



DEVELOPMENT OF HARMONISED EAST AFRICAN COMMUNITY SEED LEGISLATION

DRAFT SEED AND PLANT VARIETIES BILL

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THE EAST AFRICAN COMMUNITY SEED AND PLANT VARIETIES BILL,

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THE EAST AFRICAN COMMUNITY SEED AND PLANT VARIETIES BILL,

A Bill for an Act

ENTITLED

THE EAST AFRICAN COMMUNITY SEED AND PLANT VARIETIES ACT,

An Act of the Community to make provisions for the production, certification, distribution and marketing of seed within and into the EAC region, to provide for establishment of systems for plant variety registration and commercialization; establishment of national seed authorities, phytosanitary measures on seed, import and export documentation; and plant variety protection systems; and to provide for other related matters.

Enacted by the East African Community and assented to by the Heads of State.

PART I - PRELIMINARY

Short Title and Commencement

1.. This Act may be cited as the East African Community Seed and Plant Varieties Act,and shall come into force on such date as the Council may, by notice in the *Gazette*, appoint.

Interpretation:

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

“agent or representative” means a legally recognized and authorized representative of the breeder or the holder of the breeder’s right residing in the EAC Partner States who has been so authorized through special power of attorney to act on behalf of the breeder or the holder of a breeder’s right;

“applicant” means a breeder, who files an application for the grant of a breeder’s right;

“biotechnology” means the application of-

- (a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles; or
- (b) fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

“breeder” means:

- (a) a person who bred, or discovered and developed a variety; or
- (b) a person who is the employer of the aforementioned person or who has commissioned the latter’s work; or
- (c) a successor in title of the first or second aforementioned person, as the case may be;

“border post” means any official point of entry or exit, and includes an airport, or any port,

railway station or road check-point open to regional and international trade of commodities, where import and export of food and agricultural commodities inspections can be performed;

“Community” means the East African Community established by Article 2 of the Treaty;

“Council” means the Council of Ministers established by Article 9 of the Treaty for the establishment of the East African Community;

“genetically modified organism” or “GMO” means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;

“national seed authority” means a government institution with the mandate to regulate and enforce laws and regulations related to seed matters;

“plant variety of common knowledge” means a plant variety:-

- a) for which protection has been applied for or granted;
- b) entered on the national variety list or on the variety list of any other country;
- c) being produced or sold;
- d) entered in the database of plant varieties that are recognized in a Partner State or elsewhere for research purposes;
- e) bearing any other mark recognized by the law.

“seed” means a botanical structure that contains at least one ripened ovule with or without accessory parts and may also include any plant or plant part used as propagation material under the system;

“seed lot” means homogenous seed quantity, physically identifiable by a unique reference code;

“seed certification” means the process of ensuring that seed offered for sale meets minimum requirements of the stipulated field and laboratory regulatory standards;

“Treaty” means the treaty for the establishment of the East African Community;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be:

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

Scope of the Act

3. This Act shall apply to registration of plant varieties, seed certification, phytosanitary measures on seeds, import and export of seed; and plant variety protection systems in the EAC Partner States as provided in the framework of the EAC Common Market Protocol.

Objectives of the Act

4. The objects of this Act are to-
- (a) Promote production and trade in quality certified seed within the Community and with other trading partners as provided in the East African Common Market Protocol.
 - (b) Facilitate elimination of restrictions on regional and international trade in seeds.
 - (c) Promote the implementation of the harmonised procedures for plant variety registration, seed certification, phytosanitary measures on seeds, import and export documentation, and plant variety protection systems.
 - (d) Strengthen cooperation and coordination of seed production and marketing activities at national and regional level, based on common understanding and application of harmonized procedures within the Community.

PART II - ADMINISTRATIVE ARRANGEMENTS

Institutional Arrangements

5. For the purposes of this Act, the Council shall-
- (1) designate an office within the EAC structure to coordinate seed matters in the region as provided for by the Act.
 - (2) put in place mechanisms for the co-ordination, implementation and enforcement of this Act;
 - (3) monitor the effective implementation of this Act.

Establishment of National Seed Authorities

- 6 (1) Each Partner State shall designate an entity which shall serve as the National Seed Authority.

(2) The national seed authorities shall be institutions or departments assigned the relevant functions to facilitate cooperation on seed production and marketing matters among the Partner States.

(3.) In the performance of their functions, the national seed authorities shall cooperate in sharing of relevant information and expertise related to seed production and marketing through the establishment and maintenance of a regional information management system.

- (4) The functions of the national seed authorities under subsection (1) shall include-
- a) proposing review of regional seed standards;
 - b) enforcing standards affecting seed quality;
 - c) appointing inspectors, analysts and samplers;
 - d) providing training to persons responsible for the implementation of the provisions of this Act at the national level;
 - e) registration, licensing and deregistration of all seed merchants and seed dealers;

- f) receiving and testing all new varieties intended for release, registration and commercialization in accordance with this Act;
- g) verifying the quantity and quality of data available for a plant variety for which regional release is being applied;
- h) carrying out distinctness, uniformity and stability (DUS) and value for cultivation and use (VCU) tests for candidate varieties;
- j) implementing regional procedures for variety performance trials and distinctness, uniformity and stability trials;
- k) carrying out seed certification processes;
- l) reviewing the history and performance records of selected varieties with a view to making appropriate recommendations including deregistration;
- m) determining varieties to be released and gazetted.
- n) providing data, upon request, on varieties required by other national seed authorities for release and the EAC Seed Coordination Office for listing on the EAC Variety Catalogue;
- o) providing regional seals and labels to seed producers in accordance with the relevant laws;
- p) maintaining and updating seed database;
- q) issuing certificates for seed lots tested;
- r) issuing the required import and export permits and certificates in relation to seed matters;
- s) liaising with the relevant international agencies on matters related to seeds;
- t) any other functions as may be determined by each Partner State.

(3) The National Seed Authorities may by notice in the Gazette authorize competent persons to perform specified functions under the Act and Regulations on their behalf or as may be prescribed.

(4) The authorization granted under sub-section (3) may be withdrawn in case of non-compliance with set requirements.

PART III - PLANT VARIETY EVALUATION, RELEASE AND REGISTRATION

Establishment of National Variety Release Committees

7 Each Partner State shall establish a National Variety Release Committee responsible for evaluation and registration of new and existing plant varieties. The functions and composition of the Committees shall be stipulated under the relevant national regulations.

Variety Evaluation

8 (1) A new plant variety shall be released in a Partner State subject to having undergone two seasons of the following tests:

- (a) Distinctness, Uniformity, Stability (DUS) test carried out in accordance with EAC approved guidelines; and
- (b) Value for Cultivation and Use (VCU) or National Performance Tests (NPT).

(2) A plant variety released in one EAC Partner State shall undergo the test requirements set out in sub-section (1) for one season and fulfil the release criteria under similar agro ecological conditions in a second EAC Partner State, provided that the National Seed Authority of the first Partner State shall avail the data used to release the plant variety in that other country.

(3) A plant variety released in two EAC Partner States may undergo automatic release in other EAC Partner States provided that the data used to release the plant variety in the two Partner States is availed.

(4) Partner States shall maintain and regularly update National Variety Lists and notify the EAC Seed Coordination office on new entries and withdrawals.

Regional Plant Variety Catalogue

9 (1) There shall be a Regional Plant Variety Catalogue of approved plant varieties which shall include varieties produced, imported, sold or distributed in the EAC Partner States.

(2) A plant variety shall not be included in the Regional Plant Variety Catalogue unless it has been officially released and registered in the National Variety List or Catalogue of two EAC Partner States.

(3) The EAC Seed Coordination Office shall maintain a database of all regional plant varieties including those that have been withdrawn from the Catalogue.

PART IV - SEED CERTIFICATION

Seed Multiplication, Labelling and Marketing

10 (1) Seed multiplication shall be undertaken according to seed classes defined in the regulations.

(2) The seed offered for sale within EAC shall be labelled and sealed in accordance with the specifications drawn by the Partner States.

Seed Testing

11 (1) Partner States shall establish or designate existing entities to function as official seed testing laboratories.

(2) The EAC Seed Coordination office may designate official seed testing laboratories to test seeds and issue EAC seed testing certificates.

(3) The Official Seed Testing Laboratories shall test seeds using procedures defined in the regulations and issue certificates in the prescribed format.

Seed Marketing

12 (1) Any importation or exportation of seed within the Community shall only be done upon issuance of permits and certificates by the relevant authorities as per the prescribed procedures.

(2) For seed traded outside the community, internationally accepted seed trade procedures shall apply.

Prohibition of Access to a Market

13 A Partner State may apply to the EAC Seed Coordination office to prohibit the use of a variety in its territory based on technical issues, such as unsuitability for cultivation, or risk to other seed varieties, human health, animal health and the environment.

PART V - PHYTOSANITARY MEASURES

Import and export documentation

14 (1) All seed traded in the community shall meet the phytosanitary requirements following procedures provided by the IPPC.

(2) The import and export documentation shall provide for genetically modified organism (GMO) status declaration.

(3) There shall be mutual recognition of plant import permits and phytosanitary certificates issued by Partner States.

Quarantine Pest List

15 (1) Each Partner State shall develop and maintain a quarantine and non-quarantine pest list for seeds.

(2) The Partner States shall adopt the EAC quarantine and regulated non quarantine pest list for seeds.

Pest Risk Analysis Procedures

16 The Partner States shall adopt the pest risk analysis procedures stipulated under the relevant international standards for pest management.

PART VI - PLANT VARIETY PROTECTION

Genera and Species to be protected

16 This Law shall be applied to all plant genera and species in the Partner States.

Administration

17 (1) A breeder's right granted under this Law shall, on the basis of one application, be protected in all Partner States unless a Partner State has refused the grant.

(2) The National Authorities of Partner States empowered to grant breeders' rights and to administer such breeders' rights on behalf of the Partner States shall be responsible for:

- (a) granting breeders' rights;
- (b) establishing a documentation centre for the purposes of dissemination of information on breeders' rights;
- (c) maintaining the register of breeders' rights;

- (d) providing information on breeders' rights granted by the EAC Seed Office;
- (e) collaborating with other regional and international bodies whose functions relate to the protection of new varieties of plants;
- (f) liaising with national authorities in all matters relating to the grant and administration of breeders' rights; and
- (g) performing such other functions as are necessary for the furtherance of the objectives of this Act.

Register of Breeders' Rights

18 (1) The EAC Seed Office shall maintain a register, to be known as the EAC Register of Breeders' Rights.

(2) The register shall include the information prescribed in the regulations, in particular:

- (a) information relating to applications for breeders' rights;
- (b) information relating to grants of breeders' rights;
- (c) any assignment and exclusive licences of the rights;
- (d) any declaration of nullity or cancellation of rights; and
- (e) any submission, registration, rejection, change or cancellation of variety denomination.

(3) Any person shall, upon payment of a prescribed fee be entitled, during normal business hours, to examine the register kept in accordance with paragraph (1), and to make or receive copies of or extracts from the information contained therein.

Conditions of Protection

19 (1) A breeder's right shall be granted where it is determined that a variety is new, distinct, uniform and stable.

(2) The grant of a breeder's right shall not be subject to any further or different conditions provided that:

- (a) the variety is designated by a denomination in accordance with the provisions of Section 40;
- (b) the applicant complies with the formalities provided for in this Act; and
- (c) the breeder pays the required fees.

Novelty

20 (1) A variety shall be deemed to be new if, on the date of filing of an application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder of the variety, for purposes of exploitation of the variety:

- (a) in the territories of the Partner States earlier than one year before the date of filing of an application; and
- (b) in a territory other than that of the territories of the Partner States earlier than four years or, in the case of trees or of vines, earlier than six years before the date of filing of an application.

(2) Where this Act applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition

of novelty set out in paragraph (1), even where the sale or disposal of the variety to others took place in the territories of the Partner States:

(a) within four years before the date of filing of an application; or

(b) in the case of trees or vines, within six years before the date of filing of an application.

(3) Sub-section (2) shall apply only to applications for a breeder's right filed within two years, at the latest, after the provisions of this Act apply to the genera or species concerned.

Distinctness

21 The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Uniformity

22. A variety shall be deemed 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.

Stability

23. A variety shall be deemed to be stable if its relevant characteristics remain unchanged:

(a) after repeated propagation; or

(b) in the case of a particular cycle of propagation, at the end of each such cycle.

Persons Entitled to Apply for Protection

24 (1) An application may be filed by a breeder who:

(a) is a resident in any Partner State; or

(b) is not a resident in a Partner State.

(2) An application filed by a breeder who is not resident in any of the Partner States shall be filed only through an agent with residence in any of the Partner States.

Filing of Application

25 (1) In accordance with Section 24, an application for the grant of a breeder's right for EAC shall be filed with any National Authority of a Partner State by the breeder or an agent.

(2) An application filed with the National Authority of a Partner State under the provisions of sub-section (1), shall have the same effect as if it had been filed on the same date at the EAC Seed Office.

- (3) When an application is filed, the National Authority shall:
- (a) verify that the application on the face of it contains the minimum information specified in the regulations; and
 - (b) within one month of receiving the application, notify the EAC Seed Office on the application
- (4) An application shall include the information prescribed in the regulations, in particular:
- (a) the name, address and other required information of the applicant, including the person who bred, discovered and developed the variety, if different from the applicant, and, if applicable, the name, address and other information required of the agent;
 - (b) identification of the botanical taxon (botanical and common name);
 - (c) the proposed denomination for the variety or provisional designation;
 - (d) technical description of the variety;
 - (e) information on prior applications and grants of breeders' rights for the same variety; and
 - (f) date of sale or of disposal to others for the purposes of exploitation of the variety in accordance with Section 20.

Filing Date of Application

26 The filing date of the application for a breeder's right shall be the date of receipt of the application duly filed subject to the payment of the prescribed fees.

Right of Priority

27 (1) Any breeder who has duly filed an application for the protection of a variety in a Partner State or a party to an international agreement for the protection of new plant varieties (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety for EAC protection through a National Authority, enjoy a right of priority for a period of twelve months which shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) In order to benefit from a right of priority, a breeder shall claim the priority of the first application.

(3) For the purposes of paragraph (1), the National Authority shall require the breeder to furnish, within a period of not more than three months from the date of filing an application:

- (a) a copy of the documents which constitute the first application certified to be a true copy by the authority with which that first application was filed; and
- (b) samples or other evidence that the variety which is the subject matter of both applications is the same.

(4) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such

rejection or withdrawal, in which to furnish, to the EAC Seed Office, any necessary information, document or material required for the purpose of the examination under Section 30.

(5) Events occurring within the period provided for in sub-section (1), such as the filing of another application or the publication or use of a variety that is the subject of the first application, shall not:

- (a) constitute a ground for rejecting the subsequent application; and
- (b) give rise to any third-party right.

Publication of Information

28 (1) The EAC Seed Office shall at regular intervals publish an EAC Journal containing the following information:

- (a) applications for the grant of breeders' rights;
- (b) information on variety denominations;
- (c) withdrawals of applications for the grant of breeders' rights;
- (d) rejections of applications for the grant of breeders' rights;
- (e) grants of breeders' rights;
- (f) changes in the persons (applicants, holders and agents); and
- (g) nullity, surrender, cancellation and expiry of breeders' rights.

(2) No confidential information, as indicated in an application form, shall be published without the written consent of the applicant or the holder of a breeder's right.

Objection

29 (1) Any person who wishes to lodge an objection may only do so once an application for a breeder's right is published, in accordance with the procedures set out in the regulations.

(2) Any person lodging an objection as stipulated under sub-section (1), shall submit a written and reasoned objection to the National Authority, alongside the payment of the prescribed fee, at any time prior to the refusal or to the grant of the right under the provisions of Sections 19, 20, 21, 22, 23 and 24. The objection shall be submitted within 3 months from the date of the publication of the proposed variety denomination under the provisions of Section 40.

Examination of Applications

30 (1) The National Authority shall:

- (a) examine an application to determine whether the application and its supporting documents and material fulfil the criteria for protection as stipulated in Sections 19, 20, 21, 22 and 23;
- (b) examine the novelty condition in accordance with Section 20;

- (c) examine the formal requirements of the application and entitlement to the breeder's right in accordance with Section 24;
- (d) arrange for the examination of the distinctness, uniformity and stability of the variety in accordance with the provisions of Section 31;
- (e) examine the suitability of the denomination in accordance with Section 40; and
- (f) receive the payment of fees in accordance with Sections 26 and 46.

(2) For the purposes of examination, the National Authority may require the applicant or agent to furnish all the necessary information, documents or material as specified in the regulations.

Examination for Distinctness, Uniformity and Stability

31 (1) In accordance with Section 30(1)(d), the National Authority may, for the purposes of the examination and ensuring compliance with the conditions specified in Sections 21, 22 and 23:

- (a) arrange for the examination to be carried out by any competent institution of a Partner State or of any member of an inter-governmental organization providing an effective system of plant variety protection selected by the Council; or
- (b) take into account the results of tests that have already been carried out from the Partner State or any member of an inter-governmental organization providing an effective system of plant variety protection selected by the Council.

(2) The procedures for implementation of the provisions of this Section shall be specified in the regulations.

Granting and Rejection of a Breeder's Right

32 (1) Where a plant variety fulfils the requirements of novelty, distinctness, uniformity and stability as provided under Sections 20, 21, 22 and 23 and that the proposed denomination of the variety is suitable for registration, the National Authority shall grant a plant breeder's right and where those requirements are not fulfilled, the National Authority shall reject the application.

(2) Subject to Section 17(1), the National Authority shall in respect of each breeder's right granted:

- (a) issue a Breeders' Right Certificate to the person who applied for the grant of the right;
- (b) enter the applicable particulars in the register; and
- (c) publish such particulars relating to the grant of such right as may be prescribed by regulations.
- (d) notify the EAC Seed Office on the details for publication in the EAC Journal

(3) Where the examination shows that the proposed denomination of the variety cannot be registered, the National Authority shall request the applicant in writing to submit another denomination within a period of three months, or further time period that the Secretary General may allow on good cause shown, failing which the application shall be rejected.

- (4) An application shall be rejected if it is established that:
- (a) the applicant is not entitled to file an application in accordance with Section 24;
 - (b) the applicant has not replied within the prescribed time limit to the official notifications issued by the National Authority, particularly where:
 - (i) the information given was erroneous or incomplete;
 - (ii) the application contained a material irregularity;
 - (c) the variety to which the applicant refers does not satisfy the requirements of Sections 20, 21, 22 and 23;
 - (d) the applicant refuses or is unable to propose an acceptable denomination;
 - (e) the applicant does not comply with the payment of fees as prescribed by regulations.
- (5) The National Authority shall in respect of each rejected application:
- (a) notify its decision in writing to the applicant; and
 - (b) enter the applicable particulars in the register; and
 - (c) publish a notice of rejection.
- (6) The National Authority shall not:
- (a) refuse to grant a breeder's right on the ground that protection for the same variety has not been applied for, or has been refused, in any other State outside the territories of the Partner States or inter-governmental organization; or
 - (b) limit the duration of the breeder's right on the ground that protection for the same variety has expired in any other State or inter-governmental organization.

Provisional Protection

33 (1) During the period between the publication of the application for the grant of a breeder's right and the grant of that right, a provisional protection will be provided to safeguard the interests of the breeder.

(2) A breeder shall be considered to be a holder of provisional protection during the period provided in paragraph (1), and shall be entitled at least to equitable remuneration from any person who has carried out acts which, once the right is granted, require the breeder's authorization as provided in Section 34.

(3) Any legal action in respect of provisional protection can only be initiated after the right is granted.

Scope of Breeder's Right

34 (1) Subject to Sections 36 and 37, the following acts in respect of the propagating material of a protected variety shall require the authorization of the breeder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;

- (c) offering for sale;
 - (d) selling or other marketing;
 - (e) exporting;
 - (f) importing; and
 - (g) stocking for any of the purposes mentioned in (a) to (f), above.
- (2) A breeder may grant authorizations subject to conditions and limitations.
- (3) Subject to Sections 34 and 35, the acts referred to in paragraph (1) items (a) to (g), in respect of:
- (a) harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise the right in relation to the said propagating material;
 - (b) products made directly from harvested material of the protected variety falling within the provisions of paragraph (a) through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise the right in relation to the said harvested material.
- (4) The provisions of paragraphs (1), (2) and (3) shall also apply in relation to:
- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - (b) varieties which are not clearly distinguishable in accordance with Section 21 from the protected variety; and
 - (c) varieties whose production requires the repeated use of the protected variety.
- (5) For the purposes of paragraph (4)(a), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when:
- (a) it is predominantly derived from an initial variety, or from a variety that is itself predominantly derived from an initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
 - (b) it is clearly distinguishable from the initial variety; and
 - (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (6) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a soma-clonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Exceptions to Breeder's Right

35 (1) A breeder's right shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes; and
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of Section 34(4) apply, acts referred to in Section 34(1), (2) and (3) in respect of such other varieties.

(2) Notwithstanding Section 34, for the list of agricultural crops and vegetables with a historical common practice of farmers saving seed, but not including fruits, ornamentals, other vegetables and forest trees, the breeder's right shall not extend to a farmer and to the product of the harvest of a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, for propagating purposes, plants on own holdings, the protected variety or a variety covered by Section 34(4) (a) or (b).

(3) The conditions for the implementation of the provisions under paragraph (2), such as the different level of remuneration to be paid by small-scale commercial farmers and large scale commercial farmers and the information to be provided by the farmer to the breeder, shall be stipulated in the regulations.

Exhaustion of Breeder's Right

36 (1) A breeder's right shall not extend to acts concerning any material of a protected variety, or of a variety covered by the provisions of Section 34(3), which has been sold or otherwise marketed by the breeder or with the breeder's consent in the territories of the Partner States to the Law, or any material derived from the said material, unless such acts:

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

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

- (a) propagating material of any kind;
- (b) harvested material, including entire plants and parts of plants; and
- (c) any product made directly from the harvested material.

Restrictions on Exercise of Breeder's Right

37 (1) A compulsory licence shall be granted to an applicant by a Partner State only for reasons of public interest.

(2) The National Authority, when granting a compulsory licence, pursuant to sub-section (1), shall stipulate the acts covered and specify the reasonable conditions which shall include the payment of equitable remuneration to the breeder.

(3) The regulations shall stipulate the details on the implementation of the provisions under sub-sections (1) and (2).

Measures Regulating Commerce

38 A breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material and in any case, such measures shall not affect the application of the provisions of this Act.

Duration of Breeder's Right

39 (1) A breeder's right shall be granted for a period of twenty years from the date of the grant of the breeder's right excluding trees and vines, for which a breeder's right shall be granted for a period of twenty-five years from the said date.

(2) Notwithstanding sub-section (1), the term of protection may be extended for an additional five years by a notice in writing to the National Authority in respect of specific genera and species

Variety Denomination

40 (1) A variety shall be designated by a denomination which:

- (a) will be its generic designation and enables the variety to be identified;
- (b) may not consist solely of figures except where this is an established practice for designating varieties;
- (c) must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
- (d) must be different from every denomination which designates, in the territory of any Partner State and any member of an inter-governmental organization providing an effective system of plant variety protection, an existing variety of the same plant species or of a closely related species.

(2) Subject to sub-section (5), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

(3) The denomination of a variety shall be submitted by the breeder to the National Authority in accordance with Section 25.

(4) Where it is found that a denomination does not satisfy the requirements of sub-section (1), or that a prior right is in existence, the National Authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the National Authority at the same time as the breeder's right is granted.

(5) If, by reason of a prior right, the use of the denomination of a variety is forbidden, to a person who, in accordance with the provisions of sub-section (10), is obliged to use it, the National Authority shall require the breeder to submit another denomination for the variety.

(6) A variety must be submitted to the Partner States, the National Authority and to all members of an inter-governmental organization providing an effective system of plant variety protection under the same denomination.

(7) The National Authority shall register the denomination so submitted, unless it considers the denomination unsuitable, in which case the National Authority shall require the breeder to submit another denomination.

(8) The National Authority shall ensure that the authorities of the Partner States and of all members of an inter-governmental organization providing an effective system of plant variety protection are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.

(9) Any Partner State and any member of an inter-governmental organization providing an effective system of plant variety protection may address its observations, if any, on the registration of a denomination to the National Authority.

(10) Any person who offers for sale or markets propagating material of a variety protected within the territories of the Partner States is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (5), prior rights prevent such use.

(11) When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination, and if such an indication is so associated, the denomination must nevertheless be easily recognizable.

Nullity of Breeder's Right

41 (1) The National Authority shall declare a breeder's right null and void when it is established:

(a) that the conditions laid down in Sections 7 or 8 were not complied with at the time of the grant of the breeder's right; or

(b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Sections 9 or 10 were not complied with at the time of the grant of the breeder's right; or

(c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

Cancellation of Breeder's Right

42 (1) The National Authority may cancel a breeder's right if:

(a) it is established that the conditions laid down in Sections 22 or 23 are no longer fulfilled; or

(b) after being requested to do so and within the prescribed period:

- (i) the breeder does not provide the National Authority with the information, documents or material deemed necessary for verifying the maintenance of the variety; or
- (ii) the breeder fails to pay such fees as may be payable to keep the breeder's right in force; or
- (iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in subsection (1).

Surrender of Breeder's Right

43 (1) A breeder's right may be surrendered before expiry of its term when the holder of that right renounces it by written declaration addressed to the National Authority.

(2) The date of surrender shall be the date specified in the declaration or, if none is specified, the date on which the declaration is received by the National Authority.

(3) Upon surrender of the breeder's right, the certificate must be returned to the National Authority.

Licenses

44 The holder of a breeder's right may grant, to any person, an exclusive or a non-exclusive license relating to all or any of the rights granted in accordance with this Act.

Assignment and transfer

45 (1) An application for the grant of a breeder's right or a breeder's right may be assigned or otherwise transferred.

(2) The assignment or transfer shall be in writing, shall be signed by the parties concerned and shall be registered in the register.

Fees

46 Fees for the implementation of this Law shall be paid in accordance with a schedule of fees prescribed in the regulations.

Enforcement Measures

47 The Partner States shall ensure that accessible and appropriate enforcement measures and dispute settlement mechanisms, sanctions and remedies are available for the effective enforcement of breeders' rights and any other breach of this Act.

Extension of Time Limits

48 (1) An extension may be granted even when the time limit concerned has expired, where the National Authority deems it justified given the circumstances before it.

(2) The National Authority may, upon having received a written request addressed to it, extend, under conditions it shall lay down, the time limit prescribed for performing an act or

satisfying a requirement in accordance with provisions of this Act or of the regulations, by notifying its decisions to the parties concerned.

Uniform Effect of Regional Breeders' Rights

49 Breeders' rights shall have uniform effect within the territories of the Partner States where the breeders' rights have been granted.

PART VII - GENERAL PROVISIONS

Emergency Actions

50 In case of unprecedented shortage of seeds, a Partner State may take measures to limit the exportation of seeds to ensure food security.

Border Posts Control

53 (1) The Partner States shall facilitate the smooth movement of seeds across the region through conduct of joint inspection and clearance at the declared border posts.

(2) The Partner States shall develop and build capacity in matters related to seeds in the border posts.

Technical Assistance

54. (1) The Partner States shall upon request, provide assistance to other Partner States to build capacity in matters related to seed production, commercialization and trade for compliance with provisions of this Act.

(2) The Community may seek technical assistance to build capacity for compliance with provisions of this Act.

Dispute Settlement

55. Any dispute between two or more Partner States arising from the application of this Act shall be referred to the Council for settlement in accordance with the provisions of the Treaty.

PART VIII - MISCELLANEOUS PROVISIONS

Compliance

56 (1) Each Partner State shall take appropriate measures including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Act.

(2) Each Partner State shall draw the attention of the Council to any activity which in its opinion affects the implementation of the purposes of this Act.

Regulations

58 The Council may make regulations generally for giving effect to the provisions of this Act.

Act to take precedence

58 This Act shall take precedence over the Partner States' laws with respect to any matter to which its provisions relate.