

**Decree no. .../2013**

**of... of ....**

In view of the need to adapt the Norms on the Protection of New Plant Varieties, as approved by Decree no. 58/2006 of 26 December, to current developments in the field of plant variety protection, and pursuant to subparagraph f) of paragraph 1 of Article 204 of the Constitution of the Republic, the Council of Ministers decrees:

Article 1. The Regulation on the Protection of New Plant Varieties in the Schedule to this Decree is approved and forms an integral part of the Decree.

Article 2. It is the duty of the Minister responsible for Agriculture to approve the necessary norms for the implementation of this Regulation.

Article 3. Decree no. 58/2006 of 26 December is hereby revoked.

Approved by the Council of Ministers on ..... .

For publication,

The Prime Minister, *Alberto Clementina António Vaquina*.

# Regulation on the Protection of New Plant Varieties

## CHAPTER I

### General provisions

#### Article 1

#### Definitions

For the purposes of this Regulation, the following definitions apply:

**Agent** - representing entity who is legally recognised and authorised by the plant breeder or plant breeders' right holder, who resides in Mozambique and who has been mandated to act on behalf of the plant breeder or plant breeders' right holder.

**Authorisation** - legal permission granted by the plant breeders' right holder which grants powers to exploit or utilise the protected variety.

**Reference sample of the variety** - representative portion of the propagating material, able to produce plants with the same features of the variety as noted at the time of registration.

**Certificate** - document issued by the Registration Entity which proves the authenticity of the plant breeders' right.

**Transferee** - entity to whom the plant breeders' right is transferred in respect of the new variety.

**Priority date** - the date in which the first application for plant breeders' rights was validly submitted, in instances where the Registration Entity has received more than one application relating to the same variety.

**Effective date of application** - the date in which the application for plant breeders' rights was validly submitted to the Registration Entity.

**Description** - written statement which defines the features of a plant variety, distinguishing it from any other variety.

**Designation** - generic designation of a variety.

**Plant breeders' right** - right acquired and exercised under this Regulation.

**Registration Entity** - organ responsible for the administration of plant breeders' rights.

**Licence** - document issued by the breeders' rights holder which authorises the performance of any activity involving the protected variety, under terms and conditions stipulated therein.

**Compulsory license** - license issued exceptionally by the Registration Entity in instances where the public interest is not served as regards the new variety, or where the plant breeders' right holder unreasonably refuses to grant the license or imposes unacceptable conditions.

**Propagating material** - any reproductive or vegetative material from a plant variety, including seeds and any whole plant or part thereof, which may be used for the reproduction or multiplication of that variety.

**Plant breeder** - refers to:

- a) a natural or legal person who created or discovered and developed a plant variety;
- b) a natural person through whom the entity referred to in subparagraph (a) provides services;
- c) a successor or heir to the entities referred to in subparagraphs (a) and (b).

**Applicant** - entity who applies for a plant breeders' right.

**SADC** - Southern African Development Community.

**Seed** - All plant material of any species, sexually or asexually reproduced, normally used for the propagation of the species.

**Holder** - refers to:

- a) entity in whose name a plant breeders' right certificate has been issued in respect of a variety;
- b) transferee or successor of the breeders' right.

**Variety** - a plant grouping, within a single botanical taxon of the lowest known rank, which is:

- 1) defined by the expression of characteristics resulting from a given genotype or combination of genotypes;
- 2) distinguished from any other plant grouping by the expression of at least one of said characteristics, and considered as a unit in regard to its capacity to be propagated without changing.

**Variety of common knowledge** - a variety whose existence is determined by the following factors:

- a) Existence of propagation material for that variety which has been sold or traded;
- b) Existence of a valid application for a plant breeders' right, provided it results in the granting of said right.
- c) Existence of a valid application for the registration of the variety in the official list of varieties;
- d) Registration of the variety in the official list of varieties;
- e) Existence of a precise description of the variety in any professional publication;
- f) Inclusion of the variety in a collection of plant varieties accessible to the public;
- g) Other circumstances to be determined by the Registration Entity.

**Distinct variety** - a variety which is clearly distinguishable from any other variety whose existence is common knowledge as at the effective date of application.

**Variety essentially derived from the initial variety** - refers to a variety which:

- a) Is derived predominantly from the initial variety and retains the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- b) Is clearly distinguishable from the initial variety by the differences that result from the act of derivation;
- c) May be obtained through the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

**Stable variety** - a variety whose main characteristics do not change with the number of generations, taking into account the seed chain and seedling production system.

**New variety** - a variety whose propagating material has not been sold or otherwise transferred to a third party with the consent of its plant breeder in Mozambique, in SADC countries or in other countries with which Mozambique maintains reciprocal agreements in respect of plant breeders' rights.

**Protected variety** - a variety that may not be used or exploited for commercial purposes without permission by the plant breeders' rights holder.

**Uniform variety** - a variety which, subject to the variation that may be expected of the specific characteristics of its propagation, is sufficiently uniform in its principal characteristics.

## Article 2

### Objective

The objective of this Regulation is to establish rules for the protection of new plant varieties.

## Article 3

### Scope

- 1 This Regulation applies to all genera and species of plants.
- 2 The protection of the plant breeders' rights acquired under this Regulation is valid within the national territory and in all countries with which Mozambique has established bilateral and multilateral agreements on that subject.

## Article 4

### Registration Entity

- 1 The national authority in charge of seeds is the Registration Entity, which is responsible for the administration of plant breeders' rights.
- 2 It is the duty of the Registration Entity to:
  - a) Receive and assess applications and issue plant breeders' rights;
  - b) Establish and keep a register of and documentation system on plant breeders' rights;
  - c) Establish links with national, regional and international entities in all matters pertaining to plant breeders' rights;
  - d) Keep and update a database of institutions authorised to trade in protected varieties in accordance with this Regulation;
  - e) Keep documentation and reference samples in laboratory facilities or in the field, as appropriate to demonstrate that they pertain to a new variety;
  - f) Devise general guidelines and specific norms for plant breeders' rights and submit them for appraisal by the Minister in charge of Agriculture;
  - g) Oversee the implementation of this Regulation.

## Article 5

### Register of plant breeders' rights

- 1 The Registration Entity shall keep a register of plant breeders' rights comprising all of the information required under this Regulation.
- 2 For each registered variety, the information to be kept in the register shall include:
  - a) The full name and address of the plant breeder, the plant breeders' right holder and each and every entity to whom that right has been transferred;
  - b) The species and designation of varieties;
  - c) Information relating to applications, and any objections to those applications;
  - d) Any proposal, registration, rejection, alteration or cancellation of the designation of a variety;
  - e) Any statement of invalidity, withdrawal or cancellation of a plant breeders' right;
  - f) Improved characteristic (literal translation);
  - g) Any other information that may be required under this Regulation.
- 3 The register constitutes proof of the authenticity of the information recorded therein.
- 4 Without prejudice to confidentiality as under paragraph 5 of this article, any entity may have the right to access the register kept in terms of this article, for which purpose that entity shall:
  - a) Submit a written request to the Registration Entity, clearly detailing the information required and its intended use;
  - b) Pay the prescribed fee to cover the costs of the information provision services.

- 5 The Registration Entity shall determine what specific information in the register may be accessible to the public, with due respect for the confidentiality of certain information, particularly that which pertains to company secrets.
- 6 The Registration Entity may, on request by the applicant, rectify or authorise the rectification of any error or omission in the register.
- 7 Whenever a rectification is proposed by the Registration Entity or any other interested party, the Registration Entity shall notify the plant breeder of the intention to rectify the error.

## Article 6

### **Technical Commission**

- 1 It is the duty of the Minister in charge of Agriculture to create a technical commission to advise the Registration Entity on all matters relating to plant breeders' rights, consisting of a plant breeding specialist, a specialist appointed according to the nature of the issue, and a jurist.
- 2 The Technical Commission established under paragraph 1 of this article may comprise other specialists whenever necessary.
- 3 Members of the Technical Commission shall be appointed according to their technical and scientific expertise and their professional merit in matters relating to the protection of plant varieties.
- 4 It is the duty of the Technical Commission to:
  - a) Advise the Registration Entity on all matters relating to plant breeders' rights;
  - b) Issue expert opinions about applications for plant breeders' rights, assess objections and challenges within the scope of this Regulation and submit these for the decision of the Registration Entity;
  - c) Advise the Registration Entity on monitoring and evaluation of the implementation of this Regulation.
- 5 The rules of organisation and operation of the Technical Commission shall be approved by the Minister in charge of Agriculture.

## **CHAPTER II**

### **Conditions for the granting of plant breeders' rights**

#### Article 7

##### **Granting criteria**

- 1 Plant breeders' rights are granted when the variety is new, distinct, uniform and stable in accordance with articles 8 to 11 in this Regulation, and provided it has a single designation in accordance with article 17 of this Regulation.
- 2 The granting of plant breeders' rights shall not be subject to any additional criteria, provided that the applicant complies with the formalities imposed by this Regulation.

#### Article 8

##### **Novelty**

- 1 A variety is deemed new if its propagating material has not been sold, traded or transferred to others with the consent of the respective plant breeder:
  - a) Up to 12 months prior to the effective date of application, if within Mozambique or the SADC region; and
  - b) Up to 48 months prior to the effective date of application, if outside the SADC region, with the exception of tree species and vines, in which cases the period is 72 months prior to the effective date of application.
- 2 Novelty shall not be affected or lost by the sale, trade or transfer to others when:
  - a) The variety has been obtained illegally or exploited without the consent of the plant breeder;
  - b) It forms part of an agreement for the transfer of rights over the variety;
  - c) It forms part of an agreement under which an entity multiplies the propagating material of the variety in question on behalf of the plant breeder, provided the material multiplied reverts to the plant breeder and is not used for the production of another variety;
  - d) It forms part of an agreement for the purpose of assessing the variety through field trials, laboratory tests or small-scale processing trials;
  - e) It is pursuant to a legal or administrative obligation, particularly in the case of tests or trials carried out for reasons of biosafety or the registration of the variety;
  - f) It involves a by-product or surplus product from the process of developing the variety or from the activities referred to in subparagraphs c), d) and e) of this paragraph, provided that the product is used for consumption and the variety is not identified.

## Article 9

### **Distinctness**

- 1 A variety is deemed distinct if it is clearly distinguishable from any other variety whose existence is common knowledge at the effective date of application.
- 2 The existence of a variety of common knowledge as referred in paragraph 1 of this article is determined by the following factors:
  - a) Existence of propagating material of the variety which has been sold or traded;
  - b) Existence of a valid application for a plant breeders' right, provided this results in the granting of the plant breeders' right;
  - c) Existence of a valid application for the registration of a variety in the official list of varieties, provided the application results in its registration in the official list of varieties;
  - d) The registration of the variety in the official list of varieties;
  - e) Existence of a precise description of the variety in any professional publication;
  - f) The inclusion of the variety in a collection of varieties of plants accessible to the public;
  - g) Other circumstances which may be determined by the Registration Entity.

## Article 10

### **Uniformity**

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

## Article 11

### **Stability**

A variety shall be deemed stable if its principal characteristics do not change with the number of generations, taking into account the seed chain and seedling production system.

## **CHAPTER III**

### **Application for plant breeders' rights**

## Article 12

### **Entities with the right to protection**

- 1 The application for plant breeders' rights shall be made by the following entities:
  - a) The plant breeder;



- b) An agent of the entity referred to in the previous subparagraph.
- 2 The application for plant breeders' rights under paragraph 1 of this article may be made by any natural or legal entity individually or jointly.
- 3 The application under paragraphs 1 and 2 of this article may be made by national entities or by foreign entities who reside in Mozambique, in SADC countries or any other country with which Mozambique has reciprocal agreements in respect of matters relating to the protection of plant breeders' rights.

## Article 13

### **Application**

- 1 Applications for the protection of varieties shall be submitted in writing to the Registration Entity and must include:
  - a) A duly completed application sheet as in annex 2;
  - b) A duly completed form for the technical description of the variety, which is obtainable from the Registration Entity;
  - c) In cases where the applicant does not reside in Mozambique, a document appointing the legal representative;
  - d) Proof of payment of the prescribed fees;
  - e) Any other requirement that may be established under the Supplementary Norms.
- 3 The sheet required under subparagraph (a) of paragraph 1 of this article shall contain the following information:
  - a) Name and address of the applicant;
  - b) Botanical name of the species;
  - c) Proposed name of the variety;
  - d) Technical description of the variety;
  - e) Information about any prior applications.
- 5 The Registration Entity may request any information, documentation or material on the variety as may be required for the purpose of conducting analyses.

## Article 14

### **Right of priority**

- 1 In order to benefit from the right of priority the plant breeder shall, at the time of application:
  - a) Submit the application for the right of priority to the Registration Entity, by means of a form supplied by the Registration Entity;
  - b) Pay the prescribed fees.
- 2 Should the Registration Entity receive more than one application relating to the same variety, priority must be given according to the order of receipt of the applications, taking into account the stipulated requirements.

- 3 Should an application have been preceded by another, on behalf of the same applicant and for the protection of the same variety, in any country with which Mozambique maintains reciprocal agreements regarding plant breeders' rights, without prejudice to paragraph 2 of this article priority must be given to the first application which has been validly submitted within the period of 12 months counted from the effective date of the preceding application.
- 4 If no other application has been made in another country, or if such an application has been annulled, cancelled, withdrawn or rejected, the effective date of application is the date of its submission to the Registration Entity.

#### Article 15

##### **Documents and materials for the granting of priority**

- 1 For purposes of granting priority in terms of paragraph 3 of article 14 of this Regulation, the Registration Entity may require that the plant breeder submit, within three months counted from the effective date of the subsequent application, the following documents or materials:
  - a) A certified copy of the documents which constitute the first application;
  - b) A reference sample or other proof that the variety in question is the same.
- 2 If any of the requirements set out in paragraph 1 of this article is not complied with, no application for the right of priority shall be deemed to have been made.

#### Article 16

##### **Provisional protection**

- 1 The applicant for plant breeders' rights enjoys provisional protection during the period between the effective date of application, or date of publication of the application, and the date of granting of breeders' rights under this Regulation.
- 2 Provisional protection applies as if the plant breeders' rights have been granted, and the plant breeder shall benefit from equivalent remuneration for the performance of the activities prescribed in article 27 during the period between the effective date of application, or date of publication of the application, and the date of granting of those rights.
- 3 No provisional protection as set out in paragraphs 1 and 2 of this article shall be granted prior to the expiry of the periods prescribed for submission and assessment of objections and challenges under article 22 of this regulation.

## Article 17

### **Designation of varieties**

- 1 Each variety subject to protection under this Regulation shall have a unique name approved for its designation, which name shall be used both during the period in which the plant breeders' rights are in force and after its expiry.
- 2 The name of the variety shall enable the identification of the variety, it shall be proposed by the plant breeder at the time of submission of the application for plant breeders' rights and shall be subject to approval by the Registration Entity.
3. The Registration Entity may, at any time prior to the granting of plant breeders' rights and after considering all proof and objections received, reject the proposed name in terms of paragraph 2 of this article if:
  - a) It is comprised only of numbers;
  - b) It leads to error or confusion regarding the characteristics, value or identity of the variety, or the identity of the plant breeder;
  - c) It is identical to a name used to designate a pre-existing variety of the same or similar species in Mozambique, SADC or a country with which Mozambique maintains reciprocal agreements regarding plant breeders' rights;
  - d) It is identical or causes confusion with another trademark which is protected under applicable legislation, except where the applicant submits documentation proving that the holder of that trademark will renounce their right to the trademark on the date in which the plant breeders' rights are granted;
  - e) It does not conform with international plant nomenclature.
- 4 Should the proposed designation of the variety not be appropriate, the Registration Entity shall request in writing that the applicant submit a different designation within 3 months, failing which the application may be rejected.

## Article 18

### **Use of the designation of a variety**

- 1 Any entity engaged in the sale or marketing of material of a protected variety shall use the registered designation of said variety even after the expiry of the period of protection.
- 2 For purposes of advertising, sale and marketing of a protected variety, the association of a trademark with the registered designation of the variety shall be permitted.
- 3 The trademark referred to in paragraph 2 of this article may only be used in conjunction with the designation of the variety, which shall be easily recognisable.
- 4 No right acquired with a registered designation may be exercised against the legal use of the designation in connection with the variety by another entity, even after the expiry of the period of protection of the plant breeders' right.

## Article 19

### **Prior rights of a third party**

- 1 Prior rights acquired by third parties relating to the designation shall not be affected by this Regulation.
- 2 When the use of the designation of a variety by an authorised entity is prohibited by a prior right, the Registration Entity shall require that the plant breeder propose a different designation for the variety.

## Article 20

### **Cancellation of the designation of a registered variety**

- 1 The Registration Entity shall cancel any designation of a protected variety if, after the registration, facts become evident which would have caused the rejection of the designation.
- 2 Should the designation of a variety be cancelled, the Registration Entity shall request that the plant breeders' right holder submit a proposed new designation for the variety, in accordance with paragraph 4 of article 17.
- 3 The Registration Entity shall assess the proposal for the new designation, and register it if found acceptable.

## Article 21

### **Publication of information**

- 1 The Registration Entity shall publish in the Government Gazette, at regular intervals, the following information:
  - a) Applications for plant breeders' rights;
  - b) Information about the designation of a variety;
  - c) Withdrawal of applications;
  - d) Rejection of applications;
  - e) Granting of rights;
  - f) Cancellation of rights;
  - g) Waiving of rights;
  - h) Forfeiture of rights;
  - i) Changes of entities (applicants, holders and agents/legal representatives);
  - j) Any other information of public interest.
- 2 Confidential information included in the application for plant breeders' rights shall not be published without the consent of the plant breeder.

## Article 22

### **Publication of applications and objections**

- 1 The Registration Entity shall publish, in the Government Gazette or in the newspaper of widest circulation in the country, a notice for every application received, detailing the following:
  - a) The name of the applicant;
  - b) The effective date of the application;
  - c) The proposed designation of the variety;
  - d) Any information relating to the application which may be necessary to describe the variety for purposes of public comment on the application, or which may be detailed in the supplementary norms without prejudice to the confidentiality of information under paragraph 5 of article 5 of this Regulation.
- 2 Any entity may, within the period of 2 months from publication of the notice of application of plant breeders' rights, submit a duly substantiated written objection to the Registration Entity.
- 3 The objection submitted under this article shall:
  - a) Detail the grounds for the objection;
  - b) Submit proof of the facts alleged in subparagraph (a) above;
  - c) Be accompanied by proof of payment of the prescribed fees.
- 4 Grounds for an objection may include:
  - a) The applicant is not eligible to submit the application;
  - b) The published notice is incomplete or does not clearly describe the variety;
  - c) Non-compliance with the requirements for the granting of plant breeders' rights as set out in articles 7 to 14 of this Regulation;
  - d) The application constitutes a fraud;
  - e) The application contains an inadequate or false representation of the material;
  - f) The proposed variety has been reproduced through the repeated use of another variety, in respect of which rights have already been granted or applied for by an entity other than the applicant, unless that material is used under a licence issued in accordance with articles 31, 32 and 33 of this Regulation;
  - g) The proposed name for the variety must be rejected or changed in accordance with the provisions of article 17 of this Regulation;
  - h) The proposed species does not conform with international plant nomenclature;
  - i) In the case of applications made outside the country, the existence of differences in the information contained in the application or rights granted in another country;
  - j) The application for the right of priority submitted with the application for plant breeders' rights is not valid for the application in question;
  - k) Any other reasonable grounds for objection to the application.
- 5 The Registration Entity may request additional proof to the entity submitting the objection.
- 6 The Registration Entity shall notify the applicant of receipt of the objection under this article, and furnish the applicant with a copy of said objection and all supporting documentation within fifteen days from the date of receipt.

- 7 If allowed by the Registration Entity, any challenge by the applicant to the objection raised must be submitted within thirty days.
- 8 The Registration Entity shall furnish the opponent with a copy of the contestation note and all documentation in support of the contestation within two weeks from the date of submission of the contestation.
- 9 The Registration Entity shall make a decision on the objection, having heard the parties concerned and the opinion of the Technical Commission.

## **CHAPTER IV**

### **Assessment of applications**

#### Article 23

#### **Assessment of application**

- 1 An application is assessed to determine whether:
  - a) The application and supporting documents comply with the requirements for the granting of plant breeders' rights as set out in articles 7 to 13 of this Regulation;
  - b) The application for priority conforms with the provisions of article 14 of this Regulation;
  - c) The prescribed fees have been paid within the prescribed timeframe.
- 2 Once the application has been assessed, the Registration Entity may notify the applicant of the need for correction of errors identified towards compliance with the requirements set out in articles 13 and 17 of this Regulation.

#### Article 24

#### **Assessment of distinctness, uniformity and stability**

- 1 Once the application has been assessed in terms of article 23 of this Regulation, the Registration Entity shall ensure that a technical assessment is carried out in respect of compliance with the requirements under articles 7 to 11 of this Regulation.
- 2 The technical assessments shall be carried out in accordance with the technical norms for testing to be supplied by the Registration Entity.
- 3 The Registration Entity shall communicate the results of the technical assessments and description of the variety to the applicant, who shall challenge the results, if they so wish, within fifteen days.

- 4 The Registration Entity may conclude agreements with national or foreign entities for the performance of scientific tests to determine the distinctness, uniformity and stability of the variety, or to use the results of said tests after completion.

## Article 25

### **Granting and rejection of plant breeders' rights**

- 1 The Registration Entity shall grant plant breeders' rights if, after assessing the application, the objections and the results of the tests or trials conducted, it concludes that:
  - a) the variety meets the requirements of novelty, distinctness, uniformity and stability described in articles 8 to 11 of this Regulation;
  - b) The proposed designation of the variety conforms with article 17 of this Regulation;
  - c) The objections received provide no valid grounds for the prevention of the granting of the plant breeders' right.
- 2 When granting a plant breeders' right, the Registration Entity shall:
  - a) Issue the Certificate of Plant Breeders' Right in the name of the applicant;
  - b) Record the required data in the register;
  - c) Publish information relating to the granting of said right, in accordance with this Regulation.
- 3 The application shall be rejected if:
  - a) The applicant has no right to submit the application;
  - b) The applicant has not furnished correct and complete information as requested, fails to correct the irregularities found during the process of assessment, does not comply with the timeframes in the official notifications and does not meet the requirements in articles 8 to 11 and article 17 of this Regulation.
  - c) The applicant refuses or is unable to propose an acceptable designation;
  - d) The applicant has not paid the prescribed fees.
- 4 In the case of rejection, the Registration Entity shall:
  - a) Notify the applicant in writing of its decision to reject the application;
  - b) Record the required data in the register;
  - c) Publish a notice of rejection of the application.

## **CHAPTER V**

### **Plant breeders' rights**

#### Article 26

##### **Duration of plant breeders' rights**

Plant breeders' rights remain in force for a period of twenty-five years in the case of tree species and vines, and twenty years in the case of other genera and species, unless a decision to cancel them is taken before this period expires.

#### Article 27

##### **Scope of protection of plant breeders' rights**

- 1 The production and multiplication of propagating material of a protected variety, as well as its packaging for purposes of propagation, display, sale or any other form of marketing, export, import and storage, requires prior authorisation by its plant breeders' right holder, failing which it constitutes a violation of the rights of the holder.
- 2 Authorisation for any of the activities mentioned in the preceding paragraph of this article is granted in the form of a licence issued by the plant breeders' rights holder.
- 3 The plant breeders' rights holder may impose certain limits and conditions upon the activities mentioned in paragraph 1 of this article.
- 4 The conditions prescribed in paragraphs 1, 2 and 3 of this article apply also to varieties:
  - a) Which are essentially derived from the protected variety, where the protected variety itself is not an essentially derived variety;
  - b) Whose production requires the repeated use of the protected variety.

#### Article 28

##### **Exceptions to the plant breeders' rights**

- 1 The plant breeders' right is not extended to:
  - a) The use of the protected variety in a programme of improvement of new varieties, except where the protected variety is used repeatedly;
  - b) Experiments or research activities;
  - c) Activities carried out by small-scale farmers for purposes of propagation in their own fields, and the product of the cultivation of the protected variety in their own fields;
  - d) Any other private activity carried out for non-commercial purposes.



## Article 29

### **Limitations of the plant breeders' rights**

Rights shall not be granted in cases where the breeder has performed or consented to the performance of the activities mentioned in paragraph 1 of article 27 of this Regulation without due protection, save for the provisions of paragraph 2 of article 8 of this Regulation.

## Article 30

### **Obligations relating to the maintenance of the protected variety**

- 1 Throughout the period in which the protection is in force, the plant breeders' rights holder shall assure their ability to:
  - a) Make sample references available which are capable of producing plants with the same characteristics observed at the time of registration;
  - b) Provide any information and assistance to the Registration Entity for the purpose of determining whether the plant breeders' rights holder is complying with the obligations under paragraph 1 of this article, including the granting of access to their facilities for purposes of inspection by the Registration Entity.
- 2 The maintenance of breeders' rights relating to a protected variety is subject to the payment of the maintenance fee set out in annex 1 of this Regulation.

## **CHAPTER VI**

### **Licences, assignment and transfer of plant breeders' rights**

## Article 31

### **Granting of licence**

- 1 The plant breeders' right holder may grant, to any entity, a licence in respect of any or all rights under this Regulation.
- 2 The licence shall include the following information:
  - a) The quantity and price of the propagating material of the variety in question;
  - b) The sums to be paid in connection with the use of the licence;
  - c) The information to be made available to the plant breeders' rights holder regarding the terms and quantities under which the licence is being used;
  - d) The period of validity of the licence, which shall not exceed the period of validity of the plant breeders' rights;
  - e) The date of granting of the licence;
  - f) The punitive measures applied in the case of violation of the terms of the licence;
  - g) Any other matter agreed by the parties.

- 3 The plant breeders' right holder shall notify the Registration Entity of the issuing of the licence, and supply a copy of same, within thirty days.

## Article 32

### **Compulsory licence**

- 1 After a period of 3 years from the granting of plant breeders' rights, any entity may request that the Registration Entity issue a compulsory licence in respect of specific plant breeders' rights, having paid the prescribed fees, and on the following grounds:
  - a) The public interest as regards the new variety is not being served;
  - b) The plant breeders' right holder unreasonably refuses to grant the license or imposes unacceptable conditions.
- 2 The application for a licence under paragraph 1 of this article shall specify the reasons why the licence is believed to be withheld, and may need to include proof if the Registration Entity so requests.
- 3 The Registration Entity shall provide the plant breeders' rights holder a copy of the application mentioned in paragraph 1 of this article.
- 4 Should the rights holder wish to challenge, they must do so within thirty days, citing the reasons for the contestation, and the Registration Entity shall supply the applicant with a copy of the contestation.
- 5 Compulsory licences shall be issued by the Registration Entity upon consultation and a favourable opinion by the Technical Commission.
- 6 When issuing a compulsory licence, the Registration Entity shall ensure that the propagating material, comprising pre-basic or basic seed, is available to the public.
- 7 A compulsory licence may be granted to one or various applicants.
- 8 The holder of a compulsory licence may not prevent the plant breeders' rights holder from granting licences to other entities.
- 9 A compulsory licence granted under this article shall specify the type of activities it covers, the conditions which are applicable and the specific requirements, taking into account:
  - a) The interests of any plant breeders' rights that may be affected by the granting of the compulsory licence;
  - b) The possibility of a time limit for said licence;
  - c) The payment of copyrights as fair remuneration to the holder;
  - d) Any other obligations imposed to the applicant of the compulsory licence.

## Article 33

### **Assignment and transfer of plant breeders' rights**

- 1 A plant breeders' right may be assigned or transferred in accordance with procedures set out in applicable legislation.
- 2 The assignment shall be made in writing, signed by the interested parties and recorded in the register.
- 3 The transfer shall be carried out in accordance with procedures prescribed under succession law, and shall be recorded in the register.

## **CHAPTER VII**

### **Waiver, annulment and cancellation of plant breeders' rights**

## Article 34

### **Waiver of plant breeders' rights**

- 1 The holder of plant breeders' rights granted under this Regulation may waive their rights before the expiry of the prescribed period, to which end they shall notify the Registration Entity in writing of their intention to do so.
- 2 Within thirty days from the notification to the Registration Entity, the plant breeders' rights holder shall publish a notice of their intention to waive their rights in the Government Gazette or newspaper of widest circulation in the country.
- 3 Any person or entity opposed to the waiver of rights may, within two months from the date of publication of the notice, notify the Registration Entity of their objection and provide appropriate justification.
- 4 If, having consulted the holder and the opponent, the Registration Entity finds in favour of the holder, it shall:
  - a) Approve the waiver of plant breeders' rights and record the information in the appropriate register;
  - b) Request the return of the certificate of registration of the plant breeders' rights issued under subparagraph a) of paragraph 2 of article 25 of this regulation.
- 5 Within thirty days from the cancellation of the plant breeders' rights, the Registration Entity shall publish a notice of said cancellation in terms of article 21 of this Regulation.

## Article 35

### **Annulment of plant breeders' rights**

- 1 The Registration Entity shall declare plant breeders' rights as being null and void if it concludes that:
  - a) The information, documentation and materials submitted at the time of registration were incorrect or false;
  - b) Other data/information have come to light which, had they been obtained during the assessment phase, would have led to the rejection of the application;
  - c) Priority should have been given to another applicant for rights over the same variety;
  - d) The plant breeders' rights were granted to an entity which is not entitled.
- 2 No plant breeders' right shall be declared null and void for reasons other than those mentioned in paragraph 1 of this article.
- 3 A plant breeders' right which has been declared null shall be considered as if it was never granted.

## Article 36

### **Cancellation of plant breeders' rights**

- 1 A plant breeders' right may be cancelled if:
  - a) The variety no longer meets the criteria for uniformity and stability;
  - b) The plant breeders' rights holder fails to supply the Registration Entity with information, documentation and material deemed necessary for monitoring the maintenance of the variety;
  - c) The plant breeders' rights holder fails to pay the prescribed fees to keep their right in force;
  - d) In cases where the designation of the variety has been cancelled after the granting of the right, the plant breeder fails to propose a different, appropriate designation within the time frame stipulated by the Registration Entity.
- 2 The plant breeders' right shall not be cancelled for reasons other than those mentioned in paragraph 1 of this article.
- 3 The Registration Entity shall notify the rights holder and licensees of its intention to cancel the rights, providing appropriate justification.
- 4 Any rights holder who has been notified in terms of the preceding paragraph may submit their objection to the Registration Entity within thirty days and upon paying the discount rate.
- 5 The Registration Entity shall decide on the cancellation after consulting the interested parties and the opinion of the Technical Commission.

- 6 The Registration Entity shall publish a notice of the cancellation of rights and record the information about the cancellation in the plant breeders' rights register, in terms of article 21 of this Regulation.
- 7 Upon cancellation of the plant breeders' right, the certificate of registration of rights issued in terms of subparagraph a) of paragraph 2 of article 25 of this Regulation is rendered invalid and shall be returned to the Registration Entity within thirty days counted from the date of notification of the cancellation.

## **CHAPTER VIII**

### **Inspection, fees, infringements and penalties**

#### Article 37

##### **Inspection**

- 1 The Registration Entity or its licensed agents are the competent authority to carry out inspections within the scope of this Regulation.
- 2 Without prejudice to applicable legislation, all activities referred to in paragraph 1 of article 27 are subject to inspection by the Registration Entity or its accredited agents.
- 3 For purposes of inspection, properly identified inspectors shall have access to:
  - a) All places where the activities described in paragraph 1 of article 27 of this Regulation are carried out, including plants, equipment, means of transport and others;
  - b) Documentation, information and materials relating to the implementation of this Regulation.
- 4 Operators of activities with protected varieties shall allow access by the Registration Entity or its licensed agents to the places of activity, means of transport, documentation, information and material.
- 5 The registration entity and its licensed agents may remove samples of propagating material or other plant material for purposes of testing.

#### Article 38

##### **Fees**

- 1 The assessment of applications, objections, challenges, maintenance of plant breeders' rights, change of designation of varieties, appeals against the decisions of the Registration Entity and any other services provided under this Regulation are subject to the payment of fees, whose amounts are set out in Table I appended to this Regulation.

- 2 Fees paid by an applicant shall not be reimbursed, regardless of the decision taken about the application.
- 3 It is the duty of the Ministers in charge of Agriculture and Finance periodically to update the value of the fees.

## Article 39

### **Fines**

- 1 The values of fines imposed for infringements under article 41 are set out in Table II appended to this Regulation.
- 2 The time limit for the payment of fines is fifteen days, counted from the date of notification of the offender.
- 3 Failure to pay a fine within the period prescribed in paragraph 1 (2?) of this article is subject to its increase by fifty percent payable within sixty days, after which the matter shall be referred to tax enforcement proceedings.
- 4 Recurrence of the infringements prescribed under article 41 of this Regulation is subject to an increase of the respective fine payable in terms of paragraphs 1 to 3 of this article, to temporary or permanent suspension of the activity, and to seizure of the material.
- 5 It is the duty of the Ministers in charge of Agriculture and Finance periodically to update the value of fines for infringements of this Regulation.

## Article 40

### **Use of the amounts charged**

- 1 The amounts collected as fees shall be used as follows:
  - a) 60% for the State Budget;
  - b) 40% for the Registration Entity.
- 2 The amounts collected from the payment of fines shall be used as follows:
  - a) 40% for the State Budget;
  - b) 60% for the Registration Entity.

## Article 41

### **Infringements**

- 1 Infringements of this Regulation shall be deemed to have been committed by any entity which:
  - a) Not being a plant breeders' right holder, carries out activities described in paragraph 1 of article 27 without a licence issued under articles 31 or 32 of this Regulation.

- b) In the case of an essentially derived variety, carries out the activities described in paragraph 1 of article 27 without proper authorisation from either the holder of the breeders' right to the derived variety or the holder of the breeders' right to the initial variety.
  - c) Has been granted a licence under article 31 or 32 but does not comply with any term or condition of said licence;
  - d) Uses the approved designation of a variety for a different variety, for any purpose whatsoever;
  - e) Sells plants or propagating material of a protected variety under a designation other than that which was approved for that variety.
- 2 Any entity which commits the following acts shall also be in violation of this Regulation:
- a) Improper registration with the Registration Entity;
  - b) Obstruction of the activities of the Registration Entity or of inspectors performing their duties in the implementation of this Regulation;
  - c) Making false statements;
  - d) Denying the Registration Entity or its licensed agents access to places of activity and means of transport, documents, information and material;
  - e) Refusal to comply with any procedure set out under this Regulation;
  - f) The publication or exposure of information deemed confidential under this Regulation.
- 3 The Ministers in charge of Agriculture and Finance shall approve the values of fines imposed for violation of the provisions of this Regulation.

## Article 42

### **Penalties**

- 1 Should the Registration Entity or its licensed agents detect any infringement as described in article 41 of this Regulation, it shall impose the necessary corrective measures, including warnings, fines in terms of article 29 of these Norms, temporary or permanent suspension, and seizure of material.
- 2 In addition to fines imposed under article 39 of this Regulation, any entity which violates plant breeders' rights in terms of paragraph 1 of article 41 of this Regulation may be sued by the rights holder in the competent court of law, with a view to the prohibition of the activity and/or compensation for damages.

## **CHAPTER IX**

### **Appeal**

#### Article 43

#### **Appeals Committee**

- 1 The Minister in charge of Agriculture shall assign an Appeals Committee comprised of three members, namely a jurist as head of the committee, a plant breeding specialist and an expert in seeds or other relevant area within agriculture, which Committee shall be responsible for deciding on appeals relating to decisions of the Registration Entity.
- 2 The Appeals Committee shall have power to call or subpoena witnesses and to order searches for or surrender of documentation.
- 3 Any entity which believes to have been injured in terms of the provisions of this Regulation may, within thirty days of receipt of notification of the decision, and upon paying the prescribed fees, appeal the decision of the Registration Entity to the Appeals Committee.
- 4 The Appeals Committee may request the collaboration of specialists as may be found appropriate for the correct handling of the matter.
- 5 The Appeals Committee shall be convened by the Minister in charge of Agriculture whenever necessary, and it shall function in accordance with rules of procedure to be approved by the Minister in charge of Agriculture.
- 6 The Appeals Committee shall take majority decisions.
- 7 The members of the Appeals Committee shall be independent in their decisions.
- 8 Any member of the Appeals Committee may be relieved of their duties whenever the Minister in charge of Agriculture determines that they have committed an act that amounts to misconduct under the General Statute for Civil Servants and State Employees.
- 9 No member of the Appeals Committee may participate in an appeals process who has any personal interest in the matter, or has been previously involved as a representative of one of the parties, or has taken part in the decision under appeal.

#### Article 44

#### **Decision of the Appeals Committee**

- 1 The Appeals Committee may, after considering the decision of the Registration Entity and after hearing the parties:
  - a) Confirm, annul or amend the decision of the Registration Entity;
  - b) Order the Registration Entity to implement the decision of the Appeals Committee.



- 2 The Appeals Committee shall provide written justification for its decision to the Registration Entity, the applicant and other interested parties.

## **CHAPTER X**

### **Final provisions**

#### Article 45

### **Confidentiality**

- 1 All documentation submitted under this Regulation to the Registration Entity shall be treated as confidential and may only be made available to:
  - a) The Registration Entity, Appeals Committee and other duly accredited entities within the scope of the registration of plant breeders' rights;
  - b) The appropriate entities for purposes of investigation or enquiry relating to compliance with the provisions of this Regulation.
- 2 Improper use of or access to information relating to plant breeders' rights is punishable by law.

#### Article 46

### **Agreements with other governments**

- 1 The Minister in charge of Agriculture may enter into bilateral or multilateral agreements with other governments, on a reciprocal basis, towards the protection of plant breeders' rights over certain varieties.

#### Article 47

### **Registered varieties**

- 1 Holders of varieties already registered in the Official List who wish to apply for plant breeders' rights may submit their application to the Registration Entity no later than 12 months from the date of publication of this Regulation.
- 2 The Registration Entity shall approve the application if it finds that availability of the seed to the public is under the control of the applicant, and provided that all requirements under articles 9 to 11 of this Regulation are met.
- 3 The Registration Entity shall publish a notice of the applications received in the Government Gazette or newspaper of widest circulation in the country, and any objections must be submitted within thirty days.

- 4 The period of protection of varieties already in existence will be reduced by the number of years for which the variety has been traded.

## Article 48

### **Supplementary norms**

- 1 For purposes of implementation of this Regulation, the Minister in charge of Agriculture will approve the following:
  - a) Procedures relating to the receipt and processing of applications, to assessments, to designation of varieties, to the processing of objections, contestations and appeals, to requests and granting of compulsory licences and to the rejection of applications for plant breeders' rights;
  - b) Any certificate, document or form to be issued or used for any purpose under this Regulation;
  - c) Any other document relating to the administration of this Regulation.
- 2 The Ministers in charge of Agriculture and Finance shall determine the payments to be effected under this Regulation with respect to:
  - a) Applications for plant breeders' rights;
  - b) Costs of services by the official test assessment entities for purposes of registration in the protection list;
  - c) Maintenance of the variety in the protection list, and of the reference sample;
  - d) Change of designation of the variety;
  - e) Appeals;
  - f) Licences;
  - g) Costs of other services provided under this Regulation.

## Article 49

### **Rights of employees/researchers**

- 1 The plant breeders' right belongs to the employer if the plant breeding was carried out within the scope of the performance of the contract of employment and the effective duties of the employee.
- 2 The employee is entitled to hold individual plant breeders' rights if the plant breeding was carried out outside the scope of the terms of reference agreed under the employee's contract of employment.
- 3 In the case of paragraph 1 of this article, the employee shall have the right to additional remuneration as reward for the employee's contribution to the breeding of the protected variety, in accordance with paragraph 2 of article 15 of the Statute of Scientific Researchers.
- 4 In the case of paragraph 2 of this article, the employee shall have the right to equitable remuneration in terms of applicable legislation on the protection of intellectual property.

- 5 The amount of remuneration under paragraph 4 of this article may be set by mutual agreement or, in the case of disagreement, through arbitration.
- 6 Failure to pay the employee the full remuneration in terms of paragraph 4 of this article shall result in the cancellation of the plant breeders' rights granted to the employer.