) (i) and (ii), as the case may be;

(c) "breeder's right" means the right of the breeder provided for in this Act;

(d) "committee" means committee established by section 8;

(e) "court" means the High Court of Uganda;

(f) currency point has the value assigned to it in the First Schedule;

(g) "derivative" means a product developed or extracted from plant varieties; a derivative may include such products as oils, resins, gums, protein;

(h) "ex-situ conditions" means the conditions in which plant varieties are found outside their natural habitats;

(i) "innovation" includes—

(i) any new alteration, modification, improvement of collective and cumulative knowledge or technology;

(ii) the use of properties and processes of any plant varieties or any part of a plant variety;

(iii) any, or enhanced use as a result of cumulative knowledge or technology,

whether documented, recorded, oral, written or in whatever manner otherwise existing;

(j) "in-situ conditions" means the conditions in which plant varieties are found in their ecosystems and natural habitats and, in the case of domesticated or cultivated species, in the cultural contexts in which their specific properties have been developed;

(k) "Minister" means the Minister responsible for agriculture;

(l) "Office" means the Plant Variety Protection Office established under section 4;

(m) "prior informed consent" means the giving by a collector of complete and accurate information, and based on that information, the prior acceptance of that collector by the Office and the concerned breeder collect plant varieties;

(n) "plant 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 breeders' right are fully met, can be—

(i) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(ii) distinguished from any other plant grouping by the expression of atleast one of the said characteristics; and

(iii) considered as a unit with regard to its similarity for being propagated unchanged.

(o) "protected variety" means the variety that is the subject of a breeder's right;

(p) "Registrar" means the registrar of plant varieties;

(q) "register" means the register of plant varieties;

PART III—ADMINISTRATION

4. Establishment of a Plant Variety Protection Office

There is established a Plant Variety Protection Office in the Ministry of Agriculture, Animal Industry and Fisheries.

5. Registrar

(1) The Office shall be headed by a Registrar, who shall be responsible for maintaining a register of plant varieties which are entitled to protection under this Act.

(2) The Registrar shall be responsible for the day to day administration of the Office.

(3) The Registrar shall be responsible to the Commissioner for crop protection in the implementation of the provisions of the Act.

6. Functions of the Office

The functions of the Office are—

(a) to receive and examine applications for the registration of plant breeders' rights;

(b) to assign the testing of the applicant's variety to the National Seed Certification Services unit in the Ministry responsible for agriculture or any relevant body;

(c) to publish applications of the plant breeders' rights in the Gazette;

(d) to publish any objection against an application of the plant breeders' rights and conduct a hearing of the objection;

(e) to register and issue certificates for plant breeders' rights;

(f) to maintain the register for the plant breeders' rights;

(g) to protect breeders' rights;

(h) to co-ordinate with relevant stakeholders in the implementation of this Act.

7. Designation of officers

The Minster shall designate—

(a) a Registrar of plant varieties who shall exercise and perform the functions of the office under this Act; and

(b) examiners, officers and other staff as may be necessary for carrying out the provisions of this Act.

8. Plant Variety Protection Committee

(1) There shall be established a Plant Variety Protection Committee.

(2) The Committee shall consist of—

(a) a plant pathologist;

(b) a breeder;

(c) a seed technologist;

(d) an agronomist;

(e) a socio-economist;

(f) a representative of the Commodity Association;

(g) an agricultural extension worker;

(h) a representative from the Intellectual Property Office;

(i) a representative of the National Farmer's Associations;

(j) a representative of the Uganda National Council for Science and Technology;

(k) a representative of plant breeders;

(l) the Commissioner for crop protection in the Ministry responsible for agriculture who shall be the Secretary.

(3) The Committee shall have the chairperson who shall be a person elected by the Committee from among its members.

(4) The chairperson shall hold office for one year and shall be eligible for re-election.

(5) A member of the Committee shall hold office for three years and shall be eligible for re-appointment.

(6) A member of the Committee may, in writing addressed to the Minister, resign from the Committee or may be removed from office by the Minister for a reasonable cause.

(7) The members of the Committee shall be paid such allowances, as the Minister shall determine after consultation with the Minister responsible for finance.

9. Functions of the Committee

The functions of the Committee are—

(a) to advise the Minister on policies relating to plant varieties;

(b) to approve plant varieties to be registered;

(c) to recommend and review the policy of the Office;

(d) to perform any other duties assigned to it by this Act.

10. Meetings of the Committee

The Second Schedule to this Act shall have effect in respect of meetings of the Committee.

11. Liability of staff etc

A Committee member, officer or other staff of the office shall not, in his or her personal capacity, be liable to civil proceedings in respect of an act or omission done in good faith in the exercise of his or her functions under this Act

12. Liability of the officer for damages

Notwithstanding section 11, the officer may be liable to pay compensation to any person for injuries to him or her, his or her property caused either wholly or partially by the exercise of the functions of the office under this Act or any other law.

PART VI—PLANT BREEDERS' RIGHTS

13. Rights of plant breeders

Plant breeders' rights, in respect of a new variety are—

(a) the exclusive right to sell, including the right to license other persons to sell and export plant varieties and reproductive material of plants of that variety; and

(b) the exclusive right to produce, including the right to license other persons to produce, reproductive material of plants of that variety for sale.

14. Dependant varieties

(1) The holder of plant breeders' rights shall have, in relation to any variety which is dependent on the protected variety, the same rights as the holder has under section 13 in relation to the protected variety.

(2) For the purposes of this Act, one variety is dependant on another if—

(a) its nature is such that repeated production of the variety is not possible without repeated use of the other variety; or

(b) it is essentially derived from the other variety and the other variety is not itself essentially derived from a third variety.

(3) For the purposes of subsection (2), a variety shall be taken to be essentially derived from another variety, if—

(a) it is predominantly derived from—

(i) the initial variety, or

(ii) a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics resulting from the genotype or combination of gene-types of the initial varieties,

(b) it is clearly distinguishable from the initial variety by one or more characteristics which are capable of a precise description; and

(c) except for the differences which result from the act of deviation, 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) For the purposes of subsection (3), deviation may, for example, be by—

(a) the selection of—

(i) a natural or induced mutant,

(ii) a somaclonal variant, or

(iii) a variant individual from plants of the initial variety;

(b) back-crossing, or

(c) transformation by genetic engineering.

(5) Sub-section (1) does not apply where the existence of the dependent variety was common knowledge immediately before the coming into force of this Act.

15. Exemptions to the rights of breeders

Notwithstanding that plant breeders' rights subsist in respect of a variety, a person may—

(a) propagate, grow and use parts of the variety for purposes other than commerce;

(b) sell plants, seed or propagating material of plants of that variety as food or for another use that does not involve growing of the plants or the production of plants of that variety;

(c) being a farmer, exchange seed, plants or propagating material of plants of that variety with another farmer for purposes other than commerce;

(d) use propagating material of a plant by way of allowing it to sprout and then eating it, or using it in the preparation of food, before it has developed further;

(e) use the protected variety in further breeding, research or education for non-commercial purposes; or

(f) use the existing germplasm available with national gene banks or plant genetic resource centres for research material.

16. Application for breeders' rights

(1) Subject to this Act, a breeder of a new plant variety may make an application to the Office under section 4 for plant breeders' rights in respect of the new variety.

(2) A breeder of a new variety or his or her successor, has the right to make an application for plant breeders rights in respect of that variety, whether or not the breeder is a citizen or foreigner, or is resident or not and whether the variety was bred locally in Uganda or outside Uganda.

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

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

(5) Applications made under this section shall be in the prescribed form.

17. Restrictions to plant breeders' rights

(1) Where the Minister considers it necessary in the public interest that the plant breeders' rights in respect of a new variety shall be subject to conditions restricting the rights of the breeders, conditions may be imposed under the following circumstances—

(a) where anti-competitive practices of the rights holder are identified;

(b) where food security or nutritional or health needs are affected or threatened;

(c) where a high proportion of the plant variety offered for sale is being imported;

(d) where the requirements of the farming community for propagating material of a particular variety are not met; or

(e) where it is considered important to promote public interest for socio-economic reasons and for developing indigenous and other technologies.

(2) Where restrictions are imposed on plant breeders rights—

(a) the grantee shall be given a copy of the instrument setting out the conditions of the restriction including the maximum duration of the restriction;

(b) a public notice shall be given;

(c) the compensation to be awarded to the holder of the right shall be specified; and

(d) the rights holder may appeal against the compensation or restriction.

(3) Notwithstanding anything in this section, the relevant Government authority shall have the right to convert the exclusive plant breeders' rights granted under this Act to non-exclusive plant breeders' rights.

18. Rights not extended to acts requiring authorisation

(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety that requires authorization of the owner, which has been sold or otherwise marketed by the breeder or with his or her consent in Uganda, or any material derived from that material, unless those 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 Uganda which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) For the purposes of this section, "material" means, in relation to a variety—

(a) propagating material of any kind;

(b) harvested material, including entire plants or parts of plants; and

(c) a product made directly from the harvested material.

(3) Where duration is not included, the breeder may notify the Minister of the end of the duration.

19. Terms of protection of plant breeders' rights

Subject to this Act, plant breeders' rights in respect of a plant variety shall subsist—

(a) for a period of twenty years in the case of annual crops; or

(b) for a period of twenty five years for trees, vines and other perennials commencing on the day of filing of the application.

20. Remedies for infringement of rights

(1) Infringement of plant breeders' rights, shall be actionable at the instance of the holder of the rights.

(2) In any proceedings for the infringement of plant breeders' rights, relief shall be available by way of damages, injunction or any other relief that court may grant.

(3) A defendant in proceedings for an infringement of plant breeders' rights in respect of a variety shall apply by way of counter-claim for the revocation of plant breeders' rights on the ground that—

(a) the variety was not new; or

(b) facts exist which, if they had been known by the office before the grant of those rights, would have resulted in the refusal of the grant.

(4) If, in any action or proceedings for infringement of plant breeders' rights in respect of a plant variety in which a defendant has applied by way of counter-claim for the revocation of those rights on the grounds referred to in subsection 3 (a) or (b), the court is satisfied that the ground exists, the court may revoke those rights.

(5) Where, in proceedings for an infringement of plant variety rights, the court, on an application by the defendant by way of counter-claim revokes the plant breeders' rights, the court shall order the defendant to serve the Office a copy of the order revoking the plant breeders' rights.

21. Naming of protected plant varieties

(1) The decision of whether to accept or reject the name of a plant variety shall vest in the Registrar in consultation with the Plant Variety Protection Committee.

(2) If any person uses the registered name of a protected variety for sale, or marketing of a different variety within the same class, the use of the name shall be a wrong and actionable in proceedings by the holder of the rights where—

(a) the name is registered in respect of a variety;

(b) the name so nearly resembles the registered name as to be likely to deceive or cause confusion.

22. Filing of applications

(1) Where an application is filed in respect of plant breeders' rights, the application shall be accepted if the Registrar is satisfied that—

(a) the application complies with the requirements of the Act;

(b) the name of the variety complies with section 21.

(2) Where the Registrar accepts an application, the Registrar shall, within six months, present the application to the Plant Variety Protection Committee.

(3) The Committee shall meet to take a decision on the application within six months.

(4) The Registrar shall inform the applicant of the decision of the committee, stating the grounds, in case of rejection.

23. Assessment procedures

(1) The Registrar shall satisfy himself or herself that the required testing and evaluating of the variety for release by the National Variety Release Committee has been done.

(2) The Registrar shall demand an impact assessment report.

(3) The fees with respect to testing and assessment shall be fixed on the basis of the administrative and examination costs of issuing plant breeders' rights.

24. New varieties

(1) A variety shall be taken to be new if, at the time of filing of the application for a breeders' right, propagating or harvested material of the variety has not been sold or disposed of to others by or with the consent of the breeder, for purposes of commercial exploitation of the variety—

(a) in Uganda earlier than one year before the filing date; and

(b) in any country other than Uganda in which the application has been filed earlier than four years; or,

(c) in the case of trees or vines, earlier than six years before that date.

(2) A variety existing at the commencement of this Act and created within the previous four years shall be taken to satisfy the condition of novelty defined in subsection (1) even where the sale or disposal to others described in that subsection took place earlier than the time limits defined in that subsection.

25. Distinct Variety

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

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

26. Uniform variety

A variety shall be taken to be 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.

27. Stable variety

A variety shall be taken to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

28. Grant not limited to protection of same variety

The grant of a breeders' right shall not be refused or limited in duration on the ground that protection for the same variety has not been applied for, or has been refused or has expired in any other country or intergovernmental organization.

29. Characteristics of plant varieties originating from outside Uganda

For the purposes of this Act, where a plant variety in respect of which an application has been accepted has origin from outside Uganda, the variety shall not be taken to have a particular characteristic unless—

(a) statistically valid, multi-locational, variety trials have been carried out in Uganda for at least—

(i) three growing seasons for annuals; or

(ii) two breeding cycles for perennials have demonstrated that the variety has the specific characteristics as claimed by the applicant;

(b) the Office with the advice of the Plant Variety Protection Committee is satisfied that—

(i) statistically valid trials on the variety carried out outside Uganda have demonstrated that the variety has that specified characteristic;

(ii) the natural environment outside the country under which the statistically valid trials were carried out is similar to the environment in Uganda;

(iii) a test growing of the variety carried out at a place outside Uganda has demonstrated that the variety has that characteristic;

(iv) the test growing of the variety carried out in the country is equivalent to that carried out outside Uganda;

(v) if a test growing of the variety in Uganda that would be sufficient to demonstrate whether the variety has that characteristic would take longer than two years; and

(vi) the concerned breeder submits to the extent possible the pedigree of the variety indicating the identity of the folk varieties used as parents.

30. Test growing of plant varieties

(1) Where, in dealing with an application in respect of a plant variety, the Office considers it necessary that there should be a test growing, or a further test growing of the variety, test growing shall be performed by the variety testing and evaluation institution—

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

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

(2) The applicant shall supply seeds or sufficient reproductive material of plants, of the variety, as the case may be and with any necessary information, to enable the variety to be test grown for the purpose referred to in subsection (1).

(3) After the completion of the test growing of a plant variety, any plants or reproductive material of plants used, in or resulting from the test growing, shall be surrendered to the applicant for the plant breeders' rights in respect of that plant variety.

31. Withdrawal of application

(1) The applicant may withdraw an application at any time before the publication of the application.

(2) Where an application is withdrawn after publication in the Gazette, but before the grant of the plant breeders' rights, the Office shall forthwith publish that withdrawal at the cost of the applicant.

32. Provisional protection

(1) Where an application for plant breeders' rights in respect of a variety has been accepted, the applicant shall, for the purpose of protecting the breeders' rights, be taken to be the grantee of the plant breeders' rights in respect of that plant variety during the period commencing on the date of filing of the application and ending—

(a) at the disposal of the application; or

(b) if the Registrar has given the applicant notice at the expiration of the prescribed period, whichever occurs first.

(2) Steps to protect the genetic materials of new varieties under testing shall be taken, so as to prevent their use for non-research purposes.

33. Objection to grant of rights

(1) Where official advertisement of an application for plant breeders' rights in respect of a plant variety or of the variation of an application is done, any person who considers—

(a) that the commercial or public interests would be affected by the grant of those rights to the applicant; or

(b) that the application in relation to that variety does not fulfill the prescribed criteria for grant of plant breeders rights may within six months after publication of the application, or any further time before the application is disposed of, lodge with the Office a written objection to the grant of those rights setting out particulars of the objection.

(2) Where an objection to the grant of plant breeders' rights is lodged under subsection (1), the Office shall cause a copy of that objection to be given to the applicant for those rights.

(3) Any person may inspect an application or an objection filed, during office hours and is entitled, upon payment of the prescribed fees, to be given a copy of the application or of the objection.

34. Grant of rights

(1) Subject to this section, an application for plant breeders' rights in respect of a plant variety shall be granted, if the Office is satisfied that—

(a) there has been no objection filed;

(b) the plant variety is new, distinct, uniform and stable;

(c) the variety has satisfied the requirements of section 16;

(d) those rights have not been granted to another person; and

(e) there has been no earlier application for those rights that has not been withdrawn or disposed of.

(2) If the Registrar is not satisfied with the conditions in subsection (1), the Registrar shall refuse to grant those rights to the applicant.

(3) The Registrar shall not grant or refuse to grant plant breeders' rights in respect of a plant variety, unless a period of six months has elapsed since the publication of the application in the Gazette, and in a newspaper of wide circulation, or if the application has been varied in a manner that the Registrar considers to be significant, or, a period of six months has elapsed since the publication of particulars of the variation.

(4) The Registrar shall not refuse to grant plant breeder's rights unless he or she has given the applicant for the rights a reasonable opportunity to make a written submission to the registrar in relation to the application.

(5) Where an objection to the grant of plant breeders' rights has been lodged, the Registrar shall not grant the rights unless it has given the person who lodged the objection a reasonable opportunity to make a written submission to the Registrar in relation to the objection.

(6) Plant breeders' rights shall be granted and the breeder issued with a plant breeders' certificate by the Registrar which shall be prescribed by the Minister in the regulations.

(7) Where plant breeders' rights are granted to more than one person, those rights shall be granted to those persons jointly.

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

(9) Where the Registrar refuses to grant plant breeders' rights in respect of a plant variety, the Registrar shall, within thirty days after refusal, give written notice of the refusal to the applicant setting out the grounds for the refusal.

(10) Any person may in agreement with the substantive holder of the rights use plants or propagating material of plants as an initial source of variation for the purpose of developing another new variety.

35. Entry of rights into register

When the Office grants plant breeders' rights in respect of a plant variety, the Registrar shall enter in the register—

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

(b) the name of the variety;

(c) the pedigree of the variety where possible;

(d) the name and address of the breeder;

(e) the address for the service of documents on the breeder;

(f) the date and time on which the right was granted;

(g) description of the communities or localities in the country entitled to farmers' rights where applicable; and

(h) other particulars relating to the grant as the Registrar considers appropriate.

36. Publication of rights

Where the plant breeders' rights have been granted, the Registrar shall within thirty days after granting those rights publish them in the Gazette and a newspaper of wide circulation.

37. Appeal against decision

Any person aggrieved by any decision of the Office regarding an application for plant breeders' rights may institute proceedings before the court in respect of the application within sixty days.

38. Nature of rights

(1) Plant breeders' rights are personal property and are capable of assignment, transmission or transfer.

(2) An assignment of plant breeders' rights does not have effect unless it is in writing, signed by or on behalf of the assignor, with notice to the Registrar.

39. Assignment of rights

(1) Where plant breeders' rights are assigned or transmitted to a person, that person shall, within thirty days after acquiring those rights, inform the Registrar in writing that he or she has acquired those rights, giving particulars of the manner in which the rights were acquired.

(2) The Registrar if satisfied that the rights have been so assigned or transmitted, shall amend the register and enter the name of that person on the register as the grantee of those rights.

(3) Where in accordance with subsection (2), the Registrar enters on the register as the grantee of plant breeders' rights the name of a person who claims to have acquired those rights, the Registrar shall, within thirty days after entering the name on the register, give written notice to the person and to the person who was the grantee before the entry was made stating that the entry has been made.

(4) Where the Office is not satisfied that plant breeders' rights have been assigned or transmitted to a person who has informed the Office in accordance with subsection (1) that those rights have been assigned or transmitted to the claimant, the Office shall forthwith give written notice to the claimant stating that the Office is not satisfied; and

(a) setting out the grounds on which the Office is not satisfied; and give written notice to the grantee of those rights;

(b) setting out particulars of the information given by the claimant, stating that the Office is not satisfied and setting out the grounds on which the Office is not satisfied.

(5) A person who informs the Office in accordance with subsection (1) that the plant breeders rights have been assigned or transmitted to him or her shall give written notice to the Office of an address in Uganda for the service of documents in accordance with this Act.

(6) Where the address of the assignee is different from that on the register, the Registrar shall amend the register so that the address given is entered in the register as the address for service of documents on the assignee for the purpose of this Act.

(7) Where the Registrar is not satisfied that those rights have been assigned or transmitted to that person, he or she shall notify that person.

(8) The Registrar may refuse to amend the register in the public interest.

40. Supply of reproductive material

(1) Plant breeders' rights in respect of a plant variety are subject to the condition that the breeder shall comply with any notice given to the breeder by the Registrar under this Act.

(2) Where plant breeders' rights are granted in respect of a plant variety, the Office may give the breeder a written notice requiring the breeder, to cause a specified quantity of propagating material of plants of that variety to be delivered, at the expense of the breeder, to a specified genetic resource centre within fourteen days or any other time that may be allowed by the registrar of receiving of the notice or any further time that is allowed by the Registrar.

(3) The quantity of propagating material of plants of a variety specified in the notice under subsection (2) shall be the quantity that the Registrar considers sufficient to enable that variety to be kept in existence if there were no other propagating material of plants of that variety.

(4) Where the propagating material of plants is delivered to a genetic resources centre in accordance with the condition imposed on plant breeders' rights by subsection (1), the Registrar shall, subject to subsection (6), cause that material to be stored at a genetic resources centre.

(5) The delivery and storage of the propagating material of plants in accordance with this section does not affect the ownership of the material but that material shall not be dealt with other than for the purposes of this Act.

(6) The propagating material of plants stored at a genetic resources centre may only be used by the Registrar for the purposes of this Act.

(7) Without limiting subsections (5) and (6), where, in accordance with this section, the propagating material of plants is stored at a genetic resources centre as gazetted by the Minister according to section 46, the material shall not form part of the collection of the National Genebank, and shall not be used for the purposes of that collection, until a decision on the application is taken.

(8) Once the variety is accorded recognition, the propagating material may be used for the purposes of further research and breeding upon notification of the holder of rights in respect of the material.

(9) Where plant breeders' rights are granted in respect of a plant variety, the Registrar may give the breeder written notice requiring the breeder to cause to be delivered to the Registrar a specimen of a plant of the variety suitable for deposition by the Registrar in a herbarium within fourteen days of the notice or any additional time that may be allowed by the Registrar.

(10) Where a specimen of a plant is delivered in accordance with the conditions imposed on plant breeders' rights by section 13, the Registrar shall cause the specimen to be deposited in a herbarium.

41. Maintenance of reproductive material

(1) Every holder of breeders' rights shall ensure that throughout the period for which the rights are exercisable, he or she is in a position to produce to authorized reproductive material which is capable of producing the variety to which the rights relate with the morphological and physiological and other characteristics, such as molecular identity, taken into account when the rights were granted in respect of the variety.

(2) The holder of breeders' rights has the obligation to stock the market with propagating material at reasonable prices and he or she may do this himself or herself or may grant such licenses as are necessary to stock the market with propagating material on reasonable terms and conditions.

42. Revocation of rights

(1) The Registrar shall revoke the breeders' rights in respect of plant variety—

(a) if the Registrar discovers that the plant variety was not new;

(b) if facts exist which, if they had been known before the grant of those rights would have resulted in the refusal of the grant; and

(c) in public interest.

(2) The Registrar may revoke the breeders' rights in respect of the plant variety if Registrar is satisfied that the breeder or the person to whom those rights have been assigned or transmitted has failed to comply with this Act.

(3) Any person whose interests are affected by the grant of breeders' rights in respect of a plant variety may apply to the Registrar for the revocation of those rights in accordance with this section.

(4) The Registrar shall consider any application under subsection (8) for the revocation of breeders' rights.

(5) The decision of the Registrar not to revoke the rights shall be communicated to the applicant by written notice within fourteen days after the decision is taken, setting out the grounds of the refusal for the revocation of the rights.

(6) Where the Registrar revokes breeders' rights in respect of a plant variety in accordance with this section, the Registrar shall after the decision is taken give written notice of the revocation to the breeder setting out the grounds for the revocation within fourteen days after the decision is taken giving reasons for the revocation.

(7) The Registrar shall not revoke breeders' rights under this section unless the Registrar has given the breeder and the person, if any, to whom the Registrar believes those rights have been assigned or transmitted, particulars of the grounds of the proposed revocation and given the breeder and any such person a period of twenty one days to make a written submission to the Registrar in relation to the proposed revocation.

(8) Where the breeder is not satisfied with the final decision of revocation, he or she may make an application to court for a review of the revocation of the rights within sixty days from the date of receipt of the revocation notice.

(9) The revocation of breeders' rights in respect of a plant variety in accordance with this section takes effect—

(a) at the expiration of the period within which an application may be made to court for a review of the revocation under subsection 8; or

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

43. Surrender of rights

(1) Subject to subsection (2), a breeder may at any time, upon giving notice to the Office, offer to surrender his or her rights.

(2) The Office shall, after receiving the notice of surrender, give public notice of the offer and give all interested parties an opportunity to make written submissions to the Registrar in relation to the offer, and may, if the Registrar thinks fit, accept the offer and revoke those rights.

(3) Where proceedings in respect of breeders' rights are pending in a court, the office shall not accept an offer for the surrender or revocation of those rights, except by leave of court or by consent of the parties to the proceedings.

44. Royalty to conservation and development

(1) Where the variety is available with restrictions for further research and breeding, a percentage (1.1%) of the sales from the seed of the new variety shall constitute the royalty.

(2) Where a variety is available without restrictions for further research and breeding, a percentage (0.5%) of the sales from seed shall constitute the royalty.

(3) The royalty shall be paid to the Community Genefund in accordance with the procedures outlined by the Office.

45. Placement of completed application form in public registry

(1) Upon completion of the application, the Office shall place or cause to be placed, the application in a public registry for thirty years, or publish or cause it to be published in the Gazette and a newspaper of wide circulation.

(2) Any person may consult the public registry and comment on the application within the period specified in subsection (1).

(3) The Office shall disseminate information to the local community concerned and other interested parties.

46. Genetic resource centres

The Minister may from time to time declare or gazette genetic resource centre, as suitable centres for storage and maintenance of germplasm material for purposes of this Act.

PART IV—MISCELLANOUS

47. Contravention

Any activities carried out in contravention of this Act and the regulations made under this Act shall be illegal, and any claims upon plant varieties obtained or used outside this Act shall not be recognised.

48. Dispute settlement

Where a conflict arises concerning any matter related to this Act, unless otherwise provided for, it shall be settled administratively through the Office and finally through the courts of law.

49. Regulations

(1) The Minister may make regulations for giving full effect to the provisions of this Act.

(2) Without prejudice to the general effect of subsection (1), Regulations made under this Act may also subject to this Act prescribe the procedure for processing applications and the forms to be used under this Act and also the fees to be paid in respect of anything to be done under this Act.

(3) Without prejudice to the rights of person to proceed in court for the enforcement of the rights under this Act, the regulations may under this section prescribe—

(a) that any contravention of the regulations may be punishable by a fine not exceeding one currency point or imprisonment not exceeding two months or both and may prescribe higher penalties for repeated contravention;

(b) that the court convicting a person for an offence under the regulations shall order the person—

(i) to pay compensation to the community affected by the offence;

(ii) that anything involved in the commission of the offence shall be forfeited to the state or destroyed;

(iii) that the court shall order the cancellation of the permit for access of the offender;

(iv) that the offence shall cause to be published in international media and secretariats of relevant international authorities.

FIRST SCHEDULE

CURRENCY POINT

Regulation 49(3)(a)

One currency point is equivalent to twenty thousand Uganda shillings.

SECOND SCHEDULE

Section 10

MEETINGS OF THE COMMITTEE AND OTHER MATTERS

1. Meetings of the Committee.

(1) The Committee shall meet for the discharge of business at least two times every year or upon a request in writing to the chairperson by at least three members of the Committee.

(2) The Committee shall meet at such time and place as the Chairperson may appoint.

(3) The chairperson may also call a special meeting of the Committee.

(4) A meeting of the Committee shall be convened by a notice to each member issued and signed by the secretary, at least fourteen days before the meeting except that a shorter notice may be given for a special meeting.

2. Quorum

The quorum at a meeting of the Committee shall be five members for the transaction of ordinary business, and all the members for review of the previous decision of the Committee.

3. Minutes of meetings of the committee.

(1) The secretary shall cause to be recorded and kept, minutes of all meetings of the Committee in a form approved by the Committee.

(2) The minutes recorded under this paragraph shall be submitted to the Committee for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the chairperson and the secretary in the presence of the members present at the latter meeting.

4. Decisions of the Committee.

(1) The decisions of the committee shall be by majority vote.

(2) Each member shall have one vote and chairperson shall not have a casting vote except in the circumstance where for whatever reason the Constitution of the committee amounts to an even number.

(3) The secretary shall have no voting powers.

5. Decision by circulation of papers.

(1) Subject to subparagraph(2), a decision of the committee may be made by circulation of the relevant papers among members of the Committee and the expression of their view in writing except that any member is entitled to require that the decision be deferred until the subject matter has been considered at a meeting of the committee.

(2) A decision made by circulation of papers under this paragraph is not valid unless supported by five members of the committee.

6. Validity of meetings not affected by vacancy etc.

The validity of any proceedings of the committee shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

7. Disclosure of interest.

(1) If a person is present at a meeting of the committee at which a matter is the subject of consideration and in which that person or his or her spouse or nominee is interested in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting disclose that interest and shall not, unless the committee directs otherwise, take part in any consideration or discussion or vote on any question relating to the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

8. Service of documents and other notices.

A notice or other document maybe served on the committee by delivering it to the office of the secretary or by sending it by prepaid registered post addressed to the secretary.

9. Committee may regulate procedure.

Except as otherwise provided under this Act, the committee may regulate its own procedure.