

A BILL

FOR

AN ACT TO PROVIDE FOR THE PROTECTION OF PLANT VARIETIES,
ESTABLISH A PLANT VARIETY PROTECTION OFFICE FOR THE PROMOTION
OF INCREASED STAPLE CROP PRODUCTIVITY FOR SMALL HOLDER
FARMERS IN NIGERIA AND FOR RELATED MATTERS

Sponsored Hon. Munir Babba Dan Agundi

[] Commencement

ENACTED by the National Assembly of the Federal Republic of
Nigeria as follows:

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PART I - PRELIMINARY PROVISIONS

1. The objectives of this Act are to:

Objectives

(a) Promote increased staple crop productivity for smallholder
farmers in Nigeria and encourage investment in Plant Breeding and crop
variety development;

(b) Promote increased mutual accountability in Seed sector;

(c) Protection of new varieties of plants.

2. This Act applies to:

Application

(a) A breeder;

(b) Any plant genera and species.

PART II - PLANT VARIETY PROTECTION OFFICE

3. There is established an office to be known as the Plant Variety
Protection Office (herein after referred to as the Office) which shall be
domiciled in the National Agricultural Seeds Council

Establishment
of Plant Variety
Protection rights
office

4.-(1) The Director General of the National Agricultural Seeds
Council shall be the Registrar of the Plant Variety Protection Office and he
shall appoint an officer as Deputy Registrar:

Appointment of
Registrar

(a) The Deputy Registrar shall have at least a Masters Degree in
Plant Breeding, Seed Science, Agronomy or in related fields with a

1 minimum of 7 years cognate experience who shall perform the functions
2 assigned to him by the Registrar; and

3 (b) There shall for the purpose of this Act be appointed such other
4 grades of assistants as the Registrar may consider necessary for the
5 enforcement of the provisions of this Act.

6 (2) The Deputy Registrar shall be responsible for the day to day
7 management and administration of the Office and answerable to the Registrar.

Functions of
the Office

8 5. The functions of the Office shall be to:

9 (a) grant breeders' rights;

10 (b) maintain a register and provide information on plant breeders'
11 rights issued in Nigeria;

12 (c) facilitate transfer and licensing of plant breeders' rights;

13 (d) collaborate with local and international bodies whose functions
14 relate to plant breeders' rights matters; and

15 (e) perform any other functions as are necessary for the furtherance of
16 the objects of this Act.

Register of Plant
Variety Protections'
rights

17 6.-(1) The Registrar shall maintain a breeders' rights register in which
18 the information required to be registered under this Act shall be entered.

19 (2) The information to be listed in the register for each registered
20 variety shall include:

21 (a) the species and denomination of a variety;

22 (b) the full name and address of the:

23 (i) applicant or holder of the breeder's right, and

24 (ii) person who bred or discovered and developed the variety, in case
25 such person is different from the applicant or holder of the breeder's right;

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

27 (d) any other matter which:

28 (i) is required by this Act or any other written law to be entered in the
29 Register, and

30 (ii) may affect the validity or ownership of plant breeders' rights; and

1 (e) any other information which may be required by Regulations
2 made pursuant to this Act.

3 (3) The Register shall be a prima facie evidence of any matter
4 entered therein.

5 7.-(1) The register shall be prima facie evidence of all matters
6 directed or authorized by the Act to be noted therein.

Register to be evidence

7 (2) A certificate by the registrar to the effect that an entry has or has
8 not been made in the register or that any other thing authorized by this Act to
9 be done, has or has not been done, shall be prima facie evidence of the
10 matters specified in that certificate.

11 (3) A copy of an entry in the register or an extract from the register,
12 certified by the registrar, shall be admitted in evidence in any court without
13 further proof or production of the register.

14 8.-(1) The Register shall be open for inspection by any member of
15 the public during business hours.

Inspection of Register

16 (2) A certified copy of any entry in the Register shall be given upon
17 request and payment of the fees prescribed in the regulations made pursuant
18 to this Act.

19 9.-(1) An ad-hoc committee to be known as the Plant Variety
20 Protection' Advisory Committee (hereinafter referred to as the Committee)
21 may from time to time be established to perform the functions specified in
22 section 10 of this act.

Plant Variety Protection Advisory Committee

23 (2) The Director General shall, subject to gender consideration,
24 appoint members of the Committee and it shall be composed of one
25 representative each from:

26 (a) the Council, who shall be the Chairman of the Committee;

27 (b) the Ministry;

28 (c) a registered Plant Breeder Association;

29 (d) a registered Seed Traders Association;

30 (e) the registered farmers' association;

- 1 (f) a University offering a course on Plant Breeding;
 2 (g) the Attorney General of the Federation's office;
 3 (h) the National Office for Technology Acquisition and Promotion;
 4 (i) the National Quarantine Services;
 5 (j) the National Biotechnology Development Agency;
 6 (k) the National Biosafety Management Agency;
 7 (l) the National Crop Variety Release Committee;
 8 (m) Registrar of Trademarks,
 9 (n) Registrar of Patents and Design; and
 10 (o) the deputy Registrar

11 (3) The Legal unit of the Council shall be the secretary of the
 12 Committee.

Functions of
the Committee

13 **10.** The Committee shall:

14 (a) through the Director General of NASC advise the Minister on
 15 efficient enforcement of this Act;

16 (b) receive reports of plant breeders' rights applications from the
 17 Registrar;

18 (c) receive information on the plant breeders' rights reports and on the
 19 Registrar's tests results; and

20 (d) manage the operations of the Fund.

Powers of the
Committee

21 **11.** The Committee shall:

22 (a) make its own rules of procedure;

23 (b) give the Registrar directives of a specific and general nature; and
 24 call on breeders and any other interested person for hearing on plant variety
 25 protection matters.

26 **PART III - VARIETIES TO BE PROTECTED**

Genera and
Species to be
protected

27 **12.** The protection of varieties under this Act shall apply to all plant
 28 genera and species.

Conditions of
Protection

29 **13.-(1)** The breeder's right shall be granted with respect to a variety
 30 which is new distinct, uniform and stable.

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

3 (a) variety is designated by a denomination in accordance with the
4 provisions of section 19 of this Act; and

5 (b) applicant complies with the provisions of this Act and that he
6 pays the fees prescribed in the Regulations made pursuant to this Act.

7 **14.-(1)** The variety shall be deemed to be new if, at the date of filing Novelty
8 of the application for a breeder's right, propagating or harvested material of
9 the variety has not been sold or otherwise disposed of to any person by or
10 with the consent of the breeder, for purposes of exploitation of the variety in:

11 (a) Nigeria: earlier than one year before the date of filing the
12 application; and

13 (b) a territory other than Nigeria earlier than:

14 (i) four years, or

15 (ii) six years before the said date in the case of a tree or vine.

16 (2) Subject to subsection (1) of this section, the following acts shall
17 not be considered to result in the loss of novelty:

18 (a) a trial of the variety not involving sale or disposal of to others
19 for purposes of exploitation of the variety; and

20 (b) sale or disposal of to:

21 (i) others without the consent of the breeder,

22 (ii) any person that forms part of an agreement for the transfer of
23 rights to the successor in title,

24 (iii) any person that forms part of an agreement under which a
25 person multiplies propagating material of the variety concerned on behalf of
26 the breeder, provided that the property in the multiplied material reverts to
27 the breeder and the multiplied material is not used for the production of
28 another variety,

29 (iv) any person that forms part of an agreement under which a
30 person undertakes field tests or laboratory trials, or small-scale processing

- 1 trials with a view of evaluating the variety,
- 2 (v) any person that forms part of the fulfillment of a statutory or
- 3 administrative obligation concerning biological security or the entry of
- 4 varieties in an official catalogue of varieties admitted to trade,
- 5 (vi) any person of harvested material which is a by-product or a
- 6 surplus product of the creation of the variety or of the activities referred to in
- 7 paragraphs (iii) to (v) provided that the said material is sold or disposed of
- 8 without variety identification for the purposes of consumption, and
- 9 (vii) any person due to or in consequence of the fact that the breeder
- 10 had displayed the variety at an official or officially recognized exhibition.

Distinctness

11 **15.-(1)** A variety shall be deemed to be distinct where it is clearly

12 distinguishable from any other variety whose existence is a matter of common

13 knowledge at the time of the filing of the application.

14 (2) For purposes of subsection (1) of this section, the filing of an

15 application for the granting of breeder's right or for the entering of another

16 variety in the official register of varieties in any country, shall be deemed to

17 render that other variety a matter of a common knowledge from the date of the

18 application, provided that the application leads to the granting of breeder's

19 right or to the entering of the said other variety in the official

20 register of varieties.

Uniformity and stability

21 **16.** A variety shall be deemed to be:

22 (a) uniform if, subject to the variation that may be expected from the

23 particular features of its propagation, it is sufficiently uniform in its relevant

24 characteristics; and

25 (b) stable, where its relevant characteristics remain unchanged after

26 repeated propagation or, in the case of a particular cycle of propagation, at the

27 end of each such cycle.

28 PART IV - APPLICATION FOR PLANT VARIETY PROTECTION RIGHTS

Application for Plant Variety Protection's right

29 **17.** A breeder of a new variety may apply for the grant of a breeder's

30 right for that variety.

1 18. The application for breeder's right relating to a variety shall
2 contain:

The Contents of
an application

3 (a) the name and address of the applicant;
4 (b) where the applicant is the successor in title of the person who
5 bred, or discovered and developed, the variety;

6 (i) proof of title or authority in the form and content satisfactory to
7 the Registrar or as may be specified by Regulations establishing the
8 existence and validity of the assignment or succession; and

9 (ii) the name and address of the person who bred, or discovered and
10 developed, the variety;

11 (c) the proposed denomination and the description of the
12 characteristics of the variety as the Registrar may require;

13 (d) samples of the propagating material in such quantities as the
14 Registrar may require; and

15 (e) any additional information, documents and material that may
16 be required in connection with the application as may be prescribed in the
17 Regulations.

18 19. (1) The variety shall be designated by a denomination which
19 shall be its generic designation.

Variety
Denomination

20 (2) Subject to subsection (6) of this section, the rights in the
21 designation registered as the denomination of the variety shall not hamper
22 the free use of the denomination in connection with the variety even after the
23 expiration of the breeder's right.

24 (3) The denomination
25 (a) shall enable the variety to be identified;

26 (b) shall not mislead or cause confusion concerning the
27 characteristics, value or identity of the variety or the identity of the breeder;

28 (c) shall be different from every denomination which designates, in
29 the territory of any member of an international organization dealing with
30 plant breeders' rights matters to which Nigeria is a party, an existing variety

1 of the same plant species or of a closely related species; and

2 (d) may not consist solely of figures except where this is an
3 established practice for designating varieties.

4 (4) The denomination of the variety shall be submitted by the
5 applicant to the Registrar and where the Registrar finds that the denomination
6 does not satisfy the requirements of this section, he shall:

7 (a) refuse to register it; and

8 (b) direct the applicant to propose another denomination within the
9 period to be prescribed in the Regulations made pursuant to this Act.

10 (5) The Registrar shall register the denomination at the time the
11 breeder's right is granted.

12 (6) Prior rights of third persons shall not be affected and where, by
13 reason of a prior right, the use of the denomination of a variety is forbidden to a
14 person who, in accordance with the provisions of subsection (10) of this
15 section, is obliged to use it, the Registrar shall direct the applicant to submit
16 another denomination for the variety.

17 (7) Where the variety is already protected by a member of an
18 international organization dealing with the plant breeders' rights matters to
19 which Nigeria is a party or an application for the protection of the same variety
20 is filed in a member of such organisation, the variety denomination which has
21 been proposed or registered in that other member of the organization shall be
22 submitted by the applicant to the Registrar.

23 (8) The Registrar shall:

24 (a) register the denomination submitted, unless he considers the
25 denomination unsuitable within Nigeria; and

26 (b) direct the applicant to submit another denomination where the
27 denomination is unsuitable.

28 (9) The Registrar shall in writing, inform the authorities of the
29 members of UPOV on matters concerning variety denominations, in particular
30 the submission, registration and cancellation of the denominations.

1 (10) Any person who, within Nigeria, offers for sale or markets
2 propagating material of a variety protected within the said territory shall be
3 obliged to use the denomination of that variety, even after the expiration of
4 the breeder's right of that variety, except where prior rights prevent such use.

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

9 PART V - CONSIDERATION AND DISPOSITION OF APPLICATION

10 20.-(1) Shall be the date which the application was filed at the
11 Registry by the applicant. The filling date
of an application

12 (2) For the purposes of this section, an application shall be deemed
13 to have been submitted in the form prescribed under this Act.

14 21.-(1) Any breeder who has duly filed an application for the
15 protection of a variety in one of the members of an international Right of Priority
16 organization dealing with plant breeder's right matters which Nigeria is a
17 party shall enjoy a right of priority for a maximum period of twelve months.

18 (2) The period referred to in subsection (1) of this section shall be
19 computed from the date of filing the first application and the day of filing
20 shall not be included in the latter period.

21 (3) The applicant shall, in order to benefit from the right of priority
22 in the subsequent application in Nigeria, claim within twelve months the
23 priority of the first application.

24 (4) The Registrar may, direct the applicant to furnish, within a
25 period of not less than three months from the filing date, a certified true copy
26 of the documents which constitute the first application that was filed and
27 samples or other evidence indicating that the variety which is the subject
28 matter of both applications is the same.

29 (5) The applicant may submit to the Registrar any necessary
30 information, document or material required in this Act for the purpose of the

1 examination within a period of two years after the expiration of the period of
 2 priority or a period of six months where the first application is rejected or
 3 withdrawn.

Amendment of
 application

4 **22.-(1)** An applicant may amend his application for the grant of a
 5 breeder's right for a variety at any time without affecting its filing date,
 6 provided that the amendment does not affect the variety which is the subject of
 7 the application.

8 (2) Where any amendment of an application occurs after publication
 9 of a notice under section 23 of this Act, the applicant shall be liable to pay the
 10 cost of re-publication.

Publication of
 Notice of
 Application

11 **23.** The Registrar shall publish in the Federal Government Gazette or
 12 in two national daily newspapers of wide circulation, a notice of every filed
 13 application for plant breeder's right that satisfies the requirements of the Act
 14 specifying:

15 (a) the name and address of the applicant;

16 (b) the filing date of the application;

17 (c) the proposed denomination; and

18 (d) such other information as may be specified in the Regulations.

Objection to
 the proposed
 grant of breeder's
 right

19 **24.-(1)** Any person may submit to the Registrar a written objection to
 20 the matter specified in the notice under section 23 of this Act within one month
 21 of its publication.

22 (2) A notice of objection made under sub-section (1) of this section
 23 shall:

24 (a) specify the grounds on which the objection is based;

25 (b) include a statement of the facts alleged in support of the grounds
 26 stated under paragraph (a) of this sub-section; and

27 (c) be supported by an affidavit or other proof, where required by the
 28 Registrar.

Grounds for
 Objection

29 **25.** An objection submitted pursuant to section 24 of this Act shall be
 30 based on the allegation that the:

- 1 (a) applicant is not entitled to file the application;
2 (b) application contains a material misrepresentation; and
3 (c) contents of the application do not comply with this Act or the
4 Regulations.

5 26.-(1) The Registrar shall, within two weeks from the date on
6 which an objection has been filed:

Notice to the
applicant and reply
to an objection

7 (a) notify the applicant that an objection has been made pursuant to
8 section 24 of this Act; and

9 (b) provide the applicant with a copy of the notice of objection and
10 all the supporting documents that have been submitted with the objection.

11 (2) The applicant may submit a written response to the objection to
12 the Registrar within two weeks or such further period as the Registrar may
13 allow from the date of the notification made under sub-section (1) of this
14 section.

15 (3) Where the applicant submits a response in pursuance to sub-
16 section (2) of this section, he shall send a copy to the person making the
17 objection.

18 (4) The Minister may reply to any objection made against the
19 Federal Government.

20 27.-(1) The Registrar shall examine an application and reply upon:

Disposition of
applications

21 (a) completion of the notice requirements under section 23 of this
22 Act; and

23 (b) the expiration of time limits for objections and replies.

24 (2) Upon any decision to grant a breeder's right which require an
25 examination for compliance with the conditions specified under this Act, the
26 Registrar may, in the course of the examination, grow or cause to be grown
27 the Variety or carry out other necessary tests, or take into account the results
28 of growing tests or other trials which have already been carried out.

29 (3) The Registrar may, for the purpose of an examination, direct the
30 breeder to provide the necessary information, document or material.

1 (4) The Registrar shall grant the breeder's right where he concludes
2 that:

- 3 (a) the applicant is entitled to file the application;
4 (b) the application conforms to the requirements of this Act;
5 (c) no objection has been filed;
6 (d) where an objection has been filed, there are no grounds for
7 objection; and

8 (5) For each variety for which breeder's right is granted, the Registrar
9 shall:

- 10 (a) issue a certificate of registration to the holder;
11 (b) enter the variety in the register as provided for under section 6 of
12 this Act; and
13 (c) publish a notice of the grant of breeder's right and the approved
14 denomination in the Gazette.

15 PART VI - PROVISIONAL AND FINAL PROTECTION

Provisional
protection

16 28. The holder of a breeder's right shall be entitled to equitable
17 remuneration from any person who, during the period between the publication
18 of the application under section 23 of this Act for the grant of a breeder's right
19 and the date of the grant of that right, has carried out acts which, once the right
20 is granted, require the breeder's authorization as provided for under section 29
21 of this Act.

Scope of the
breeder's right,
essentially derived
and certain other
varieties

22 29.-(1) Subject to sections 30 and 31 of this Act, the following acts in
23 respect of the propagating material of the protected variety shall require the
24 authorization of the holder of the breeder's right:

- 25 (a) production or reproduction (multiplication);
26 (b) conditioning for the purpose of propagation;
27 (c) offering for sale;
28 (d) selling or marketing;
29 (e) exporting;
30 (f) importing; and

1 (g) stocking for any purposes mentioned in the paragraphs (a) to (f)
2 of this subsection.

3 (2) The holder of the breeder's right may give his authorization
4 subject to conditions and limitations.

5 (3) Subject to the provisions of sections 30 and 31 of this Act, the
6 acts referred to in paragraphs (a) to (g) of sub-section (1) of this section in
7 respect of:

8 (a) harvested material, including entire plants and parts of plants,
9 obtained through the unauthorized use of propagating material of the
10 protected variety, shall require the authorization of the holder of the
11 breeder's right, unless the holder of the breeder's right has had reasonable
12 opportunity to exercise his right in relation to the said propagating material;
13 and

14 (b) products made directly from harvested material of the protected
15 variety falling within the provision of paragraph (a) of this subsection
16 through the unauthorized use of the said harvested material, shall require the
17 authorization of the breeder, unless the breeder has had reasonable
18 opportunity to exercise his right in relation to the said harvested material.

19 (4) The provisions of sub-sections (1), (2) and (3) of this section
20 shall apply to a variety:

21 (a) that is essentially derived from the protected variety, where the
22 protected variety is not itself an essentially derived variety;

23 (b) which is not clearly distinguishable in accordance with section
24 15 of this Act from the protected variety; and

25 (c) whose production requires the repeated use of the protected
26 variety.

27 (5) For the purposes of paragraph (a) of subsection (4), a variety
28 shall be deemed to be essentially derived from another variety (initial
29 variety) when:

30 (a) it is predominantly derived from the initial variety, or from a

1 variety that is itself predominantly derived from the initial variety, while
2 retaining the expression of the essential characteristics that result from the
3 genotype or combination of genotype of the initial variety;

4 (b) it is clearly distinguishable from the initial variety; and

5 (c) except for the differences which result from the act of derivation, it
6 conforms to the initial variety in the expression of the essential characteristics
7 that result from the genotype or combination of genotypes of the initial variety.

8 (6) For the purpose of this section, an essentially derived variety may
9 be obtained through:

10 (a) the selection of a natural or induced mutant or of somaclonal
11 variant;

12 (b) the selection of a variant individual from plants of the initial
13 variety; and

14 (c) backcrossing, or transformation by genetic engineering.

Exceptions to
the breeder's
right

15 **30.-(1)** The Breeder's right shall not extend to any act carried out:

16 (a) privately and for non-commercial purposes;

17 (b) for experimental purposes; and

18 (c) for the purpose of breeding any other variety, and, except where
19 the provisions of section 29 (4) to (6) of this Act apply, any act referred to in
20 section 29 (1) to (3) in respect of such other varieties.

21 (2) For the list of agricultural crops specified by the Minister, the
22 breeder's right shall not extend to a farmer who, within reasonable limits and
23 subject to the safeguarding of the legitimate interests of the holder of the
24 breeder's right, uses for propagating purposes on his own holding, the product
25 of the harvest which he has obtained by planting on his own holding, the
26 protected variety or a variety referred to in section 29 (4)(a) or (b) of this Act.

27 (3) The reasonable limits and the means of safeguarding the
28 legitimate interest of the holder of the breeder's right shall be specified in the
29 regulations made pursuant to this Act.

1 31.-(1) The breeder's right shall not extend to an act concerning any
2 material of the protected variety or of a variety covered by the provisions of
3 section 29(4) to (6) of this Act, which has been sold or otherwise marketed
4 by the breeder or with his consent in Nigeria, or any material derived from
5 the said material, unless the act involves:

Exhaustion of
the breeder's
right

6 (a) further propagation of the variety in question; or

7 (b) an export of material of the variety, which enables the
8 propagation of the variety, into a country which does not protect varieties of
9 the plant genus or species to which the variety belongs, except where the
10 exported material is for final consumption purposes.

11 (2) In this section "material" means, in relation to a variety:

12 (a) propagating material of any kind;

13 (b) harvested material, including entire plants and parts of plants;

14 and

15 (c) any product made directly from the harvested material.

16 32.-(1) Except as specified in part VII of this Act, the breeders'
17 rights granted under this Act shall expire after 20 years from the date of the
18 grant except for trees and vines whose breeders' rights shall expire after 25
19 years from the date of grant.

Duration of a
plant breeder's
right

20 (2) The Registrar may extend the duration referred to in subsection
21 (1) of this section for an additional five years where he receives a six month
22 written notice from the holder of the Breeder's Right before the expiration of
23 the original term.

24 33.-(1) A breeder's right is protected by both civil and criminal
25 measures stipulated in any written law.

Protection and
damages for
infringement of
a breeder's right

26 (2) A suit by the holder of breeder's right against any person who
27 infringes the breeder's right may be brought in the court.

28 34. The holder of breeder's right shall pay fees at time and rate
29 specified in the Regulations made pursuant to this Act.

Fees

1 PART VII - NULLITY, CANCELLATION AND SURRENDER

2 OF BREEDER'S RIGHT

Nullity of the
breeder's right3 35.-(1) The Registrar shall declare a breeder's right granted by him
4 null and void where it is established that:5 (a) the variety did not comply with the conditions specified in sections
6 14 or 15 at the time the breeder's right was granted;7 (b) where the grant of the breeder's right has been essentially based
8 upon information and documents furnished by the applicant, the conditions
9 laid down in paragraphs (a) or (b) of section 16 were not complied with at the
10 time of the grant of the breeder's right; or11 (c) the breeder's right has been granted to a person who is not entitled
12 to it, unless it is transferred to the person who is so entitled.Cancellation
of the breeder's
right13 36.-(1) The Registrar may cancel a breeder's right granted by him
14 where he has established that the conditions specified in paragraphs (a) or (b) of
15 section 16 of this Act are no longer fulfilled.16 (2) Without prejudice to sub-section (1) of this section, the Registrar
17 may cancel a breeder's right granted by him, within the prescribed period
18 provided in the Regulations made pursuant to this Act, where the holder of the
19 breeder's right:20 (a) does not provide the Registrar with the information, documents or
21 materials deemed necessary for verifying the maintenance of the variety;22 (b) fails to pay the fees which may be payable to keep his right in
23 force; or24 (c) does not propose another suitable denomination where the
25 denomination of the variety is cancelled after the grant of the right.Notification of
nullification and
cancellation26 37.-(1) The Registrar shall notify the holder of the breeder's right of
27 any decision made pursuant to sections 35 and 36 of this Act and the grounds
28 for such decision.29 (2) A person who receives the notice referred to in sub-section (1) of
30 this section may send a written objection to the Registrar within thirty days

1 from the date of receipt of the notification.

2 (3) The Registrar may hold, within a reasonable time after receipt
3 of an objection, a hearing or may decide the matter based on the written
4 submission of the interested parties.

5 (4) Where the Registrar nullifies and cancels any breeder's right
6 under this section, he shall publish the nullification or cancellation by a
7 notice in the Gazette or two daily national newspapers of wide circulation,
8 after the expiration of thirty days from the date of the decision or following a
9 decision made under sub-section (3) of this section.

10 (5) The holder of the breeder's right shall return to the Registrar any
11 certificate of the grant of a breeder's right that has been nullified or cancelled
12 under this section.

13 **38.**-(1) A holder of a breeder's right may, by written notice to the Registrar, surrender the right. Surrender of
breeder's right

14 (2) The Registrar shall, within one month from the date of
15 receiving the notice referred to sub-section (1) of this section, terminate the
16 breeder's right and publish a notice in the Gazette or two daily national
17 newspapers of the termination.

18 **PART VIII - AUTHORIZATION AND ASSIGNMENTS**

19 **39.** The holder of breeder's right may assign or authorize any Authorization or
assignment of
breeder's right
20 person, to undertake any activity described or referred to in section 29 of this
21 Act.

22 **40.**-(1) The free exercise of a breeder's right shall, unless where Restriction on
the exercise of
breeder's right
23 expressly provided in this Act, not be restricted for reasons other than of
24 public interest.

25 (2) When any such restriction has the effect of the Registrar
26 authorizing a third party to perform any act for which the breeder's
27 authorization is required, the breeder shall receive equitable remuneration.

28 **41.**-(1) A person authorized under section 39 of this Act may, in not Information on
authorization or
assignment of
breeder's right
29 more than sixty days from the effective date of the authorization:
30

- 1 (a) notify the Registrar of the transaction; and
2 (b) submit a copy of the authorization agreement to the Registrar.
3 (2) The Registrar may prescribe the form and manner of the
4 notification to be made under sub-section (1) of this section.
5 (3) Upon assignment or other transmission of all of a breeder's right,
6 the assignee or recipient shall notify the Registrar for the purposes of making
7 changes in the Register.

8 PART IX - APPEALS

Appeals from
decision of
Registrar

9 42.-(1) An appeal from the decisions of the Registrar made under this
10 Act shall lie to the Minister.

11 (2) A person who is aggrieved by any of the decisions of the Registrar
12 may appeal to the Minister by submitting a notice of the appeal within sixty
13 days following the publication or of the receipt of the individual notice of such
14 decision by the person whose interest is the source or subject of the appeal.

Decisions of
the Minister on
Appeals

15 43.-(1) The Minister:

16 (a) may conduct an investigation, if it deems it necessary to do so, and
17 may hold a hearing of the appeal or make a decision based on written
18 submissions;

19 (b) may confirm, set aside or vary any decision or action of the
20 Registrar and may order the Registrar to carry out his decision; and

21 (c) shall give the reasons for his decision in writing, and copies of the
22 decision shall be given to the appellant, the Registrar and any other interested
23 party.

24 (2) Subject to the provisions of this section, a decision of the Minister
25 shall be final.

26 PART X - PLANT BREEDERS' RIGHTS DEVELOPMENT FUND, ACCOUNTS,

27 AUDIT AND ANNUAL REPORT

Plant Breeders
Rights Development
Fund

28 44.-(1) The Minister shall, after consultation with the Minister
29 responsible for finance matter, establish a fund to be known as the "Plant

1 Breeders' Rights Development Fund" into which money realized under this
2 Act shall be kept.

3 (2) The sources of moneys for the fund shall include:

4 (a) fees payable under this Act; and

5 (b) any donation or grant from the government or any other person.

6 (3) The purposes of the fund shall be for the financing of:

7 (a) development and promotion of the plant breeders' rights;

8 (b) training of plant breeders on matters concerning plant breeders'
9 rights;

10 (c) establishment and maintenance of the variety collection and
11 data base; and

12 (d) any other activity relating to administration of the Act.

13 (4) In addition to the functions entrusted to it under section 10 of
14 this Act, the committee shall operate as the fund committee, whereby:

15 (a) the registrar shall be a member of the fund committee and shall
16 serve as the secretary of the fund; and

17 (b) the fund committee shall make rules and procedures for the
18 operations and management of the fund provided that such rules and
19 procedures shall not be operative (5) Separate books of accounts and other
20 records in respect of the fund shall be kept properly and maintained and be
21 subject to audit.

22 45.-(1) The plant breeders' rights office shall cause to be kept and
23 maintain proper books of accounts with respect to:

Accounts and
audit

24 (a) all sums of money received and expended by the Plant Breeders'
25 Rights Office and matters in respect of which the receipt and expenditure
26 take place;

27 (b) all the assets and liabilities of the Plant Breeders' Rights Office
28 and the Fund; and

29 (c) the income and expenditure statement of the Plant Breeders
30 Rights Office.

1 (2) The financial year of the Plant Breeders Rights Office and the fund
2 shall end on 31st December of each year.

3 (3) The books of accounts of the Plant Breeders' Rights Office and the
4 Fund shall be audited at the end of each financial year by the Accountant
5 General and Auditor General.

Annual report
to be submitted
to the Minister

6 46.-(1) The Registrar shall, submit to the Minister a copy of the
7 audited accounts and annual report on the activities of the Plant Breeders'
8 Office in respect of that particular year not later than six months after the end of
9 each financial year.

10 (2) The Registrar shall, within a period of six months or such longer
11 period as the National Assembly may by resolution appoint after the accounts
12 have been audited, lay the audited accounts and audit report before the National
13 Assembly.

14 PART XI - OFFENCES AND PENALTIES

Offences and
penalties

15 47.-(1) Any person who knowingly;

16 (a) makes a false entry in the Register;

17 (b) makes a writing which falsely purports to be a copy of an entry in
18 the Register or of a document lodged with the Registrar;

19 (c) produces or tenders a false entry of copy as evidence;

20 (d) submits a false document or makes a false statement or
21 representation to the Registrar in regard to any action described under this Act;

22 (e) obstructs or hinders the Registrar or any officer in the exercise of
23 his powers or the carrying out of his functions under this Act;

24 (f) having been duly summoned to appear at any proceedings under
25 this Act, fails without lawful excuse to appear;

26 (g) having appeared as a witness at any proceedings under this Act,
27 refuses without lawful excuse to be sworn or to r to produce any document or
28 answer any question which he may be lawfully required to produce or answer;

29 (h) contravenes the obligation to use the denomination as required by
30 subsection 10 of section 19 of this Act;

1 (i) gives false information in any application or makes any false
2 statement in evidence,

3 (j) violates breeders right,

4 (k) any person who violates the provisions of section 29; and

5 (l) Contravenes any other provisions of this Act commits an
6 offence.

7 (2) Any person who commits an offence referred to under this Act
8 shall be liable upon conviction (a) as a first offender, to imprisonment for a
9 term not exceeding one year or a fine not exceeding N1,000,000; and

10 (b) in the event of such person having been previously convicted
11 under this section, he is liable to imprisonment for a term not exceeding two
12 years or a fine of N2,000,000 or both.

13 PART XII - GENERAL PROVISIONS

14 48. Notwithstanding any other provision of this Act, the Registrar
15 shall collect fees from the applicant or any other person filling a document or
16 requesting access of administrative action under this Act, for each
17 application, extension, filling, inquiry or other administrative process or
18 service.

Collection of
fees

19 49.-(1) The contents of any license or assignment shall be
20 confidential unless both parties agreed to permit access to a third party and
21 only to the extent of the permission so granted.

Confidentiality
and Disclosure

22 (2) The applicant may declare some portion of the application to be
23 confidential, where declared so, the Registrar shall determine whether the
24 application can be processed without the publication or other violation of
25 that confidentiality, and give the applicant the option of altering his
26 statement of confidentiality or withdraw the application.

27 (3) Except as otherwise provided for in this Act, any person who
28 discloses any information made available under the Act, except to:

29 (a) The Minister, the Registrar or any other person for the purposes
30 of carrying out his duties or the performance of his function under this Act;

1 (b) A police officer for the purposes of an investigation or inquiry
2 relating to the enforcement of the provision of this Act; or

3 (c) Any other person when required to do so by any court or under any
4 written law, Commits an offence and upon conviction shall be liable to a fine
5 not exceeding N5,000,000 or an imprisonment for a period not exceeding one
6 year or to both.

Action against
the state

7 **50.**-(1) Subject to the existing law on taking action against the State,
8 this Act shall be binding on the Government with regard to its applications for
9 breeder's right and other interests acquired or given in breeder's right to the
10 same extent and with the same effect as it applies to any other person.

11 (2) No claim shall lie against the State, the Minister, the Registrar or
12 any other office for anything done in good faith in the discharge of duties under
13 the powers conferred by this Act.

Breeders right
in respect of
existing varieties
of recent creation

14 **51.**-(1) Where, according to Section 12, this Act applies to a plant
15 genus or species to which it did not previously apply, varieties belonging to
16 such plant genus or species shall be considered to satisfy the condition of
17 novelty defined in paragraph (1) of Section 14 even where the sale or disposal
18 of to others described in that paragraph took place in Nigeria within four years
19 before the filing date or, in the case of trees or of vines, within six years before
20 the said date.

21 (2) Within twelve months from the date of commencement of this Act,
22 the breeder of an existing variety of recent creation may apply to the Registrar
23 in respect of that variety to benefit from the provisions under paragraph 1 of
24 this Section

Agreement with
foreign governments

25 **52.** The Minister may enter into bilateral or multilateral agreements
26 with the states and intergovernmental or non-governmental organizations in
27 order to facilitate cooperation in testing.

Agents

28 **53.**-(1) When the breeder is a non-resident or in the case of a
29 corporation, does not have its registered office in Federal Republic of Nigeria,
30 he shall have an agent who is resident in Federal Republic of Nigeria.

1 (2) The Registrar may, for any gross misconduct or prescribed
2 cause or any other reasonable cause considered by the Registrar to be
3 sufficient, refuse to recognize or to continue to recognize any person as
4 authorized by the breeder to act in the capacity of agent.

5 54. The Registrar shall make guidelines for the proper Registrar to
6 implementation of this Act and Regulations made under this Act. make guidelines

7 55.-(1) The Registrar shall with the approval of the Minister make Regulations
8 Regulations under this Act. Regulations

9 (2) Without prejudice to the generality of the sub-section (1) of this
10 section, Regulations made shall prescribe:

11 (a) various forms to be used under this Act;

12 (b) the procedure to be followed in any proceedings before the
13 Registrar;

14 (c) specific information and facilities to be provided, and of the
15 propagating and other materials to be submitted with respect to a variety;

16 (d) the test, trials, examinations and other steps to be taking with
17 respect to a variety, by applicants or by the Registrar and the time within
18 with any such steps are to be taken; and

19 (e) the fees to be paid in respect of:

20 (i) Application for the grants of breeder's right, for extension of its
21 terms,

22 (ii) Maintenance of breeder's right,

23 (iii) Request for administrative review, including objections to
24 nullity and cancellation of breeder's right, appeals from administrative
25 decisions and other administrative actions,

26 (iv) Technical examination,

27 (v) The inspection of obtained record in the Registrar or other
28 transaction involving a breeder's right,

29 (vi) Provision of certified copy of any entry therein, and

30 (vii) Any other fees to be paid under this Act.

Interpretation

- 1 **56. In this Act:**
- 2 "Agent", in relation to an applicant or a holder of plant breeder's right, means a
- 3 person who is duly authorized by the applicant or holder to act, on behalf of the
- 4 applicant or holder;
- 5 "Applicant" means the breeder entitled to file an application for the grant of a
- 6 breeder's right in accordance with the definition of "breeder" provided for in
- 7 this Act;
- 8 "Breeder" means a:
- 9 (a) person who bred or discovered and developed a variety,
- 10 (b) person who is the employer of the person who bred or discovered
- 11 and developed, a variety or who has commissioned the latter's work, or
- 12 (c) a successor in title of a person mentioned in paragraph (a) or (b) as
- 13 the case may be;
- 14 "Breeder's right" means the right of the breeder provided for in this Act;
- 15 "Business hours" means 9am-3pm Mondays -Fridays, excluding public
- 16 holidays;
- 17 "Council" means the national agricultural seed council (NASC);
- 18 "Director General" means the director general of national agricultural seed
- 19 council (NASC);
- 20 "Fund" means the Fund established under section 44 of this Act;
- 21 "Gazette" means the Federal Government Gazette;
- 22 "Minister" means the Minister responsible for agriculture;
- 23 "Ministry" means the Ministry responsible for Agriculture;
- 24 "Register" means the Register of plant breeders' rights kept in terms of section
- 25 6 of this Act;
- 26 "Registrar" means the Registrar of Plant Breeders' Rights appointed in
- 27 accordance with section 4 of this Act;
- 28 "Propagating material" means a plant or part of the plant used to multiply the
- 29 plant;
- 30 "Sell" means to offer, advertise, keep, expose, transmit, convey, deliver or

1 (a) prepare for sale or exchange or dispose of for any consideration; --

2 (b) transmit, convey or deliver in pursuance of the sale;

3 "Variety" means a plant grouping within a single botanical tax on of the
4 lowest known rank, which grouping, irrespective of whether the conditions
5 for the grant of a breeder's right are fully met, can be:

6 (a) defined by the expression of the characteristics resulting from a
7 given genotype or combination of genotypes,

8 (b) distinguished from any other plant grouping by the expression
9 of at least one of the said characteristics, and

10 (c) considered as a unit with regard to its suitability for being
11 propagated unchanged.

12 57. This Bill may be cited as the Plant Varieties Protection Bill, Short title
13 2019.

EXPLANATORY MEMORANDUM

This Bill seeks for the protection of Plant Varieties, to establish a Plant Variety Protection Office for the promotion of increased staple crop productivity for small holder farmers in Nigeria.

