



## **AZIMIO NA. 08/2019**

### **AZIMIO LA BUNGE LA KURIDHIA ITIFAKI YA JUMUIYA YA MAENDELEO YA NCHI ZA KUSINI MWA AFRIKA KUHUSU KULINDA HAKIMILIKI ZA WAGUNDUZI WA AINA MPYA ZA MBEGU ZA MIMEA (*THE PROTOCOL FOR PROTECTION OF NEW VARIETIES OF PLANTS (PLANT BREEDER'S RIGHTS) IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY – SADC*)**

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**KWA KUWA** Jamhuri ya Muungano wa Tanzania ni miongoni mwa Nchi Wanachama wa Jumuiya ya Maendeleo ya Nchi za Kusini mwa Afrika (*The Southern African Development Community – SADC*) kwa mujibu wa Mkataba ulioanzisha Jumuiya hii ambao ulisainiwa na Wakuu wa Nchi Wanachama wa Jumuiya ya Maendeleo ya Nchi za Kusini mwa Afrika mnamo 1992;

**KWA KUWA** Mkataba huu unazitaka Nchi Wanachama wa Jumuiya ya Maendeleo ya Nchi za Kusini mwa Afrika kushirikiana kwenye masuala yenye maslahi kwa maendeleo na ustawi wa Wananchi wa nchi hizo;

**KWA KUWA** Ibara ya 22 ya Mkataba wa Jumuiya ya Maendeleo ya Nchi za Kusini mwa Afrika wa mwaka 1992 umebainisha umuhimu wa nchi Wanachama kuandaa Itifaki zitakazotumika kutoa miongozo ya ushirikiano kwenye masuala yenye maslahi kwa ajili ya maendeleo na ustawi wa Wananchi wa nchi hizo;

**KWA KUWA** Mkataba huo unaelekeza kwamba kila Itifaki itakayoandaliwa itaidhinishwa na Mkutano wa Wakuu wa Nchi Wanachama wa Jumuiya ya

Maendeleo ya Nchi za Kusini mwa Afrika na itapaswa kusainiwa na kuridhiwa na Nchi Wanachama;

**KWA KUWA** katika kutoa mwongozo kuhusu Kulinda Hakimiliki za Wagunduzi wa Aina Mpya ya Mbegu za Mimea (*Protection of New Varieties of Plants*) nchi Wanachama wa Jumuiya ya Maendeleo ya Kusini Mwa Afrika ziliandaa Itifaki ya Kulinda Hakimiliki za Wagunduzi wa Aina Mpya za Mbegu za Mimea ya Mwezi Mei, 2017 ambayo iliidhinishwa na Mawaziri wa Katiba na Sheria wa Nchi za SADC mwezi Julai, 2017 na baadae ilithibitishwa na Baraza la Mawaziri wa Kilimo wa SADC mwezi Agosti, 2017.

**KWA KUWA** Jamhuri ya Muungano wa Tanzania ni mwanachama wa Shirika la Biashara Duniani (*World Trade Organisation – WTO*) kuanzia tarehe 1 Januari, 1995 na kama Mwanachama wa WTO inalazimika kutekeleza makubaliano mbalimbali yanayoridhiwa na Wanachama wa Shirika hilo na miongoni mwa makubaliano hayo ni kuhusu Makubaliano ya Utekelezaji wa Masuala ya Hakimiliki – *Trade Related Aspect of Intellectual Property Right (TRIPS)*;

**KWA KUWA** Itifaki ya Kulinda Hakimiliki za Wagunduzi wa Aina Mpya za Mbegu za Mimea (*The Protocol For Protection of New Varieties of Plants (Plant Breeders' Rights) In The Southern African Development Community - SADC*) ilisainiwa Mwezi Agosti, 2018 Jijini Windhoek Namibia Katika Mkutano wa Wakuu wa nchi Wanachama wa Jumuiya ya Maendeleo ya Nchi za Kusini mwa Afrika;

**KWA KUWA** madhumuni ya Itifaki hiyo kama yalivyoainishwa katika Ibara ya 2 ni pamoja na:

- (a) Kuwezesha kuwa na mfumo wa thabiti wa kulinda hakimiliki za wagunduzi wa aina mpya za mbegu za mimea;
- (b) Kuhamasisha ugunduzi wa aina mpya za mbegu za mazao ya kilimo; na

- (c) Kutoa Hakimiliki kwa Wagunduzi wa aina mpya za mbegu za mimea.

**KWA KUWA** Tanzania imesaini, kuridhia na kutekeleza Mikataba mingine inayohusiana na Hakimiliki za Wagunduzi wa Aina Mpya za Mbegu za Mimea ambayo ni pamoja na Mkataba wa Kimataifa wa Kulinda Hakimiliki za Wagunduzi wa Aina Mpya za Mbegu za Mimea (*UPOV-Convention*) ambapo Mikataba hii ni muhimu ikatekelezwa kwa pamoja;

**NA KWA KUWA** kuridhiwa kwa Itifaki hii kutakuwa na matokeo chanya yafuatayo:

- (a) Kuweka mfumo wa kulinda Hakimiliki za Wagunduzi wa mbegu unaokubalika na kutekeleza katika nchi za SADC na hivyo kuimarisha mahusiano ya nchi yetu na nchi nyingine;
- (b) Hakimiliki itakayotolewa chini ya Itifaki ya SADC itatambulika ndani ya nchi zote Wanachama wa SADC, na hivyo kuchochea uwekezaji katika Nyanja ya utafiti na ugunduzi wa mbegu mpya wa sekta binafsi;
- (c) Kupanua wigo na kurahisisha biashara ya mbegu na hivyo kuhamasisha ushindani katika tasnia ya mbegu;
- (d) Kuhamasisha na kutoa fursa za utafiti unaolenga kuongeza uzalishaji wa mbegu mpya na hatimaye kuwezesha wakulima kupata mbegu bora;
- (e) Kuongeza upatikanaji wa mbegu bora, kupunguza gharama za usafirishaji na hivyo kupunguza bei ya mbegu kwa Wakulima; na
- (f) Kuwezesha upatikanaji wa mbegu zenye ukinzani wa magonjwa, wadudu wa mimea na kuhimili mabadiliko ya tabianchi.

**KWA HIVYO BASI,** kwa kuzingatia manufaa yatokanayo na Itifaki hii kwa Tanzania na kwa Nchi Wanachama wa Jumuiya ya Maendeleo ya Nchi za Kusini mwa Afrika na pia umuhimu wa kuridhia Itifaki hii, Bunge hili kwa mujibu wa Ibara ya 63 (3) (e) ya Katiba ya Jamhuri ya Muungano wa Tanzania ya Mwaka 1977, linaazimia kuridhia Itifaki ya Hakimiliki za Wagunduzi wa Aina Mpya za Mbegu za Mimea (*The Protocol For Protection of New Varieties of Plants (Plant Breeders' Rights) In The Southern African Development Community - SADC*) bila kulazimika kutekeleza masharti ya mkataba ambayo yanaweza kuathiri maslahi ya Taifa.

**Limepitishwa na Bunge leo tarehe 11 Septemba, 2019**

Stephen Kagaigai  
**KATIBU WA BUNGE**



**PROTOCOL FOR PROTECTION OF NEW VARIETIES OF  
PLANTS (PLANT BREEDERS' RIGHTS) IN THE  
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
REGION**

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## **PREAMBLE**

**WE**, the Governments of:

The Republic of Angola  
The Republic of Botswana  
The Democratic Republic of Congo  
The Kingdom of Lesotho  
The Republic of Madagascar  
The Republic of Malawi  
The Republic of Mauritius  
The Republic of Mozambique  
The Republic of Namibia  
The Republic of Seychelles  
The Republic of South Africa  
The Kingdom of Swaziland  
The United Republic of Tanzania  
The Republic of Zambia  
The Republic of Zimbabwe

**CONSCIOUS** of the collective duty to attain the objectives set forth in Article 5 of the Southern African Development Community Treaty as amended, among others, to achieve development and economic growth, complementarity between national and regional strategies and programmes, promote the development, transfer and mastery of technology and improve economic management and performance through regional co-operation;

**NOTING** that the Treaty in Article 22 expressly provides for the conclusion of Protocols as necessary in each area of cooperation within the Community;

**NOTING FURTHER** that Article 24 of the SADC Protocol on Trade, 1996 provides that Member States shall adopt policies and implement measures for the protection of intellectual property rights, in accordance with the World Trade Organization (WTO) Agreement in the SADC Region;

**RECOGNIZING** the need to have an effective *sui generis* system of intellectual property protection of new varieties that meets the requirements of Article 27.3 (b) of the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement in the SADC Region;

**FURTHER RECOGNIZING** that natural persons and legal entities in the Member States shall enjoy equal treatment within the SADC Region provided that the said natural persons and legal entities comply with all conditions and formalities governing plant breeders right as provided for in this Protocol;

**BEARING IN MIND** the importance of providing an effective system for the protection of new varieties of plants with the aim of encouraging plant breeding and facilitation of agricultural advancements for the benefit of the Region;

**CONVINCED** that the provision for plant breeders' rights in the region will allow farmers access to a wide range of improved varieties of crops, which will contribute to the attainment of the regional goal of economic development and food security;

**HEREBY** agree as follows:

## **ARTICLE 1 DEFINITIONS**

In this Protocol, unless the context indicates otherwise, a word defined in the SADC Treaty bears the same meaning, and:

"agent"	means a legally recognized and authorized representative of the breeder or holder of the plant breeder's right residing in a State Party who has been so authorized through special power of attorney to act for and on behalf of the breeder or the holder of the plant breeder's right;
"applicant"	means a breeder, or a person acting on behalf of a breeder, who files an application for the grant of a plant breeder's right according to Article 12 of this Protocol;
"Appeals Board"	means the Appeals Board established under Article 38 (1) of this Protocol;
"assignee"	means, in relation to a new variety, a person to whom a plant breeder's right is transferred;
"authorization"	means legal permission from a holder of a plant breeder's right to allow exploitation or use of a protected variety;
"breeder"	means: <ul style="list-style-type: none"><li>(a) the person who bred and developed a variety;</li><li>(b) the employer of the aforementioned person under paragraph (a) or who has commissioned the latter's work; or</li><li>(c) the successor in title of the persons referred to in paragraph (a) or (b);</li></ul>
"certificate"	means a plant breeder's right certificate issued by the Registrar pursuant to Article 25(3)(a) of this Protocol;
"Committee"	means the Plant Breeders' Rights Advisory Committee as established under Article 5(1) of this Protocol;
"compulsory license"	means a license issued on instruction of the SADC PBR Office in accordance with Article 33(2) of this Protocol;

"denomination"	means the generic designation of the variety;
"description"	means a narrative statement that defines the characteristics of a plant variety for the purpose of distinguishing it from any other variety ;
"DUS"	means Distinctness, Uniformity and Stability of a plant variety as provided for under Articles 9(1),10 and 11 of this Protocol;
"Executive Secretary"	means the Executive Secretary of SADC appointed under Article 15 of the Treaty
"holder"	means: <ul style="list-style-type: none"> <li>(a) a person to whom a certificate of the plant breeder's right has been issued pursuant to Article 25(3)(a) of this Protocol; or</li> <li>(b) assignee or successor in title of the person referred to in paragraph (a);</li> </ul>
"infringement"	means the doing, without authority under this Protocol of anything that the holder of those rights has the exclusive right to do as provided for in Article 27(1)(a) of this Protocol;
"International organization"	means an organisation that recognizes and protects new varieties of plants of which SADC is a member;
"licence"	means a licence granted under Article 32 of this Protocol;
"Member State"	means a member of SADC;
"Ministers"	means the Ministers responsible for agriculture and food security of the State Parties;
"National Authority"	means the Plant Breeders' Rights Office of a State Party or the designated authority in a State Party which is responsible for the administration of the plant breeders' rights;
"PBR"	means Plant Breeders' Rights;
"person"	means a natural or legal person;
"plant breeder's rights"	means the rights referred to in Article 27(1) of this Protocol;
"propagating material"	means any reproductive or vegetative material of a plant variety, including seeds and any whole plant or part thereof, that may be used for reproduction or

	multiplication of that variety;
"Protocol"	means this Protocol and any amendments thereto;
"Register"	means the Register of plant breeders' rights kept in terms of Article 6(1) of this Protocol;
"Registrar"	means a person appointed under the provisions of Article 4(3) of this Protocol;
"Regulations"	means the Plant Breeders' Rights Regulations made pursuant to Article 39(1) of this Protocol;
"reproductive material"	means a plant or part of a plant used to multiply the plant;
"SADC PBR Office"	means the office established under Article 4(1) of this Protocol;
"sale"	means to offer, advertise, keep, expose, transmit, convey, deliver, prepare for sale, exchange, dispose of for financial consideration, transmit, convey, deliver in pursuance of a sale, exchange, or barter and cognate words shall be construed accordingly;
"Secretariat"	means the Secretariat of SADC established under Article 9 of the Treaty,
"seed"	means true botanical seed or vegetative planting materials or any plant or part of a plant that is used for plant propagation;
"State Party"	means a Member State that is a party to this Protocol;
"System"	means the SADC Harmonised Seed Regulations System;
"Treaty"	means the Treaty of the Southern African Development Community of 1992, as amended;
"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 plant breeder's right are fully met, can be: <ul style="list-style-type: none"> <li>(a) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and</li> <li>(b) considered as a unit with regard to its suitability for being propagated unchanged (b)</li> </ul>

**PART ONE  
GENERAL PROVISIONS**

**ARTICLE 2  
OBJECTIVES**

The objectives of this Protocol are to:

- (a) provide for the establishment of an effective system of plant variety protection;
- (b) promote the development of new varieties of plants for the benefit of the region; and
- (c) provide for the grant and protection of breeders' rights.

**ARTICLE 3  
SCOPE AND APPLICATION**

- 1. This Protocol shall be applied to all genera and species of plants.
- 2. Plant breeders' rights granted under this Protocol shall, on the basis of one application, be valid in all State Parties.
- 3. This Protocol shall be without prejudice to the right of State Parties to grant plant breeders' rights through their own national legislation.

**ARTICLE 4  
ESTABLISHMENT AND ADMINISTRATION OF SADC PBR OFFICE**

- 1. It is hereby established an office which shall be known as the SADC Plant Breeders' Rights Office in its acronym "SADC PBR Office" which shall be responsible for the administration of this Protocol.
- 2. The SADC PBR Office shall collaborate with the National Authorities in the exercise of its functions under this Protocol.
- 3. The SADC PBR Office shall be managed by a Registrar to be appointed by the Ministers responsible for agriculture on such terms and conditions as may be prescribed.
- 4. The Registrar appointed under sub-article (3) shall be responsible for the following:
  - (a) receiving and evaluating applications, and granting plant breeders' rights in accordance with this Protocol and any Regulations made thereunder;

- (b) establishing and maintaining the plant breeders' rights register and documentation system for purposes of dissemination of information on plant breeders' rights;
  - (c) collaborating with the National Authorities and other regional and international organizations in all matters relating to the administration of plant breeders' rights;
  - (d) publishing all matters related to the application and granting of plant breeders' rights under this Protocol;
  - (e) taking all necessary steps, including the adoption of internal administrative instructions and the publications of notices, to ensure the functioning of the SADC PBR Office in accordance with the provisions of this Protocol, Regulations, rules or guidelines issued from time to time by Ministers responsible for agriculture;
  - (f) managing all financial and human resources under the SADC PBR Office;
  - (g) appoint other staff under the SADC PBR Office; and
  - (h) performing such other functions as are necessary for the furtherance of the objectives of this Protocol.
5. A person who is appointed as a Registrar or officer in the SADC PBR Office pursuant to this Protocol, shall not, during the period of holding the office apply for the grant of the plant breeders' rights or directly acquire plant breeders' rights under this Protocol except under a will or intestacy.
  6. The provisions laid down in Article 37 of the Treaty determining the languages to be used in SADC shall apply regarding the SADC PBR Office.
  7. Applications to the SADC PBR Office, the documents required to process such applications and all other papers submitted shall be filed in one of the official languages of SADC.

## ARTICLE 5

### SADC PLANT BREEDERS' RIGHTS ADVISORY COMMITTEE

1. There shall be a Committee to be known as the SADC Plant Breeders' Rights Advisory Committee, herein after referred to as "the Committee".
2. The Committee shall be composed of not less than eight (8) members and not more than eleven (11) members to be nominated by the State Parties on a rotational basis and in accordance with the procedures governing membership as shall be prescribed by the Ministers from time to time.

3. Subject to sub-article (2), the Committee members shall be drawn from each of the following:
  - (a) one (1) from plant breeders' associations;
  - (b) one (1) from agricultural universities;
  - (c) one (1) from agricultural research centers or institutions;
  - (d) one (1) from farmers associations or unions;
  - (e) one (1) from the SADC seed trade association;
  - (f) one (1) being a legal expert;
  - (g) one (1) from institutions responsible for registration of intellectual property rights; and
  - (h) four (4) from National Seed Authorities.
4. The Committee may, co-opt advisers or experts to attend its meetings, but such co-opted persons shall not have a right to vote.
5. The duration of the terms of office of the members of Committee shall be two (2) years subject to renewal for a further term of two years.
6. The Committee shall elect a Chairperson and a Deputy Chairperson from among its members.
7. The terms of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Committee ceases.
8. The Committee shall hold its ordinary meeting twice in a year at such place as the Chairperson may determine and the Registrar shall serve as Secretary to the Committee.
9. The Committee shall take its decisions by a simple majority and, in case of equality of votes, the Chairperson shall have a casting vote.
10. In discharging its functions under this Protocol, the Committee shall have the powers to:
  - (a) make its own rules of procedure for conducting its business;
  - (b) give to the Registrar advice of specific and general nature;
  - (c) call applicants and other interested persons for a hearing before the approval of a plant breeder's right.

11. The Committee shall be responsible for:

- (a) advising the Registrar on technical matters regarding plant breeders' rights;
- (b) issuing general and specific guidelines and directives to the SADC PBR Office in relation to plant breeders' rights;
- (c) receiving budgetary proposals from the Registrar and recommending them to the Ministers for approval;
- (d) approve rules of procedures for the SADC PBR Office;
- (e) reviewing and approving test guidelines pursuant to this Protocol; and
- (f) advising the Secretariat on all matters pertaining to the implementation of the SADC PBR policy.

#### ARTICLE 6 PLANT BREEDERS' RIGHTS REGISTER

1. The Registrar shall maintain the Plant Breeders' Rights Register in which shall be entered all information required to be registered under this Protocol.
2. For each registered variety, information to be maintained in the Register shall include:
  - (a) information relating to applications and any objections thereto;
  - (b) species, genus and denomination of varieties;
  - (c) the full name and address of the breeder, any other holder of plant breeders' rights and each person to whom such rights have been transferred or assigned;
  - (d) any declaration of nullity, termination or cancellation;
  - (e) any submission, registration, rejection, change or cancellation of the variety denomination; and
  - (f) any other information, which may be required by the Regulations.
3. The Register shall be *prima facie* evidence of any matter entered therein.
4. A person may, upon payment of the prescribed fee, be entitled, during normal business hours, to examine the Register, and to make or receive copies of or extracts from the information contained therein.



5. A person who wishes to examine the Register pursuant to sub-article (4), shall submit a written request to the Registrar, indicating clearly the information the person wishes to inspect and the purpose thereof.
6. The Registrar may determine the particulars in the Register which should be open for public inspection.
7. The discretion referred to under sub-article (6) shall be diligently exercised with due regard to the confidentiality of any particular information.
8. The Registrar may, upon application by the applicant, holder of the plant breeder's right or any other interested person, correct or authorize the correction of any clerical error or any omission in the Register.
9. Where the correction is proposed to the Registrar by any interested person other than the applicant or holder of the plant breeder's right, the Registrar shall give notice of one month to the applicant or holder of the plant breeder's right or that other interested person of the intention of the Registrar to correct the error.

## **PART TWO CONDITIONS FOR GRANT OF PLANT BREEDER'S RIGHT**

### **ARTICLE 7 CRITERIA FOR PROTECTION**

1. A plant breeder's right shall be granted where the variety is:
  - (a) New;
  - (b) Distinct;
  - (c) Uniform; and
  - (d) Stable.
2. The grant of a plant breeder's right shall not be made subject to any further or different condition and provided that:
  - (a) the variety is designated by the denomination in accordance with Article 17 of this Protocol, that;
  - (b) the applicant complies with the formalities for the grant of the plant breeder's right as established by this Protocol; and
  - (c) the applicant pays the prescribed fees.

## **ARTICLE 8 NOVELTY**

1. A variety shall be considered new if, at the date of filing of the application for a plant 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, for purposes of exploitation of the variety:
  - (a) in the SADC region earlier than one year before the date of application; and
  - (b) outside the SADC region earlier than four years in the case of other varieties or, in the case of trees and vines, earlier than six years before the date on which protection is applied for under this Protocol.
2. Novelty shall not be lost by sale or disposal of a variety to others:
  - (a) where a variety was obtained illegally and exploited without the consent of the breeder;
  - (b) where it forms part of an agreement for the transfer of the right in the variety;
  - (c) where it forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder or the successor in title of the breeder, on condition that the multiplied material reverts to the breeder or the successor in title of the breeder and on condition that the multiplied material is not used for the production of another variety;
  - (d) where it forms part of an agreement under which a person undertakes field trials or laboratory tests or small-scale processing trials in order to evaluate the variety;
  - (e) where it forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biological security or the entry of varieties in an official catalogue or list of varieties admitted to trade; or
  - (f) where it involves harvested material being a by-product or a surplus product of the creation of the variety or of the activities referred to in subparagraphs (c) to (e), on condition that the material is sold or otherwise disposed of without variety identification for the purposes of consumption.

## **ARTICLE 9 DISTINCTNESS**

1. A variety shall be considered 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 or where relevant, at the priority date. In particular,

the filing of an application for a plant breeder's right, or for entry in a catalogue or list of varieties admitted to trade, shall be deemed to render a variety a matter of common knowledge from the date of the application, provided that the application leads to the grant of the plant breeder's right or the entry in the catalogue or list, as the case may be.

2. The fact that the existence of another variety is a matter of common knowledge may be established by various factors such as:
  - (a) exploitation of the propagating material or harvested material of the variety has already been marketed for commercial purposes;
  - (b) entry of the variety in an official list or register of varieties in any SADC Members State or outside SADC Region or precisely described in any professional publication; or
  - (c) inclusion of the variety in a publicly accessible plant varieties collection.
3. Notwithstanding sub- article (2), the Regulations made under this Protocol may specify further circumstances in which the variety shall be deemed to be a matter of common knowledge.

#### **ARTICLE 10 UNIFORMITY**

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 the expression of those characteristics which are included in the examination for distinctness, as well as any others used for the variety description.

#### **ARTICLE 11 STABILITY**

A variety shall be deemed to be stable if the expression of the characteristics which are included in the examination for distinctness as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

### **PART THREE APPLICATION FOR GRANT OF PLANT BREEDER'S RIGHT**

#### **ARTICLE 12 PERSONS ENTITLED TO PROTECTION**

1. A breeder of a new variety shall be entitled to apply for protection in accordance with the procedures stipulated under this Protocol and the Regulations made thereunder.

2. An application for a plant breeder's right may be filed by any person or jointly by two or more persons.
3. An application for plant breeder's right may be filed by the breeder of a variety who is a national or resident of:
  - (a) SADC Member State; or
  - (b) a Member of an International Organization that recognizes and protects plant breeders' rights, to which SADC is part; or
  - (c) any other State which grants reciprocity of treatment to SADC.
4. An application under sub-article (3) (b) and (c) by a breeder who is not resident in a SADC Member State shall be filed only through an agent with residence in any State Party to this Protocol.

#### **ARTICLE 13 FILING OF APPLICATION**

1. An application for plant breeder's right under this Protocol shall be filed at the choice of the applicant:
  - (a) directly to the SADC PBR Office; or
  - (b) at one of the National Authorities in the State Parties which will handle the application in accordance with the provisions of this Protocol or Regulations.
2. Where an application is filed with the National Authority of a State Party, the National Authority shall confirm that the application contains the information specified in sub-article (5) and shall forward it to the SADC PBR Office within the time specified in the Regulations.
3. The omission of forwarding an application to the SADC PBR Office pursuant to sub-article (2), shall not affect the validity of the application.
4. A National Authority may charge the applicant an additional fee which shall not exceed the administrative costs of receiving and forwarding the application. A National Authority shall have its own approved fees for handling applications.
5. A valid application shall contain the following:
  - (a) a duly completed application form as provided for in the Regulations;
  - (b) a duly completed technical questionnaire;
  - (c) a document designating a duly appointed agent, if the applicant is not a resident in a State Party country;

- (d) proof of payment of the prescribed fees;
  - (e) a declaration that the genetic material or parental material acquired for breeding the variety has been lawfully acquired and the source of such material; and
  - (f) any other requirement as may be prescribed.
6. At the request of the Registrar, the applicant shall, on the date and at the place fixed by the Registrar, submit for the purpose of examination any other necessary information, documents and material relevant to the application.
  7. The filing date of the application under this Article shall be the date on which a valid application was received by the Registrar or National Authority.

#### **ARTICLE 14 RIGHT OF PRIORITY**

1. If more than one application is received by the Registrar in respect of the same variety, the Registrar shall, subject to the provisions of sub-article (2), give priority to the first application received.
2. If an application in terms of Article 13 is preceded by an application by or on behalf of the same applicant for protection of the same variety in any State Party to this Protocol or International Organization that recognizes and provides for plant breeder's right to which SADC is a member, the Registrar shall, notwithstanding the provisions of sub-article (1) give priority to the first-mentioned application if it:
  - (a) is submitted to the Registrar in the prescribed manner within a period of twelve months of the date on which the preceding application was deposited;
  - (b) is accompanied by a claim in respect of the priority thereof; and
  - (c) complies with the provisions of Article 13 (4) and (5).
3. The right of priority shall be claimed by the breeder at the moment of filing the application.
4. The effect of the right of priority shall be that, with respect to the conditions of protection attached to the variety, the application shall be deemed to have been filed at the date of the filing of the earlier application.

**ARTICLE 15**  
**DOCUMENTS AND MATERIAL TO BE FURNISHED FOR PRIORITY**

1. The Registrar may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a certified true copy of the documents which constitute the first application, samples or other evidence to prove that the variety which is the subject matter of both applications is the same.
2. 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 prescribed in the Regulations, after such rejection or withdrawal, in which to furnish to the Registrar any necessary information, document or material required for the purpose of the examination.
3. If any of the provisions of this Article are not complied with, the application shall be dealt with as if no priority has been claimed.

**ARTICLE 16**  
**PROVISIONAL PROTECTION**

1. The Registrar shall grant provisional protection to a variety subject to the application from the date of acceptance of an application, to the date of grant or rejection of the application whichever occurs first.
2. The provisional protection shall have the effect that when a plant breeder's right is granted, the holder of the right shall be entitled to equitable compensation for actions specified in Article 27 during the period between the date of filing of the application and the date of granting that right.

**ARTICLE 17**  
**VARIETY DENOMINATION**

1. An applicant for a plant breeder's right shall propose a variety denomination, under which the variety will be known.
2. The variety denomination must enable the variety to be identified.
3. No variety denomination shall be registered if it:
  - (a) consists solely of numbers except where this is an established practice for designating varieties; or
  - (b) is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder; in particular, if it is identical to a variety denomination in any State Party or in another Member of an International Organization that recognizes and protects

plant breeders' rights of an existing variety of the same plant species or of a closely related species.

4. The Registrar shall not register a variety denomination for which a prior right has been granted.
5. Where:
  - (a) a variety is protected by a member of an International organisation that recognizes and protects plant breeders' rights; or
  - (b) an application for the protection of the same variety is filed in such member of an International organisation,only the variety denomination which has been proposed or registered in that other Member of an International organisation that recognizes and protects plant breeders' rights may be proposed and registered.
6. The Registrar shall not register any other designation as a denomination for the variety unless the Registrar considers the denomination unsuitable within its territory, in which case the recognized and accepted synonym of the protected variety shall be recorded in the register.
7. Where the variety denomination used in the other Member of an international organization that recognizes and protects plant breeders' rights is inappropriate for linguistic reasons in the SADC region or for any reason specified in sub-article (3), the Registrar may request the applicant to propose another variety denomination.
8. The Registrar shall publish in the SADC PBR Journal the variety denominations which have been proposed, registered or cancelled.

#### **ARTICLE 18 USE OF VARIETY DENOMINATION**

1. A person who offers for sale or markets the protected material of a variety protected under this Protocol shall, even after the expiration of the protection, use the registered variety denomination only in so far as prior rights do not prevent such use.
2. When a protected variety is offered for sale or marketed, a trademark, trade name or other similar indication may be associated with the registered variety denomination provided that the denomination is easily recognizable.
3. The holder of a plant breeder's right may not exercise a right (trademark, trade name or other right) in the denomination against the legitimate use of the holder's variety denomination by offering for sale or marketing of the variety by another person, even after the expiration of the protection of the plant breeder's right.

**ARTICLE 19**  
**PRIOR RIGHTS OF THIRD PARTIES**

1. Prior rights of third parties in a denomination shall not be affected by this Protocol.
2. Where by reason of a prior right, the use of a denomination of a variety is not permitted to a person who is obliged to use it, the Registrar shall require the breeder to submit another denomination for the variety.

**ARTICLE 20**  
**CANCELLATION OF REGISTERED VARIETY DENOMINATION**

1. The Registrar shall cancel any registered variety denomination if the denomination should not have been registered or if, subsequent to registration, facts become known which would have justified the rejection of the denomination.
2. Where the variety denomination has been cancelled, the Registrar shall request the holder of the plant breeder's right to submit, within the time specified, a proposal for a new variety denomination, and shall, if the proposal is acceptable, register it.

**ARTICLE 21**  
**PUBLICATION OF INFORMATION**

1. The Registrar shall in the manner prescribed, publish the SADC PBR Journal containing among others the following information:
  - (a) applications for the grant of plant breeder's right;
  - (b) information on variety denominations;
  - (c) withdrawals of applications for the grant of plant breeder's right;
  - (d) rejections of applications for the grant of plant breeder's right;
  - (e) grants of plant breeder's right;
  - (f) changes in applicants, holders and agents;
  - (g) nullification, surrender, cancellation and expiry of plant breeder's right; and
  - (h) any other information which may be deemed necessary for the public knowledge.
2. No confidential information, as indicated in the application form, shall be published without the written consent of the breeder of the variety.



**ARTICLE 22**  
**PUBLICATION OF APPLICATION AND OBJECTIONS**

1. The Registrar shall publish in the SADC PBR Journal, every application filed and shall require the application to be published in the official publications of the State Parties and such publication shall specify the following:
  - (a) the name of the applicant;
  - (b) the effective date of the application;
  - (c) the proposed denomination of the variety; and
  - (d) such information relating to the application as may be necessary to describe the variety for purposes of public comments on the application, or as may be specified by Regulations.
2. Once the application for a plant breeder's right for a particular variety is published, any person may within sixty (60) days after publication submit a written and reasoned objection to the Registrar.
3. A notice of objection made under this Article shall:
  - (a) specify the grounds on which the objection is based;
  - (b) be accompanied with a proof of paid fee as prescribed in the Regulations;
  - (c) include a statement of the facts alleged in support of the grounds stated under paragraph (a);
  - (d) be supported by an affidavit as statement of proof of the grounds for the objection filed; and
  - (e) contain any other grounds as may be provided for in the Regulations.
4. An objection lodged pursuant to sub-article (2), may be based on allegations of one or more of the following grounds:
  - (a) that the published notice is incomplete, or that it does not clearly describe the variety;
  - (b) that the application does not comply with criteria for the grant of the plant breeders' right as provided for under this Protocol including that the variety described in the application is not a new variety to which this Protocol applies;
  - (c) that the applicant infringes the rights of a breeder who has an interest in the variety or otherwise is not entitled to make the application;
  - (d) that the applicant is not the owner of an interest in the variety or otherwise is not entitled to make the application;

- (e) that the application contains a material misrepresentation;
  - (f) that the proposed denomination should be rejected or altered;
  - (g) that the variety has been reproduced by the repeated use of the reproductive material of another variety for which plant breeders' rights have been granted to or applied for by a person other than the applicant, without license or permission or in violation thereof;
  - (h) that any claim of priority based on an application for, or grant of plant breeders' rights is not valid or does not relate to the variety of the current application; or
  - (i) any other reasonable ground to object to the application.
5. The Registrar shall notify the applicant of the filing of an objection under this Article and shall provide to the applicant a copy of the notice of objection and all supporting documents that are lodged with the objection within the time limit prescribed.
6. The applicant may respond to the allegations of the objector, in writing to be lodged with the Registrar, within the time limit prescribed or such further period as the Registrar may allow from the date of notification made under sub-article (5).
7. The procedure for filing of objections, replies and disposal of the objections shall be prescribed.

#### **PART FOUR**

#### **CONSIDERATION OF APPLICATION FOR PLANT BREEDER'S RIGHT**

#### **ARTICLE 23**

#### **EXAMINATION OF APPLICATION**

1. The Registrar shall examine the application to determine:
- (a) whether the application and its supporting documents fulfill the criteria for the grant of a plant breeder's right as provided for in Article 7 to Article 13;
  - (b) where appropriate, if a claim for priority complies with the provisions laid down in Article 14 (1), (2) and (3); and
  - (c) if the prescribed fees have been paid within the time limit specified.
2. If the application, although complying with the conditions referred to in Article 14 of this Protocol, does not comply with other conditions laid down in Article 13, the Registrar shall give the applicant an opportunity to correct any deficiencies that may have been identified.

3. If the application does not comply with the conditions in Article 13, the Registrar shall inform the applicant in writing, prior to publication of the information pursuant to Article 21.

#### **ARTICLE 24**

##### **EXAMINATION FOR DISTINCTNESS, UNIFORMITY AND STABILITY**

1. Where there is no impediment to the granting of a plant breeder's right on the basis of the examination under Article 23, the Registrar shall arrange for the technical examination relating to compliance with the conditions provided for in Articles 9, 10 and 11 to be carried out in accordance with this Article and any technical examinations provided for in the Regulations, operating procedures or test guidelines.
2. Technical examinations conducted pursuant to sub-article (1), shall be in accordance with test guidelines issued by the SADC PBR Office from time to time.
3. The Registrar shall communicate the results of the technical examinations and the variety description to the applicant and shall give the applicant an opportunity to comment thereon.
4. The SADC PBR Office may, for the purposes of the examination, enter into an arrangement with any relevant institutions or persons either in or outside SADC Region, to carry out scientific tests to determine the distinctness, uniformity and stability of the variety, or it may use the results of such tests that have already been carried out by such institution or person.

#### **ARTICLE 25**

##### **GRANTING AND REJECTING OF PLANT BREEDER'S RIGHT**

1. The Registrar shall grant a plant breeder's right where:
  - (a) the plant variety fulfills the requirements of novelty, distinctness, uniformity and stability as provided for under Articles 8, 9, 10 and 11;
  - (b) the proposed denomination of the variety complies with Article 17; and
  - (c) there is no objection filed or, if filed, it does not contain any valid ground.
2. Where the requirements referred under sub-article (1) are not fulfilled, the Registrar shall reject the application and notify the applicant in writing.
3. The Registrar shall in respect of each plant breeder's right granted –
  - (a) issue a Plant Breeder's Right Certificate in respect thereof to the person who applied for the granting of the right;

- (b) enter the applicable particulars in the Register; and
  - (c) publish such particulars relating to the granting of the right as may be prescribed.
- 4. Where the examination shows that the proposed denomination of the variety cannot be registered, the Registrar shall request the applicant in writing to submit another denomination within the period prescribed, or further time period that the Registrar may allow on good cause shown, failing which it shall reject the application.
- 5. An application shall be rejected if it is established that:
  - (a) the applicant is not entitled to file an application; or
  - (b) the applicant has not remedied any deficiencies notified to the applicant within the prescribed time during which he the applicant was given an opportunity to correct or has not replied within the prescribed time limit to the official notifications issued by the Registrar, particularly where the:
    - (i) information given was erroneous or incomplete;
    - (ii) application contained a material irregularity;
    - (iii) variety to which the applicant refers does not satisfy the requirements of Articles 8 to 11;
    - (iv) applicant refuses or is unable to propose an acceptable denomination;
    - (v) applicant does not comply with the payment of fees as prescribed.
- 6. Where the Registrar rejects an application, the Registrar shall,
  - (a) notify the applicant of the decision in writing;
  - (b) enter the applicable particulars in the register; and
  - (c) publish a notice of rejection in the SADC PBR Journal.

## **PART FIVE RIGHTS OF BREEDER**

### **ARTICLE 26 PERIOD OF PROTECTION**

1. Except as set forth in Part Eight, the plant breeder's right granted under this Protocol shall expire in respect of:

- (a) trees and vines, twenty five years from the date of the grant; and
  - (b) all other genera or species, twenty years from the grant thereof.
2. The Committee, may, upon application made to the Registrar, in respect of specific genera or species, recommend to the Registrar to extend the period of protection for up to another period of five years.

## **ARTICLE 27**

### **SCOPE OF PLANT BREEDER'S RIGHT**

1. Subject to Article 28 and 29, the following acts in respect of the propagating material of a protected variety shall require the authorization of the holder of the plant breeder's right, which otherwise would constitute an infringement of the right of the holder:
- (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 referred to in paragraphs (a) to (f).
2. The holder may make an authorization referred to in sub-article (1), subject to conditions and limitations.
3. The acts referred to in sub-article (1) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety, shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his or her right in relation to the said propagating material.
4. The provisions of sub-articles (1), (2) and (3) shall also apply in relation to varieties:
- (a) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
  - (b) which are not clearly distinguishable in accordance with Article 9 from the protected variety; and

- (c) 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 the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
  - (b) it is clearly distinguishable from the initial variety; and
  - (c) except for the differences which result from the action 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 by 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.

#### **ARTICLE 28**

#### **EXCEPTIONS TO PLANT BREEDER'S RIGHT**

The plant breeder's right shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental or research purposes;
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 27(3) apply, actions referred to in Article 27(1) and (2) in respect of such other varieties; and

- (d) acts done by a farmer to save, use, sow, re-sow or exchange for non-commercial purposes his or her farm produce including seed of a protected variety, within reasonable limits subject to the safeguarding of the legitimate interests of the holder of the breeder's right. The reasonable limits and the means of safeguarding the legitimate interests of the holder of the breeder's right shall be prescribed.

#### **ARTICLE 29 EXHAUSTION OF PLANT BREEDER'S RIGHT**

1. A plant breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 27(3), which has been sold or otherwise marketed in the SADC Region by the breeder or with the breeder's consent or any material derived from the said material, unless such actions involve:
  - (a) further propagation of the variety in question; or
  - (b) 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-article(1), "material" in relation to a variety means:
  - (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.

#### **ARTICLE 30 MEASURES REGULATING COMMERCE**

The plant breeders' rights shall not be affected by any measure taken by a State Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material.

#### **ARTICLE 31 MAINTENANCE OF PROTECTED VARIETY**

1. The holder of a plant breeder's right shall, throughout the period for which the right is valid, be under the obligation to make available, at the request of the Registrar, reasonable samples of the protected variety capable of producing plants which correspond to the characteristics defined for the variety when the right was granted.

2. The holder of a plant breeder's right shall also provide the Registrar with all such information and assistance as the Registrar may request for the purpose of ensuring that the holder of the plant breeder's right is fulfilling his obligations under sub-article (1), including facilities for the inspection by or on behalf of the Registrar of the measures taken for the maintenance of the variety.

## **PART SIX LICENSES**

### **ARTICLE 32 LICENSING**

The holder of a plant breeder's right may grant, to any person, an exclusive or a non-exclusive licence relating to all or any of the rights provided for under this Protocol.

### **ARTICLE 33 COMPULSORY LICENSES**

1. At any time after the expiration of a period of three years from the date of the grant of a plant breeder's right under this Protocol, an interested person may, in the prescribed manner and upon payment of the prescribed fee, apply to the Registrar for a compulsory license in respect of a specific plant breeder's right on the grounds that:
  - (a) it is necessary to safeguard the public interest in all State Parties or any State Party; and
  - (b) the holder of the plant breeder's right concerned, unreasonably refuses to grant a license to such interested person.
2. Compulsory licenses shall be granted by the Registrar after consultation and advice from the Committee.
3. A compulsory license may, upon application, be granted to such State Party or to a category of persons satisfying specific requirements for the granting of such compulsory license.
4. The Registrar shall, when granting a compulsory license pursuant to this Article, taking into account the interest of a holder of a plant breeder's right who would be affected by the grant of the compulsory license, stipulate the and the specific purpose for which the compulsory license is being granted and specify the reasonable conditions pertaining thereto including:
  - (a) possible time limitation for such compulsory license;
  - (b) payment of an appropriate royalty as equitable remuneration to the holder; and



- (c) any obligations to be fulfilled by the holder which are necessary to make use of the compulsory license.

## **PART SEVEN TRANSFER OF BREEDER'S RIGHT**

### **ARTICLE 34 CONDITIONS FOR TRANSFER OF PLANT BREEDER'S RIGHT**

1. A plant breeder's right may be assigned or transferred to another person in accordance with the prescribed procedures stipulated in the Regulations.
2. An assignment or transfer shall be in writing, signed by the parties concerned and entered in the Register.
3. Transfer of a plant breeder's right by assignment can only be made to successors who comply with the conditions laid down in Article 12.

## **PART EIGHT SURRENDER, NULLIFICATION AND CANCELLATION OF PLANT BREEDER'S RIGHT**

### **ARTICLE 35 SURRENDER OF PLANT BREEDER'S RIGHT**

1. Any holder of a plant breeder's right granted under this Protocol may, by written notice to the Registrar, surrender the said right before the expiry of the term laid down in Article 26.
2. The date of surrendering shall be that specified in the declaration or, if none is specified, the date on which the declaration is received by the Registrar.
3. Upon surrender of the plant breeder's right, the Certificate of Plant Breeder's Right shall become invalid and shall be returned to the Registrar.
4. The Registrar shall, upon receipt of a notification for surrender, terminate the plant breeder's right and publish the said termination in the SADC PBR journal.

### **ARTICLE 36 NULLIFICATION OF PLANT BREEDER'S RIGHT**

1. The Registrar shall declare a plant breeder's right null and void when it is established that:
  - (a) the conditions provided for in Articles 8 or 9 were not complied with at the time of the grant of the plant breeder's right;

- (b) where the grant of the plant breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 10 or 11 were not complied with at the time of the grant of the plant breeder's right; or
  - (c) the plant breeder's right has been granted to a person who is not entitled to it;
  - (d) the right was obtained through fraud, misrepresentation or concealment of any material fact.
2. A plant breeder's right shall not be declared null and void for reasons other than those referred to in sub-article (1).
  3. Subject to any provision contrary to this Protocol, the plant breeder's right that has been declared null and void shall be deemed never to have been granted.

#### **ARTICLE 37 CANCELLATION OF THE BREEDER'S RIGHT**

1. The plant breeder's right may be cancelled if:
  - (a) the variety no longer meets the criteria set out in Article 10 and 11;
  - (b) after being requested to do so and within a prescribed period, the breeder or holder has failed to provide to the Registrar information, documents or material deemed necessary for verifying the maintenance of the variety;
  - (c) the plant breeder or holder fails to pay such fees within such time as may be prescribed to keep the right of the plant breeder or holder in force;
  - (d) the plant breeder or holder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination within the prescribed period.
2. A plant breeder's right shall not be cancelled for reasons other than those referred to in sub-article (1).
3. A cancellation shall take effect on the date of its entry in the Register.
4. Upon cancellation of a plant breeder's right, the certificate shall become invalid and shall be returned to the Registrar.

## **PART NINE APPEALS**

### **ARTICLE 38 ESTABLISHMENT AND POWERS OF APPEALS BOARD**

1. There shall be established within the SADC PBR Office an Appeals Board, which shall be responsible for deciding appeals from the decisions of the Registrar.
2. The Ministers shall appoint on a rotational basis, among State Parties, members of the Appeals Board which shall consist of the following:
  - (a) one legal expert;
  - (b) one expert in plant breeding matters;
  - (c) one seed expert; and
  - (d) one representative from farmers organization.
3. Members of Appeals Board shall elect from among themselves a chairperson.
4. Where the Appeals Board considers that the nature of the appeal so requires, it may co-opt other experts having experience on the matter to be determined.
5. The members of the Appeals Board shall hold office for a period of three years.
6. Any person aggrieved by a decision made by the Registrar may, in the manner prescribed, upon payment of the prescribed fees and within the prescribed time, after receiving notification of the decision, submit an appeal against that decision to the Appeals Board.
7. The Appeals Board shall convene as necessary and determine its rules of procedure.
8. The Appeals Board shall reach its decision by majority and in the event that there is an equality of votes the chairperson shall have a casting vote.
9. The members of the Appeals Board shall be independent in making their decisions.
10. A member of the Appeals Board may be removed from office where the Ministers determine that the member has committed an action that amounts to misconduct.
11. A member of the Appeals Board shall not take part in any appeal proceedings if the member has:
  - (a) any personal interest in the matter being considered;

- (b) has been a representative of one of the parties to the proceedings; or
  - (c) participated in the decision under appeal.
12. The Ministers responsible for agriculture shall determine allowances payable to the members of the Appeals Board and any supporting secretariat.
  13. The Appeals Board may, after hearing the appeal confirm, vary or set aside or the decision of the Registrar.
  14. The Appeals Board may order the Registrar to execute the decision of the Appeals Board in connection therewith.
  15. The decision of the Appeals Board shall be in writing and a copy shall be furnished to the Registrar, the appellant and any other interested party.
  16. If the Appeals Board sets aside a decision made by the Registrar, the prescribed fees paid by the appellant in respect of the appeal shall be refunded to the appellant, or, if the Appeals Board varies a decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.
  17. The decision of the Appeals Board shall be final and binding.

**PART TEN  
GENERAL PROVISIONS**

**ARTICLE 39  
REGULATIONS AND OPERATING PROCEDURES**

1. The Ministers shall make Regulations for the implementation of this Protocol by prescribing the following:
  - (a) the procedure for the receiving and handling of applications, the conduct of the examination of varieties and of variety denominations, the handling of objections and appeals, the application and granting of compulsory licenses and the refusal of applications of the grant of plant breeders' rights;
  - (b) the nullification and cancellation of plant breeders' rights, the transfer of an application, or the plant breeders' rights, to the entitled person;
  - (c) the information and facilities to be provided to the Registrar by an applicant for a plant breeder's right, and the reproductive material to be submitted at the time of an application and thereafter;
  - (d) the maintenance and conservation of samples, the cooperation with gene-banks or other institutions for the conservation of genetic material;
  - (e) the administration and maintenance of the register and the receiving and filing of any documents concerning plant breeders' rights;
  - (f) the amounts and the collection of fees payable in respect of any application, matter or document provided for under this Protocol;
  - (g) the making of additional rules to interpret the provisions of variety denominations;
  - (h) any certificate or other document or form to be issued or used for the purposes of this Protocol;
  - (i) the allowance that shall be paid to any member of the Appeals Board appointed in terms of Article 38; and
  - (j) any other matter relating to the administration of this Protocol.
2. The Committee may prepare operating procedures regarding:
  - (a) the handling of applications for the plant breeders' rights;
  - (b) the technical evaluation of the applications;
  - (c) the appointment of subcommittees and their powers;

- (d) the procedures for cooperation with other institutions and international organisations with regard to the administration of this Protocol; and
- (e) any other matter relating to the administration of this Protocol which are within the powers of the Committee.

#### **ARTICLE 40 PROTECTION OF EXISTING VARIETIES**

1. Notwithstanding Article 8, a plant breeder's right may be granted for an existing variety that is no longer new on the date of entry into force of this Protocol subject to the following conditions:
  - (a) the application shall be filed within one year following the date of coming into force of this Protocol; and
  - (b) the variety must:
    - (i) have been entered in the catalogue or list of varieties admitted to trade or in a register of varieties held by a professional organization recognized by the SADC PBR Office; or
    - (ii) have been the subject of a plant breeder's right in a SADC Member State or a Member of an International Organization that recognizes and protects Plant Breeders' Rights which SADC is a member thereto, or be the subject of an application in a SADC Member State or a Member of an International Organization that recognizes and protects Plant Breeders' Rights provided that the application subsequently leads to the granting of the plant breeder's right; or
    - (iii) be the subject of proof acceptable to the SADC PBR Office concerning the date on which the variety ceased to be new under the provisions of Article 8 of this Protocol.
2. The duration of the plant breeders' rights granted under this Article shall be calculated from the date of the entry referred to in paragraph (1)(b)(i), the date of the grant of the plant breeders' rights referred to in paragraph (1)(b)(ii), above, or the date upon which the variety ceased to be new referred to in paragraph (1)(b)(iii).

3. Where a plant breeder's right is granted under this Article, the holder shall be under the obligation to grant licenses on reasonable terms in order to allow the continuation of any exploitation initiated in good faith by a third party before the said filing.

#### **ARTICLE 41 FINANCIAL PROVISIONS**

1. State Parties shall endeavor to allocate the necessary funds for the effective implementation of this Protocol at the national and regional level.
2. Programmes and projects may be financed by funds solicited from various sources including donor community and other cooperating partners.

#### **ARTICLE 42 AMENDMENT OF THIS PROTOCOL**

1. A State Party may propose amendments to this Protocol.
2. Proposals for amendment to this Protocol shall be made in writing to the Executive Secretary who shall duly notify all SADC Member States of the proposed amendments, at least ninety (90) days in advance of consideration of the amendments by Member States, but such period of notice may be waived by Member States.
3. Amendments to this Protocol shall be adopted by a decision of three quarters of all State Parties, and shall become effective thirty (30) days after such adoption.

#### **ARTICLE 43 SETTLEMENT OF DISPUTES**

1. State Parties shall strive to resolve any dispute arising between them regarding the application, interpretation or implementation of this Protocol amicably.
2. Any dispute arising between State Parties from the application, interpretation or implementation of this Protocol which cannot be settled amicably shall be referred to the Ministers.
3. Any dispute arising from the interpretation, application and implementation of this Protocol which cannot be settled by the Ministers, shall be referred to the SADC Tribunal.
4. The decision of the Tribunal shall be final and binding.

**ARTICLE 44  
WITHDRAWAL**

1. A State Parties may withdraw from this Protocol upon the expiry of twelve (12) months from the date of giving the Executive Secretary a written notice to that effect.
2. The Executive Secretary, upon receiving the notification contemplated in sub-article (1), shall inform the States Parties Ministers of the intention of that State Party to withdraw.
3. A State Party that has given notice to withdraw pursuant to sub-article(1) of shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective, but shall remain bound by her outstanding obligations under this Protocol.

**ARTICLE 45  
SIGNATURE**

This Protocol shall be signed by duly authorized representatives of the Member State.

**ARTICLE 46  
RATIFICATION**

This Protocol shall be ratified by Signatories in accordance with their respective constitutional procedures.

**ARTICLE 47  
ENTRY INTO FORCE**

1. This Protocol shall enter into force thirty (30) days after deposit of instruments of ratification or accession by two-thirds of the Member States.
2. This Protocol shall remain in force, for as long as there are at least two thirds of the States Parties who remain bound by the provisions of this Protocol.

**ARTICLE 48  
ACCESSION**

This Protocol shall remain open for accession by any Member State.



**ARTICLE 49  
DEPOSITORY**

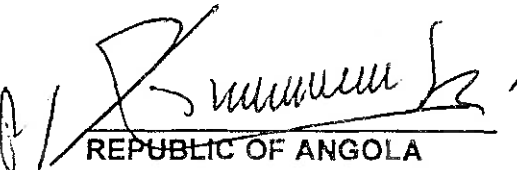
1. The original text of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC who shall transmit certified copies to all Member States.
2. The Executive Secretary of SADC shall register this Protocol with the Secretariat of the United Nations and the Commission of the African Union (AU).

**ARTICLE 50  
IMPLEMENTATION OF THE PROTOCOL**

1. Each State Party shall adopt all measures necessary for the implementation of this Protocol, in particular, it shall:
  - (a) provide for appropriate legal remedies for the effective enforcement of breeders' rights;
  - (b) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another State Party;
  - (c) ensure that the public is informed through the regular publication of information concerning applications for and grants of breeders' rights, and any other matters related to the plant breeder rights in the SADC region.
2. In depositing its instrument of ratification, acceptance, approval or accession to this Protocol as the case may be, each State Party shall be in a position, under its laws, to give effect to the provisions of this Protocol.

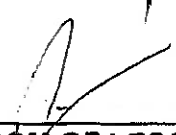
IN WITNESS WHEREOF, WE, the undersigned, being duly authorised representatives of our respective Governments, have signed this Protocol.

DONE at ....., on this .....day of.....in three (3) original texts, in the English, French and Portuguese languages, all texts being equally authentic.

  
REPUBLIC OF ANGOLA

  
DEMOCRATIC REPUBLIC CONGO

REPUBLIC OF BOTSWANA

  
KINGDOM OF LESOTHO

REPUBLIC OF MADAGASCAR

REPUBLIC OF MALAWI

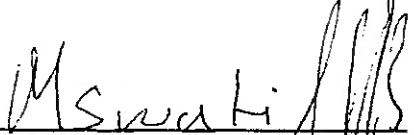
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REPUBLIC OF MOZAMBIQUE

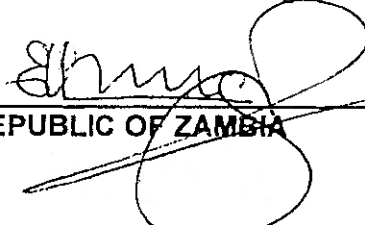
  
REPUBLIC OF NAMIBIA

REPUBLIC OF SEYCHELLES

REPUBLIC OF SOUTH AFRICA

  
KINGDOM OF SWAZILAND

UNITED REPUBLIC OF TANZANIA

  
REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE

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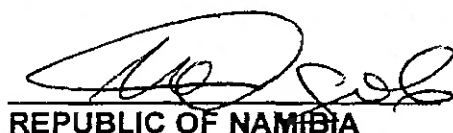
DONE at ....., on this .....day of.....in three (3) original texts, in the English, French and Portuguese languages, all texts being equally authentic.

  
REPUBLIC OF ANGOLA

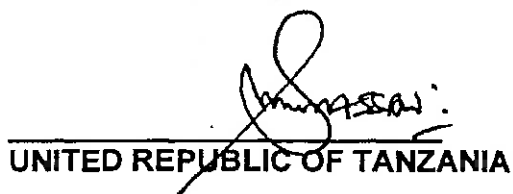
  
DEMOCRATIC REPUBLIC CONGO

REPUBLIC OF MADAGASCAR

REPUBLIC OF MAURITIUS

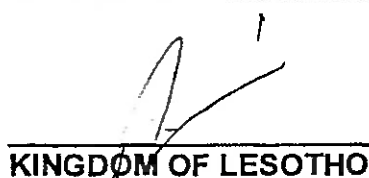
  
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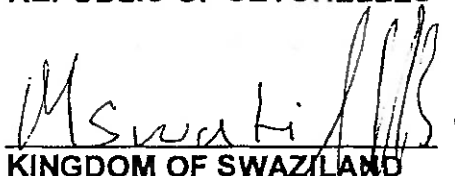
REPUBLIC OF BOTSWANA

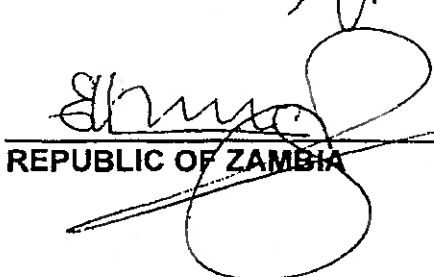
  
KINGDOM OF LESOTHO

REPUBLIC OF MALAWI

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF SEYCHELLES

  
KINGDOM OF SWAZILAND

  
REPUBLIC OF ZAMBIA