

# TANZANIA LEGAL & INSTITUTIONAL FRAMEWORK ON

## PLANT BREEDERS' RIGHTS

**Patrick Ngwediagi**  
**Registrar of PBR**  
**MAFC, Tanzania**

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# BACKGROUND

## Types of Intellectual Property

- Industrial property:
- Literary and artistic property
- **Plant variety protection (PBR): a *sui generis* system often excluded from lists of intellectual property categories**

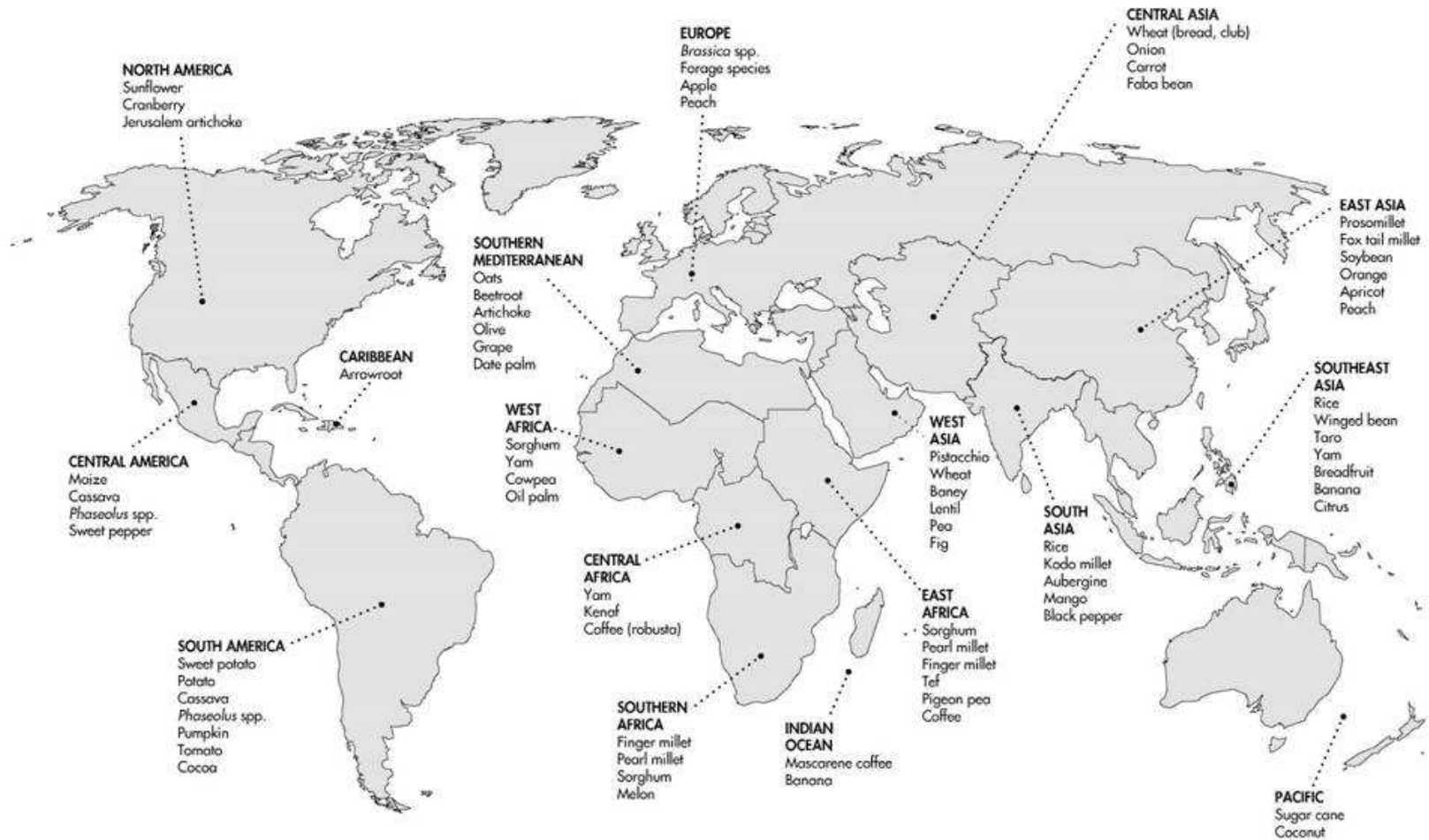
# PLANT VARIETY PROTECTION / PLANT BREEDERS' RIGHTS

- ❑ PBR: An exclusive right over commercialization of propagating material (seeds or cuttings) of a protected variety
- ❑ Aimed to provide:
  - Legal rights to creators and innovators as a reward for their achievement
  - Incentives for creativity and innovation
  - Facilitate transfer of technology

# Commonalities, differences between Patents and PBRs

- They create incentives for investment in research and development of new plant varieties
- Both rights are territorially limited. They apply only within the state, or the group of states, in which they are granted; and
- They represent a balance between the public interest and the private interests of the holder.
- **Differences** (Table 1)

# INTERNATIONAL OBLIGATIONS



# International...

## ❑ *TRIPS Agreement of WTO, 1994*

- TRIPS is one of international efforts to enhance intern. trade and overcome most of the common non-tariff barriers
- Requires WTO member states (incl. TZ) to protect new plant varieties using patent rights or an **effective** *sui generis* system or some combination thereof (TRIPS Agreement Article 27.3(b))

## **Intern. Obligations cont.**

- TRIPS Agreement does not give a clear and acceptable definition of what is an **effective** *sui generis* PVP system
- **ISF** recognizes 1991 Act of the **UPOV** Convention as an effective *sui generis* system

## Tanzania Position on Patent on Life

- Many countries do not allow patenting of life forms (plants and animals) with exception of micro-organisms. USA do allow!!
- Patent Act of 1987 of Tanzania (Mainland) (Refer S. 7) prohibits patenting of life forms exception of micro-organisms
- AU (OAU) Model Law says no to patents on life forms
- European Patent Convention prohibits patenting of living organisms

# International Obligations Contnd

## □ *UPOV*

- UPOV Convention regulates plant breeders' rights
- UPOV has 68 members as of Dec. 2009
- The main advantage of UPOV membership is on sharing/exchange of DUS test results and other useful information
- UPOV membership raises confidence on country's investment environment
- Tanzania not yet a member, internal processes initiated to allow her to join UPOV

# PBR SYSTEM IN THE URT

## PBR IN MAINLAND TZ

- The PBR Act was passed by the URT Parliament on **7/11/2002**
- The Minister declared **1/2/2004** as the official operational date of the Act
- Practically became operational in 2005 when the Minister appointed the Registrar (s. 4 of PBRA)

# Main Elements of PBR Act, 2002

❖ Varieties that may be Protected must be:

- New;
- Distinct;
- Uniform;
- Stable

In addition:

- Variety must have a denomination
- Administrative procedures including payment of fees must be followed

# Requirements for PBR application

The breeder/applicant must provide:

- Description of variety characteristics
- Sample of the variety
- List of countries where similar application has been made

**NB: Who is breeder, Who is applicant?**

# Main Elements of PBR Act contnd

## ❖ Duration of Protection

- 25 years for trees and vines
- 20 years for other crops
- Renewable for another five years

# Main Elements of PBR Act contnd

- ❖ PBR holder shall have sole rights to:
  - Sell
  - Reproduce or multiply the propagating materials,
  - Process
  - Stock the variety
  - Export
  - Collect royalties rough licensing and assignment of his or her rights

## □ Exceptions to Breeders' Rights:

- ✓ Non commercial activities are allowed (eg. Demonstration, training material)
- ✓ Further breeding using a protected variety is allowed

# Main Elements of PBR Act contnd

Any new varieties of all crop species listed in the PBR Regulations may be protected



## Main Elements of PBR Act contnd.

- ❖ PBR Act privileges farmers to save seeds of a protected variety harvested in their own holdings (Section 34)
- ❖ Minister shall set aside part of the fees paid to Registrar for benefit of traditional farmers and conservation of traditional varieties (Section 57)

## Licensing and Assignment of PBRs

- The holder of PBR may grant a licence to any person mainly for commercialization of the variety (S. 41);
- The licence may contain several conditions, including payable royalty;
- The law provides for compulsory licence if is unreasonably denied (S. 42);
- The law also allows assignments of PBR,
- Both must be recorded with the Registrar's office.

# OFFENCES AND PENALTIES

- ❖ Offences are established under section 51 for:
  - making false entries or declarations;
  - Obstructing the Registrar or his officers from conducting their duties;
  - Selling a variety using a different/wrong denomination
  
- ❖ Any person who commits such offences and convicted shall be liable to a fine not exceeding TSh. 5 million or one year imprisonment or both

# Functions of the Registrar

As provided by Section 5 of PBRA:

- To grant PBR;
- To establish Documentation Centre on PBR;
- To maintain the Register;
- To facilitate transfer of PBR
- To collaboration with national and international bodies on PBR.
- The Registrar heads the PBRO

# **STATUS OF IMPLEMENTATION**

## **□ Institutional arrangements:**

- ✓ PBRO established under MAFC since 2005 (s. 3 of PBRA) & Operational
- ✓ PBR Advisory Committee formed 2005 (s. 10 of PBRA) & Operational
  
- ✓ PBR Development Fund established as provided in s. 48 of PBRA
- ✓ PBR Development Fund is now operational

# Status contnd

- ❑ So far 36 PBR Applications received
  - 5 Applications: Maize
  - 9 Applications: Coffee
  - 2 Application: Beans
  - 2 Applications: Sesame
  - 16 Applications: Cashew
  - 2 Applications: Tomato
  
- ❑ Number of tittles granted: 25
- ❑ All are local applications –Lack of foreign applications connected with UPOV membership

# INITIATIVES TO ESTABLISH PBR SYSTEM IN ZNZ

- MAFC and MALE experts have met three times in Zanzibar and Dar since 2008 to discuss need to establish PBR system in Zanzibar
- A joint task force was formed comprising experts from both sides and produced a report
- It is under consideration by Znz authorities
- Task force to meet there after
- Taskforce included legal experts from MALE & The Agric Commission
- Task force also deals with need for seed law in Znz

# CHALANGES

Need to create awareness at local and international levels for more FDI



Local breeders should to be involved in active breeding, both in field crops, tree crops and in horticulture

Field crops





# Horticultural crops



# Need to strengthen Regional and International cooperation



# PBR Office Location

Located within Buildings of the Ministry responsible for Agriculture



# Beautiful Islands of Zanzibar



# Mt. Kilimanjaro-The Roof of Africa



● **ASANTEN SANA!**