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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
 Geneva

COUNCIL

Thirtieth Extraordinary Session
Geneva, March 22, 2013

ADDENDUM TO

EXAMINATION OF THE CONFORMITY
 OF THE PLANT BREEDERS' RIGHTS BILL FOR ZANZIBAR
 WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

1. The purpose of this Addendum is to report that, on March 5, 2013, the Office of the Union received a copy of the Plant Breeders' Rights Act for Mainland Tanzania (Act for Mainland Tanzania), which was adopted on November 5, 2012, and published in the Gazette of the United Republic of Tanzania on March 1, 2013, and to invite the Council to consider developments relevant for its decision of November 1, 2012.

2. The Council, at its forty-sixth ordinary session, held in Geneva on November 1, 2012, decided to:

“(a) note the analysis in document C/46/15 and that the Plant Breeders' Rights Bill for Mainland Tanzania (Draft Law) would incorporate in Section 2 the text “Ministry’ means Ministry responsible for agriculture”;

“(b) subject to the incorporation in the Draft Law (see Annex II to document C/46/15) of the Minister's Amendments (see Annex III to document C/46/15), as set out in paragraphs 14, 16, 18, 24, 26, 28, 33, 36, 40, 42 and 43 of document C/46/15, the modifications recommended in paragraphs 22 and 34 of document C/46/15, and in subparagraph (a) above, and the following proposals agreed with the Delegation of the United Republic of Tanzania in Section 14 and Section 22(1) and (4) of the Draft Law:

'14.-(1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to any person by or with the consent of the breeder for purposes of exploitation of the variety

(a) in the territory of the United Republic of Tanzania, earlier than one year before the date of filing the application;

(b) in a territory other than that of the United Republic of Tanzania ~~in which the application has been filed-~~

(i) earlier than four years; or

(ii) in the case of trees or of vines, earlier than six years before the said date.'

'22.-(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of an international organization dealing with plant breeders' rights matters which Tanzania is a party shall enjoy a right of priority for a maximum period of twelve months. This period ~~which~~ shall be computed from the date of filing the first application. The day of filing date shall not be included in the ~~later application~~ latter period.

'[...]

'(4) The applicant shall, within a period of two years after the expiration of the period of priority, or a period of six months where the first application is rejected or withdrawn, be allowed to furnish to the Registrar any necessary information, document or material required in this Act for the purpose of the examination.'

"and with no additional changes, take a positive decision on the conformity of the Plant Breeders' Rights Bill for Mainland Tanzania with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants;

"(c) note that the adoption of the Draft Law for Mainland Tanzania and of the Draft Law for Zanzibar are necessary for breeders' rights to cover the whole territory of the United Republic of Tanzania;

"(d) note that the Government of the United Republic of Tanzania has the intention to submit, at a later stage, the Draft Law or adopted Law for Zanzibar for examination by the Council;

"(e) inform the Government of the United Republic of Tanzania that its instrument of accession may be deposited after positive decisions of the Council on the Laws for Mainland Tanzania and Zanzibar; and

"(f) authorize the Secretary-General to inform the Government of the United Republic of Tanzania of that decision."

(see document C/46/18 "Report on the decisions", paragraph 15, and document C(Extr.)/30/4 Rev., paragraph 7)

3. Document C(Extr.)/30/4 Rev. "Examination of the conformity of the Plant Breeders' Rights Bill for Zanzibar with the 1991 Act of the UPOV Convention", in its decision paragraph 43(d)(i), provides as follows:

"43. The Council is invited to: [...]

(d) inform the Government of the United Republic of Tanzania that, subject to

(i) the recommendations of the Council, as set out in document C/46/18 "Report on the decisions", paragraph 15(b) (see paragraph 7 of this document), having been incorporated in the Plant Breeders' Rights Act for Mainland Tanzania adopted on November 5, 2012, with no additional changes (see document C(Extr.)/30/4 Add.), and [...]" (underlined added)

4. The Office of the Union has noted that the changes presented in revision mode in the recommendations of the Council in its decision of November 1, 2012 (see paragraph 2, above), have been incorporated in the Act for Mainland Tanzania (the full text of the Act for Mainland Tanzania can be viewed on the C(Extr.)/30 page of the UPOV website).

5. The Office of the Union has noted that additional changes have been introduced in Sections 1, 4(1), 6(2)(c), 9(2), 27(3), 38(2) and 49(2) of the Act for Mainland Tanzania, which were not part of the decision of the Council of November 1, 2012. Relevant changes in those provisions are presented in revision mode in the Annex to this document (in English only). In the opinion of the Office of the Union those changes do not affect the substantive provisions of the 1991 Act of the UPOV Convention.

6. *The Council is invited to:*

(a) note that the Plant Breeders' Rights Act for Mainland Tanzania, which was adopted on November 5, 2012, and published in the Gazette of the United Republic of Tanzania on March 1, 2013, has incorporated the changes presented in revision mode in the recommendations of the Council in its decision of November 1, 2012 (see document C/46/18 "Report on the decisions", paragraph 15, and paragraph 2, above); and

(b) agree that the additional changes, as presented in the Annex to document C(Extr.)/30/4 Add. do not affect the substantive provisions of the 1991 Act of the UPOV Convention, and subject to that agreement, to confirm the decision on conformity of November 1, 2012.

[Annex follows]

EXTRACT FROM THE PLANT BREEDERS' RIGHTS ACT FOR MAINLAND TANZANIA PUBLISHED IN
THE GAZETTE OF THE UNITED REPUBLIC OF TANZANIA ON MARCH 1, 2013
(ACT SUPPLEMENT ISSN 0856 0331X)

(Changes to Sections 1, 4(1), 6(2)(c), 9(2), 27(3), 38(2) and 49(2) of the Act are presented in revision mode)

Section 1 – Short title and commencement

This Act may be cited as Plant Breeders' Rights Act, 2012 and shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint.

Section 4 – Appointment of Registrar

(1) The Minister shall, by notice published in the *Gazette*, appoint a person or an officer who has the relevant academic qualifications and experience in plant breeding field or sector to be a Registrar who shall perform the functions conferred to or imposed on the Registrar of Plant Breeders' Rights under this Act.

[...]

Section 6 – Register of plant breeders' rights

(1) The Registrar shall maintain an official breeders' rights register in which all information required to be registered under this Act shall be entered.

(2) The information to be listed in the Register for each registered variety, shall include-

[...]

(c) the date and time of inception of the breeder's right;

[...]

Section 9 - Plant Breeders' Rights Advisory Committee

(1) There is established a committee to be known as the Plant Breeders' Rights Advisory Committee.

(2) The Committee subject to gender consideration, shall be composed of the following members who shall be appointed by the Minister –

[...]

Section 27 – Notice to the applicant and reply to an objection

(1) The Registrar shall notify the applicant of an objection under Section 25 and provide him with a copy of the notice of an objection and all supporting documents that are lodged with the objection within two weeks from the date of filing the objection.

(2) The applicant may respond to the allegation of the objector in a written reply which shall be lodged to the Registrar and copied to the objector within one month or such further period as the Registrar may allow from the date of notification made under sub-section (1).

(3) The Minister may, on behalf of the Government, lodge a reply to any objection lodged against the Government under section 25.

Section 38 – Notification of nullification and cancellation

(1) The Registrar shall notify the holder of the breeders' right and any licensee of any decision made under section 36 or 37 of this Act and grounds for such decision.

(2) Any person receiving notice under sub-section (1) may contest the decision, by a written objection lodged to the Registrar within thirty days from the date of receipt of notification of the decision.

[...]

Section 49 – Offences and penalties

[...]

(2) Any person who commits an offence referred to under this Act shall upon conviction, be liable to a fine not exceeding ten million shillings or ~~to an~~ imprisonment for a period term not exceeding one year or to both.

[End of Annex and of document]