
Decree nº58/2006 of December 26

Being required to promote the valorization of scientific initiatives within the framework of the plants improvement, and under the paragraph f), nº1, of the article 204 of the Constitution of the Republic, the Council of Ministers decree:

- Article 1. It is approved the Norms for New Plants Varieties Protection, hereto, that are also part of this Decree.
- Article 2. The National Directory of Agrarians Services of the Ministry of Agriculture is the Registration Entity responsible for the administration of the plant improver rights.
- Article 3. The Minister of Agriculture shall approve the relevant instructions for the implementation of this Norms.

Passed by Council of Ministers, on the 24th October 2006.

Be it issued.

The Prime Minister, *Luisa Dias Diogo*

Norms for Protection of New Plant Varieties

CHAPTER I

ARTICLE 1

Definitions

For the purposes of these norms, the following concepts shall have the meaning ascribed:

1. *Improver Right*: any right acquired and exercised under the terms Norms.
2. *Improver*: a person that, independently has guided the final genetic improvement of such new specie, or a person that has developed or discovered such new specie, or the institution where such an improver provides services.
3. *Attorney*: institution to which such an improver delegates his/her rights.
4. *Specie*: subdivision of an agricultural Varieties which differs from such other specie by a clearly identifiable characteristic, both morphological, physiological, cytological, biochemical, performance and other characteristics that remain stable when they are sexually or asexually modified, and are deemed therefore, to be sufficiently identifiable.
5. *Protected Specie*: a specie that can not be sold without consent by its owner.

ARTICLE 2

Scope and objective

1. The objective of these norms is:
 - a) To protect intellectual property rights within the framework of the research and improvement of the plant Varieties ;

- b) To stimulate research and improvement of plants through investment return;
 - c) To promote the sustainable use of food and biodiversity genetic resources;
 - d) To promote the seeds market.
2. These Norms are applicable to all new Varieties and genus of plants.
2. The protection of the improver rights acquired under these Norms is valid within the national territory and in all countries with whom Mozambique has entered into bilateral and multilateral agreements regarding the matter hereof.
3. The Minister may extend the application of this Norms to any other Varieties, as well as to define the mechanisms for its protection.

CHAPTER II

Registration Authority

ARTICLE 3

Competences

The Registration Authority shall have power to:

- a) Concede Breeder's rights;
- b) Establish a database centre for dissemination of information on improver;
- c) Keep records and to provide information on the Breeder's rights recognized in Mozambique, licenses issued and protected Varieties;
- d) Keep documents or notices issued under this Norms and complementary legislation, as well as other aspects that may affect the validity or legitimacy of the Breeder's rights.
- e) Establish liaisons with national, regional and international entities in all matters concerning the Breeder's rights.
- f) Keep the database on the institutions authorized to commercialize protected Varieties (organisms) in compliance with these Norms.
- g) Keep the documentation and reference samples required for corroborating that it is a new organism.

ARTICLE 4

Technical committee

The Minister of Agriculture shall nominate a technical committee composed of maximum three persons, including a lawyer and an expert in research and improvement to assist the Registration Authority in the decision-making as to the concession of the Breeder's rights and analysis of objections.

CHAPTER III
Breeder's Rights Protection

ARTICLE 5

Conditions for protection

1. Breeder's rights shall be acknowledged if the specie is new, different, unvarying, and stable and if it has a single identification, as per article 11 of these Norms.
2. The acknowledgement of the Breeder's rights shall not be subject to the other conditions, as long as the applicant fulfils all the formalities set out in this Norms and makes the required payment.
3. Varieties to be registered under these Norms shall have been tested officially by the "Distinction, Uniformly and Stability" test, in at least one period, observing the established under the n°1 of this article.
4. The Registration Authority shall acknowledge the Breeder's rights to the new specie, where after analyzing the application, the objection and diagnosis of the results of the tests or experiments carried out, it finds that:
 - a) It is really a new variety;
 - b) The applicant fulfills the requirements set forth in this Norms and that he/she is eligible.
 - c) No objections or the objections are groundless.
4. The Registration Authority shall issue a certificate for any specie that its Breeder's rights have been acknowledged.

ARTICLE 6

Novelty

1. A specie shall be considered as new if:
 - a) Before the date of submission of application, the specie was not available for the public, in Mozambique, for more than one year, by commerce or other way, with Breeder's consent;
 - b) The specie is not circulating in other countries where the same application was submitted to, not more than four years, in case o agricultural seeds and six years, in case of tree-Varieties, and grape-vines;
 - c) The specie is not being cultivated or commercially available;
 - d) It is nor included in a commercial or botanic collection;
 - e) It was not duly described in any magazine, newspaper or other type of publication.
2. The innovation will not be affected or lost where:
 - a) The specie was obtained illegally, without the Breeder's consent;
 - b) Exhibition makes part of an agreement for the rights transfer or within the framework of the official testing for acknowledging of rights.

ARTICLE 7

Distinction

Any specie shall be considered as distinct if it is clearly different from any other specie known, of which an application has been submitted for the Breeder's rights registration, or if it is in an Official List of Varieties or botanic collection that the has access to.

ARTICLE 8

Invariability

Any specie shall be considered as unvarying, taking into account the variability foreseen and the reproductive system, sexual or asexual, if it sufficiently unvarying for the main characteristics.

ARTICLE 9

Stability

Any specie shall be considered as stable, if its main characteristics do not change after a number of generations recommended to include in the seeds production system.

ARTICLE 10

Denomination of Varieties

1. All Varieties (organisms) subject to protection under these Norms shall only have one name approved for its denomination, which will be used, either before or after term of Breeder's rights.
2. The name of the specie to be registered shall be proposed by the improver or such an entity that applies for registration.
3. The Registration Authority may, any time, before the acknowledgement of the Breeder's rights, and after examining all tests or objections submitted, reject the name proposed under the terms of n^o 2 of this article, if:
 - a) the name be similar or susceptible of being mistaken for another
 - b) it is similar to any other specie already registered in Mozambique, within the SADC or other country that acknowledges the protection of the specie;
 - c) coincide with the registered brand of a final product, fruit or seed;
 - d) it is not in harmony with the international plants nomenclature;
 - e) It leads into error about the identity of specie and its characteristics, or characteristics of the owner;
 - f) It only consists of numbers, unless it is common to designate specie.

CHAPTER IV
Breeder's Rights Acknowledgement

ARTICLE 11

Eligibility

1. Breeder's rights shall be conceded to:
 - a) Any new specie registered in the Official Varieties List, as referred to in the 4 of the Norms for Production and Commercialisation of Seeds, approved by the Decree 41/94, of September 20, as long as it is not for sale for more than one year;
 - b) Any specie acknowledged as being new in Mozambique, included in the Official Varieties List of any SADC member country, which as signed an agreement for rights protection in reciprocity base, and whose commercialization in Mozambique has been authorized;
 - c) A new variety from any other country that has signed an agreement with the Government of Mozambique for the rights protection in reciprocity base, if the same is not listed in Mozambique.

2. Breeder's rights shall be conceded to persons either collectively or individually, nationals or foreigners, as long as they have residence in Mozambique, in case of singular persons, or if they are registered or constituted in Mozambique, in case of collective entities, in harmony with this Norms and complementary legislation, should it be approved as to this matter.

ARTICLE 12

Application for Recognition

1. Applications for recognition may be submitted by:
 - a) Improver of the new specie or his/her attorney or successor in title;
 - b) leader of public research institution, on behalf of the Government;
2. Applications for Varieties protection shall be submitted, in writing, to the Registration Authority, enclosing the due payments.
3. The registration application shall include:
 - a) Applicant's name and address;
 - b) Botanic name of the specie;
 - c) Proposed name for the specie;
 - d) Technical description of the organism;
 - e) Information on former applications for the rights recognition.
4. The Registration Authority may solicit any information about the specie (organism) and/or its progenitors, including availability of drawing for visual and photographic inspection.

ARTICLE 13

Priority and date of submission of recognition applications

1. The effective date of the Breeder's rights recognition application shall be the date of receipt by the Registration Authority.
2. Should the Authority receive more than one application concerning the same specie priority to the rights recognition shall be given according to the submission order, taking into account the necessary requirements.
3. In case of Varieties from other countries, the effective date of the application for recognition shall be the date of application of the country of origin.
4. Should no application be submitted in other country, or be cancelled, recalled or rejected, the effective date shall be the date of receipt by the Registration Authority.

ARTICLE 14

Analysis and amendment of recognition applications

1. The Registration Authority shall acknowledge the Breeder's rights to the new specie, when, after analyzing the application, objections and the results of diagnosis of testing or trials made for the such a purpose, it is determined that the specie meets the requirements described in the articles 7 to 11 of this Norms.
2. For the purpose of the number 1 of this article, the Registration Authority appeal to the cultivation of the specie, and other related trials, including taking into account the results obtained with the specie, to be solicited from the applicant or other sources of information.
3. With the consent by the Registration Authority, the person or institution that have applied for the Breeder's rights, may any time, before the publication of the of the approval, alter the denomination or submit other data concerned the proposed specie.
4. The Registration Authority may correct or allow to be corrected the errors or descriptions of the new specie in the documents submitted.
5. The corrections mentioned in the previous numbers shall be done at the Registration Authority discretion or if the applicant asks for such corrections to be done, and he shall be informed about such any corrections.
6. The Registration Authority shall given reasons for any rejections to make such any changes.

ARTICLE 15

Provisional protection

1. The Breeder's rights applicant may have an exclusive right to sale, reproduce and multiply the reproductive material of the specie proposed for registration, from the publication of the notice until such rights are recognized or rejected under the terms of this Norms.
2. During this period, the Breeder's rights holder is eligible to remuneration equivalent to the activities performed under the article 19.

ARTICLE 16

Information publication

1. Should the specie concerned to the application to be submitted for the Breeder's rights protection is new and the proponent is eligible, the basic information on the specie the related aspects about the same shall be published in the *Government Gazette*.
2. The exception mentioned in the previous number of this article shall be subject to review and updating, according to the progress of the national agriculture, and shall be charged a little amount inferior to the established within the context of the Breeder's rights.

ARTICLE 17

Limits to the Breeder's rights

1. Any person that feels that the Breeder's rights owner deliberately rejects to grant the license or imposes conditions to obtain it, may solicit the Registration Authority to issue a compulsive license of the Breeder's rights, which can be issued by this Authority, specifying its conditions, should the public interest concerning such specie be no satisfied.
2. Applications for licenses submitted under the terms of the n°1 of this article shall say why he/she thinks that the obtaining of the license is being hindered, and they will enclose evidences, if the Registration Authority requests them to do so.
3. The Registration Authority shall provide a copy of the said solicitation referred to in n°1 of this article to the Breeder's rights holder.
4. Should the holder of such rights need to contest, he/she will do it within thirty days, stating the reasons for such objection, and the Registration Authority shall provide a copy of the said contestation to the applicant.
5. In issuing the compulsive license, the Registration Authority shall ensure that the propagation material, composed of basic and pre-basic seeds is available to the public at an affordable price, commensurate to those applied by the Breeder's rights holder.
6. The compulsive license may be granted to one or more persons and/or institutions.
7. The holder of the compulsive license shall not impede that the owner of the Breeder's rights concede licenses to other persons or institutions.

ARTICLE 18

Duties concerning Varieties maintenance

The owner of the Breeder's rights shall ensure that, over the period in which his rights are valid, he/she has conditions to:

- a) Testify the existing of seed of improver or reproduction material with the same morphologic, physiologic characteristics and others taken into account at the time that the registration was accomplished.

- b) Avail to the Registration Authority all information and conditions through which the specie maintenance is being maintained adequately, including the site map for the purposes of inspection.

ARTICLE 19

Confidentiality

1. All documentation submitted under the terms of this Norms, to the Registration Authority, shall be confidential and may only be available:
 - a) To the Ministry of Agriculture, Committee for Appeal and other entities duly with credentialed in the context of the Breeder's rights registration;
 - b) The competent authorities, for the purposes of research or surveys concerning the compliance with the Norms established.
2. The use or undue access to information concerning the rights of the improver shall be subject to penalty under the laws.

CHAPTER V

Validity and Cancellation of Breeder's Rights

ARTICLE 20

Duration of Plants Breeder's Rights

The Breeder's rights shall be in force, after its recognition, for a period of twenty-five years for forest Varieties and grape, and twenty years for other genus and Varieties, unless a decision for its removal is taken before this term.

ARTICLE 21

Cancellation of Breeder's Rights

1. The Registration Authority may cancel the Breeder's rights before the term referred to in the previous article, if:
 - a) It is found that the information provided over the registration process was not accurate or it false;
 - b) Any other data is that if it were obtained in such a period, would lead to a rejection are discovered.
 - c) It is discovered that the property rights would have been conceded to another applicant;
 - d) The holder does not meet the requirements established in the article 23 of this Norms.
2. The Registration Authority shall notify the holder of the rights and the holders of the licenses on their intention to cancel the rights, submitting a due justification.
3. Any holder of rights that have been notified under the terms of the previous number, shall, within thirty days and against the payment of the updating fee, submit to the Registration Authority, his/her objection.
4. The Registration Authority shall resolve after hearing the parts involved.
5. The Registration Authority shall publish an announcement about the cancellation of the rights.
6. The Rights Registration Certificate issued under the terms of the n°5 of this Norms shall be sent back to the Registration Authority within thirty days.

ARTICLE 22

Waiver to the Breeder's Rights

1. The Breeder's rights holder that intends to waive to his/her rights shall give a notice, in writing, to the Registration Authority about their intention hundred and twenty days prior to such a waiver.
2. Within thirty days of the receipt of the notice to the Registration Authority, the Breeder's rights holder shall make an announcement about his/her intention to waive their rights.
3. Any person or entity that may oppose to any waiver of rights, may, within two months after such announcement, send a notice to the Registration Authority about their objection, furnishing with the due reasons.
4. After hearing the holder and the opponent, the Registration Authority conclude that that it must consider the request of the holder, it shall:
 - a) Accept the waiver of the Breeder's rights and file the information hereof in the database;
 - b) Solicit that he/she brings back the Rights Registration Certificate issued under the terms of n° 5 of the article 5 of this Norms.
5. Within thirty days after cancellation of the Breeder's rights, the Registration Authority shall make an announcement.

CHAPTER VI

Appeal

Article 23

Committee for Appeal

1. The Ministry of Agriculture shall nominate a Committee for appeal, composed of three members, head by lawyer, being the other members scientists with a track record in the agriculture area.
2. The Committee for Appeal shall have power to convene and ensure the participation of witnesses, and to search and produce documents.
3. Any person or institution that feels their rights damaged may, under this Norms, within thirty days, appeal to the Committee for Appeal about the decision taken.
4. The Committee may solicit the collaboration of experts in the area, whenever it's is deemed to be relevant for the due solution of the matter.

Article 24

Decision of the Committee for Appeal

1. The Committee for Appeal may, after the analysis of the appeal and the hearing:
 - a) Ratify or alter the decision or action of the Registration Authority;
 - b) Give order to the Registration Authority to implement the decision taking by the Committee

2. The Committee for Appeal shall support to their decision, informing, in writing, the applicant to the Registration Authority and other parts concerned.

CHAPTER VII Infringement

Article 25

Infringement

1. As per this Norms, infringements are:
 - a) Undue registration in the Registration Authority;
 - b) Obstruction to the activities of the Registration Authority, Inspectors, exercising their functions within the framework of the implementation of this Norms;
 - c) The deny to comply with any procedures established in this Norms;
 - d) Forging and exhibition for the sale of seeds or material for propagation of a specie whose Breeder's rights were conceded under the terms of this Norms;
 - e) Publication or exhibition of information deemed to be confidential in the context of this Norms.
2. The Ministries of Agriculture and Finance shall establish the amount of fine for infringements of the established in this Norms.

CHAPTER VIII Final dispositions

Article 26

Agreements with other governments

The Minister of Agriculture may undersign bilateral or multilateral agreements with other governments for the protection of the Breeder's rights of some Varieties, reciprocally.

Article 27 Variety registered

1. Owners of Varieties registered in the Official List that need to apply for the Breeder's rights may submitted their applications to the Registration Authority, within the maximum term of six months after publication of this Norms.
2. The Registration Authority shall consider the applications if it finds that the seeds is under the control of the applicant, after meeting all requirements conveyed in the articles 6 to 10 of this Norms.
3. The Registration Authority shall publish an announcement about the applications, and any object shall be given within thirty days.

4. The years in which the specie is available in the market shall be deduct against the period.

Article 28
Complementary Rules

1. The Minister of Agriculture and of Finance shall resolve about the payments under this Norms, concerning:
 - a) Application for registration;
 - b) Service provision for officials trials of assessment for the purposes of registration in the protection list;
 - c) Maintenance of specie and reference sample in the protection list;
 - d) Change of name
 - e) Appeal;
 - f) Licenses
2. Payments made under the previous number shall be for the operation of the Registration Authority.