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## THE PRESIDENCY

No. 511 29 March 2019

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 12 of 2018: Plant Breeders' Rights Act, 2018**

## VHUPRESIDENDE

No. 511 29 March 2019

Zwi khou divhadziwa henefha uri mupresidende o tendelana na uyu mulayo une wa khou andadziwa hu u itela ngivhadzo kha tshitshavha:—

**Nom 12 ya 2018: Mulayo wa Pfanelo dza Vhasimi vha Zwimela, wa 2018**

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(English text signed by the President)  
(Assented to 27 March 2019)

# ACT

**To provide for a system whereunder plant breeders' rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be complied with for the grant of such rights; for the scope and protection of such rights; and for the grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(English text signed by the President)  
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## MULAYO

U ita mbetshelo kha sisiteme hune pfanelo dza vhasimi vha zwimela malugana na tshaka dzo fhambanaho dza dzenedzo tshaka dza miri dza nga netshedzwa; kha thod̄ea dzine dza tea u tevhedzwa musu hu tshi fhiwa idzo pfanelo; kha tshikoupu na tsireledzo dza idzo pfanelo; na kha u netshedza laisentse malugana na u shumisa idzo pfanelo; na u ita mbetshelo ya zwi kwamanaho na zwenezwo.

U KHWAHISEDZWE nga Phalamennde ya Riphabuḽiki ya Afrika Tshipembe, nga ndila i tevhelaho:—

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1. In this Act, unless the context indicates otherwise—  
 “**Advisory Committee**” means the Plant Breeders' Rights Advisory Committee 35  
 established by section 45(1);  
 “**agent**” means a person who is domiciled and resident in the Republic and who  
 has been duly authorised by a breeder or the holder of a plant breeder's right to act  
 on his or her behalf;  
 “**applicant**” means a breeder who makes an application for the granting of a plant 40  
 breeder's right in terms of section 16;  
 “**breeder**”, in relation to a variety contemplated in section 15, means—  
 (a) the person who bred, or discovered and developed, the variety;  
 (b) the employer of the person contemplated in paragraph (a), if that person is an 45  
 employee whose duties are such that the variety was bred, or discovered and  
 developed, in the performance of those duties; or  
 (c) the successor in title of the person contemplated in paragraph (a) or the  
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**SHEDULU****Thalutshedzo**

1. Kha uno Mulayo, nga nnqa ha musu zwo sumbedzwa nga inwe ndila—  
 “**Komitinyeletshedzi**” zwi amba Komitinyeletshedzi ya Pfanelo dza Vhasimi vha Zwimela yo thomiwaho nga khethekanyo ya vhu 45(1); 35  
 “**zhendedzi**” zwi amba muthu a dzulaho nahone ane a vha mudzulapo wa Riphabuliki nahone ane a fhiwaho mannda nga vhasimi kana muqe wa pfanelo ya vhasimi vha zwimela uri a v ha imele;  
 “**muhumbeli**” zwi amba musimi ane a ita khumbelo ya u fhiwa pfanelo ya musimi wa tshimela u ya nga khethekanyo ya vhu 16; 40  
 “**musimi**”, zwi tshi kwama lushaka lwo sumbedzwaho kha khethekanyo ya vhu 15, zwi amba—  
 (a) muthu we sima, kana we a tumbula na u bveledzisa, lushaka/mufuda;  
 (b) mutholi wa muthu o sumbedzwaho kha pharagirafu ya (a), arali muthu uyo a mushumi ane mishumo yawe I nga ndila yo simaho, kana u tumbula na u bveledzisa lushaka a khou shuma iyo mishumo; kana 45  
 (c) muthu o dzhiaho dzina ja muthu o bulwaho kha pharagirafu ya (a) kana muthgu o dzhielaho dzina ja mutholi o bulwaho kha pharagirafu ya (b);

- “**conditioning**”, in relation to propagating material of a plant variety, means—
- (a) cleaning, drying, coating, sorting, grading or packaging of the material;
  - (b) testing for germination and vigour; or
  - (c) any other similar treatment,
- undertaken for the purposes of preparing the material for propagation or sale; 5
- “**convention country**” means a country or intergovernmental organisation that is a member of the International Union for the Protection of New Varieties of Plants;
- “**denomination**”, in respect of a protected variety, means the denomination contemplated in section 23;
- “**Department**” means the Department responsible for agriculture; 10
- “**employee**” has the meaning ascribed to it in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but does not include an employee contemplated in the definition of breeder;
- “**essential characteristics**”, in relation to a plant variety, means heritable traits that are determined by the expression of one or more genes, or other heritable 15
- determinants, that contribute to the principal features of the variety;
- “**kind of plant**” means a group of plants of the same taxon;
- “**mark**” has the meaning ascribed to it in section 2 of the Trade Marks Act, 1993 (Act No. 194 of 1993);
- “**material**” in relation to a variety, means— 20
- (a) any propagating material;
  - (b) harvested material, including an entire plant or any part of a plant; or
  - (c) any product made directly from the harvested material;
- “**Minister**” means the Minister responsible for agriculture;
- “**persons**” includes a trust; 25
- “**Plant Breeders’ Rights Act, 1976**” means the Plant Breeders’ Rights Act, 1976 (Act No. 15 of 1976);
- “**plant breeder’s right**” means a plant breeder’s right granted in terms of section 28;
- “**prescribed**” means prescribed by regulation; 30
- “**propagating material**” means any reproductive or vegetative material of a plant from which, whether alone or in combination with other parts or products of that plant, another plant with the same characteristics can be produced;
- “**protected variety**” means a variety in respect of which a plant breeder’s right has been granted; 35
- “**register**” means the register kept in terms of section 4;
- “**Registrar**” means the employee contemplated in section 2(1);
- “**regulation**” means a regulation made in terms of section 54;
- “**sell**” includes— 40
- (a) agree to sell;
  - (b) to offer, keep, expose, send, convey or deliver for sale; and
  - (c) to exchange or to otherwise dispose of to any person in any manner;
- “**successor**”—
- (a) in relation to a breeder of a plant variety, means a person to whom the right of the breeder to make application for a plant breeder’s right in that variety has 45
  - been assigned by operation of law, testamentary disposition or otherwise; and
  - (b) in relation to a holder of a plant breeder’s right, means a person to whom that right has been assigned by operation of law, testamentary disposition or otherwise;



- “**ndugiselo**”, malugana na u bvedzwa matheriaḷa a lushaka lwa tshimela, zwi amba—
- (a) u kunakisa, u omisa u putela, u nanguludza, u vhekanya kana u paka;
- (b) ndingedzo ya u medza/ na u tshidza; kana
- (c) kufarele kuḽwe na kuḽwe, 5
- zwine izwi itwa ndivho dzi dza u lugisela matheriaḷa a u bvedzwa kana thengiso;
- “**Shango ḷine ḷa vha muraḷo**” zwi amba shango kana dzangano ḷa ṽhanganelano ya muvhuso ḷine ndi muraḷo wa dzangano ḷa Vhuthihi ha Mashango a dzitshaka-tshaka kha Tsireledzo ya Tshaka Ntswa dza Zwimela;
- “**Lushaka**”, malugana na tshaka dzo fhambanaho dzo tsireledzwaho, zwi amba 10 tshaka dzo sumbedzwaho kha khethekanyo ya vhu 23;
- “**Muhasho**” zwi amba Muhasho u re na vhuḷifhinduleli kha zwa vhulimivhufuwi;
- “**mushumi**” ipfi iḷi ḷi na vhushaka ho vhoḷhiwaho naḷo kha khethekanyo ya vhu 1 ya Mulayo wa Tshumelo ya Muvhuso wa, 1994 (Muluvho wa vhu. 103 wa 1994), fhedzi hu sa katelwi mushumi o bulwaho kha ṽhalutshedzo ya musimi; 15
- “**zwiṽtaluli zwa ndeme**”, malugana na tshaka dza zwimela, zwiamba pfukisea zwi lavheleswaho nga u vhonala ha dzhini nthihi kana dzhini nnzhi, kana zwiḽwe zwiṽtaluli zwi pfukiseleaho, zwine zwa dzhenelela kha zwiṽtaluli zwiḷulwane zwa tshaka;
- “**lushaka lwa tshimela**” zwi amba tshigwada tsha zwimela zwa khethekanyo I 20 fanaho;
- “**swaya**” ipfi iḷi ḷi amba zwine zwa fana na zwi re kha khethekanyo ya vhu 2 ya Mulayo wa Tswayo dza Thengiso wa, 1993 (Mulayo wa Nomboro ya vhu. 194 wa 1993);
- “**matheriaḷa**” zwi tshi kwama tshaka, zwi amba— 25
- (a) matheriaḷa maḽwe na maḽwe a u bvedzisa;
- (b) matheriaḷa o kaḽwaho, hu tshi katelwa tshimela tshoṽthe kana tshipiḷa tshiḽwe na tshiḽwe tsha tshimela; kana
- (c) tshibvedzwa tshiḽwe na tshiḽwe tsho itwaho tshi tshi bva kha matheriaḷa o kaḽwaho; 30
- “**Minisṽa**” zwi amba Minisṽa a re na vhuḷifhinduleli kha zwa vhulimivhufuwi;
- “**vhathu**” hu katelwa trust;
- “**Mulayo wa Pfanelo dza Vhasimi vha Zwimela, wa 1976**” zwi amba Mulayo wa Pfanelo dza Vhasimi vha Zwimela wa, 1976 (Mulayo wa Nomboro ya vhu. 15 wa 1976); 35
- “**pfanelo ya musimi wa tshimela**” zwi amba pfanelo ya musimi wa tshimela yo fhiwaho/ṽtshedzwaho hu tshi tevhedzwa khethekanyo ya vhu 28;
- “**randelwaho**” zwi amba zwo randelwaho nga ndangulo;
- “**matheriaḷa a u bvedzwa**” zwi a ba matheriaḷa maḽwe na maḽwe a bvedzulula kana matheriaḷa a vegetative a tshimela ane khao, naho a oṽthe kana o ṽtanganywa na 40 zwiḽwe zwiḷa kana zwiḷvedzwa zwa itsho tshimela, tshiḽwe tshimela tshine tsha vha na zwiṽtalululi zwi fanaho tsha nga bvedzwa;
- “**lushaka lwo tsireledzwaho**” zwi amba lushaka malugana na pfanelo ya musimi wa muri ien iyo pfanelo ndi ye ya ṽnewea;
- “**redzhisiṽara**” zwi amba redzhisiṽara yo vhulungwaho hu tshi tevhedzwa 45 khethekanyo ya vhu 4;
- “**Redzhisṽra**” zwi amba mushumi o bulwaho kha khethekanyo ya vhu 2(1);
- “**Ndangulo**” zwi amba ndangulo yo itwaho hu tshi tevhelwa khethekanyo ya vhu 54;
- “**rengisa**” hu katelwa— 50
- (a) u tenda u rengisa;
- (b) u ṽnea, vhulunga/fara, aḽadza, rumela, endedza hu tshi itelwa u rengisa; na
- (c) u ṽnekana kana iḽwe ḽdila ya u fha muthu muḽwe na muḽwe nga ḽdila ifhio na ifhio;
- “**a tevhelaho**”— 55
- (a) zwi tshi kwama musimi wa lushaka lwa tshimela, zwi amba muthu ane khae pfanelo ya musimi ya u ita khumbelo ya pfanelo ya musimi wa tshimele kha ulo lushaka yo fhiwa ene hu tshi shumiswa mulayo, wiḷi kana iḽwe ḽdila; nahone
- (b) zwi tshi kwama mufari/ muṽe wa pfanelo ya musimi wa tshimela, zwi amba 60 muthu o fhiwaho pfanelo hu tshi khou shumiswa mulayo, zwa wiḷi ya u ṽnea kana iḽwe ḽdilavho;

“**this Act**” includes the regulations;

“**variety**” means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether or not the conditions for the grant of a plant breeder’s right are fully met, can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes; 5
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged. 10

## CHAPTER 1

### REGISTRAR AND REGISTER OF PLANT BREEDERS’ RIGHTS

#### Designation and functions of Registrar

2. (1) Subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and after following the recruitment processes prescribed by and in terms of that Act, the Minister must appoint and designate a person as the Registrar of Plant Breeders’ Rights. 15

(2) The Registrar is the authority to whom the protection of varieties is entrusted and must perform the functions entrusted to the Registrar under this Act.

#### Exercise of discretionary powers by Registrar

3. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)— 20

- (a) any discretionary power conferred on the Registrar in terms of this Act must not be exercised by him or her to the prejudice of any applicant or any other person who appears to the Registrar to be an interested party, without giving such applicant or such other person an opportunity to be heard within such period as may be so prescribed or, if no period has been prescribed, within such reasonable period as the Registrar may determine; and 25
- (b) an applicant or other interested party referred to in paragraph (a) may not waive the right to be heard.

(2) Whenever a period is specified under this Act within which any act or anything must be done, the Registrar may, except where otherwise expressly provided, extend the period. 30

#### Register of plant breeders’ rights

4. (1) The Registrar must keep a register in which the prescribed particulars in respect of all applications for plant breeders’ rights in terms of this Act must be entered. 35

(2) The register must be open for inspection at the office of the Registrar.

(3) The Registrar must furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register within seven days.

#### Register to be evidence

5. (1) The register is *prima facie* evidence of all matters directed or authorised by this Act to be noted therein. 40

(2) A copy of an entry in the register or an extract from the register, certified by the Registrar, may be admitted in evidence in any court without further proof or production of the register.

- “uno Mulayo” u katela ndangulo;  
 “lushaka” zwi amba tshigwada tsha tshimela tshinwe na tshinwe tshi welaho kha khethekano yeneyo ya tshimela kha renke ya fhasisa I qivheaho, tshine tshigwada, hu songo lavheleswa nyimele dza u fha kana u sa fha pfanelo ya musimi wa tshimela uri idzo nyimele dzo fusha naa, lu nga— 5
- (a) talutshedzwa nga u sumbedza zwiṭaluli zwi bvaho kha lushaka/mufuda kana ṭhanganelo ya dzitshaka;
- (b) fhambanywa na tshinwe tshigwada tsha zwimela nga u sumbedza tshinwe tsha zwiṭaluli zwo mbulwaho; na
- (c) dzhiiwa sa yuniti malugana na u tea halo kha u vha lo bvededzawho lu songo shandukiswa. 10

### NDIMA YA 1

#### REDZHISṬRA NA REDZHISṬARA YA PFANELO DZA VHASIMI VHA ZWIMELA

#### U nangwa ha Redzhiṣṭra na mishumo yawe 15

2. (1) Hu tshi tevhedzwa Mulayo wa Tshumelo dza Muvhuso, wa 1994 (Mulevho wa nomboro ya vhu. 103 wa 1994), nahone nga murahu ha u tevhela maitele a u thola o randelwaho nga uyo Mulayo, Miniṣṭa u tea u thola na u nanga muthu sa ene Redzhiṣṭra wa Pfanelo dza Vhasimi vha Zwimela.

(2) Redzhiṣṭra ndi ene maanḍalanga ane tsirededzo ya tshaka ndi vhuḍifhinduleli hawe nahone u tea u shuma mishumo ya vhuḍifhinduleli ha Redzhiṣṭra nga fhasi ha uno Mulayo. 20

#### U shumisa maanḍa nga Redzhiṣṭra

3. (1) Hu tshi tevhedzwa Mulayo wa Ṭhuthuwedzo ya Ndaulo ya Vhulamukanyi, wa 2000 (Mulayo wa nomboro ya vhu. 3 wa 2000)— 25

(a) maanḍa afhio na afhio o hweswaho Redzhiṣṭra u ya nga uno Mulayo a songo shumiselwa u ṭalula kha muhumbule ufhio na ufhio kana muthu muṅwe na muṅwe ane takalelwa nga Redzhiṣṭra, hu songo fhiwa uyo muthu tshikhala tsha uri uyo muthu a thetsheswe nga tshifhinga tshenetsho tsho randelwaho kana, arali hu sina tshifhinga tsho randelwaho, hu vhe tshifhinga tshi pfadzaho tshine tsha ḍo vha tsho tiwa nga Redzhiṣṭra; nahone 30

(b) muhumbeli kana muṅwe muthu ane a vha na dzangalelo sa zwo sumbedzawho kha phara ya (a) a nga si litshe ndugelo ya u thetsheswa.

(2) Misi yoṭhe musi tshifhinga tsho ṭaluswa nga fhasi ha uno Mulayo uri tshithu tshi itwe, Redzhiṣṭra a nga engedza tshifhinga nga nḍa ha msui zwo ambiwa nga inwe nḍila. 35

#### Redzhiṣṭara ya pfanelo dza vhashumi vha zwimela

4. (1) Redzhiṣṭra u tea u vhulunga redzhiṣṭara ine khayoy zwidodombedzwa zwo randelwaho malugana na khumbelo dzoṭhe dza pfanelo dza vhasimi vha zwimela u ya nga uyu Mulayo dza dzheniswa. 40

(2) Redzhiṣṭara henefho ofisini ya Redzhiṣṭra I tea u ṭolwa.

(3) Redzhiṣṭra u tea musi ho itwa khumbelo nga muthu muṅwe na muṅwe nahone mbadelo yo randelwaho yo itwa u te u netshedza muthu uyo khophi ya zwidodombedza zwi re kha redzhiṣṭara hu sa athu fhela maḍuvha a sumbe.

#### Redzhiṣṭara i vha yone vhuṭanzi 45

5. (1) Redzhiṣṭara ndi yone vhuṭanzi vhuṭukusa kha mafhungo oṭhe o laelwaho kana o tendelwaho nga uyu Mulayo.

(2) Khophi ya zwo dzheniswaho kha redzhiṣṭara kana zwo dzhiwaho zwi tshi bva kha redzhiṣṭara, zwo khwaṭhisedzawho nga Redzhiṣṭra, zwi ḍo dzhiiwa sa vhuṭanzi kha khothe dzoṭhe hu sa ṭoḍei na inwe tsumbo kana inwe khwaṭhisiedzo. 50

### Inspection of documents submitted in connection with an application for plant breeder's right

6. (1) Any person may inspect any document submitted in connection with an application for a plant breeder's right at any reasonable time and upon payment of a prescribed fee. 5
- (2) The Registrar must furnish a person contemplated in subsection (1), on payment of a prescribed fee, with a copy of the document contemplated in that subsection within seven days.
- (3) Notwithstanding subsections (1) and (2) but subject to subsection (4), a person may not— 10
- (a) inspect that part of the document in question that contains information in respect of the name of each variety used in the breeding program and in respect of the manner in which the variety was bred;
  - (b) be furnished with a copy of the part of the document referred to in paragraph (a); or 15
  - (c) inspect, or be furnished with a copy of, any other prescribed confidential information.
- (4) Subsection (3) does not apply to— 20
- (a) the applicant;
  - (b) the applicant's authorised agent; or
  - (c) any other person who has to inspect that part of the documentation or information contemplated in subsection (3) in the course of the performance of any function entrusted to him or her in terms of this Act.

## CHAPTER 2

### PLANT BREEDER'S RIGHT 25

#### Protection given to holder of plant breeder's right

7. (1) The protection given under this Act to the holder of a plant breeder's right is that prior authorisation has to be obtained for the duration of the plant breeder's right from that holder, by way of a licence granted or issued in terms of section 34 or section 36, by any person intending to undertake— 30
- (a) the production or reproduction (*multiplication*) of the protected variety;
  - (b) the conditioning for the purposes of propagation of the protected variety;
  - (c) the sale or any other form of marketing of the protected variety;
  - (d) the exporting of the protected variety;
  - (e) the importing of the protected variety; or 35
  - (f) the stocking of the protected variety for any of the purposes referred to in paragraphs (a) to (e).
- (2) (a) The undertaking of any activity referred to in subsection (1)(a) to (f) in respect of harvested material obtained through the unauthorised use of propagating material of the protected variety also requires the authorisation of the holder of the plant breeder's right concerned, unless that holder has had reasonable opportunity to exercise his or her right in respect of that propagating material. 40
- (b) For the purposes of paragraph (a), "harvested material" includes an entire plant, any part of such plant or any product made directly from harvested material of such plant. 45
- (3) (a) Subsections (1) and (2) also apply to a variety—
- (i) that is essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
  - (ii) that is not clearly distinguishable from the protected variety in accordance with section 15(2)(b); or 50
  - (iii) whose production requires the repeated use of the protected variety.
- (b) For the purposes of paragraph (a)(i), a variety must be regarded as being essentially derived from another variety if—
- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety; 55



- (ii) it is clearly distinguishable from the initial variety; and
- (iii) 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 except for the differences which result from the act of derivation.

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#### **Duration of plant breeder's right**

**8.** (1) A plant breeder's right is valid for a period of 20, 25 or 30 years depending on the particular kind of plant, calculated from the date on which the certificate of registration is issued in terms of section 28(b).

(2) The period of validity of the plant breeder's right in respect of a particular kind of plant must be prescribed.

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#### **Period of sole right**

**9.** (1) The holder of a plant breeder's right has the sole right to undertake any activity referred to in section 7(1), or to have any such activity undertaken by any other person, during such period as may be prescribed as a period for the exercise of sole rights in respect of the kind of plant to which such a variety belongs.

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(2) During the period prescribed in terms of subsection (1) the Registrar may not order the issue of a compulsory licence in terms of section 36 in respect of the variety in question.

#### **Exceptions to plant breeder's right**

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**10.** (1) Notwithstanding section 32(a), a plant breeder's right in respect of a variety obtained in a legitimate manner does not extend to—

- (a) any act done in respect of that variety for private and non-commercial purposes;
  - (b) any act done in respect of that variety for experimental purposes;
  - (c) any act done in respect of that variety for the purposes of breeding other varieties and, except where section 7(3) applies, any act contemplated in section 7(1) and section 7(2) in respect of such other varieties; or
  - (d) a farmer who uses the protected variety in accordance with subsection (2).
- (2) (a) In respect of subsection 1(d), the Minister must prescribe—
- (i) the category or categories of farmers who may use the protected variety;
  - (ii) the category or categories of plants that may be used;
  - (iii) the uses to which the protected variety may be put; and
  - (iv) where applicable—
    - (aa) conditions for payment of royalties; and
    - (bb) labelling requirements.

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(b) When the Minister acts in terms of paragraph (a), the Minister must ensure that the legitimate interests of the breeder are safeguarded.

#### **Exhaustion of plant breeder's right**

**11.** A plant breeder's right does not extend to any act concerning any material of the protected variety or of a variety covered by section 7(3) that has, in the Republic, been sold or otherwise marketed by the holder of a plant breeder's right concerned, or sold or otherwise marketed with his or her written authorisation, or any material derived from the said material, unless the act—

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- (a) involves further propagation of the variety in question; or
- (b) involves exportation of material of the variety in question, which enables the propagation of the variety, into any country that does not protect varieties of the particular kind of plant, except where the exported material is for consumption purposes.

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**Joint holders of plant breeder's right**

- 12.** (1) Where a plant breeder's right is granted to two or more persons jointly, each such person is, subject to any written agreement to the contrary between them, entitled—
- (a) to an equal share in such right; 5
  - (b) to undertake in connection therewith for his or her own benefit any activity referred to in section 7, if he or she discloses any such activity in writing to the other joint holders; and
  - (c) to institute any action in respect of any infringement of that right.
- (2) A joint holder of a plant breeder's right may not without the written authorisation of the other joint holders— 10
- (a) grant a licence under section 34; or
  - (b) transfer the whole or any part of his or her interest in such right.

**Transfer of plant breeder's right**

- 13.** (1) The holder of a plant breeder's right must, after such right or any part thereof has been transferred to any other person, in the prescribed manner inform the Registrar of the name and address of the person to whom the right or part thereof has been transferred. 15
- (2) A person to whom a plant breeder's right or any part thereof has been transferred must, if he or she appoints an agent in respect of such right, inform the Registrar in the prescribed manner of the name and address of such agent. 20

**State bound by plant breeder's right**

- 14.** A plant breeder's right binds the State in all respects in the same way as it binds any other person.

**CHAPTER 3**

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**APPLICATION FOR PLANT BREEDER'S RIGHT****Varieties in respect of which plant breeders' rights may be granted**

- 15.** (1) A plant breeder's right may be granted in respect of any variety of all plant genera and species, if it is new, distinct, uniform and stable and has an acceptable variety denomination. 30
- (2) A variety contemplated in subsection (1) must be regarded as—
- (a) new, if propagating material or harvested material thereof has not been sold or otherwise disposed of by, or with the consent of, the breeder for the purposes of exploitation of the variety before the date of filing of the application for a plant breeder's right— 35
    - (i) in the Republic, for a period of not more than one year; and
    - (ii) in any other country, in the case of—
      - (aa) varieties of vines and trees, for a period of not more than six years; or
      - (bb) other varieties, for a period of not more than four years; 40
  - (b) 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;
  - (c) uniform, if it is sufficiently uniform with regard to the characteristics of the variety in question taking into account the variation that may be expected from the particular features of the propagation of that variety; and 45
  - (d) stable, if the characteristics thereof remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
- (3) Subsection (2)(a) does not apply to the sale of plant material of a plant variety to a person by, or with the consent of, the breeder if— 50
- (a) the sole purpose of the sale is for the person to multiply plant material of that plant variety on behalf of the breeder;



**Pfanelo ya vhasimi vha zwimela ine vhuṅe hayo ndi muṅanganelano**

12. (1) Hune pfanelo ya musimi wa tshimela ya vha yo fhiwa vhatu vhavhili kana vhanzhi vho ṅanganelana, muṅwe na muṅwe wavho, zwi tshi itwa nga thendelano yo tou ṅwalwaho vhukati havho, o tea—

- (a) u vha na mukovhe u linganaho kha iyo pfanelo; 5
- (b) u shuma zwine zwa kwama zwine zwa muedza sa zwe zwa sumbedzwa kha khethekanyo ya vhu 7, arali a bvukulula uyo mushumo nga u tou ṅwala kha avho vhaṅwe ngae; nahone
- (c) ita nyito iṅwe na iṅwe malugana na u pfukwa ha iyo pfanelo.

(2) Muṅe wa pfanelo ya musimi wa tshimela ya muṅanganelano hu sina thendelo yo tou ṅwalwaho I bvaho kha vhaṅwe ngaao a nga si— 10

- (a) fhe laisentse nga fhasi ha khethekanyo ya vhu 34; kana
- (b) rathise tshipiḁa tsha nzwalelo yawe kana hu nzwalelo dzoṅhe kha iyo pfanelo.

**U fhirisa pfanelo ya vhasimi vha zwimela**

13. (1) Muṅe wa pfanelo ya musimi wa tshimela u tea, uri nga murahu ha iyo pfanelo kana tshipiḁa tshenetsho tsho rathiselwa kha muṅwe muthu, nga ṅḁila yo randelwaho a vhudze Redzhiṅtra ḁirese na dzina la muthu ane pfanelo kana tshipiḁa tshayo tsho rathiswa. 15

(2) Muthu ane pfanelo yawe yo rathiswa u tea, arali a thola zhendzi malugana na iyo pfanelo, u vhudza Redzhiṅtra dzina na ḁirese zwa zhendedzi ilo nga ṅḁila yo randelwaho. 20

**Muvhuso u a vhoṅheha nga pfanelo ya vhasimi vha zwimela**

14. Pfanelo ya musimi wa tshimela i vhoṅheha Muvhuso nga ṅḁila i fanaho na iyo i vhoṅheha muthu muṅwe na muṅwe.

**NDIMA YA 3**

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**KHUMBELO YA PFANELO YA VHASIMI VHA ZWIMELA****Tshaka malugana na pfanelo dza vhasimi vha zwimela dzine dza nga ṅetshedzwa**

15. (1) Pfanelon ya musimi wa tshimela I nga ṅetshedzwa malugana na lushaka luṅwe na luṅwe lwa zwimela zwa *plant genera na species*, arali zwi zwiswa, zwi na phambano, fana na stable nahone zwi na lushaka lu ṅanganedzeaho. 30

(2) Lushaka lwo sumbedzwaho kha khethekanyo ṅhukhuya vhu (1) lu tea u dzhiwa sa—

- (a) luswa, arali matheriaḁa a u bvedza kana matheriaḁa o kaṅwaho a songo rengiswa kana u laṅwa nga, kana hu na thendelo ya, musimi ndivho dzi dza u shumisa/ lushaka ophanḁa ha musi datumu ya u faela khumbelo ya pfanelo ya musimi wa tshimela— 35
  - (i) kha Riphabuḁiki, lwa tshifhinga tshi sa fhiri ṅwaha muthihi; na
  - (ii) kha shango ḁifhio na ḁifhio, arali—
    - (aa) hu tshaka dza munḁirivhe na miri, lwa tshifhinga tshi sa fhiriho miṅwaha ya rathi; kana 40
    - (bb) hu dziṅwe tshaka, lwa tshifhinga tshi s fhiriho miṅwaha miṅa;
- (b) lwo fhambanaho, arali hu na phambano ire khagala u bva kha dziṅwe tshaka dzine u vha hone hadzo zwi tou ḁivhea lwo ḁowealeho nga tshifhinga tsha u faela khumbelo;
- (c) lu fanaho, arali lu hu na u fana zwo linganelaho malugana na zwiṅaluli zwa lushaka lu kwameaho hu tshi dzhielwa ṅḁha phambano ine ya nga lavhelelwa kha zwenezwo zwiṅaluli zwa u bvedza ulo lushaka; na 45
- (d) lwo rombaho, arali zwiṅaluli zwa ḁi dzula zwi songo shanduka nga murahu ha ndovhololo ya u bvedza kana, arali hu yeneyo sekele ya u bvedza, ngai magumoni a sekele iṅwe na iṅwe. 50

(3) Khethekanyo ṅhukhu ya vhu (2)(a) a I shumi kha thengiso ya matheriaḁa a tshimela tsha lushaka kha muthu nga, kana hu na u thendelo ya, musimi arali—

- (a) ndivho nthihi ya thengiso kha muthu u itelka u andisa matheriaḁa a tshimela ya lushaka lwa itsho tshimela vhuimoni ha musimi;

- (b) by virtue of the agreement of sale, ownership in the new plant material vests in the breeder immediately after the plant material has been multiplied; or
- (c) the sale is part of an agreement under which the person agrees to use plant material of that variety for the sole purpose of evaluating the variety in one or more of the following tests or trials: 5
- (i) field trials;
  - (ii) laboratory tests;
  - (iii) small-scale processing trials; or
  - (iv) tests or trials prescribed for the purposes of this paragraph.
- (4) For the purposes of subsection (2)(b), the filing of an application for the— 10
- (a) granting of a plant breeder's right; or
  - (b) entering in an official register of varieties,
- of another variety in any country, renders that other variety a matter of common knowledge from the date of such application, if such application results in the granting of a plant breeder's right of that other variety or the entering in the official register of varieties of the said other variety, as the case may be. 15

#### **Application for grant of plant breeder's right**

- 16.** (1) An application for the grant of a plant breeder's right must be made by an applicant in the prescribed manner and must be accompanied by the following documents and non-refundable fees— 20
- (a) An application form obtainable from the office of the Registrar, duly completed;
  - (b) a technical questionnaire in respect of a kind of plant of the variety in question obtainable from the office of the Registrar, duly completed;
  - (c) such application fee and such examination fee as may be prescribed; 25
  - (d) written proof of the appointment of an agent by the breeder, if applicable; and
  - (e) written proof of the transfer of the variety to the applicant, if applicable.
- (2) If the applicant is not domiciled and resident in the Republic, the application must be submitted through an agent.
- (3) The Registrar must notify the applicant of any outstanding documentation or information within 21 days of receiving the application. 30
- (4) The applicant must furnish the Registrar with any documentation or information required by the Registrar within three months of the notification contemplated in subsection (3), failure of which may result in the application being returned to the applicant. 35
- (5) (a) The effective filing date is the date on which the requirements of subsection (1) have been met.
- (b) Copies of documents referred to in subsection (1)(e) to (f) may be submitted in order to secure a filing date, but the original documents must be submitted to the Registrar within three months of the filing date. 40
- (6) In the event that a variety may not be used without prior approval in terms of other legislation, the application must be accompanied by the relevant permit or proof of general release for the variety issued in terms of such legislation.

#### **Priority and redating of applications**

- 17.** (1) If an application in terms of section 16 is preceded by another application by 45 or on behalf of the same applicant for protection of the same variety in a convention country, and such other application has been deposited in accordance with the laws in force in the convention country in question, the Registrar must give priority to the application submitted in terms of section 16, if it is—
- (a) submitted to the Registrar in the prescribed manner within a period of 12 50 months of the date on which such other application was duly filed in the convention country in question; and
  - (b) accompanied by the prescribed fee.

- (b) nga vhanga la thendelano ya thengiso, vhuṅe kha matheriaḷa mawa a tshimela o hweswa musimi nga murahu ha musu matheriaḷa a tshimela o andiswa; kana
- (c) thengiso I tshipiḷa tsha thendelano nga fhasi ha muthue ane a thenda zwa u shumisa matheriaḷa a tshimela a ulu lushaka u itela ndivho nthihi ya u sengulusa lushaka kha nthihi kana vhunzhi ha ndingu dzi tevhelaho: 5
- (i) ndingedzo hune zwa khou itwa hone;
- (ii) ndingo dza laborotahri;
- (iii) ndingo dza maitele maṭuku; kana
- (iv) ndingo dzo randelwaho u itela ndivho dza ino phara.
- (4) U itela ndivho dza khethekanyo ṭhukhu ya vhu (2)(b), u faela khumbelo ya u— 10
- (a) ṅetshedza pfanelo ya musimi wa tshimela; kana
- (b) u dzhenisa luṅwe lushaka kha redzhisitara ya tshiofisi ya tshaka, Kha shango ḷiṅwe na ḷiṅwe, zwi tea u dzhiwa hu ṅḷivho yo ḷowealeho u bva datumu ya iyo khumbelo, arali mvelelo dza khumbelo kha u fha pfanelo ya musimi wa tshimela kana u dzhenisa lushaka lwo bulwaho kha redzhisitara ya tshiofisi ya tshaka, sa zwine zwa nga vha. 15

### Khumbelo ya u fhiwa pfanelo ya vhasimi vha zwimela

16. (1) Khumbelo ya u ṅewa pfanelo ya musimi wa tshimela I tea u itwa nga muhumbeli nga ṅḷila yo randelwaho nahone I fhelekedzwe nga maṅwalwa a tevhelaho na tshelede ine ya badelwa a I nga humiswi— 20
- (a) Fomo ya khumbelo ine ya wanala ofisini ya Redzhiṣtra, yo ḷadziwa nga ṅḷila yo teaho;
- (b) mutevhe wa mbudziso wa thekhnikaḷa malugana na lushaka lwa tshimela tsha ulu lushaka lu kwameaho mutevhe u wanalaho ofisini ya Redzhiṣtra, na wone wo ḷadziwa nga ṅḷila yo teaho; 25
- (c) iyo tshelede ya khumbelo na iyo tshelede ya ṭhaṭhuvho sa zwe zwa randelwa;
- (d) kwhaṭhisedzo yo tou ṅwalwaho ya u tholwa ha zhendedzi nga musimi, arali zwo tea; na
- (e) kwhaṭhisedzo ya u rathisa lushaka u ya kha muhumbeli, arali zwo tea.
- (2) Arali muhumbeli a sa dzuli nahone a si mudzulapo wa Riphabuḷiki, khumbelo I tea u iswa nga kha zhendedzi. 30
- (3) Redzhiṣtra u tea u ḷivhadza muhumbeli nga ha ḷiṅwalwa ḷine ḷa khouṭahela kana mafhungo hu saathu u fhela maḷuvha a 21 musu o ṭanganedza khumbelo.
- (4) Muhumbeli u tea u fha Redzhiṣtra ḷiṅwalwa ḷiṅwe na ḷiṅwe kana mafhungo a ṭḷḷwaho nga Redzhiṣtra hu saathu u fhela miṅwedzi miraru o wana ṅḷivhadzo sa zwo sumbedzwaho kha khethekanyo ṭhukhu ya vhu (3), u kundelwa izwo zwi nga ita uri khumbelo I humiselwe kha muhumbeli. 35
- (5) (a) Ḷuvha ḷa u thoma u faela khumbelo ndi ḷuvha ḷine ṭhoḷea dza khethekanyo ṭhukhu ya vhu (1) dza fushwa.
- (b) Khophi dza maṅwalwa o ambiwaho kha khethekanyo ṭhukhu ya vhu (1)(e) u ya kha (f) dzi nga iswa u itela u wana datumu ya u faela, fhedzi maṅwalwa a vhukuma a tea u iswa kha Redzhiṣtra hu saathu u fhela miṅwedzi miraru ya datumu ya u faela. 40
- (6) Kha nyimelel ya musu lushaka lwa tshimela klu sa ḷo shumiswa hu saathu wanala thendelo u thoma u ya nga mulayosiṅwa, khumbelo i tea u fhelekedzwa nga thendelo kana kwhaṭhisedzo ya mvisonyangaredzi ya lushaka yo ṅetshedzwaho hu tshi tevhelwa uyo mulayosiṅwa. 45

### Zwa ndemesa na u shandukisa datumu ya khumbelo

17. (1) Arali khumbelo u ya nga khethekanyo ya vhu 16 yo rangelwa nga iṅwe khumbelo kana I vhuimoni ha khumbelo yeneyo nthihi ya tshireledzo ya lushaka lwa tshimelela tshenetsho tshithihi kh ashango ḷa convention, nahone iyo iṅwe khumbelo yo dzheniswa u ya nga milayo ine ya khou shumiswa kha shango ḷo tendelanwaho naḷo ḷi kwameaho, Redzhiṣtar u tea u dzhielesa ṅṅha khumbelo u thoma yo ḷiswaho u ya nga khethekanyo ya vhu 16, arali yo— 50
- (a) iswa kha Redzhiṣtra nga ṅḷila yo randelwaho hu saathu u fhela tshifhinga tsha miṅwedzi ya 12 tsha datumu ine iyo iṅwe khumbelo yo vha yo faeliswa zwone ngayo kha shango ḷo tendelwanwaho naḷo line la kwamwea; na 55
- (b) yo fhelekedzwa nga tshelede yo randelwaho.

(2) An application contemplated in subsection (1)(a) must be confirmed within three months by submitting a copy, certified as correct by the appropriate authority in the relevant country, of each document that constituted the relevant preceding application.

(3) The Registrar must allow the applicant to, within two years after the—

(a) expiration of the period of priority; or

(b) first application is rejected or withdrawn,

furnish the relevant information, documents or material required for the purposes of undertaking the tests and trials in terms of section 26.

(4) If two or more applications for the protection of the same variety have been deposited on different dates in different convention countries, the period referred to in subparagraph (1)(a) must be calculated as from the date on which the earliest of such applications was deposited with the appropriate authority.

(5) During the period referred to in subsection (1)(a), the filing of another application, the publication or use of the variety that is the subject of the first application or such other event as may be prescribed does not constitute grounds for the rejection of the subsequent application.

### **Provisional protection**

**18.** (1) An applicant has provisional protection in respect of the variety in question from the filing date of the application for a plant breeder's right until the granting or refusal thereof.

(2) An applicant who has provisional protection in a plant variety in terms of this section may not institute proceedings for any alleged infringement of such right during the period of provisional protection.

(3) The effect of provisional protection is that the applicant is entitled to equitable remuneration from any person who, during the period of provisional protection, carries out any act contemplated in section 7 that would, once the plant breeder's right is granted, require the authorisation of the holder of the plant breeder's right.

(4) An applicant has the provisional protection contemplated in subsection (3) only in respect of a person who has been notified in the prescribed manner.

### **Rejection of application**

**19.** (1) The Registrar must reject an application made in terms of section 16, if—

(a) the application does not comply with any provision of this Act;

(b) the variety in respect of which the application is made does not fulfill the requirement contemplated in section 15(2)(a);

(c) the applicant is not entitled to make an application under this Act;

(d) the application contains a misrepresentation; or

(e) the applicant refuses or has failed to or is not able to propose an acceptable denomination.

(2) If the Registrar rejects an application in terms of subsection (1), the Registrar must advise the applicant in writing of the rejection and must state the reasons for the rejection within 21 days of the rejection.

### **Acceptance and registration of application**

**20.** If the Registrar accepts the application, the Registrar must register the application and must notify the applicant in writing of the acceptance within 21 days of the registration of the application.

### **Amendment of application**

**21.** An applicant whose application has been registered in terms of section 20 may, at any time before or after the granting of a plant breeder's right, apply in the prescribed manner to the Registrar for the amendment of that application, subject to the approval of the Registrar and upon payment of the prescribed non-refundable fee: Provided that such amendment does not affect the description of the variety which is the subject of the application.

(2) Khumbelo yo sumbedzwaho kha khethekanyo ya vhu (1)(a) I tea u khwaṭhisedzwa hu saathu u fhela miṅwedzi miraru nga u isa khophi, yo khwaṭhisedzwaho uri a yongo khakhea nga maanḡalanga o teaho kha shango ḡo teaho, ya ḡinwalwa ḡinwe na ḡinwe ḡo teaho ḡo rangelaho khumbelo.

(3) Redzhiṡtra u tea u tendela muhumbeli, hu saathu u fhela miṅwaha mivhili nga 5 murahu ha—

(a) u fhirelwa ha tshifhinga tsha iyo ndeme; kana

(b) khumbelo ya u thoma musi yo haniwa kana u humiswa,

uri ene muhumbeli a fhe Redzhiṡtra nḡivhiso, maṅwalwa kana matheriala o teaho ane a ṡoḡea u itela ndivho dza u ita ndingo u ya nga khethekanyo ya vhu 26. 10

(4) Arali khumbelo mbili kana nṅzhi dza zwa tsireledzo ya lushaka luthihi yo/dzo iswa nga datumu dzo fhambanaho kha mashango a mulanganelano o fhambanaho, tshifhinga tsho ambiwaho kha khethekanyo ṡhukhu ya vhu (1)(a) tshi tea vhalelwa u bva kha datumu mathomo-thomo musi khumbelo I tshi iswa kha maanḡalanaga o teaho.

(5) Nga tshifhinga tsho ambiwaho kha khethekanyo ṡhukhu ya vhu (1)(a), u faelwa ha inwe khumbelo, u anḡadwa kana u shumisa lushaka lwa tshimela zwi edza khumbelo ya mathomoni kana u itea hune ha nga randelwa a zwi vhumbe mbuno dza u hana khumbelo ine ya tevhela. 15

### Mbetshelo ya tsireledzo

18. (1) Muhumbeli u na tsireledzo ya tshifhinganyana malugana na lushaka lu kwameaho u bva kha datumu ya u faela khumbelo ya pfanelo ya musimi wa tshimela u swika ḡuvha ḡa u ṅetshedza kana u hana pfanelo iyo. 20

(2) Muhumbeli a re na tsireledzo ya tshifhinganyana kha lushaka lwa tshimela u ya nga ino khethekanyo a nga ita uri hu vhe na u senga/khothe arali hu na u pfukwa ha iyo pfanelo nga tshifhinga tsha musi hu na tsireledzo ya tshifhinganyana. 25

(3) Tsireledzo ya tshifhinganyana i tendela muhumbeli a tshi wana mbadelo yo linganaho u bva kha muthu ufho na ufho any person who, during the period of provisional protection, a shuma mushumo wo bulwaho kha khethekanyo ya vhu 7 zwine zwa ḡo, musi pfanelo yo ṅetshedzwa, ha ṡoḡea thendelo ya muṅe wa pfanelo.

(4) Muhumbeli u na tsireledzo ya tshifhinganyana yo sumbedzwaho kha khethekanyo ṡhukhu ya vhu (3) fhedzi zwi tshi kwama muthu o ḡivhadzwaho nga nḡila yo randelwaho. 30

### Uhanwa ha khumbelo

19. (1) Redzhiṡtra u tea u hana khumbelo yo itwaho hu tshi tevhedzwa khethekanyo ya vhu 16, arali— 35

(a) khumbelo I sa anani na mbetshelo ya uno Mulayo;

(b) lushaka lwa tshimela malugana na khumbelo yo itwaho I sa fushi ṡoḡea dza dzo sumbedzwaho kha khethekanyo ya vhu 15(2)(a);

(c) muhumbeli a sa tei u ita khumbelo nga fhasi ha uno Mulayo;

(d) khumbelo I na mazwifhi; kana 40

(e) muhumbeli a hana kana u kundelwa u kana a sa dzinginya/ propose tshaka dzi ṡanganedzeaho.

(2) Arali Redzhiṡtra a hana khumbelo u ya nga khethekanyo ṡhukhu ya vhu (1), Redzhiṡtra u tae u vhudza muhumbeli nga u tou ṅwala nahone u tea u bula mbuno uri ndi ngani khumbelo yo haniwa hu saathu fhela maḡuvha a 21. 45

### Uṡanganedza na u ṅwalisa khumbelo

20. Arali Redzhiṡtra a ṡanganedza khumbelo, Redzhiṡtra u tea u tea ṅwalisa khumbelo nahone u tea u ḡivhadza muhumbeli nga u tou mu ṅwalela uri o ṡanganedza khumbelo hu saathu u fhela maḡuvha a 21 musi o ṅwalisa khumbelo iyo.

### Khwiṅiso ya khumbelo

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21. Muhumbeli ane khumbelo yawe yo ṅwaliswa u ya nga khethekanyo ya vhu 20 a nga, nga tshifhinga tshinwe na tshinwe phanḡa kana nga murahu ha u ṅetshedzwa ha pfanelo ya musimi wa tshimela, humbela nga nḡila yo randelwaho kha Redzhiṡtra u itela uri hu khwiṅiswe iyo khumbelo, zwi tshi bva kha khwaṭhisedzo ya Redzhiṡtra na musi ho badelwa tshedele yo randelwaho ine a I humeli murahu: Tenda uho u khwiṅisa hu sa kwami nyolo/ṡhalutshedzo ya lushaka kha khumbelo. 55

**Objection to application for grant of plant breeder's right**

22. (1) Any person may lodge an objection in the prescribed manner with the Registrar in respect of an application for the grant of a plant breeder's right following the publication of the prescribed information regarding the application in the Journal referred to in section 40 within 60 days from the date of publication. 5
- (2) The Registrar must within 14 days of the receipt of an objection—
- (a) inform the applicant concerned in writing of the objection; and
- (b) provide the applicant with a copy of the objection.
- (3) The applicant may, in the prescribed manner, lodge with the Registrar a counter-statement against the objection within 60 days of notification. 10

**CHAPTER 4****VARIETY DENOMINATIONS****Denomination of variety**

23. (1) An applicant for the grant of a plant breeder's right must propose a denomination that complies with the prescribed requirements and such denomination is subject to the approval of the Registrar. 15
- (2) No denomination other than the denomination approved by the Registrar in terms of subsection (1) may be used in connection with the variety in question, whether before or after the expiry of the term of the plant breeder's right granted in respect of the variety. 20
- (3) Subsection (2) does not prohibit the proprietor or other registered user of a mark to use such mark in conjunction with the denomination in respect of which a plant breeder's right has been granted, if such mark is clearly distinguishable from the variety denomination.
- (4) A variety must be submitted to the Registrar under the same denomination as the denomination by which it is known in any other country, unless the Registrar considers that denomination unacceptable in which case the applicant must submit an alternative denomination. 25

**Amendment of denomination**

24. (1) The Registrar must amend the denomination approved in respect of a variety in terms of section 23(1), if— 30
- (a) ordered by a court on application by a person who in law has a preferential claim to the use of the denomination in question;
- (b) the information submitted to the Registrar in the application for the approval of, or in connection with, the denomination in question was incorrect and such denomination would not have been approved had the Registrar known at the time of the application that such information was incorrect; or 35
- (c) information comes to light which, if discovered earlier, would have resulted in the refusal of such denomination.
- (2) (a) If an amendment becomes necessary on any ground referred to in subsection (1), the Registrar must notify the relevant applicant or holder of the plant breeder's right accordingly in writing within 21 days and must give reasons in the notice why the amendment is necessary. 40
- (b) The applicant or holder must submit proposals in writing to the Registrar for an alternative denomination within 30 days from the date of the notice. 45
- (3) An applicant may request the Registrar in the prescribed manner and upon payment of the prescribed fee at any time before the grant of the plant breeder's right to amend the approved denomination.
- (4) The Registrar must consider the request in terms of subsection (3) and must notify the applicant of his or her decision and the reasons for the decision in writing within 21 days of the date on which the request was received. 50
- (5) Any person may lodge an objection in the prescribed manner and within the prescribed period against an intended amendment of a variety denomination.

**Uhana khumbelo ya u țanganedza pfanelo ya vhasimi vha zwimela**

22. (1) Muthu muñwe na a nga ita khanedzo u ya nga ndila yo randelwaho kha Redzhiștra malugana na khumbelo ya u fhiwa pfanelo ya musimi wa tshimela nga musi hu tshi tou bva u anđadzwa mafhungo o randelwaho malugana na khumbelo kha Dzhenaļa sa zwo ambiwaho khethekanyo ya vhu 40 hu sa athu u fhela mađuvha a 60 u bva kha đuvha ļa nyanđadzo. 5

(2) Redzhiștra u tea uri hu saathu fhela mađuvha a 14 o țanganedza khanedzo a—

(a) vhudza muhumbeli a kwameaho nga u tou ñwala nga ha iyo khanedzo; nahone

(b) a fhe muhumbeli khophi ya iyo khanedzo.

(3) Muhumbeli nga ndila yo randelwaho a nga ita tshițatamennde kha kha Redzhiștara tsha u hanedza iyo khanedzo hu sa athu fhela mađuvha a 60. 10

**NDIMA YA 4****TSHAKA****Tshaka dzo fhambanaho**

23. (1) Muhumbeli ane a khou țođa u fhiwa pfanelo ya musimi wa tshimela u tea, zwi tshi bva kha thendelo nga Redzhiștra, a dzinginye tshaka dzine dza anana na țhođe dzo randelwaho. 15

(2) A huna tshaka nga nnda ha tshaka dzo kwhațhisedzwaho nga Redzhiștra a tshi tevhedza khethekanyo țhuku ya vhu (1) dza ndo shumiswa zwi tshi kwama lushaka lu kwameaho, hu nga vha phanda kana nga murahu ha u fhirelwa ha pfanelo ya musimi wa tshimela yo țetshedzwaho malugana na lushaka. 20

(3) Khethekanyo țhukhu ya vhu (2) a i haneli muņe wa zwithu kana muñwe mushumisi o ñwalisaho luswayo a tshi shumisa ulo luswayo lwo țangana na tshaka malugana na pfanelo ya musimi wa tshimela yo țetshedzwaho, arali ulwo luswayo zwi khagala lu tshi fhambanyisea kha tshaka dzo fhambanaho. 25

(4) Lushaka lu tea u iswa kha Redzhiștra nga fhasi ha lushaka lu fanaho sa lushaka lune lwa đivhea kha shango ļañwe na ļañwe, nga nnda ha musi Redzhiștra a tshi vhone uri lushaka a lu țanganedzei nga ndila ine muhumbeli a tea u isa luñwe lushaka.

**Ukhwiniisa lushaka**

24. (1) Redzhiștra u tea u khwiniisa lushaka lwo tendwaho malugana na lushaka u ya nga khethekanyo ya vhu 23(1), arali— 30

(a) laelwa nga khothe musi khumbelo nga muthu ane kha mulayo u na mbilo I dzhielwa nģha kha u shumisa lushaka lu kwameaho;

(b) mafhungo o iswaho kha Redzhiștra kha khumbelo ya ya u tendelwa ha, kana kha zwi kwamanaho na, lushaka lu kwameaho a vha a si one nahone lushaka ulwo a lwo vha lu tshi đo vha lu songo tendelwa arali Redzhiștra a zwi đivhe nga tshifhinga tsha musi khumbelo uri hu na mafhungo a si one; kana 35

(c) mafhungo a vhonala ane, arali o tumbulwa mathomoni, o vha a tshi đo vha o ita uri ulwo lushaka lu haniwe.

(2) (a) Arali khwiniiso ya vha ya ndeme kha sia/ground ļa ambiwaho kha khethekanyo țhukhu ya vhu (1), Redzhiștra u tea u đivhadza muhumbeli o teaho kana muņe wa pfanelo ya musimi wa tshimela zwavhuđi nga u tou ñwala hu sa athu u fhela mađuvha a 26 nahone u tea u fha na mbuno kha ndivhadzo uri ndi ngani khwiniso i na ndeme. 40

(b) Muhumbeli kana muņe wa pfanelo u tea u isa madzinginywa nga u tou ñwalela Redzhiștra u itela luñwe lushaka/denomination hu saathu u fhela mađuvha a 30 u bva kha datumu ya ndivhadzo. 45

(3) Muhumbeli a nga humbela Redzhiștra nga ndila yo randelwaho nahone musi ho badelwa tshelede yo randelwaho tshifhinga tshiñwe na tshiñwe phanda ha u țetshedza pfanelo ya musimi wa tshimela u itela u khwinisa lushaka/denomination lwo tehndelwaho. 50

(4) Redzhiștra u tea u lavhelesa khumbelo u ya nga khethekanyo țhukhu ya vhu (3) nahone u tea u đivhadza muhumbeli nga ha tsheo yawe nahone a dovhe a fhe na mbuno nga u tou ñwala hu saathu u fhela mađuvha a 21 u bva kha datumu ya u țanganedza khumbelo. 55

(5) Muthu muñwe na muñwe a nga hanedza nga ndila yo randelwaho nahone hu saathu u fhira tshiunga tsho randelwaho malugana na khwiniso ya lushaka.

**Marking of labels and containers**

25. (1) If any propagating material of a variety in respect of which a plant breeder's right has been granted is sold for the purposes of propagation or for any other purpose, the denomination of that variety must, in such manner as may be prescribed, clearly and legibly appear on a label attached thereto or, if it is packed, clearly and legibly appear on the container. 5

(2) If a mark is used in conjunction with the denomination of the relevant variety, such mark and denomination must be clearly distinguishable.

**CHAPTER 5****EXAMINATION OF VARIETY AND GRANT OF PLANT BREEDER'S RIGHT 10****Tests and trials**

26. (1) The Registrar must, in order to enable him or her to determine whether a variety in respect of which an application has been accepted is new, distinct, uniform and stable in accordance with the provisions of section 15—

- (a) undertake, or cause to be undertaken, such tests and trials as may be necessary; or 15
- (b) use the results of tests and trials obtained from the appropriate authority in another country.

(2) (a) The applicant must furnish the Registrar within the prescribed period with such material as may be prescribed. 20

(b) The Registrar may grant an extension to the applicant from compliance with paragraph (a) for a period not exceeding the initial prescribed period.

(c) An application for extension contemplated in paragraph (b) must be submitted to the Registrar in writing and must—

- (i) set out reasons for the request of an extension; and 25
- (ii) in the event of imported plant material, include prescribed proof that the plant material has been imported into the Republic.

(d) An application in terms of section 16 lapses if the material contemplated in paragraph (a) is not furnished to the Registrar within the prescribed period or extended period, as the case may be. 30

(3) If an objection has been lodged against an application for the grant of a plant breeder's right in terms of section 22, the Registrar may terminate all actions performed in accordance with subsection (1)(a) or (b) in the event that such objection is upheld.

**Refusal to grant plant breeder's right**

27. (1) The Registrar must refuse to grant a plant breeder's right to an applicant if, after examining the results of any tests or trials conducted in terms of section 26(1) in respect of the variety in question, the requirements specified in section 15 have not been met. 35

(2) If the results from the tests or trials conducted in terms of section 26(1) indicate that two or more varieties in respect of which different applications have been registered in terms of section 20 cannot be distinguished, the Registrar must grant a plant breeder's right to the applicant whose application was submitted— 40

- (a) first in time in accordance to section 16(1); or
- (b) in accordance to section 17(1),

whichever is the earlier. 45

(3) The Registrar must advise any applicant contemplated in subsection (1) or (2) in writing within 21 days of the Registrar's decision and of the grounds of the refusal, as the case may be.

**Grant of plant breeder's right**

28. The Registrar must— 50

- (a) grant a plant breeder's right to an applicant in respect of the variety applied for if, after the examination contemplated in section 26(1), that variety conforms to the requirements specified in section 15; and



**Uswaya lebele na midzio**

25. (1) Arali matheriala a u bveledza lushaka malugana na pfanelo ya musimi wa tshimela yo netshedzaho o rengiswa u itela ndivho dza u bveledza kana inwe ndivho, lushaka/ denomination lwa lushaka/ variety lu tea, nga iyo ndila sa zwine zwa nga randelwa, zwi khagala nahone zwa vhonala kha lebele yo nambatedzwaho henefho, arali zwo pakiwa, zwi khagala nahne zwi vhonale zwavhuḏi kha mudzio. 5
- (2) Arali luswayo lwo shumiswa lwo tanga na lushaka lwa tshaka dzo fhambanaho, ulwo luswayo na lushaka zwi tea u fhambanyisea zwi khagala.

**NDIMA YA 5****UṬHATHUVHA TSHAKA NA U NETSHEDZA PFANELO YA VHASIMI VHA ZWIMELA** 10**Ndingo**

26. (1) Redzhiṣṣtra u tea uri a tshi itela uri a kone u ta/vhona uri naa tshaka malugana na uri ndi ifhio khumbelo ya tangaedzwaho ine ya vha ntswa, yo fhambanaho, ine ya fana na yo rombaho u ya nga mbetshelo dza khethekanyo ya vhu 15— 15
- (a) ite, kana a itise hu itwe, idzo ndingo nga ndila I ṭoḏeaho; kana
- (b) u shumisa mvelelo dza ndingo dzo waniwaho kha maanḏalanga a liinwe shango.
- (2) (a) Muhumbeli u tea u fha Redzhiṣṣtra matheriala ayo nga tshifhinga tsho randelwaho sa zwine zwa nga randeliswa zwone. 20
- (b) Redzhiṣṣtra a nga engedza tshifhinga tsha khumbelo u ya nga phara ya (a) tshine tshifhinga itsho a tshi nga fhiri tsho randelwaho mathomoni.
- (c) Khumbelo ya u engedza sa zwo sumbedzwaho kha phara (b) I tea u iswa kha Redzhiṣṣtra yo tou nwalwa nahone i tea u— 25
- (i) sumbedza mbuno dza uho u engedza; na
- (ii) arali matheriala a tshimela o rengwa mashangoḏavha, hu katelwe na tsumbo ya uri matheriala o rengwa nḏa a tshi ḏa kha Riphabuḏiki.
- (d) Khumbelo u ya nga khethekanyo ya vhu 16 I a fa/fhela/thuthwa arali matheriala o sumbedzwaho kha phara ya vhu (a) a songo iswa kha Redzhiṣṣtra nga tshifhinga tsho randelwaho kana tshifhinga tsho engedzwaho, sa zwine zwithu zwa vha zwi ngazwo. 30
- (3) Arali khandzo yo itwa malugana na khumbelo ya u fhiwa pfanelo ya musimi wa tshimela u ya nga khethekanyo ya vhu 22, Redzhiṣṣtra a nga fhelisa zwothe zwo itwaho a tshi khou tevhedza khethekanyo ṭhukhu ya vhu (1)(a) kana (b) arali khandzo yo upheld.

**Uhana u fha pfanelo ya vhasimi vha zwimela** 35

27. (1) Redzhiṣṣtra u tea u hana pfanelo ya musimi wa tshimela arali nga murahu ha u ṭhathuvha mvelelo dza ndingo dzo itwaho u ya nga khethekanyo ya vhu 26(1) malugana na tshaka dzi kwameaho, ṭhoḏea dzo ṭaluswaho kha khethekanyo ya vhu 15 a dzi so ngo fushwa.
- (2) Arali mvelelo dza ndingo dzo itwaho hu tshi khou tevhedzwa khethekanyo ya vhu 26(1) dza sumbedza uri tshaka mbili kana nnzhi malugana na uri ndi dzifhio khumbelo dzo fhambanaho dzo nwaliswaho u ya nga khethekanyo ya vhu 20 dzi sa fhambanyisei, Redzhiṣṣtra u tea u u fha pfanelo ya musimi wa tshimela uyo muhumbeli o ḏisaho khumbelo— 40
- (a) u thoma nga tshifhinga u ya nga khethekanyo ya vhu 16(1); kana 45
- (b) u ya nga khethekanyo ya vhu 17(1), tshenetsho tsho thomaho.
- (3) Redzhiṣṣtra u tea u vhudza muhumbeli muinwe o bulwaho kha khethekanyo ṭhukhu ya vhu (1) kana (2) nga u tou nwala hu sa athu u fhela maḏuvha a 21 a iyo tsho ye Redzhiṣṣtra a dzhia nahone na mbuno dza u hana khumbelo dzi sumbedzwe, u ya nga hune zwa vha. 50

**Uḡea pfanelo ya vhasimi vha zwimela**

28. Redzhiṣṣtra u tea u—
- (a) fha pfanelo ya musimi wa tshimela kha muhumbeli malugana na lushaka lwo humbelwaho arali, nga murahu ha ṭhathuvho sa zwo sumbedzwaho kha

- (b) issue a certificate of registration to the applicant in respect of each plant breeder's right granted within 90 days of receiving examination results.

## CHAPTER 6

### HEARING OF OBJECTIONS

#### Hearing of objection

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29. (1) In considering an objection lodged in terms of section 22, the Registrar must conduct a hearing in accordance with this section.

(2) The Registrar must determine the date on and the time and place at which the objection will be heard and must inform the person objecting and the applicant in writing of such date, time and place 30 days prior to the hearing. 10

(3) The Registrar when considering a matter at the hearing may utilise one or more of the persons contemplated in section 43 who have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise the Registrar with regard to the hearing of the objection.

(4) The Registrar may, for the purposes of the hearing of an objection— 15

(a) 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 or her control any document that has any bearing upon the subject of the hearing, to appear before the Registrar 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; 20

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control. 25

(5) The procedure at the hearing of an objection must be prescribed.

(6) The person objecting and the applicant may, if he or she appears before the Registrar at the hearing of an objection, be represented.

(7) The Registrar must advise the person objecting and the applicant in writing of his or her decision and of the grounds on which it is based within 21 days after the hearing of the objection. 30

## CHAPTER 7

### OBLIGATIONS OF HOLDER OF PLANT BREEDER'S RIGHT

#### Payment of annual fee

35

30. (1) A person to whom a plant breeder's right has been granted in terms of section 28 must pay the prescribed annual fee for the duration of the plant breeder's right in question.

(2) The holder of the plant breeder's right must pay the first annual fee on or before 31 March of the year following the date on which a plant breeder's right was granted, and must pay any subsequent annual fee on or before 31 March of each year thereafter. 40

(3) In the event that an annual fee has not been paid on or before the date contemplated in subsection (2), the plant breeder concerned may pay an amount double the amount of such fee in order to ensure that the registration of the plant breeder's right does not lapse, but such late payment may only be effected during a period not exceeding six months from the date on which the payment was due in terms of that subsection. 45



(4) If no fee is paid in terms of subsection (2) or within the period contemplated in subsection (3), the registration of the plant breeder's right in question may be cancelled in accordance with section 38.

#### **Maintenance of propagating material**

**31.** (1) The holder of a plant breeder's right must ensure that he or she is in a position for the duration of the right when requested by the Registrar— 5

- (a) to furnish the Registrar with propagating material of the variety in respect of which the right was granted that is capable of reproducing the variety in question in such a manner that the characteristics of the variety correspond with those described at the time of the grant of the relevant right; and 10
- (b) to provide the Registrar with the information and access to the relevant facilities to satisfy the Registrar that the holder is maintaining propagating material that conforms with the requirements contemplated in paragraph (a).

(2) The Registrar may, during normal business hours, undertake such inspection in connection with any matter contemplated in subsection (1) as may be necessary in order to ensure compliance with the provisions of that subsection. 15

### **CHAPTER 8**

#### **ENFORCEMENT OF PLANT BREEDERS' RIGHTS**

##### **Infringement of plant breeder's right**

**32.** Subject to section 10, a plant breeder's right is infringed by any person who— 20

- (a) not being the holder of the plant breeder's right, performs, or causes to be performed, an act contemplated in section 7(1), read with section 7(2) and section 7(3), without having been granted a licence contemplated in section 34 or section 36; 25
- (b) in the case of an essentially derived variety performs, or causes to be performed, an act contemplated in section 7(1), read with section 7(2) and section 7(3), without an authorisation from the holder of the plant breeder's right of the— 30
  - (i) initial variety; or
  - (ii) essentially derived variety, in the event that separate protection for the essentially derived variety exists;
- (c) uses the approved denomination of a protected variety in relation to plants or propagating material of any other variety for any purpose whatsoever; or
- (d) sells plants or propagating material of a protected variety— 35
  - (i) under a denomination other than the approved denomination of that variety; or
  - (ii) without using the approved denomination.

##### **Remedies in respect of infringement of plant breeder's right**

**33.** (1) The holder of a plant breeder's right or any person to whom a licence contemplated in section 34 or section 36 has been granted may, upon proof of an infringement of that right and with proof of damages suffered by that holder or licensee, recover by action in any competent court from the person who infringed the plant breeder's right compensation in respect of such infringement. 40

(2) The holder of a plant breeder's right may not institute an action contemplated in subsection (1) while the relevant plant breeder's right or variety is the subject of an appeal in terms of section 41. 45

(4) Arali hu si na tshedele yo badelwaho u ya nga khethekanyo thukhu ya vhu (2) kana kha tshifhinga tsho sumbedzwaho kha khethekanyo thukhu ya vhu (3), u nwalisa ha pfanelo hu nga namba ha fheliswa hu tshi khou tevhedzwa khethekanyo ya 38.

#### Ulondola matheriaja a u bvedeza

**31.** (1) Muṅe wa pfanelo ya musimi wa tshimela u tea u vhona uri u na pfanelo musi 5  
I tshi toḡwa nga Redzhiṣṣtra—

(a) u itela u fha Redzhiṣṣtra matheriaja a u bvedezisa a lushaka malugana na pfanelo ye ya fhiwa uri u a kona u bvedezulula lushaka lu kwameahon nga ndila ine ya fana nay o ṭaluswaho nga tshifhinga tsha musi pfanelo I tshi netshedzwa; na 10

(b) u itela u fha Redzhiṣṣtra mafhungo na u mu tendela a tshi swikelela zwishumiswa zwoteaho u itela u fusha Redzhiṣṣtra uri na ngoho muṅe wa pfanelo u khou vhona uri matheriaja a u bvedeza a khou anana na thodeadzo sumbedzwaho kha phara ya (a).

(2) Redzhiṣṣtra nga tshifhinga tsha mushumo a nga ingamela malugana na tshiiwe na 15  
tshiiwe tsho sumbedzwaho kha khethekanyo we tsho sumbedzwaho kha khethekanyo thukhu ya (1) sa zwine zwa nga toḡea u itela u vhona uri mbetshelo dza khethekanyo thukhu dzi khou tevhedzwa.

### NDIMA YA 8

#### UTEVHEDZISA PFANELO DZA VHASIMI VHA ZWIMELA 20

#### U pfukwa ha pfanelo ya vhasimi vha zwimela

**32.** Hu tshi khou tevhedzwa khethekanyo ya vhu 10, pfanelo ya musimi wa tshimela I pfukwa nga muṅwe na muṅwe—

(a) a si muṅe wa pfanelo ya musimi wa tshimela arali a khou ita, kana u ita uri u shuṅwe, nyito yo sumbedzwaho kha khethekanyo ya vhu 7(1), I tshi vhalwa 25  
na khethekanyo ya vhu 7(2) na khethekanyo ya vhu 7(3), a songo fhiwa laisentse yo sumbedzwaho kha khethekanyo ya vhu 34 kana khethekanyo ya vhu 36;

(b) arali hu lushaka lwo shandukiswaho/ derived variety a ita, kana a itisa uri hu itwe, nyito yo sumbedzwaho kha khethekanyo ya vhu 7(1), I tshi vhalwa na 30  
khethekanyo ya vhu 7(2) na khethekanyo ya vhu 7(3), a songo wana thendelo kha muṅe wa pfanelo ya musimi wa tshimela ya—

(i) lushaka lwa mathomoni; kana  
(ii) lushaka lwo shandulwaho, kha nyimele ine tsireledzo ya thungo ya lushaka lwo shandulwaho ya vha hone; 35

(c) a khou shumisa lushaka lwo tendelwaho lwa lushaka lwo tsireledzwaho zwi tshi kwama zwimela kana matheriaja a u bvedeza a tshimela tshiiwe na tshiiwe u itela ndivho iṅwe na iṅwe; kana

(d) rengisa zwimela kana matheriaja a u bvedeza zwa/a lushaka lwo tsireledzwaho— 40

(i) nga fhasi ha lushaka nga nḡa ha lushaka lwo tendelwaho lwa ulwo lushaka; kana

(ii) hu sa shumiswi lushaka lwo tendelwaho.

#### Thasululo musi ho pfukiwa pfanelo ya chasimi vha zwimela

**33.** (1) Muṅe wa pfanelo ya musimi wa tshimela kana muthu muṅwe na muṅwe ane 45  
laisentse yo sumbedzwaho kha khethekanyo ya vhu 34 kana khethekanyo ya vhu 36 o I fhiwa, arali a na tsumbo ya uri pfanelo yo pfukiwa na tsumbo ya tshinyalelo ye uyo mune wa pfanelo kana laisentse, a badelwa tshinyalelonga uyo o pfuka /recover nga zwo itwa nga kha khothe I zwi konaho.

(2) Muṅe wa pfanelo ya musimi wa tshimela a nga si ite nyito yo sumbedzwaho kha 50  
khethekanyo thukhu ya vhu (1) musi pfanelo ya musimi wa tshimela yo teaho kana lushaka lwo teah i na aphiji u ya nga khethekanyo ya vhu 41.

(3) If the person to whom a licence contemplated in section 34 or section 36 has been granted institutes a claim contemplated in subsection (1), the holder of the relevant plant breeder's right must be joined as a party to those proceedings.

(4) In addition to any other remedy, a competent court may, in proceedings due to the infringement of a plant breeder's right, make an order in respect of the custody, surrender or disposal of any book, document, plant, propagating material, product, substance or other article. 5

## CHAPTER 9

### LICENCES

#### Licences 10

**34.** The holder of a plant breeder's right may enter into a written licence agreement authorising any person to undertake any activity referred to in section 7.

#### Application for compulsory license

**35.** (1) Any person who is of the opinion that the holder of a plant breeder's right unreasonably refuses to grant him or her a license under section 34, or that such a holder is imposing unreasonable conditions for the issue of such a license, may in the prescribed manner apply to the Registrar to issue a compulsory license in respect of the relevant plant breeder's right. 15

(2) The Registrar must inform the holder of the plant breeder's right in writing of the application contemplated in subsection (1)(a) within 21 days of receiving that application. 20

(3) The holder of the plant breeder's right may lodge a counter-statement with the Registrar within 60 days of receiving the information contemplated in subsection (2) in which the holder concerned sets out the reasons why he or she contests the application in question. 25

(4) If the person who made the application and the holder of the relevant plant breeder's right at any stage after the application has been lodged with the Registrar reach an agreement with regard to the issue of a license, the person who made the application must inform the Registrar of the agreement within 21 days of reaching the agreement.

#### Hearing of application for and issue of compulsory license 30

**36.** (1) The Registrar must determine the date on and the time and place at which an application contemplated in section 35(1) will be heard and 30 days prior to the hearing must inform the person who made the application and the holder of the plant breeder's right in question in writing of such date, time and place.

(2) (a) The Registrar may appoint one or more persons who have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise him or her with regard to the hearing of the application for a compulsory license. 35

(b) A person appointed in terms of paragraph (a) must receive such remuneration as may be prescribed. 40

(3) The Registrar may, for the purposes of the hearing of an application for a compulsory license—

(a) 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 or her control any document that has any bearing upon the subject of the hearing, to appear before the Registrar 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; 45

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and 50

(3) Arali muthu ane laisentsi yo sumbedzwaho kha khethekanyo ya vhu 34 kana khethekanyo ya vhu 36 yo fhi fhiwa ene a ita mbila yo sumbedzwaho kha khethekanyo thukhu ya vhu (1), muṅe wa pfanelo ya musimi wa tshimela yo teaho u vha tshipiḁa tsha miṅgano.

(4) Nga ṅṅha ha thasululo inwe na inwe, khothe I re na vhukoni I nga, kha miṅaangano ya u kandekanya pfanelo ya musimi wa tshimela, ita ndaela malugana na custody, u ṅekedza kana u laṅa bugu, liṅwalwa, tshimela, matheriala a u bveledza, tshibveledza, zwidzidzivhadzi kana atikiḁi. 5

## NDIMA YA 9

### LAISENTSI

10

#### DZILAISENTSI

34. Muṅe wa pfanelo ya musimi wa tshimela a nga ita laisentsi ya thendelano yo tou ṅwalwaho ya u tendela muthu muṅwe na muṅwe a tshi ita nyito inwe na inwe yo ambiwaho kha khethekanyo ya vhu 7.

#### Khumbelo ya laisentsi ya khombe-khombe

15

35. (1) Muthu muṅwe na muṅwe a re na muhumbulo wa uri muṅe wa pfanelo ya musimi wa tshimela u khou hana u mu fha laisentsi zwi sa pfadzi nga fhasi ha khethekanyo ya vhu 34, kana uri uyo muṅe wa pfanelo u khou vhea nyimwele dzi sa pfadzi malugana na fhungo la laisentsi, nga ṅḁila yo randelwaho a nga humbela Redzhiṅtra uri a mu ṅetshedze laisentsi ya khombe-khombe malugana na pfanelo ya muṅe wa tshimela. 20

(2) Redzhiṅtra u tea u vhudza muṅe wa pfanelo ya musimi wa tshimela nga u tou muṅwalela nga ha khumbelo yo sumbedzwaho kha khethekanyo thukhu ya vhu (1)(a) hu sa athu u fhela maḁuvha a 21 musi o ṅanganedza iyo khumbelo.

(3) Muṅe wa pfanelo ya musimi wa tshimela a nga ita tshiṅṅamennde tsha u tsha u hanedza kha Redzhiṅtra hu sa athu u fhela maḁuvha 60 o ṅanganedza mafhungo o sumbedzwaho kha khethekanyo thukhu ya vhu (2) hune muṅe wa pfanelo a kwameaho a sumbedza mbuno dza uri ndi ngani a sa tendelani na khumbelo ine ya khou ambiwa ngayo. 25

(4) Arali muthu o itaho khumbelo na muṅe wa pfanelo nga tshifhinga tshiṅe na tshiṅwe nga murahu ha musi khumbelo yo no itwa vha swikelele thendelano malugana na zwa laisentsi, muthu ane ndi ene o itaho khumbelo u tea u vhudza Redzhiṅtra nga ha thendelano hu sa athu fhela maḁuvha a 21 ho swikelelwa iyo thendelano. 30

#### Uthetsheleswa ha khumbelo ya na u ṅetshedzwa ha laisentsi ya khombekhombe

36. (1) Redzhiṅtra utea u ta datumu na tshifhinga na fhethu hune khumbelo yo sumbedzwaho kha khethekanyo ya vhu 35(1) ya ḁo thetsheleswa nahone phanḁa ha maḁuvha a 30 hu sa athu itwa zwa u thetshelesa a vhudze muthu o itaho khumbelo na muṅe wa pfanelo ya musimi wa tshimela a kwameaho nga u tou ṅwala date, tshifhinga na fhethu. 35

(2) (a) Redzhiṅtra a nga thola muthu muthihi kana vhanzhi vha re na tshenzhemo kha zwa vhulangi ha vhulamukanyi kana vhukoni kha mafhungo maṅwe na maṅwe ane a nga vha a tshi khou lavheleswa afho kha zwa u thetshelesa, uri a thuswe na u eletshedzwa malugana na u thetsheleswa kha zwa khumbelo ya laisentsi ya khombe-khombe. 40

(b) Muthu o tholwaho u ya nga pharagirafu ya (a) u tea u holelwa u ya nga zwo randelwaho. 45

(3) Redzhiṅtra a tshi itela ndivho dza u thetsheleswa ha khumbelo ya laisentsi ya khombe-khombe a nga—

(a) vhidza muthu muṅwe na muṅwe ane a a nga ḁisa mafhungo a kwamaho thero ya zwa u theleswa kana ane a vha na liṅwalwa liṅe la vha na mafhungo a izwo zwa u thetsheleswa, uri a ḁivhonadze phanḁa ha Redzhiṅtra nga tshifhinga na fhethu ho ambiwaho kha mbidzos, uri a vhudziswe kana a sumbedze liṅwalwa, nahone Redzhiṅtra a nga dzhia liṅwlaw lo bviswaho uri a li thathuvhe; 50

(b) anise/tshimbidzee zwa muano kha kana u ṅanganedza khwaṅhisedzo kha muthu o vhidzwaho u vha ṅhanzi kah zwenezwo zwa u thetsheleswa; na 55

- (c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.
- (4) The procedure at the hearing of an application for compulsory license must be prescribed. 5
- (5) The person who applied for a compulsory license and the holder of the plant breeder's right in question may, if he or she appears before the Registrar at the hearing, be represented.
- (6) The Registrar must advise the applicant for a compulsory license and the holder of the plant breeder's right in question in writing of his or her decision and of the grounds on which it is based within 21 days after the hearing of the application for a compulsory license. 10
- (7) (a) The Registrar must issue a compulsory license if it has been established that—
- (i) the granting of a compulsory licence is in the public interest;
  - (ii) the holder of a plant breeder's right is unreasonably refusing a license referred to in section 34 or is imposing unreasonable conditions for the issue of such a license; and 15
  - (iii) the reasonable requirements of the public with regard to the variety in question are not being satisfied or will not be satisfied as a result of such refusal or the imposition of such conditions. 20
- (b) A compulsory license contemplated in paragraph (a)—
- (i) may include such condition as the Registrar may determine; and
  - (ii) may at any time be reviewed by the Registrar by reason of representations made to him or her for the amendment or withdrawal of that compulsory licence. 25
- (8) In setting the terms of a compulsory license the Registrar must endeavour to ensure that propagating material of the variety in question is available to the public at reasonable prices consistent with the holder of a plant breeder's right deriving a reasonable advantage therefrom.
- (9) (a) A compulsory license may be granted to any person whether or not the holder of the relevant plant breeder's right has granted a license in terms of section 34 to any other person. 30
- (b) The issue of a compulsory license does not prevent the holder of the plant breeder's right from granting additional licenses in terms of section 34. 35
- (10) In the event that a compulsory licence is issued in accordance with subsection (7), the Registrar must ensure the payment of equitable compensation to the holder of the plant breeder's right concerned.

## CHAPTER 10

### TERMINATION OF PLANT BREEDER'S RIGHT

#### Expiry of plant breeder's right 40

37. A plant breeder's right expires at the end of the relevant period contemplated in section 8.

#### Cancellation of plant breeder's right

38. (1) The Registrar may cancel a plant breeder's right if—
- (a) it is established that a requirement specified in section 15(2)(a) or (b) has not been complied with at the time of the grant of the right; 45
  - (b) a requirement specified in section 15(2)(c) or (d) is no longer complied with;
  - (c) the right has been granted to a person who is not entitled to it, unless it is transferred to a person who is so entitled; or
  - (d) the holder of the plant breeder's right concerned has failed to— 50
    - (i) provide the Registrar with information or material considered necessary for verifying the maintenance of the variety within three months of the date on which the Registrar requested the information or material in terms of section 31(1);
    - (ii) pay the annual fee to maintain the plant breeder's right; or 55



- (c) vhidza muthu muṅwe a re heneffho hune ha khou thetsheswa uri a vhe ṭhanzi nga u mu vhudzisa na u mu ṭoḽa a tshi bvisa ḽinwalwa ḽinwe na ḽinwe ḽine a vha naḽo kana ḽine ḽa vha fhasi ha ndango yawe.
- (4) Kuitela kwa u thetsheswa ha khumbelo ku fanela u randelwa.
- (5) Muthu o itaho khumbelo ya ḽaisentse ya khombe-khombe na muṅwe wa ḽaisentse ya musimi wa tshimela vha kwameaho a nga toumelwa, arali a tshi tea u ḽivhonadza phanḽa ha Redzhiṣṭra kha zwa u thetsheswa ha khumbelo. 5
- (6) Redzhiṣṭra u tea u eletshedza muhumbeli wa ḽaisentse ya khombe-khombe na muṅwe wa pfanelo ya musimi wa tshimela vha kwameaho nga u tou vha ṅwalela vha vhudziwe nga ha tsho yo itwaho na mbuno dza tsho hu sa athu u fhela maḽuvha a 21 nga murahu ha u thetsheswa ha khumbelo ya ḽaisentse ya khoimbe-khombe. 10
- (7) (a) Redzhiṣṭra u tea I ṅetshedza ḽaisentse ya khombe-khombe arali zwo wanala uri—
- (i) u fha ḽaisentse ya khombe-khombe ndi dzangalelo ḽa tshitshavha;
- (ii) muṅwe wa pfanelo ya musimi wa tshimela u khou hana a sina mbuno dzi pfalaho sa zwo sumbedzwaho kha khethekanyo ya vhu 34 kana u vhea nyimele dzi sa pfali kha mafhungo a ḽaisentse iyo; na 15
- (iii) ṭhoḽea dzi pfalaho dza tshitshavha malugana na lushaka lu kwameaho a dzi khou fushwa kana a dzi nga fushwi nga vhang ḽa u hana uho kana u vheva ha nyimele idzo. 20
- (b) ḽaisentse ya khombe-khombe yo sumbedzaho kha phara ya (a)—
- (i) ḽi nga katela idzo nyimele dzine Redzhiṣṭra a ḽo dzi ta; na
- (ii) I nga ṭolwa nga tshifhinga tshinwe na tshinwe nga Redzhiṣṭra arali hu na mbuno dze a sumbedzwa uri hu vhe na u khwiṅisa kana u hu dzhiululwe murahu ḽaisentse ya khombe-khombe. 25
- (8) Hu tshi itwa milayo/ndayo ya ḽaisentse ya khombe-khombe, Redzhiṣṭra u tea u lingedza u vhona uri matheriaḽa a u bvedza lushaka lu kwameaho a wanwa nga tshitshavha nga mutengo u pfalaho zwi ananaho na muṅwe wa pfanelo ya musimi wa tshimela.
- (9) (a) ḽaisentse ya khombe-khombe I nga ṅetshedzwa muṅwe na muṅwe hu songo sedza uri ṅaa muṅwe wa pfanelo ya musimi wa tshimela o I fha ḽaisentse u ya nga khethekanyo ya vhu 34 a tshi ifha muṅwe muthu. 30
- (b) U ṅetshedza ḽaisentse ya khombe-khombe a hu thivheli muṅwe wa pfanelo ya tshimela u wana inwe ḽaisentse hu tshi tevhedzwa khethekanyo ya vhu 34.
- (10) Kha nyimele ya musi ḽaisentse ya khombe-khombe yo ṅetshedzwa u ya nga khethekanyo ṭhukhu ya vhu (7), Redzhiṣṭra u tea u vhona uri hu itwe mbadelo yo linganaho kha muṅwe wa pfanelo ya tshimela a kwameaho. 35

## NDIMA YA 10

## PHELISO YA PFANELO YA VHASIMI VHA ZWIMELA

## Ufhela ha pfanelo ya vhasimi vha zwimela 40

37. Pfanelo ya musimi wa tshimela I fhela mafheloni a tshifhinga tsho sumbedzwaho kha khethekanyo ya vhu 8.

## Ufhelisa pfanelo ya vhasimi vha zwimela

38. (1) Redzhiṣṭra a nga fhelisa pfanelo ya musimi wa tshimela arali—
- (a) o wana uri ṭhoḽea yo ṭaluswaho kha kha khethekanyo ya vhu 15(2)(a) kana (b) yo vha i so ngo fushwa musi hu tshi ṅetshedzwa pfanelo; 45
- (b) ṭhoḽea yo ṭaluswaho kha khethekanyo ya vhu 15(2)(c) kana (d) a I tsha tevhedziwa;
- (c) pfanelo yo ṅetshedzwa muthu ane ha ngo fanela, nga nṅa ha musi yo pfukiselwa kha muthu o teaho; kana 50
- (d) muṅwe wa pfanelo ya musimi wa tshimela a kwameaho o kundelwa u—
- (i) fha Redzhiṣṭra mafhungo kana matheriaḽa ane a dzhiwa a tshi ṭoḽea kha u khwathisedza thikhedzo/ndondolo/maintenance ya lushaka hu saathu u fhela minwedzi miraru ya datumu ye Redzhiṣṭra a humbela mafhungo kana matheriaḽa u ya nga khethekanyo ya vhu 31(1); 55
- (ii) badela tshedele ya ṅwaha nga ṅwaha nga u khwathisedza pfanelo ya musimi wa tshimela; kana

- (iii) propose, within 30 days from the date of notification in terms of section 24(2), another suitable denomination if the denomination of the variety is cancelled after the grant of the plant breeder's right.
- (2) The Registrar must—
- (a) notify the holder of the plant breeder's right concerned in writing that an application for the cancellation of the right has been received and is being considered; 5
  - (b) request the plant breeder to submit reasons in writing within the prescribed period as to why the plant breeder's right should not be cancelled;
  - (c) consider any reasons received pursuant to the notice contemplated in paragraph (a); 10
  - (d) make a decision whether or not to cancel the plant breeder's right; and
  - (e) in the event that the he or she decides to cancel the plant breeder's right in accordance with subsection (1)—
    - (i) inform the holder of the plant breeder's right concerned in writing of the intended cancellation and the reasons for the cancellation; and 15
    - (ii) cancel the plant breeder's right within 60 days of the date on which the Registrar has informed the holder of the plant breeder's right in terms of subparagraph (i).
- (3) The Registrar must cancel a plant breeder's right before the expiry of the plant breeder's right if ordered by a court or the Minister in terms of section 44. 20
- (4) A plant breeder's right may not be cancelled for any reasons other than those contained in subsections (1) or (3).
- (5) A variety in respect of which a plant breeder's right has been cancelled under this section vests, by operation of law, in the public domain and is not capable of registration in accordance with this Act. 25

#### **Voluntary surrender of plant breeder's right**

- 39.** (1) The holder of a plant breeder's right may, at any time, surrender his or her plant breeder's right by notifying the Registrar in writing of such surrender.
- (2) A variety in respect of which a plant breeder's right has been surrendered as contemplated under this section vests, by operation of law, in the public domain and is not capable of registration in accordance with this Act. 30

### **CHAPTER 11**

#### **PLANT VARIETY JOURNAL**

#### **Matters to be published in Plant Variety Journal** 35

- 40.** (1) The Registrar must ensure that a journal, to be styled the "Plant Variety Journal", is published on an annual basis or at regular intervals within each year.
- (2) The subject matter of the journal contemplated in subsection (1) must be prescribed.

### **CHAPTER 12**

40

#### **APPEALS**

#### **Right to appeal**

- 41.** A person who feels aggrieved by any decision or action taken by the Registrar may appeal in the prescribed manner to the Minister against such decision or action.



**Appeal Board, composition and membership**

**42.** (1) The Minister may constitute a board known as the Appeal Board to investigate and consider any appeal referred to it in terms of section 41.

(2) The Board must consist of at least three members appointed by the Minister, of whom— 5

(a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and

(b) two or more persons must have expert knowledge of the subject of the appeal.

(3) The Minister must designate the person referred to in subsection (2)(a) as the chairperson. 10

(4) The remuneration of a member of the Board must be prescribed after consultation with the Minister of Finance.

(5) Any person appointed in terms of subsection (2) must recuse himself or herself as a member of the Board if he or she has any direct or indirect personal interest in the outcome of the appeal. 15

**Investigation and consideration by Board**

**43.** (1) The Minister may refer an appeal to the Board.

(2) An appeal must be heard on the date and at the time and place determined by the chairperson.

(3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing 30 days prior to the hearing. 20

(4) The chairperson may, for the purposes of the hearing of an appeal—

(a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the Board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and 25

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing. 30

(5) A person who appeals in terms of section 41 and the Registrar may be represented at the appeal.

(6) If a member of the Board—

(a) dies during the investigation or proceedings of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time; 35

(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 of the Board. 40

(7) Where the member of the Board who has died or has become incapacitated as envisaged in subsection (6) was or is the chairperson of the Board, the Minister must designate one of the remaining members of the Board to act as chairperson.

**Consideration of appeal by Minister**

**44.** (1) Where the Minister has referred an appeal to the Board in terms of section 43(1), he or she may— 45

(a) confirm or set aside the recommendations of the Board; and

(b) order the Registrar to execute the decision in connection therewith.

(2) Where the Minister considers an appeal, he or she may—

(a) confirm, set aside or vary the decision of the Registrar; and 50

**Bodo ya zwa aphili na miraḁo ya Bodo**

- 42.** (1) Minisṯa a nga vhumba bodo ine ya ḁivhea sa yone Bodo ya zwa Aphili u itela uri i ṯoḁuluse na u lavhelesa aphili inwe na inwe yo ḁiswaho kha yone Bodo u ya nga khethekanyo ya 41.
- (2) Bodo I tea u vha yo vhumbiwaho nga miraḁo I siho fhasi ha miraru ine yo tholwa nga Minisṯa, ine— 5
- (a) muthu muthihi u tea u tholwa ho sedzwa nḁivho yawe kha masia o teaho a zwa mulayo; na
- (b) vhatu vhavhili kana vhanzhi vha tea u vha vha na nḁivho ya thero i kwameaho kha aphili. 10
- (3) Minisṯa u tea u nanga muthu o bulwah kha khethekanyo ṯuhuhu ya (2)(a) sa ene mudzulatshidulo.
- (4) Muholo wa muraḁo wa Bodo u tea u randelwa nga murahu ha musi ho kwamiwa Minisṯa wa zwa Masheleni.
- (5) Muthu muinwe na muinwe o tholwaho hu tshi khou tevhedzwa khethekanyo ṯhukhu ya (2) u tea u ḁibvisa arali e muraḁo wa Bodo ane a vha na dzangalelo ḁo livhaho kana ḁi songo livhaho kha mvelelo dza aphili. 15

**Tsedzuluso na u lavhelesa nga Bodo**

- 43.** (1) Minisṯa a nga isa aphili kha Bodo.
- (2) Aphili i tea u thetsheleswa nga datumu nahone kha vhufhethu vhune ho tiwa nga mudzulatshidulo. 20
- (3) Mudzulatshidulo u tea u vhudza muaphili na muthu muinwe na muinwe ane a kwamea a re na dzangalelo kha aphili nahone izwi zwo itwa nga u tou nwalwa hu sumbedzwe datumu na fhethu hune u thetsheleswa ha ḁo itelwa hone nahone nḁivhiso i itwe maḁuvha a 20 phanḁa ha musi hu tshi itwa zwa u thetsheleswa. 25
- (4) Mudzulatshidulo a tshi itela nḁivho dza u thetshelesa aphili a nga—
- (a) vhidza muthu muinwe na muinwe ane nḁivhiso I kwameaho kha thero ya uho u thetshelesa kana a re na ḁinwalwa kana ane a langa ḁinwalwa ḁinwe na ḁinwe ḁi re na zwine zwa khou ṯoḁea kha thero ya uho u thetsheleswa, ur uyo muthu a ḁivhonadze phanḁa ha Bodo nga datumu nahone nga tshifhinga na fhethu ho ṯaluswaho kha samanisi, u itela uri uyo muthu a vhudziswe kana a bwise ḁlo ḁinwalwa, nahone mudzulatshidulo a nga dzhia ḁlo ḁinwalwa ḁo bviswaho a tshi itela uri ḁi ṯaṯhuvhiwe; na 30
- (b) langula muano u itela u kana u ṯanganedza khwaṯhisedzo I bvaho kha muthu ufho na ufho o vhidzwaho uri a vhe ṯhanzi afho kha zwa u thetshelesa. 35
- (5) Muthu ane a khou ita aphili u ya nga khethekanyo ya 41 na Redzhiṯtra a nga imelelwa ngei kha zwa aphili.
- (6) Arali muraḁo wa Bodo—
- (a) a lovha hu tshi kha ḁi itwa tsedzuluso kana aphili i tshi kha ḁi vha kati kana nga u ṯavhanya phanḁa ha musi tsedzuluso i tshi thoma nahone tshikhala tshi sa nga valwe nga tshifhinga; 40
- (b) i sa ḁo kona u shuma nahone muinwe muthu a sa nga tholwe nga tshifhinga; kana
- (c) nga murahu ha musi tsedzuluso yo thoma, Bodo i sa nga kone u bvela phanḁa na mushumo, 45
- vhane vha kwamea vha nga tendelana uri tsedzuluso i ye phanḁa hu tshi khou shuma miraḁo yo salaho ya Bodo.
- (7) Hune muraḁo wa Bodo o lovhaho kana muraḁo wa Bodo a vha kha nyimele ya u sa tsha kona u shuma sa zwo lavhelewaho kha khethekanyo ṯhukhu ya (6) ha vha hu mudzulatshidulo wa Bodo, Minisṯa u tea u nanga muthu muthihi kha miraḁo yo salaho ya Bodo uri a shume sa mudzulatshidulo. 50

**Ulavhelesa aphili nga Minisṯa**

- 44.** (1) Hune Minisṯa a vha o isa aphili kha Bodo u ya nga khethekanyo ya 43(1), u tea u—
- (a) khwaṯhisedza kana u sa ṯanganedza themendelo dza Bodo; na 55
- (b) laela Redzhiṯtra uri a ite tsho malugana na zwi kwamanaho na zwenmezwi.
- (2) Hune Minisṯa a lavhelesa aphili, a nga—
- (a) khwaṯhisedza kana u sa ṯanganedza themendelo dza Bodo; na

- (b) order the Registrar to execute the decision in connection therewith.
- (3) The decision of the Minister must be in writing and a copy thereof must be furnished to the Registrar, appellant and any other party to whom decision must be conveyed within 90 days.
- (4) If the Minister— 5
- (a) sets aside any decision or action by the Registrar the prescribed fee paid by the appellant in respect of the appeal must be refunded to the appellant; or
- (b) varies any decision or action by the Registrar, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.

## CHAPTER 13 10

### ADVISORY COMMITTEE

#### Establishment of Advisory Committee

- 45.** (1) A committee to be known as the Plant Breeders' Rights Advisory Committee may be established.
- (2) The Advisory Committee may advise the Registrar on— 15
- (a) any technical matter arising from any provision of this Act; and
- (b) any other matter relating to the administration of this Act referred to the Advisory Committee by the Registrar.

#### Appointment of members of Advisory Committee and termination of membership

- 46.** (1) The Minister may appoint as members of the Advisory Committee— 20
- (a) two persons who are appropriate persons to represent breeders of new plant varieties;
- (b) two persons who are appropriate persons to represent farmers;
- (c) one person who is an appropriate person to represent the interests of consumers of new plant varieties or of the products of new plant varieties; 25
- (d) one person to represent conservation interests in respect of new plant varieties and the potential impacts of new plant varieties on the environment;
- (e) one person to represent indigenous interests in respect of new plant varieties and the source, use and impacts of new plant varieties; and
- (f) one person with qualifications in respect, or experience in the relevant fields of law, including but not limited to Intellectual Property Law and Administrative Law. 30
- (2) Whenever it is necessary to appoint a member of the Advisory Committee—
- (a) the Minister must, by notice in any appropriate media, call for the nomination of persons who comply with the criteria contemplated in subsection (1); 35
- (b) the Minister must establish a selection committee, consisting of not more than five members appointed by the Minister;
- (c) the Minister must refer all nominations received to such selection committee;
- (d) the selection committee must compile a short-list of candidates in accordance with the provisions of subsection (1); 40
- (e) the selection committee must, within 30 days after the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories referred to in subsection (1); and
- (f) the Minister must appoint such number of members as is required from the list of candidates recommended by the selection committee. 45
- (3) A member of the of the Advisory Committee serves in a part-time capacity.
- (4) A member of the Advisory Committee serves for a period not exceeding three years as specified in the letter of appointment and may be reappointed for one more term not exceeding three years.



(5) If, upon the expiration of the term of office of the members of the Advisory Committee, the Minister has not yet appointed new members to take their place, the existing members continue in office until new members have been appointed to replace them.

(6) The Minister may at any time terminate the appointment of a member of the Advisory Committee if that member is incapable of performing his or her functions or is found guilty of misconduct. 5

(7) If the appointment of a member of the Advisory Committee is terminated in terms of subsection (6), the Minister must give the person written notice informing him or her of the termination and must set out the reasons for the termination in the notice. 10

(8) A member of the Advisory Committee may resign by written notice to the Minister.

(9) The Registrar is a member of the Advisory Committee by virtue of his or her office.

(10) A member of the Advisory Committee must receive such subsistence and travelling allowances as may be prescribed by the Minister after consultation with the Minister of Finance. 15

#### **Disclosure of interests by members of Advisory Committee**

47. (1) Any member of the Advisory Committee who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting. 20

(2) A disclosure in terms of subsection (1) must be—

- (a) recorded in the minutes of the meeting of the Advisory Committee; and
- (b) made known in any advice given by the Advisory Committee in relation to that matter. 25

#### **Meetings of Advisory Committee**

48. (1) The Registrar must convene a meeting of the Advisory Committee when it is necessary for the purposes of the performance of the functions of the Advisory Committee. 30

(2) At a meeting of the Advisory Committee, five members constitute a quorum.

(3) The members must elect one of the members present at the meeting to preside at the meeting.

(4) The Advisory Committee may determine the procedure to be followed in the performance of its functions. 35

### **CHAPTER 14**

#### **GENERAL PROVISIONS**

##### **Entering premises for inspection, sampling and seizure of certain articles**

49. (1) The Registrar may, on the grounds of a warrant issued in terms of subsection (3)— 40

- (a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, harvested material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be—
  - (i) conditioned for the purposes of—
    - (aa) propagation contemplated in section 7(1)(b); 45
    - (bb) the sale or any other form of marketing of the protected variety contemplated in section 7(1)(c); or
    - (cc) exportation contemplated in section 7(1)(d);
  - (ii) produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, pre-packaged, marked, labeled, held, kept, packed, removed, transported, exhibited or sold; 50



(5) Aarali tshifhinga tsha u tholwa tsha muraḁo wa Komitinyeletshedzi tshi tshi fhela, Minisṽa a vha a sa athgu u thola miraḁo miswa, muraḁo ine ya khou shuma I ya phanda na u shuma u swika hu tshi thola miraḁo miswa.

(6) Minisṽa nga tshifhinga tshinwe na tshinwe a nga fhelisa u tholwa ha muraḁo wa Komitinyeletshedzi arali uyo muraḁo a sa koni u shuma mishumo yawe kana oarli o wanwa mulkandu u kwamaho vhuḁifari hawe. 5

(7) Arali u tholwa ha muraḁo wa Komitinyeletshedzi ho fheliswa u ya nga khethekanyo ṽhukhu ya vhu (6), Minisṽa a nga fha muthu uyo muthu nḁivhadzo ya u mu vhudza uri nga ha u fheliswa ha uho nahone a mu vhudza na mbuno dza u fhilisa u tholwa kha iyo nḁivhadzo. 10

(8) Muraḁo wa Komitinyeletshedzi a nga rula mushumo nga u tou nṽwalela Minisṽa.

(9) Redzhiṽtra ndi muraḁo wa Komitinyeletshedzi nga u a vha Redzhiṽtra wa ofisi.

(10) Muraḁo wa Komitinyeletshedzi u tea u wana magavhelo a u enda u ya nga he zwa randelwa nga Minisṽa nga murahu ha musi o kwamana na Minisṽa wa zwa Masheleni. 15

#### **Ubvukulula madzangalelo nga miraḁo ya Komitinyeletshedzi**

47. (1) Muraḁo muṽwe na muṽwe wa Komitinyeletshedzi ane a vha na dzangalelo ḁo livhaho kana ḁi songo livhaho kha mafhungo ane a khou lavheleswa kha muṽangno wa Komitinyeletshedzi u tea u bula lushaka lwa dzangalelo ḁawe musi a tshi tou zwi vhona uri hu na khuḁanano ya madzangalelo. 20

(2) U bvukulula u ya nga khethekanyo ṽhukhu ya vhu (1) hu tea u—

(a) rekhodza kha maambiwa a muṽangano wa Komitinyeletshedzi; na

(b) itwa uri hu ḁivhiwe kha nyeltshedzo inwe na inwe ine ya netshedzwa nga Komitinyeletshedzi maougana na ḁi fhungo.

#### **Miṽangano ya Kmotinyeletshedzi**

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48. (1) Redzhiṽtra u tea u dzudzanya muṽangano wa Komitinyeletshedzi u itela ndivho dza u shuma mishumo ya Komitinyeletshedzi.

(2) Kha muṽangano wa Komitinyeletshedzi, miraḁo miṽanu ndi yone ine ya vhumba khoramu ya muṽangano.

(3) Miraḁo i tea u nanga muthihi wa v ha re hone muṽanganoni uri a tshimbidze muṽangano. 30

(4) Komitinyeletshedzi i nga ta kuitele kune kwa tea u tevhelwa musi Komitinyeletshedzi i tshi shuma mishumo yayo.

### **NDIMA YA 14**

#### **MBETSHELONYANGAREDZI**

35

#### **Udzhena zwifhaṽoni u itela u ingamela, u ita sambula na u dzhia atikili dzenedzo**

49. (1) Redzhiṽtra, o ḁisendeka kha mbuno dza waranthi yo netshedzwaho u ya nga khethekanyo ṽhukhu ya vhu (3) a nga—

(a) dzhena zwifhaṽoni a ingamela huṽwe na huṽwe, zwifhaṽo zwiṽwe na zwiṽwe kana tshiendisi tshinwe na tshinwe kana tshimela tshinwe na tshinwe, matheriala a u bveledza, matheriala o kaṽwaho, zwidzidzivhadzi/khemikhalala kana inwe atikili malugana na zwiṽwe uyu mulayo wa shuma khazwo, hu na mbuno dzi pfallaho dza u humbulelwa ha— 40

(i) nyimela u itela ndivho dza—

(aa) u bveledza ho sumbedzwaho kha khethekanyo ya vhu 7(1)(b); 45

(bb) tengiso kana nḁila inwe na inwe ya u maketa lushaka lwo tsireledzwaho zwo sumbedzwaho kha khethekanyo ya vhu 7(1)(c); kana

(cc) mbambadzela-mashangoḁavha yo sumbedzwaho kha khethekanyo ṽhukhu ya vhu 7(1)(d); 50

(ii) bveledzwaho, bveledzuluwaho, siṽwaho, liṽwaho, shuṽwaho, lundwaho, dzudznywaho, lingiwaho, ṽhathuvhiwaho, senguluswaho, khethekanywaho, pakwaho, swaiwaho, ḁabelwaho, fariwaho, vhwaho/vhulungwaho, pakwaho, bviswaho/sudzuuswaho, endedwaho, ṽanwaho kana rengiswaho; 55

- (b) direct a person in control of or employed at such place, premises or vehicle to—
- (i) deliver any book, record or other document, whether in physical, electronic, digital or any other form, which pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person; 5
  - (ii) furnish such information as he or she has with regard to that plant, propagating material, substance or other article; and
  - (iii) render such assistance as the Registrar, employee or person requires to enable him or her to perform his or her functions in terms of this Act; 10
- (c) inspect any book, record or other document relating to the investigation and make copies thereof or excerpts from it;
- (d) seize any plant, propagating material, substance, book, record or other document or article which is or may be relevant to a prosecution under this Act and keep it in his or her custody, after allowing the person from whose possession or control any book, record or document has been taken, to make, at his or her own expense and under the supervision of the Registrar, employee or person concerned, copies thereof or excerpts from it; and 15
- (e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, pre-packaging, marking, labeling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyse and classify those samples. 20 25
- (2) Any sample taken in terms of subsection (1)(e) or (6) must—
- (a) consist of the quantity or mass determined by the Registrar, taken in accordance with the methods determined by him or her;
  - (b) be taken in the presence of the person in charge of, or the owner or custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form as prescribed must be completed in respect thereof; 30
  - (c) if necessary, be packed and identified in such manner as the nature thereof permits; and
  - (d) with all convenient speed be tested, examined or analysed in accordance with such methods as the Registrar may determine or as may be prescribed, and the result of such test, examination or analysis must be entered on the form as prescribed. 35
- (3) A warrant referred to in subsection (1) must be issued by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the vehicle is or will be, and must only be issued if it appears to the magistrate from information on oath or affirmation that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) and (b) is upon or in such place, premises or vehicle, and must specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued. 40 45
- (4) A warrant issued in terms of this section must be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which must be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant must be conducted with strict regard to decency and order, including—
- (a) a person's right to, respect for and the protection of his or her dignity; 50
  - (b) the right of a person to freedom and security; and
  - (c) the right of a person to his or her personal privacy.

- (b) laela muthu a re na ndango ya kana o tholwaho henefho fhethu, zwifhatoni kana tshindisini uri a—
- (i) ise bugu inwe na inwe, rekhodo kana linwe linwalwa, li nga vha li kwameaho, la elektroniki, kana li kha tshivhumbeo tshinwe na tshinwe, dzi kwaanaho na itsho tshimela, matheriala a u bveledza, khemikha/a/zwidzidzivhadzi kana atikili zwine izwo muthu uyo a vha nazwo kana zwi re fhasi ha ndaulo yawe; 5
- (ii) fhe ayo mafhungo ane a vha nao malugana na itsho tshimela, matheriala a u bveledza, khemikha/a/ zwidzidzivhadzi kana inwe a tiki; na
- (iii) fhe thuso ine Redzhistra, mushumi kana muthu a i toda u itela uri a kone u shuma mishumo yawe u ya nga uno Mulayo; 10
- (c) ingamela bugu inwe na inwe, rekhodo inwe na inwe ine ya vha na vhushaka na tsedzuluso kana linwe linwalwa a ita dzikhophi kana adzhia zwine a dzhia khalo; 15
- (d) dzhia tshimela tshinwe na tshinwe, matheriala a u bveledza manwe na manwe, khemikha/a, bugu, rekhodo kana linwalwa linwe na linwe kana atikili ine ya nga vha yo tea kha zwa vhutshutshisi nga fhasi ha uno Mulayo nahone izwo u do dzula nazwo, nga murahu ha u tendela muthu we a dzhielwa linwalwa, rekhodo na bugu, rekhodo kana linwalwa zwo dzhiwaho u itela u ita dzikhophi ene muje a tshi khou tou badela nahone zwi nga fhasi ha vhulavhelesi ha Redzhistra, mushumi kana muthu a kwameaho; na 20
- (e) dzhia sambula dza tshimela tshinwe na tshinwe, matheriala a u bveledza, khemikha/a/dzidzidzivhadzi kana atikili inee na inwe yo shumiswaho kana ine ya khou toda u shumiswa kha vhubveledzi, vhubveledzululi, vhusimi, ndimbo, u shuma, lunda, ndugiselo, ndingo, thathuvho, tsenguluso, khethekanya, thangelaupaka, u swaya, u labe/a, u fara, u vhulunga, u paka, u bvisa, u endedza/tshindisi, tana kana u rengiusa, na tshimela tshinwe na tshinwe, matheriala a u bveledza manwe na manwe, khemikha/a kana atikili inwe na inwe yo dzhiwaho u ya nga phara ya (d), na u thathuvha, sengulusa na u khethekanya idzo sambula. 25 30
- (2) Sambula inwe na inwe yo dzhiwaho u ya nga khethekanyo thukhu ya vhu (1)(e) kana ya vhu (6) i tea u—
- (a) vha i na vhunzhi ho tiwaho nga Redzhistra, yo dzhiwa u ya nga ngona dzo tiwaho nga ene Redzhistra; 35
- (b) vha yo dzhiwa muthu a re na vhuifhinduleli e hone, kana muje wa kana a re na, itsho tshimela, matheriala a u bveledza, khemikha/a kana atikili, kana, arali uyo muthu, muje kana a re nazwo a siho, hu vhe hu na thanzi, na uri sa zwe zwa randelwa fomo i tea u dadiwa; 40
- (c) arali zwi zwa ndeme, zwi pakwe na u sumbiwa/dihwa nga ndila yeneyo ine zwa konadzea; na 40
- (d) musi zwothe zwo lingwa, thathuvhiwa kana senguluswa u ya nga dzenedzo ngona dzo tiwaho nga Redzhistra kana dzo randelwaho, na mvelelo dza idzo ndingo, thathuvho kana tsenguluso dzi do dzheniswa kha fomo sa zwe zwa randelwa. 45
- (3) Waranthi yo bulwaho kha khethekanyo thukhu ya vhu (1) i tea u netshedzwa nga madzhihstrata are na maandla khazwo vhuponi kana zwifhatoni zwi kwameaho, kana hune ha vha na itsho tshindisi kana i, nahone i tea u netshedzwa fhedzi arali kha madzhihstrata zwi tshi khou vhonala zwi tshi tshi bva kha mafhungo/ndivhiso a muano kana khwathisedzo uri hu na mbuno dzi pfalaho dza u tenda uri atikili yo bulwaho kha khethekanyo thukhu ya vhu (1)(a) na (b) i afha fhethu, zwifhatoni kana kha tshindisi, nahone zwi bulwe uri ndi dzi fhio nyito dzo bulwaho kha khethekanyo thukhu ya vhu (1) dzine dza nga tea u itwa nga muthu ane a khu netshedzwa. 50
- (4) Waranthi i netshedzwo u ya nga ino khethekanyo i tea tevhedzwa nga masiari nga nda ha musi muthu ane a netshedza waranthi o tendela waranthi vhusiku nga zwifhinga zwine zwa pfadza, nahone u dzhena wa guduba fhethu huwe na huwe, zwifhato zwinwe na zwinwe kana zwiendisi zwo zwo talulwaho kha iyo waranthi zwi tea u itwa nga ndila yo teaho nahone ya thompho, hu tshi katelwa— 55
- (a) pfanelo dza muthu kha zwa, thonifho khan a tsiredzo ya tshirunzi tsha muthu; 60
- (b) pfanelo dza muthu kha mbofholowo na tsiredzo; na 60
- (c) pfanelo dza muthu kha tshidzombe tshawe. 60

- (5) The Registrar, employee or person executing a warrant in terms of this section must immediately before commencing with the execution—
- (a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle; and 5
  - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (6) The registrar may, without a warrant enter any place, premises or vehicle, and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so, consents to such entry, search, seizure, taking of samples and removal. 10
- (7) (a) The Registrar, employee or person who may on the grounds of a warrant issued in terms of subsection (3) enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search. 15
- (b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly—
- (i) demanded admission to the place, premises or vehicle;
  - (ii) identified himself or herself; and
  - (iii) notified the purpose of his or her entry, 20
- unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded, such identification communicated and such purpose is first notified.
- (8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search must, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request a magistrate who has jurisdiction to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged. 30
- (9) A warrant issued in terms of this section may be issued on any day and remains in force until—
- (a) it is executed; 35
  - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
  - (c) the expiry of one month from the day of its issue; or
  - (d) the purpose for which the warrant was issued, no longer exists, 40
- whichever may occur first.
- (10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document must be returned to the person from whom it was seized. 45

#### **Request for test results by authority of another country**

50. The Registrar may provide to an appropriate authority the distinctness, uniformity and stability test reports and variety descriptions derived from tests and trials undertaken by him or her in terms of section 26(1)(a) against payment of a prescribed fee. 50

- (5) Redzhiṣṭra, mutholiwa kana muthu ane a khou shumisa waranthi u ya nga ino khethekanyo u tea uri nga u ṭavhanya phanḁa ha u thoma u ita zwi re kha waranthi a—
- (a) ḁiḁivhadze kha muthu ane a vha na ndango kha fhethu, zwifhaṭo kana tshindisi, arali muthu uyo e hone, nahone uyo muthu a fhiwe khophi ya waranthi kana, arali uyo muthu a siho, hu nambetenzwe khophi kha fhethu hune ya ḁo vhonala henfho fhethu, kha zwifhaṭo kana tshindisi; na
- (b) fhe uyo muthu zwidombedzwa malugana na maanḁa awe a u shuma zwi re kha waranthi arali zwo humbelwa.
- (6) Redzhiṣṭra, hu sina waranthi a nga dzhena huṅwe na huṅwe, zwifhaṭoni zwiṅwe na zwiṅwe kana kha tshindisi tshiṅwe na tshiṅwe, a guduba, a dzhia, a dzhia dzisambula dza n u bvisa atikiḁi iṅwe na iṅwe zwo bulwa kha khethekanyo ṭhukhu ya vhu (1) arali muḁe wa pfanelo ya musimi wa tshimela kana muthu o tendelwaho nga u tou ṅwalelwa nga uyo muḁe wa pfanelo, o tendela uho u dzhena, u guduba, u dzhia, u dzhia dzisambula na y u dzi bvisa.
- (7) (a) Redzhiṣṭra, mutholiwa kana muthu a ne o ḁisendeka kha waranthi yo ṅetshedzawo u ya nga khethekanyo ṭhukhu ya vhu (3) a dzhena nahone a guduba fhethu huṅwe na huṅwe, zwifhaṭo zwiṅwe na zwiṅwe kana tshindisi tshiṅwe na tshiṅwe, a nga tou zwi kombetschedza arali zwi tshi ṭoḁea uri a kunde u hanelwa u dzhenea guduba afho fhethu.
- (b) A huna muthu ane a nga dzhena a guduba fhethu, zwifhaṭo kana tshindisi nga nḁa ha musi ranga u amba—
- (i) zwa u ṭoḁa u dzhena afho fhethu, zwifhaṭoni kana tshindisini;
- (ii) u ḁiḁivhadza; na
- (iii) u ḁivhadza ndivho ya u dzhena,
- Nga nḁa ha musi uyo a na mbuno dzi pfalaho uri atikiḁi I nga khurukanywa arali a thoma nga u ṭoḁa humbela u dzhena, uho u ḁiḁivhadza ha ambiwa na ndivho ya u dzhena zwa thoma nga u ḁivhadzwa.
- (8) Arali, musi hu tshi khou tevhedzwa waranthi kana u ita izwo zwa u guduba hu tshi khou tevhedzwa ino khethekanyo, muthu ane a khou ri atikiḁi yo wanwaho kha kana yo wanwaho fhethu, zwifhaṭoni kana kha tshindedzi i na ṅḁivhiso yo khetheaho nahone muthu a hana hu tshi ingamelwa kana hu tshi dzhiiwa iyo atikiḁi, muthu ane a khou shuma u ya nga waranthi kana ane a khou guduba kana u sedzulusa, arali a na muhumbulo wa uri ṅḁivhiso iyo i a ṭoḁea hu tshi itelwa ṭhoḁisiso kana musi hu tshi itwa zwa u thetshelesa, u tea u humbela madzhisiṭiraṭa a re na maanḁalanga kha uyo mukano uri a dzhie na u bvisa iyo atikiḁi u itela uri i vhwewe fhethu ho tsireledzeaho u swikela khothe ya mulayo i tshi ita khaṭulo ya uri iyo ṅḁivhiso ndi yo khetheaho kana a si yo khetheaho.
- (9) Waranthi ine ya ṅetshedzwa hu tshi khou tevhedzwa ino khethekanyo I nga ṅetshedzwa ḁuvha ḁiṅwe na ḁiṅwe nahone ya tea u tevhedzwa u swika—
- (a) hu tshi itwa zwe waranthi ya laedza;
- (b) I tshi fheliswa nga muthu we a I ṅetshedza kana, arali uyo muthu a siho, ya fheliswa nga muthu muṅwe na muṅwe a re na maanḁa a fanahona uyo we a I ṅetshedza;
- (c) hu tshi fhela ṅwedzi muthihi u bva kha ḁuvha ḁe ya ṅetshgedzwa ngaḁo; kana
- (d) ndivho ya u ṅetshedza waranthi I sa tsha vha hone, hu tshi ḁo itwa tshine tsha thoma u itea kha zwe zwa bulwa afho ṅṭha.
- (10) Arali hu sina zwa khothe/tsengo kha zwi kwamaho tshimela, matheriaḁa a u bveledza, khemikhaḁa, bugu, rekhodo kana iṅwe atikiḁi kana ḁiṅwalwa ḁo dzhiiwaho hu tshi khou tevhedzwa khethekanyo ṭhukhu ya vhu (1) kana (6), kana arali ha vhonala uri itsho tshimela, matheriaḁa a u bveledza, khemikhaḁa, bugu, rekhodo kana iṅwe atikiḁi kana ḁiṅwalwa a zwi ṭoḁea kha dingo/tsengo hu tshi itelwa vhuṭanzi kana ndaela ya khothe, uri tshimela, matheriaḁa a u bveledza, khemikhaḁa, bugu, rekhodo kana iṅwe atikiḁi kana ḁiṅwalwa zwi tea u humiselwa kha muthu we zwa dzhiiwa khae.

#### **Khumbelo ya mvelelo dza ndingo nga maanḁalanga a ḁiṅwe shango**

50. Redzhiṣṭra a nga fha maanḁalanga o teaho mivhigo ya ndingo ya phambano, u fana na u rumba na ṭhalutshedzo nga ha tshaka yo bvaho kha ndingo dze a dzhia u ya nga khethekanyo ya vhu 26(1)(a) malugana na mbadelo ya tshedele yo randelwaho.

**Defect in form not to invalidate documents**

51. A defect in the form of any document that in terms of any law is required to be executed in a particular manner, or in a notice issued in terms of this Act, does not, if the document complies substantially with the applicable legal requirements, render unlawful any administrative act performed in terms of this Act in respect of the matter to which such document or such notice relates, and does not constitute a ground for exception to any legal procedure that may be taken in respect of such matter. 5

**Correction of errors**

52. (1) The Registrar may authorise—  
 (a) the correction of any clerical error or error in translation appearing in any plant breeder's right, the application for such a right or any document filed in pursuance of such application, or the register; and 10  
 (b) the amendment of any document for the amendment of which no express provision is made in this Act.

(2) The Registrar may exercise the authority under subsection (1) of his or her own accord or upon request in writing. 15

(3) Where the Registrar intends exercising the authority under subsection (1) of his or her own accord, the Registrar must—

- (a) give notice of his or her intention to the holder of the plant breeder's right or the applicant for such right, as the case may be, and to any other person who appears to him or her to have an interest in the matter; and 20  
 (b) give such holder, applicant or person an opportunity of being heard before exercising his or her authority.

**Disclosure of information**

53. Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act, except— 25

- (a) to the extent that it may be necessary for the proper administration of this Act;  
 (b) for the purposes of any legal proceedings under this Act;  
 (c) upon an order of a competent court; or 30  
 (d) at the request of the Minister, the Director-General or any other person entitled to the information.

**Regulations**

54. (1) The Minister must make regulations by notice in the *Gazette* regarding—  
 (a) any matter which may or must be prescribed in terms of this Act; 35  
 (b) any certificate or other document or form to be issued or used for the purposes of this Act;  
 (c) the fees payable in respect of any application, matter or document;  
 (d) 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; 40  
 (e) the tests, trials, examinations and other steps to be taken by an applicant or the Registrar before a plant breeder's right may be granted, and the time within which they are to be taken;  
 (f) the records relating to reproductive material for sale, multiplication or export to be kept by any person who has such material in his or her possession or under his or her control, the form and manner in which they are to be kept, and how and to whom they must be available for inspection; and 45  
 (g) any ancillary or incidental, administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 50



(2) Different regulations may be made in respect of different classes or groups of plants or in respect of different kinds of plants.

(3) The regulations may in respect of any contravention thereof, or failure to comply therewith, prescribe a penalty—

- (a) in the case of a first conviction, of a fine or imprisonment for a period not exceeding six months; and 5
- (b) in the case of a second or subsequent conviction, of a fine or imprisonment for a period not exceeding one year.

(4) A regulation prescribing a fee may be made only after consultation with the Minister of Finance. 10

### Offences and penalties

**55.** (1) (a) A person is guilty of an offence if that person, in relation to propagating material of a plant variety in respect of which a plant breeder's right has been granted in accordance with section 28, perform any of the activities contemplated in section 7(1)(a) to (f) and such activity would, by virtue of section 32, infringe the plant breeder's right in the variety. 15

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(c) The institution of an action for compensation and royalties on account of an infringement in accordance with section 33 in respect of a particular activity does not prevent a prosecution in terms of this subsection in respect of such activity. 20

(d) A prosecution in terms of this subsection in respect of an activity that allegedly infringe the plant breeder's right in a variety does not prevent the institution of an action for compensation on account of an infringement in accordance with section 33. 25

(2) A person is guilty of an offence if that person—

- (a) knowingly 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 of 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; 30
- (b) makes a false statement or representation, or furnishes false information, knowing it to be false;
- (c) obstructs or hinders the Registrar in the exercise of his or her powers or the carrying out of his or her duties under this Act; 35
- (d) falsely represents that propagating material sold by his or her for the purposes of propagation or multiplication is propagating material of a variety in respect of which a plant breeder's right has been granted under this Act, or that the propagating material originates from such a variety;
- (e) at the sale of propagating material for the purposes of propagation or multiplication, uses a denomination— 40
  - (i) for such material which is different from the denomination registered in terms of this Act for the variety in question or uses the registered denomination of another variety of the same kind of plant; or
  - (ii) which corresponds so closely to a registered denomination that it is misleading; 45
- (f) falsely holds himself or herself to be the Registrar, an employee or an authorised person; or
- (g) makes a document or causes a document to be made which purports to be a certificate, authorisation or other document or label issued in terms of this Act. 50

(3) Any person convicted of an offence referred to in subsection (2) is liable—

- (a) in the case of a first conviction of an offence referred to in subsection (2)(a), (b), (c), (d) or (e), to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;



(2) Ndangulo dzo fhambanaho dzi nga itwa malugana na kiJasi dzo fhambanaho na zwigwada zwo fhambanaho zwa zwimela kana malugana na tshaka dzo fhambanaho dza zwimela.

(3) Ndangulo malugana na u khakha, kana u kundelwa u anana/tevehedza dzi nga randela ndaṭiso— 5

(a) arali hu u wanwa mulandu lwa u thoma, hu nga vha thamu kana u dzula dzhele lwa miṅwedzi i sa paḍiho miṅwedzi ya sumbe; na

(b) arali hu u khakha lwa vhuvhili kana u kha hu tevhelaho u wanwa mulandu, hu nga vha thamu kana u dzula dzhele lwa tshifhinga tshi sa fhiriho ṅwaha.

(4) Ndangulo i randelaho masheleni i nga itwa fhedzi nga murahu ha u kwamana na Minista wa zwa Masheleni. 10

### Vhutshinyi na ndaṭiso

55. (1) (a) Muthu u vha na mulandu wa vhutshinyi arali uyo muthu, malugana na matheriaḷa a u bvededzwa ha lushaka lwa tshimela malugana na uri pfanelo ya musimo wa tshimela yo ṅetshedzwa hu sthi khou tevhelwa khethekanyo ya vhu 28, ene a vho ita muṅe wa mishumo yo sumbedzwaho kha kjetehkanyo ya vhu 7(1)(a) u ya kha (f) nahone uyo mushumo u ḑo, vha u khou pfuka pfanelo ya musimi wa tshimela kha oulo lushaka nga vhanga ḷa khethekanyo ya vhu 32. 15

(b) Muthu muṅwe na muṅwe o wanwaho mulandu wa vhutshinyi ho sumbedzwaho kha phara ya (a) o fanelwa nga ndaṭiso kana u dzula dzhele lwa tshifhinga tsi sa fhiriho miṅwaha ya 10, kana zwoṅhe u badela mulifho na u valelwa dzhele. 20

(c) U thomiwa ha nyito ya mbadelo na magavhelo malugana na u pfuka hu tshi tevhelwa khethekanyo ya vhu 33 malugana na nyito yeneyo a zwi thivheli vhutshutshisi u ya nga ino khethekanyo ṅhukhu zwi tshi lwama zwenezwo zwo itwaho.

(d) Vhutshutshisi u ya nga ino khethekanyo ṅhukhu malugana na nyito ine ya khou humbulelwa uri yo khakhela pfanelo ya musimi wa tshimela kha lushaka a zwi thivheli u itwa ha mbadelo malugana na u khakha/pfuka uya nga khethekanyo ya vhu 33. 25

(2) Muthu u vha a na mulandu wa vhutshinyi arali uyo muthu—

(a) nga khole a dzhenisa mazwifhi kha redzhiṣṣara kana a ita uri mazwifhi a dzheni kha redzhiṣṣara, kana a ṅwala kana a ita uri hu ṅwalwe mazwifhi ane a ita uri hu nge khophi yo dzhiswa kha redzhiṣṣara kana ḷiṅwalwa ḷo itwa nga Redzhiṣṣara, kana a bvia kana tenders kana a ita uri ḷi bviswe kana ṅetsedzwaho/tendered sa vhuṅanzi kha uho u dzhenisa kana iyo khophi; 30

(b) ita tshiṭaṭamennde tsha mazwifhi kana a sumbedza mazwifhi, kana a fha mafhungo a mazwifhi, a tshi khou zwi ḑivha uri ndi mazwifhi; 35

(c) khakhisa kana u thithisa Redzhiṣṣara kha u shuma maanḑa a we kana kha u shuma mishumo yawe nga fhasi ha uno Mulayo;

(d) a sumbedzwa mazwifhi zwi tshi kwama u thengiso ya matheriaḷa a u bvededza kana a tshi itela ndivho dza u bvededza kana u andisa a bvededza matheriaḷa tshakha dzo fhambanaho malugana na pfanelo ya musimi wa zwimela ye ya ṅetshedzwa nga fhasi ha uno Mulayo, kana matheriaḷa a u bvededza a bva kha dzenedzo tshaka; 40

(e) kha thengiso ya matheriaḷa a u bvededza hu tshi itelwa ndivho dza u bvededza kana u andisa, a shumisa tshaka—

(i) kha ayo matheriaḷa ane o fhambana na lushaka lwo ṅwaliswaho u ya nga uno Mulayo kha tshaka dzi kwameaho kana u shumisa lushaka lwo ṅwaliswaho lwa luṅwe lushaka lwa mufuda wonoyo u fanaho wa tshimela; kana 45

(ii) lune lwa fana zwa vhuṣinisa na ulwo lwo ṅwaliswaho zwine zwa vha zwi tshi tou xedza vhuḑuma; 50

(f) zwi zwa mazwifha a ḑifara sa Redzhiṣṣara, mushumi kana muthu o tendelwaho; kana

(g) ita ḷiṅwalwa kana a ita ḷiṅwalwa ḷine ḷa khou yo itwa ḷinge ndi ṅhanziela, thendelo kana ḷiṅwe ḷiṅwalwa kana ḷebeḷe yo ṅetshedzwaho nga uno Mulayo.

(3) Muthu muṅwe na muṅwe o ambiwaho kha khethekanyo ṅhukhu ya vhu (2) u tea— 55

(a) arali a khou wanwa mulandu lwa u thoma wa vhutshinyi ho ambiwaho kha khethekanyo ṅhukhu ya vhu (2)(a), (b), (c), (d) kana (e), hu vhe mulifho kana u valelwa dzhele lwa tshifhinga tshi sa paḑi miṅwaha mivhili kana zwoṅhe u lifha na u valelwa dzhele;

- (b) in the case of a second or subsequent conviction of an offence referred to in subsection (2)(a), (b), (c), (d) or (e), to a fine or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment;
- (c) in the case of a first conviction of an offence referred to in subsection (2)(f), (g) or (h), to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; and 5
- (d) in the case of a second or subsequent conviction of an offence referred to in subsection (2)(f), (g) or (h), to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment.

#### **Jurisdiction of magistrates' courts** 10

56. Notwithstanding anything to the contrary in any other law, a magistrate's court has jurisdiction to impose any penalty prescribed by this Act.

#### **Prohibition of trafficking by officers**

57. (1) The Registrar, or an officer who under the delegation, control or direction of the Registrar exercises the powers and carries out the duties assigned to or imposed upon the Registrar under this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year— 15

- (a) if he or she buys, sells, acquires or traffics in any plant breeder's right or an interest therein;
- (b) if he or she acquires, otherwise than in the course of his or her duties, or sells any propagating material of a variety in respect of which a plant breeder's right has been granted or applied for. 20

(2) Any purchase, sale, acquisition or assignment of any plant breeder's right by or to the Registrar or any such officer shall be of no force and effect.

(3) Any propagating material acquired by the Registrar or such an officer must be forfeited to the State. 25

(4) Nothing in this section contained applies to the person who bred, or discovered and developed, a variety of a plant or to any acquisition by inheritance.

#### **Delegation**

58. (1) The Minister may in writing delegate any function entrusted to the Minister under this Act, except a function referred to in section 54, to any employee of the Department. 30

(2) The Registrar may delegate in writing the performance of any function entrusted to the Registrar under this Act to any employee of the Department.

(3) (a) Any decision made or order given by any employee contemplated in subsection (1) or (2) must be regarded as having been made by the Minister or Registrar, as the case may be. 35

(b) The Minister or Registrar, as the case may be, may withdraw or amend any decision or order contemplated in paragraph (a), subject to any rights that may have vested as a consequence of such decision or order. 40

#### **Transitional provisions and savings**

59. (1) (a) A plant breeder's right granted in terms of the Plant Breeders' Rights Act, 1976, immediately before the commencement of this Act, must be regarded as a plant breeder's right granted under this Act.



(b) This Act applies with the changes required by the context to a plant breeder's right contemplated in paragraph (a): Provided that the period of protection of that plant breeder's right is regulated by section 21 of the Plant Breeders' Rights Act, 1976, as if that Act has not been repealed by section 60 of this Act.

(2) (a) Any application for a plant breeder's right which was received by the Registrar on a date before the date of commencement of this Act, but in respect of which a plant breeder's right has not been granted in terms of section 20 of the Plant Breeders' Rights Act, 1976, before such date of commencement, must be dealt with in all respects in accordance with the Plant Breeders' Rights Act, 1976, as if that Act was still in force, notwithstanding the repeal thereof by section 60 of this Act. 5  
10

(b) If the plant breeder's right has been granted in accordance with paragraph (a), the provisions of this Act apply.

(3) (a) In the event that a breeder has developed a variety in respect of which an application for registration of a plant breeder's right of the variety in question has not been submitted in accordance with the Plant Breeders' Rights Act, 1976, before the commencement of this Act, such breeder may, within the period prescribed by the Minister, submit an application for registration of such right in accordance with this Act. 15

(b) No such application may be submitted after expiration of the prescribed period contemplated in paragraph (a).

(4) The employee designated as registrar in terms of section 3(1) of the Plant Breeders' Rights Act, 1976, must be regarded as having been designated as Registrar in terms of section 2(1) of this Act. 20

(5) The register kept in terms of section 4(1) of the Plant Breeders' Rights Act, 1976, must be incorporated in and must form part of the register to be kept in terms of section 4(1) of this Act, and any document supplied to the register under the Plant Breeders' Rights Act, 1976, in terms of any provision thereof, must be regarded as having been furnished to the Registrar under the corresponding provision of this Act. 25

### Repeal of laws

60. The laws referred to in the second column of the Schedule are hereby repealed to the extent set out in the third column of the Schedule. 30

### Short title and commencement

61. This Act is called the Plant Breeders' Rights Act, 2016, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.



54

**SCHEDULE**

Laws repealed

*(Section 60)*

<b>No. and year</b>	<b>Short title</b>	<b>Extent of repeal</b>	
Act No. 15 of 1976	Plant Breeders' Rights Act, 1976	The whole	5
Act No. 5 of 1980	Plant Breeders' Rights Amendment Act, 1980	The whole	
Act No. 14 of 1981	Plant Breeders' Rights Amendment Act, 1981	The whole	10
Act No. 38 of 1983	Plant Breeders' Rights Amendment Act, 1983	The whole	
Act No. 15 of 1996	Plant Breeders' Rights Amendment Act, 1996	The whole	
Act No. 88 of 1996	Abolition of Restrictions on The Jurisdiction of Courts Act, 1996	Section 59	15

Mulayo wa Pfanelo dza Vhasimi vha Zwimela, wa 2018

Nom 12 ya 2018

55

**SHEDULU**

Milayo yo fheliswaho

*(Khethekanyo ya vhu 60)*

<b>Nomboro. na n̄waha</b>	<b>Dzina lipfufhi</b>	<b>Vhuhulu ha u fhelisa</b>
Mulayo wa Nomboro ya vhu. 15 wa 1976	Mulayo wa Pfanelo dza Vhasimi vha Tshimela wa, 1976	Mulayo woṭhe
Mulayo wa Nomboro ya vhu. 5 wa 1980	Mulayo wa Pfanelo dza Vhasimi vha Tshimela wo Khwiniswaho wa, 1980	Mulayo woṭhe
Mulayo wa Nomboro ya vhu. 14 wa 1981	Mulayo wa Pfanelo dza Vhasimi vha Tshimela wo Khwiniswaho wa, 1981	Mulayo woṭhe
Mulayo wa Nomboro ya vhu. 38 wa 1983	Mulayo wa Pfanelo dza Vhasimi vha Tshimela wo Khwiniswaho wa, 1983	Mulayo woṭhe
Mulayo wa Nomboro ya vhu. 15 wa 1996	Mulayo wa Pfanelo dza Vhasimi vha Tshimela wo Khwiniswaho wa, 1996	Mulayo woṭhe
Mulayo wa Nomboro ya vhu. 88 wa 1996	Mulayo wa u Kwasha Phungudzelo kha Maanḡalanga vhuponi ha Dzikhothe, 1996	Mulayo woṭhe

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