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

NOVEMBER, 2012

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(PLANT BREEDERS' RIGHTS) IN THE SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY REGION**

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 Treaty of SADC, 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 establishing the Southern African Development Community has, in Article 22, expressly called for the conclusion of Protocols as necessary in each area of cooperation within the Community;

NOTING FURTHER that the SADC Protocol on Trade has established in Article 24, 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;

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;

FURTHER RECOGNIZING that nationals, natural persons and legal entities of Member States shall enjoy equal treatment within the SADC Region provided that the said nationals, 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 provision for plant breeders' rights in the region will allow farmers access to a wide range of improved varieties to contribute to the attainment of the regional goal of economic development and food security;

CONVINCED of the importance of providing an effective system for the protection of new varieties of plants with the aim of encouraging the plant breeding and facilitation of agricultural advancements for the benefit of our society,

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 SADC Member State or having an office in SADC 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 the breeder, or a person acting on behalf of the breeder, who files an application for the grant of a plant breeder's right according to Article 12 of this Protocol;

"assignee" means, in relation to a new variety is person to whom plant breeder's right or variety is transferred by sale or gift;

"Appeals Board" means the Appeals Board established under Article 38 of this Protocol;

"authorization" means a legal permission from the holder of the plant breeder's right to allow exploitation or use of his protected variety;

"breeder" means:

- (i) the person or legal entity who bred, or discovered and developed a variety; or
- (ii) the person or legal entity who is the employer of the aforementioned person or who has commissioned the latter's work; or
- (iii) the successor in title of the first or second aforementioned person, as the case may be;

"certificate" means the document issued by the Registrar pursuant to sub-article 24(2)(a) that recognizes and protects the rights of the breeder of a plant variety that is new, distinct, stable and uniform;

"compulsory license" means a license issued on instruction of the SADC PBR Office in accordance with Article 32 of this Protocol;

"Council" means the Plant Breeders' Rights Advisory Council as established under Article 4(6) of this Protocol;

"description" means a narrative statement that defines the characteristics of a plant variety for the purpose of demonstrating that the variety in question is a new variety;

"denomination" means the generic designation of the variety;

"DUS" means Distinctness, Uniformity and Stability of a plant variety as provided for under Article 8,9 and 10 of this Protocol;

"holder of the plant breeder's right" means:

"infringement", in relation to plant breeder's rights, means the doing, without authority under this Protocol or relevant legislation of Member States, of anything that the holder of those rights has the exclusive right to do as provided in sub-article 26(1)(a) of this Protocol;

"legal representative" means –
(a) a liquidator or receiver of a company,

(b) the representative recognized by law of any person who –

- (i) has died;
- (ii) has become insolvent or bankrupt;
- (iii) has assigned his estate;
- (iv) is an infant or minor,
- (v) is of unsound mind; or
- (vi) is otherwise under a disability;

"Member States" means SADC members who are parties to this Protocol and **"Member State"** shall be construed accordingly;

"National Authority" means the plant breeder's rights office of the Member States or the designated authority in a SADC Member State responsible for plant breeders' rights;

"new variety" means a plant variety that complies with the requirements of Article 7;

"PBR" means Plant Breeders' Rights;

"plant breeder's rights" means the rights referred to in sub-article 26(1)(a) of this Protocol;

"prescribed" means prescribed by the Regulations;

"production" means cultivation of plants with the aim of obtaining product or propagating material;

"Protocol" means this Protocol and any amendments thereto;

"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;

"register" means the register of the plant breeder's rights kept in terms of Article 5 of this Protocol;

"Registrar" means a person employed, appointed or designate under the provision of Article 4(4) of this Protocol;

"Regulations" means the Plant Breeders Rights Regulations made pursuant

to Article 41 of this Protocol;

"Rules of Procedure" means Rules of procedure for the Appeal Board or any Committee as the case may be, made pursuant to this Protocol;

"reproductive material" means a plant or part of the plant used to multiply the plant;

"Secretariat" means the Secretariat of SADC established by Article 9 of the Treaty;

"SADC" means Southern Africa Development Community as established under the Treaty;

"SADC PBR Office" means the office established in Article 4 of this Protocol;

"SADC sub-office" means Sub-office of the SADC Plant Breeders Office as established by the SADC Seed Centre in the Member States for the purposes of administering this Protocol;

"Seed Centre" means the SADC Seed Centre as established under the Charter establishing the Southern Africa Development Community Seed Centre;

"seed" means the part of any plant, customarily referred to as seed, intended for planting and not for consumption or processing;

"sell" means to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or dispose of for any consideration or transmit, convey or deliver in pursuance of the sale, exchange or barter and cognate words shall be construed accordingly;

"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:

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

unchanged.

PART ONE GENERAL PROVISIONS

Article 2

Purpose and objectives

The objectives of this Protocol shall be to:

- (a) provide for the establishment of a SADC plant breeders' rights system and its administration thereof; and
- (b) encourage the development of plant varieties, and to ensure protection of new varieties and breeder's rights.

Article 3

Scope and Application

- 1. This Protocol shall be applied to all genera and species of plants.
- 2. The plant breeders' rights granted under this Protocol shall, on the basis of one application, be valid in all Member States.
- 3. This Protocol shall be without prejudice to the right of Member States to grant plant breeders' rights through their own national legislation, subject to the provisions of sub-article (4) herein.
- 4. Any variety which is the subject matter of a SADC Plant breeder's rights system shall not be the subject of a Member State national law for the protection of plant variety otherwise, any rights granted contrary to this sub-article shall be ineffective.
- 5. Where the holder has been granted another right as referred to under sub-article (4) for the same variety prior to grant of the SADC plant breeders' right under this Protocol, he shall be unable to invoke the rights conferred by such protection for the variety for as long as the SADC PBR remains in force.

Article 4
Administration

1. For the purposes of this Protocol, the Member States hereby establish within the SADC Seed Centre, an office which shall be known as the SADC Plant Breeders' Rights Office in its acronym "SADC PBR Office" that will be the institution of SADC responsible for the administration of plant breeders' rights in the SADC Region.
2. Subject to the approval of the Secretariat, SADC PBR Office may entrust National Authorities with the exercise of specific administrative functions of such Office or establish its own sub-offices for that purpose in the Member States, subject to their consent.
3. The SADC PBR Office shall be represented by the Registrar.
4. The SADC Seed Centre shall employ or designate for such terms and conditions, a qualified person to be Registrar for Plant Breeders' Rights to perform such duties and functions conferred or imposed under this Protocol.
5. The Registrar shall be responsible for the following:
 - (a) to manage all financial and human resources under the SADC PBR Office;
 - (b) to recommend to the SADC Seed Center for the employment of other staff under the SADC PBR Office and manage the same;
 - (c) to receive applications, making evaluation and grant plant breeders' rights in accordance with this Protocol and any other conditions made thereunder;
 - (d) to establish and maintain a documentation centre for the purposes of dissemination of information on plant breeders rights;
 - (e) to maintain a PBR register and provide information on plant breeders' rights issued in the SADC region;
 - (f) to collaborate with the National Authorities and international

organizations in all matters relating to the administration of plant breeders' rights; and

- (g) to perform such other functions as are necessary for the furtherance of the objectives of this Protocol.
6. There is hereby established a Council to be known as the Plant Breeders' Rights Advisory Council (herein after referred to as "the Council") which in addition to the powers assigned to it by other provisions of this Protocol, shall have the following duties:
- (a) to receive reports of plant Breeders' Rights applications from the Registrar and make expert consideration on the PBR;
 - (b) to advise the Registrar on the grant of PBR;
 - (c) to advise on all matters for which the SADC PBR Office is responsible under this Protocol;
 - (d) to issue general and specific guidelines and direction to the Registrar as regard to the Plant Breeders' Rights as regard to the implementation of this Protocol;
 - (e) to receive proposal from the Registrar as regards to budget of the Office of the PBR and recommend the same to the Seed Centre for the approval;
 - (f) to approve the establishment or designation of any Committee for the purpose of perform specific functions under this Protocol;
 - (g) to establish rules on working methods of the SADC PBR Office;
 - (h) to issue test guidelines pursuant to this Protocol;
 - (i) to deliver opinions to, and require information from the Registrar where it considers that this is necessary for effective implementation of this Protocol;
 - (j) to advise the SADC Seed Centre on all matters pertaining to the implementation of the PBR policy or legislative frameworks within the region;

- (k) perform any other functions or exercising any powers which are necessary for effectively carrying out the purposes of this Protocol.
7. In discharging its functions under this Protocol, Council shall have the powers –
- (a) to make its own rules of procedure for conducting its business under this Protocol;
 - (b) to give to the Registrar advice of specific and general nature;
 - (c) to call applicants and other interested persons for hearing before the approval of a Plant Breeders' Right, applications.
8. The Council shall be composed of not less than seven members but not more than eleven members to be nominated by the Member States in rotational basis and in accordance with the procedures governing membership as shall be prescribed by the SADC Seed Centre from time to time .
9. The duration of the terms of office of the Members of Council shall be three years subject to renewable.
10. The Registrar shall take part in the deliberations of the Council, unless the Council decides otherwise, but he/she shall not have the right to vote.
11. The members of the Council may, subject to the provisions of its rules of procedure, be assisted by co-opted advisers or experts and for that purpose, may invite any other technical experts or observers to attend its meetings, such invitees shall not have a right to vote.
12. The Council shall hold its ordinary meeting at least twice in a year at such place as may be approved by the SADC Secretariat and the SADC PBR Office shall provide secretariat to the Council.
13. The Council shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall *ex officio* replace the Chairperson in the event of him being prevented from attending to his duties.

14. The terms of office of the Chairperson or Deputy Chairperson shall expire when their respective membership of the Council ceases.
15. The Council shall take its decisions by a simple majority and the Chairperson shall have a casting vote.
16. The English, French and Portuguese languages shall be used by the SADC PBR Office in carrying out its duties.
17. A person who is appointed as a Registrar or officer in the SADC Plant Breeders' Rights Office pursuant to this Protocol or any serving member to the Council, shall not, during the period of holding the office apply for the grant of the plant breeders' rights or acquire directly or indirectly plant breeders' rights under this Protocol except under a will or intestacy.

Article 5

Plant Breeders' Rights Register

1. The Registrar shall maintain the Plant breeders' rights register (herein after referred to as "the Register") in which shall be entered all information required to be registered under this Protocol.
2. For each registered variety, information to be listed in the register shall include-
 - (a) information relating to applications and any objects thereof;
 - (b) species and denomination of varieties;
 - (c) the full name and address of the breeder, any other hold, of plant breeders' right and each person to whom such right has 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 regulation made under this Protocol.

3. The register shall be *prima facie* evidence of any matter entered therein.
4. Any person, may upon payment of the prescribed fee, be entitled, during normal business hours, to examine the Register kept in accordance with this Article, and to make or receive copies of or extracts from the information contained therein.
5. Any person who wishes to inspect a register of Plant Breeders' Rights pursuant to sub-article 3, shall submit a written request to the Registrar, indicating clearly the information he wishes to inspect and the purpose thereof.
6. The Registrar shall have discretion to determine that particulars in the register which should be open for the public inspection.
7. The discretion referred to under sub-article 6 shall be diligently and exercised with due regard to the confidentiality of a particular information.
8. The Registrar may at his discretion or upon application by the applicant, holder of PBR or any other interested person, correct or authorize the correction of any clerical error or any omission in the description of a variety or information which appear in any application or other document lodged in terms of this Protocol or in the Register.
9. Where the correction is proposed by the Registrar or any interested person other than the applicant, and the holder of the Plant Breeders' Rights is affected by the correction, the Registrar shall give a notice of one month to the applicant or holder or that other interested person of his intention to correct the error.

PART TWO

CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

Article 6

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 conditions, provided that the variety is designated by the denomination in accordance with Article 26 of this Protocol, that the applicant complies with the formalities for the grant of the plant breeder's right established by this Protocol as recognized by the laws of the Member States and that he pays the prescribed fees.

Article 7
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 a territory of the Member State or countries of State Parties to this Protocol, earlier than one year before the date of application; and
 - (b) outside the territory of the Member State or countries of State Parties to this Protocol, 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 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 his successor in title, on condition that the multiplied material reverts to the breeder or his successor in title 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 tests or laboratory trials 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) of this paragraph, on condition that the material is sold or otherwise disposed of without variety identification for the purposes of consumption.

Article 8 **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 collection.
3. Notwithstanding sub- article (2) above, the Regulations made under this Protocol may specify further circumstances which the variety shall be deemed to be a matter of common knowledge.

Article 9
Uniformity

A variety shall be considered 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.

Article 10
Stability

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

PART FOUR
APPLICATION FOR THE GRANT OF A PLANT BREEDER'S RIGHT

Article 11

Persons entitled to Protection

1. A breeder of a new variety shall be entitled to apply at the SADC PBR Office for protection under this Protocol.
2. An application for a breeders' right may be filed by any natural or legal person and may be filed jointly by two or more such persons.
3. Such an application 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 States shall be submitted only through an

agent with residence in a SADC Member States.

Article 12
Filing of Application

1. An applicant for the plant breeders' 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 SADC PBR sub - office or National Authority, established or entrusted by the SADC PBR Office to handle the applications subject to the applicant forwarding an information on this filing to the Office directly within two weeks after filing.
2. Where an application is filed pursuant to paragraph 1(b) above, the SADC sub-office or the National Authority as the case may be, shall ensure that the application are forwarded to the SADC PBR Office within two weeks after filing.
3. The omission of forwarding information on an application to the SADC PBR Office pursuant to sub-article (2) above, does not affect the validity of the application if the application has reached the Office within one month after filing at the sub-office or National Authority.
4. National Authority may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.
5. The application shall include the following :
 - (a) The name, address and other required information of the applicant;
 - (b) an assurance that, to the best of the applicants knowledge, no further persons have been involved in the breeding, or discovery and development, of the variety; if the applicant is not the breeder, or not the only breeder, he shall provide the relevant documentary evidence as to how the entitlement to the plant breeder's right came into his possession;

- (c) information identifying the applicant or, where appropriate, the joint applicants;
 - (d) the credentials of any representative;
 - (e) identification of the botanical taxon (Botanical and common name);
 - (f) the proposed denomination for the variety or provisional designation;
 - (g) technical description of the variety;
 - (a) geographic origin of the variety;
 - (b) information on prior applications and PBR granting for the same variety.
 - (c) details of any previous commercialization of the variety;
 - (d) any other information as provided for in the Regulations made hereunder.
6. At the request of the SADC PBR Office, the applicant shall, on the date and at the place fixed by the SADC PBR Office, submit for the purpose of the examination any necessary information, documents and material determined by the SADC PBR Office.
7. The application shall be considered by the Registrar upon payment of the fees as prescribed in the Regulations.
8. The date of application for the application under this Article shall be the date on which a valid application was received by the SADC PBR Office pursuant to sub-article 1 (a) or by a sub-office or National Authority pursuant to sub-article 1(b), provided it complies with sub-article 7 to 9 above and subject to payment of the prescribed fees within a time limit specified by the SADC PBR Office.

Article 13

Priority and Redating of Applications

1. If more than one application is received by the SADC PBR Office in respect of the same variety, the Registrar shall, subject to the provisions of sub-article 13(2) give priority to the first application received.
2. If an application in terms of Article 12 of this Protocol is preceded by an application by or on behalf of the same applicant for protection of the same variety in any SADC Member States to this Protocol or International Organization that recognizes and provides for plant breeders' rights which

SADC is a member thereto, the Registrar shall, notwithstanding the provisions of sub-article 13(1) give priority to the first-mentioned application if;

- (a) it is submitted to the SADC PBR Office in the prescribed manner within a period of twelve months of the date on which the preceding application was deposited;
 - (b) it is accompanied by a claim in respect of the priority thereof; and
 - (c) it is accompanied by the prescribed application fee.
- (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 14

Documents and Material to be furnished for Priority

1. The SADC PBR Office 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 determined by the Registrar, after such rejection or withdrawal, in which to furnish to the SADC PBR Office any necessary information, document or material required for the purpose of the examination.
3. If any of the provisions of this Article is not complied with, the application shall be dealt with as if no priority has been claimed.

Article 15

Provisional Protection

1. The SADC PBR Office shall provide for provisional protection from the date that the application for the granting of the plant breeders' right has been filed until the granting of the right.
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 26 of this Protocol done during the period between the filing of the application for the grant of a plant breeder's right and the grant of that right.

Article 16

Variety Denomination

1. The applicant for a plant breeder's right shall propose a variety denomination, under which the variety will be known, in accordance with this Article.
2. The 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;
 - (b) is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the plant breeder; in particular, if it is identical to a variety denomination in any SADC Member State 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 registration of the variety denomination for which a prior right has been granted is forbidden.
5. Where a variety is already protected by a Member of an International Organization that recognizes and protects Plant Breeders' Rights which SADC

is a member thereto or where an application for the protection of the same variety is filed in such Member of an International Organization, only the variety denomination which has been proposed or registered in that other Member of an International Organization that recognizes and protects Plant Breeders' Rights may be proposed and registered, and the SADC PBR Office shall not register any other designation as a denomination for the variety unless the SADC PBR Office 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.

6. 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 SADC PBR Office may request the applicant to propose another variety denomination.
7. The SADC PBR Office shall publish in a SADC publication the variety denominations which have been proposed, or registered or cancelled.

Article 17

Use of Variety Denomination

1. Any 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 his right (trademark, trade name or other right) in the denomination against the legitimate use of his variety denomination in the 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 18

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 the denomination of a variety is forbidden to a person who is obliged to use it, the SADC PBR Office shall require the breeder to submit another denomination for the variety.

Article 19

Cancellation of a Registered Variety Denomination

1. The SADC PBR Office 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 SADC PBR Office shall request the holder of a 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 20

Publication of Information

1. The SADC PBR Office shall publish at regular intervals a SADC Publication containing the following information:
 - (a) applications for the grant of plant breeders' rights;
 - (b) information on variety denominations;
 - (c) withdrawals of applications for the grant of plant breeders' rights;
 - (d) rejections of applications for the grant of plant breeders' rights;
 - (e) grants of plant breeders' rights;
 - (f) changes in the persons (applicants, holders and agents);
 - (g) Nullification, surrender, cancellation and expiry of plant breeders' rights; 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 21

Publication of Application and Objections

1. The Registrar shall notify by a notice published in the SADC PBR Journal and notify the Member States for publication in their local newspapers every filed application that relates to a variety that satisfies, the requirements of Article 7, 8, 9 and 10 of this Protocol and the notice shall specify:-
 - (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 days after publication submit a written and reasoned objection to the SADC PBR Office.'
3. A notice of objection made under this Article shall-
 - (a) specify the grounds on which the objection is based;
 - (b) 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
 - (d) paragraph (a);
 - (e) if required by the Registrar, be supported by an affidavit or other proof; and
 - (f) contain any other information as provides for in the Regulations.
4. An objection lodged pursuant to sub-article (2), shall 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 provide 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 an interest in the variety or otherwise not entitled to make the application;
 - (d) that the applicant is not the owner of an interest in the variety or otherwise 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;
 - (i) any other reasonable ground to object the application.
5. The Registrar shall notify the applicant of the filing of an objection under this Article and shall provide a copy of the notice of objection and all supporting documents that are lodged with the objection within two weeks from the date of filing of the objection.
6. The applicant may respond to the allegations of the objector, in a written reply which shall be lodged with the Registrar, within two weeks or such further period as the Registrar may allow from the date of notification made under sub-article (5).
7. The procedures for filing of objections, replies and disposal of the objections shall be prescribed in the Regulations.

PART FIVE
DISPOSAL OF APPLICATION FOR A PLANT BREEDERS' RIGHT

Article 22

Examination of the Application

1. The SADC PBR Office shall examine the application to determine –
 - (a) whether it and its supporting documents fulfill the criteria for the grant of the Plant breeder's right as provided for in Article 6 and Article 12.
 - (b) where appropriate, a claim for priority complies with the provision laid down in Article 13 (1), (2) and (3) of this Protocol; and
 - (c) the prescribed fees have been paid within a time limit specified by the SADC PBR Office.
2. If the application, although complying with the conditions referred to in Article 13 of this Protocol, does not comply with other conditions laid down in Article 12, 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 referred to in Article 13 of this Protocol, the Office shall inform the applicant thereof, or, where this is not possible, publish the information pursuant to Article 20 of this Protocol.

Article 23

Examination for Distinctness, Uniformity and Stability

1. Where the SADC PBR Office has not discovered any impediment to the grant of a plant breeder's variety right on the basis of the examination, it shall arrange for the technical examination relating to compliance with the conditions laid down in Articles 8, 9 and 10 of this Protocol to be carried out in accordance with this Article.
2. The conduct of any technical examinations shall be in accordance with test guidelines issued by the SADC PBR Office.
3. The Office shall communicate the results of the technical examinations and the

variety description to the applicant and shall give him an opportunity to comment thereon.

4. The SADC PBR Office may, for the purposes of the examination, enter into agreements with 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 use the results of such tests that have already been carried out.

Article 24

Granting and Rejection of a Plant Breeder's Right

1. The Registrar shall grant a plant breeder's right where-
 - (a) the plant variety fulfils the requirements of novelty, distinctness, uniformity and stability as provided for under Articles 6, 7, 8, 9 and 10 of this Protocol;
 - (b) the proposed denomination of the variety comply with Article 16 of this Protocol; and
 - (c) there is no any objection filed or if filed, it does not contain any valid grounds for impendent of the grant of the PBR.
2. Where the requirements referred under sub-article (1) are not fulfilled, the Registrar shall reject the application and notify the applicant according.
3. The SADC PBR Office shall in respect of each plant breeders' right granted –
 - (d) issue a Plant Breeders' Right Certificate in respect thereof to the person who applied for the grant of the right;
 - (e) enter the applicable particulars in the register; and
 - (f) publish such particulars relating to the grant of such right as may be prescribed.
4. Where the examination shows that the proposed denomination of the variety cannot be registered, the SADC PBR Office shall request the applicant in writing to submit another denomination within a period of three months, 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;
- (b) the applicant has not remedied any deficiencies notified to him within the prescribed time which he was given an opportunity to correct or as not replied within the prescribed time limit to the official notifications issued by the SADC PBR Office, particularly where:
 - (i) the information given was erroneous or incomplete;
 - (ii) the application contained a material irregularity;
 - (iii) the variety to which the applicant refers does not satisfy the requirements of Articles 7 to 10 of this Protocol;
 - (iv) the applicant refuses or is unable to propose an acceptable denomination;
 - (v) the applicant does not comply with the payment of fees as prescribed by the Regulations.

6. The Registrar shall in respect of each rejected application -

- (a) notify its decision in writing to the applicant;
- (b) enter the applicable particulars in the register; and
- (c) publish a notice of rejection.

PART SIX RIGHTS OF THE PLANT BREEDER

Article 25

Period of protection and Entitlement to The Breeder's Right

1. Except as set forth in Part XII, the plant breeder's rights granted under this to Protocol shall expire -

- (a) in respect of trees and vines, twenty five years from the date of the grant; and
 - (b) in respect all other genera or species, twenty years from the grant thereof.
- 2. The Council, may, in respect of specific genera or species, approve for an extension of these terms up to a further five years.
- 3. Where the varieties are bred or discovered and developed by employees during the execution of their duties, the breeder's right shall be vested in their employers unless otherwise provided by the contract or understood from the nature of the work.
- 4. The breeder's right shall be vested in the employers for the variety that has been bred, discovered or developed by the employee, using the information and equipment available at work, who were not required by the contract.
- 5. The employees who bred or discovered and developed the varieties may claim a certain amount of remuneration determined by breeder and employer by taking into account the economic value of the variety.
- 6. The parties may determine the level beforehand and so include in the contract and if the parties do not agree on the level of remuneration, it shall be decided by the competent Court within their jurisdiction.
- 7. For the varieties that have been bred or discovered and developed within the framework of employment contacts other than service contracts, the right shall be vested in the client unless otherwise provided by the contract.
- 8. The Ministers responsible for agriculture within the Member States shall through regulations determine the benefit from the breeder's right to the employees of public institutions and agencies who contributed to the discovery and development of varieties in their respective public institutions or agencies.

Article 26

Scope of the Plant Breeder's Right

- 1. (a) Subject to Article 27 and 28 of this Protocol, the following acts in respect to the propagating material of a protected variety shall require the authorization of the holder of the plant breeder's right, otherwise would constitute an

infringement of the right of the holder:

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;
- (iv) selling or other marketing;
- (v) exporting;
- (vi) importing; and
- (vii) stocking for any of the purposes referred to in paragraphs (i) to (vi).

(b) the holder may make his authorization subject to conditions and limitations.

2. The actions referred to in paragraphs (i) to (vii) of sub-article 26(1)(a) 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/her right in relation to the said propagating material.

3. (a) The provisions of sub-articles 26(1) and 26(2) shall also apply in relation to varieties:

- (i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (ii) which are not clearly distinguishable in accordance with Article 8 from the protected variety; and
- (iii) whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph 26(3)(a)(i), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when:

- (i) 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;
- (ii) it is clearly distinguishable from the initial variety; and
- (iii) 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.

- (c) 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 27

Exceptions to the 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; and
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 26(3) apply, actions referred to in Article 26(1) and 26(2) of this Protocol in respect of such other varieties.
- (d) acts done by subsistence farmers for the use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings the protected variety or varieties covered by Article 26(3) (a)(i) or (ii) to this Protocol

Article 28

Exhaustion of the 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 26(3) of this Protocol, which has been sold or otherwise marketed in the SADC Region by the breeder or with his consent or any material derived from the said material, unless such actions:

- (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-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 29

Measures regulating Commerce

Plant breeders' rights shall be independent of any measure taken by SADC or by any SADC Member State to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material.

Article 30

Maintenance of the Protected Variety

1. The holder of a plant breeder's right shall, throughout the period for which the right is valid, be under an obligation to make available, at the request of the SADC PBR Office, 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 SADC PBR Office with all such information and assistance as the SADC PBR Office may request for the purpose of ensuring that the holder of the plant breeder's right is fulfilling his obligations under Article (1), including facilities for the inspection by or on behalf of the SADC PBR Office of the measures taken for the maintenance of the variety.

PART SEVEN LICENSES

Article 31 **Licensing**

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

Article 32 **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, any interested person may, in the prescribed manner and upon payment of the prescribed fee, apply to the SADC PBR Office 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 any SADC Member State, and
 - (b) the holder of the plant breeder's right concerned unreasonably refuses to grant him or her a license.
2. Any person to whom a license is granted under this Article shall pay the holder of the plant breeders' right an equitable remuneration.

PART EIGHT ASSIGNMENT AND TRANSFER OF THE PLANT BREEDER'S RIGHT

Article 33 **Assignment and Transfer of the Plant breeder's Right**

1. An application for the grant of a plant breeder's right or the plant breeder's right may be assigned or otherwise transferred in accordance with the procedures stipulated in the Regulations made thereunder.
2. The assignment or transfer shall be in writing, shall be signed by the parties

concerned and shall be registered in the Register.

3. Transfer of a plant breeder's right by assignment can be made only to successors who comply with the conditions laid down in Article 11.

PART NINE SURRENDER, NULLIFICATION AND CANCELLATION OF PLANT BREEDER'S RIGHT

Article 34

Surrender of the Breeder's Right

1. The plant breeder's right granted under this Protocol may be surrendered before expiry of the term laid down in Article 25 of this Protocol, if the holder of such right surrenders or renounces it by written declaration addressed to the SADC PBR Office.
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 SADC PBR Office.
3. Upon surrender of the breeder's right, the certificate must be returned to the SADC PBR Office.

Article 35 **Nullification**

1. The SADC PBR Office shall declare a plant breeder's right granted null and void when it is established:
 - (a) that the conditions laid down in Articles 7 or 8 of this Protocol were not complied with at the time of the grant of the plant breeder's right;
 - (b) that, 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 9 or 10 were not complied with at the time of the grant of the plant breeder's right; or

- (c) that the plant 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 plant breeder's right shall be declared null and void for reasons other than those referred to in sub-article (1) of this Article.
- 3. Subject to any provision to the contrary in this Protocol, the plant breeder's right that has been declared null and void shall be deemed never to have been granted

Article 36 **Cancellation of Plant Breeder's Right**

- 1. The plant breeder's right may be cancelled or terminated if:
 - (a) the variety no longer meets the criteria of uniformity and stability;
 - (b) the plant breeder's right holder has failed to provide to the SADC PBR Office with the information, documents or material deemed necessary for verifying the maintenance of the variety;
 - (c) the plant breeder fails to pay such fees as may be payable to keep his right in force;
 - (d) the plant breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination within the period prescribed by the Registrar.
- 2. No plant breeder's right shall be cancelled for reasons other than those referred to in sub-article (1) of this Article.
- 3. The cancellation shall take effect on the date of its entry in the Register of Plant Breeders' Rights.
- 4. Upon cancellation of the plant breeder's right, the certificate must be returned to the SADC PBR Office.

PART TEN
FEES
Article 37
Fees

The applicant and plant breeder's right holder shall pay fees to the SADC PBR Office as prescribed in the Regulations for the implementation of this Protocol.

PART ELEVEN
APPEALS AND ENFORCEMENT PROCEEDINGS

Article 38
Establishment and powers of Appeal Board

1. There shall be established within the PBR Office one or more Appeal Boards of which shall be responsible for deciding on appeals from the decisions of Registrar under this Protocol.
2. Any person who feels aggrieved by any decision or action taken by the Registrar in terms of this Protocol may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal to the SADC Seed Centre against the decision or action in question.
3. The Appeal Board shall be convened as necessary and the work allocation shall be determined in the implementing Regulations pursuant to Article 41 of this Protocol.
4. Members of the Appeal Board shall be appointed by the SADC Seed Centre for each appeal and which shall consist of –
 - (a) one person designated as Chairperson on account of his/her knowledge of law;
 - (b) two persons who in the opinion of the SADC Seed Centre have expert knowledge of the subject of the appeal.
5. Where the Appeal Board considers that the nature of the appeal so requires, it

- may request the Secretariat to co-opt other members having experience on the matter to be determined.
6. The qualifications required for the members of the Appeal Board, the term of office, powers of individual members and the voting conditions shall be determined in the implementing Regulations.
 7. The members of the Appeal Board shall be independent and in making their decisions they shall not be bound by any instructions.
 8. The members of the Appeal Boards may not be removed from office nor from the list respectively, during the respective term, unless there are serious grounds for such removal
 9. Members of the Appeal Board of may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.
 10. A member of Appeal Board may be disqualified if he has any direct or indirect personal interest in the outcome of the appeal.
 11. The appointed members of the Appeal Board shall receive remuneration as prescribed in the Regulations.
 12. An appeal lodged under this Article shall be heard on the date and at the time and place fixed by the chairperson and he/she shall advise the person appealing and any other party that has an interest in the appeal, in writing thereof.
 13. The chairperson may, for the purposes of the hearing of an appeal-
 - (i) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his control any document which has any bearing upon the subject of the hearing, to appear before him at a time and place specified in the summons, to be interrogated or to produce that document, and the registrar may retain for examination any document so produced;
 - (ii) administer an oath to or accept an affirmation from any person

called as a witness at the hearing; and

- (iii) call any person present at the hearing as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.

14. The procedure at the hearing of an appeal shall be as prescribed in the Regulations.

15. The person appealing and the Registrar shall be entitled to be represented.

16. If a member of Appeal Board-

- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in time; or
- (c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the Chairperson of the Board, the SADC Seed Centre shall designate one of the remaining members to act as Chairperson.

17. If the parties do not agree under sub-article 16, the investigation shall be adjourned in order that the SADC Seed Centre may appoint a member, in accordance with the requirements of sub-article 4 above in the place of the member who has died or has become incapacitated.

18. Where an appointment has been made under sub-article (17), the investigation shall, if the parties so agree be continued as from the stage at which the investigation was interrupted by the death or incapacitation of a member, or shall, if the parties do not so agree, be commenced *de novo*.

19. The Board may after investigation of the appeal -

- (a) confirm, set aside or vary the relevant decision or action of the registrar;
- (b) order the registrar to execute the decision of the board in connection

therewith.

20. The decision of the Board shall be in writing, and a copy thereof shall be furnished to the Registrar, the appellant and any other party.
21. If the Board sets aside any decision or action by the Registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, or, if the Board varies any such decision or action, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.
22. Actions may be brought before the SADC Tribunal against decisions of the Appeal Board on appeals.

Article 39
Civil Proceedings

1. The plaintiff in proceedings for infringement may be entitled to relief by way of:
 - (a) a preliminary injunction or civil action to prohibit the committing or continuation of committing, an infringement of the plant breeder's right;
 - (b) suspension by the authorities of the release into free circulation, forfeiture, seizure or destruction of material which has been produced in contravention of the plant breeder's right; and
 - (c) damages taking into account the pecuniary and non-pecuniary loss suffered by the holder of the plant breeder's right.
2. Civil actions concerning the infringement of a plant breeder's right granted by the SADC PBR Office can be filed before the competent civil court of the SADC Member State concerned.
3. The Regulations made under Article 41 of this Protocol shall provide for the procedures of civil proceedings under this Protocol and powers of the civil court of the SADC Member States regarding enforcement of this Protocol.

Article 40
Offences and Penalties

1. Any person:

- (a) who makes a false entry in the register or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register or a document lodged with the registrar, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy;
- (b) who makes a false statement or representation, or who furnishes false information, knowing it to be false;
- (c) who obstructs or hinders the Registrar, an officer or a person in the SADC PBR Office in the exercise of his or her powers or the carrying out of his duties under this Protocol;
- (d) who, having been duly summoned to appear at any proceedings under this Protocol, fails without lawful excuse so to appear;
- (e) who, having appeared as a witness at any proceedings under this Protocol, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
- (f) who falsely represents that propagating material sold by him for the purpose of propagation or multiplication is propagating material of a variety in respect of which a plant breeder's right has been granted under this Protocol, or that the propagating material originates from such a variety;
- (g) who, at the sale of propagating material for the purpose of propagation or multiplication, uses a denomination thereof which is different from the denomination registered in terms of this Protocol for the variety in question or uses the registered denomination of another variety of the same kind of plant or uses a denomination which corresponds to closely to a registered denomination that it is misleading; and
- (h) who discloses confidential information acquired by him in the course of his duties or in the performance of his functions under this Protocol,

shall be guilty of an offence and liable on conviction to the penalties as may be imposed by the competent court in the SADC Member State concerned.

Article 41

Regulations and Operating Procedures

1. The SADC Secretariat shall in consultation with Member States make Regulations prescribing for:
 - (a) the procedure in respect of the receiving and handling of applications, the conduct of the examination of varieties and of variety denominations, the handling of objections and appeals, application and granting of compulsory licences, 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 scale of remuneration that shall be paid to any member of the

Appeal Board appointed in terms of Article 38 of this Protocol;

- (j) any other matter relating to the administration of this Protocol.
2. Notwithstanding sub-article (2), the Council may prepare various operating procedures regarding –
- (a) handling of applications for the plant breeders rights;
 - (b) technical evaluation;
 - (c) appointment of various subcommittees and their powers;
 - (d) procedures for cooperation with other institutions as regard to the administration of this Protocol;
 - (e) any other matter relating to the administration of this Protocol which are within the powers of the Council.

Article 42

Protection of Existing Varieties

1. Notwithstanding Article 7, 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 in respect of the relevant species, subject to the following conditions:
- (a) The application shall be filed within one year following the date this Protocol came into force; 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, for the purposes of this Article, 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 7.
- 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), above, 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), above. Where relevant, the earliest of those dates shall be used.
- 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 43

Amendment of this Protocol

- 1. A Member State may propose amendments to this Protocol.
- 2. Proposals for amendment to this Protocol shall be made in writing to the SADC Executive Secretary who shall duly notify all SADC Member States of the proposed amendments, at least thirty (30) 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 Member States, and shall become effective thirty (30) days after such adoption.

Article 44

Settlement of Disputes

Any dispute arising from the interpretation or application of this Protocol which cannot be settled amicably shall be referred to the SADC Tribunal for determination.

Article 45
Withdrawal

1. A Member State may withdraw from this Protocol upon the expiry of twelve (12) months from the date of giving the SADC Executive Secretary a written notice to that effect.
2. A Member State that has given notice to withdraw pursuant to paragraph 1 of this Article 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 46
Entry into Force

This Protocol shall enter into force thirty (30) days after signature by two-thirds of the Member States.

Article 47
Accession

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

Article 48
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).

IN WITNESS WHEREOF, WE, the duly authorised representatives of our 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

.....
REPUBLIC OF BOTSWANA

.....
DEMOCRATIC REPUBLIC OF CONGO

.....
KINGDOM OF LESOTHO

.....
REPUBLIC OF MADAGASCAR

.....
REPUBLIC OF MALAWI

.....
REPUBLIC OF MAURITIUS

.....
REPUBLIC OF MOZAMBIQUE

.....
REPUBLIC OF NAMIBIA

.....
THE REPUBLIC OF SEYCHELLES

.....
REPUBLIC OF SOUTH AFRICA

.....
KINGDOM OF SWAZILAND

.....
UNITED REPUBLIC OF TANZANIA

.....
REPUBLIC OF ZAMBIA

.....
REPUBLIC OF ZIMBABWE