

**IN THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA**

PARLIAMENT OF GHANA LIBRARY

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS**

ON THE

PARLIAMENT OF GHANA LIBRARY

PLANT VARIETY PROTECTION BILL, 2020

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**IN THE THIRD MEETING OF THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA**

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AND PARLIAMENTARY AFFAIRS ON THE PLANT VARIETY
PROTECTION BILL, 2020**

1.0 INTRODUCTION

- 1.1 The Plant Variety Protection Bill, 2020 was laid in Parliament on Friday, 9th October, 2020 by the Hon. Attorney-General and Minister for Justice, Miss Gloria Afua Akuffo in accordance with Article 106 of the 1992 Constitution.
- 1.2 Consequently, the Rt. Hon. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Hon. Attorney-General and Minister for Justice, and Officials of the Office of the Attorney-General and Ministry of Justice to discuss the Bill. In attendance were Officials of the Ministry of Agriculture, the Ministry of Trade and Industry, the Registrar-General's Department, and the Council for Scientific and Industrial Research (CSIR).

The Committee expresses its profound gratitude to the Hon. Attorney-General and the Officials for attending the meeting and for clarifying issues raised at the meetings.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during the deliberations:

- i. The Constitution of the Republic of Ghana, 1992;
- ii. The Standing Orders of Parliament, 2000;
- iii. The Patents Act, 2003 (Act 657);
- iv. The Geographical Indications Act, 2003 (Act 659);
- v. The Industrial Designs Act, 2003 (Act 660);

- vi. The Trademarks Act, 2004 (Act 664);
- vii. The Layout–Designs (Topographies) of Integrated Circuits Acts, 2004 (Act 667);
- viii. The Copyright Act, 2005 (Act 690);
- ix. The Plant and Fertilizer Act, 2010 (Act 803);
- x. The National Seed Policy;
- xi. The WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), 1995; and
- xii. International Convention for the Protection of New Varieties of Plant, 1961.

4.0 BACKGROUND INFORMATION

- 4.1 Ghana is a party to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). This International Agreement resulted from the Uruguay Round and became effective on 1st January, 1995.
- 4.2 The above international agreement sets out minimum standards for regulation by State Parties to protect different forms of intellectual property.
- 4.3 In the quest to harness the intellectual capacities of Ghanaians and in compliance with its international obligations, a number of intellectual property laws have been enacted in the past two decades. They include the Patents Act, 2003 (Act 657), the Geographical Indications Act, 2003 (Act 659), the Industrial Designs Act, 2003 (Act 660), the Trademarks Act, 2004 (Act 664), the Layout–Designs (Topographies) of Integrated Circuits Acts, 2004 (Act 667), and the Copyright Act, 2005 (Act 690).
- 4.4 Despite the above frantic efforts aimed at establishing an effective legal framework regime to protect intellectual works of creators, there remains a gap in the law regarding a major aspect of intellectual property, which is the protection of rights of plant breeders.
- 4.5 The first attempt to fill the gap was made in 2003 by the presenting in the Sixth Parliament of the Plant Breeders Bill, 2013. After a considerable

work on it by the House, the Bill was withdrawn to allow for further consultations to be sought.

- 4.6 After nationwide consultations, the Bill has been reintroduced in the House by the Hon. Attorney-General under the short title "Plant Variety Protection Bill, 2020".

5.0 OBJECT OF THE BILL

The object of the Bill is to establish a legal framework to protect the rights of breeders of new varieties of plants or plant groupings and to promote the breeding of new varieties of plants in Ghana.

6.0 SUMMARY OF PROVISIONS

- 6.1 The Bill contains sixty-three (63) Clauses.
- 6.2 Clauses 1 to 7 of the Bill provide for the scope of application of the Bill as well as conditions for grant of protection of plant breeder rights (novelty, distinctness, uniformity and stability). These provisions are followed by eligibility criteria for application for plant breeder rights, procedure for application for plant breeder rights, presumption of protection, criteria for determining priority of applications and related matters (Clauses 8 to 14 of the Bill).
- 6.3 Matters relating to provisional protection of plant breeder rights, objections and their consideration, protection of varieties of recent creation among others are set out under Clauses 15 to 19 of the Bill. Subsequent provisions cover issues relating to authorisation of plant breeder rights, exceptions to plant breeder rights, assignment and contractual licences, nullity, cancellation and payment of royalties (Clauses 20 to 33 of the Bill).
- 6.4 Clauses 34 to 39 of the Bill relate to labelling of varieties by designation, characteristics variety denomination, registration of variety denomination, obligation to use variety denomination among related provisions.
- 6.5 Administrative and financial matters including the establishment of registry of varieties, establishment of Plant Breeders Technical Committee, establishment of Plant Variety Development Fund, and accounts and audits are set out under Clauses 40 to 52 of the Bill.

6.6 The remaining provisions cover the establishment of an Appeals Board to handle appeals from the decisions of the Registrar-General and miscellaneous matters including the creation of the Varieties Bulletin, civil remedies, offences, application of the International Convention for the Protection of New Varieties of Plant of 1961 (Clauses 53 to 63 of the Bill).

7.0 OBSERVATIONS

The Committee made the following observations during its deliberations on the Bill:

7.1 Necessity to establish a system to protect rights of plant breeders

The Committee is cognisant that there is no existing legal framework to protect the rights of plant breeders in the country contrary to Ghana's international obligations. It is therefore, gratifying to note that the Bill proposes an effective system for the protection of the rights of plant breeders Ghana. Under this system, persons who develop new, distinct, uniform and stable varieties of plant would be entitled to apply for the grant of an exclusive right to that variety. The protection would be given for a period of twenty-five (25) years and twenty (20) years, respectively for plant breeder rights and all other genera or species. During the period of protection, right holders would be empowered to authorise use of the propagated material subject to certain exceptions in return for royalties. Additionally, right holder would be empowered to sue in High Court in respect of any infringement of their rights.

7.2 Incentives for plant breeding

The Committee acknowledges the huge expense entailed in developing new plant varieties. In this regard, it is hoped that the passage of the Bill would encourage and incentivise breeders of plant varieties in the country and attract foreign investment into the sector. This is expected to lead to the development of disease resistant, drought resistant and high yielding varieties to support the country's agricultural programmes such as the planting for food and jobs programme. This system would also deliver value to our hardworking farmers and propel the socio-economic development of the country.

7.3 Ghana's international obligations under the TRIPS Agreement

The Committee also noted that elaborate provisions have been made in the Bill to enable Ghana comply with its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Apart from establishing an effective *sui generis* system or unique system for protection of plant breeder rights, the Bill contains measures for ensuring continuing compliance with the international obligations. Further to this, the Attorney-General and Minister responsible for Justice would be mandated to ensure the implementation of the law in respect of Ghana's obligations under the Convention. The Attorney-General would also be empowered to enter into international agreements for mutual recognition and protection of plant breeder rights.

7.4 Plant Breeding to serve as a boost to the agriculture production in Ghana

The Bill seeks to promote agriculture to complement the committed initiatives of the Ministry of Food and Agriculture towards the development of the seed industry, as well as ongoing reforms in the agriculture sector. It is therefore critical that the country creates and promotes an enabling environment for the stakeholders in the agricultural sector especially the seed industry through the development of policies and strategies to ensure food security and increase the efforts of the country to compete on international markets. Food security can be improved by breeding and making available to farmers seeds of high yielding varieties that are not only adaptable to our environment but have good taste and nutritional qualities. The Bill will encourage foreign breeders and local breeders to contribute to development of the agriculture sector of the country, resulting in technology transfer and know how, as new varieties enter the channels of trade.

7.5 Establishment of Plant Variety Development Fund

The Committee again noted the establishment of the proposed Plant Variety Development Fund. The object of the Fund is to fund activities for the protection of rights of plant breeders and to promote plant breeding activities in the country. Moneys for the Fund are expected to be sourced from funds approved by Parliament, fees and charges for services to be rendered under the plant protection system. The Bill assigns responsibility for the management and disbursement of the Fund to the Registrar-General.

7.6 Administrative provisions for the implementation of the Bill

The Committee further noted that adequate provisions have been made in the Bill to ensure full implementation of the proposed system for the protection of plant breeders. Firstly, the Bill provides for the establishment of a registry within the Registrar-General's Department for the purpose of registration of plant varieties. Secondly, the Bill proposes the establishment of the Plant Breeders Technical Committee to advise the Attorney-General and the Registrar-General on matters relating to the implementation of the Act. Thirdly, the Bill provides for an Appeals Board and vested with the power to determine appeals from the Registrar-General.

7.7 Consultations

The Hon. Attorney-General informed the Committee that Bill had been subjected to nationwide stakeholder consultations and consensus has been reached among key stakeholders for the urgent passage of the Bill. It is believed that the consensus reached among stakeholders is suggestive that plant variety protection can produce mutual benefits to both plant breeders, farmers and the nation at large.

8.0 PROPOSED AMENDMENTS

The Committee has proposed a number of amendments for the consideration of the House. The proposed amendments are attached as an appendix.

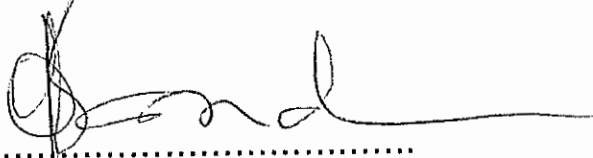
9.0 CONCLUSION AND RECOMMENDATION

The Committee acknowledges the urgent need for the passage of Bill to fill the existing gap in Ghana's intellectual property laws, protect the legitimate rights of plant breeders and incentivise them to deliver quality seeds to boost ongoing agricultural initiatives including the planting for food and jobs programme.

The Committee further acknowledges the need for the country to comply with its international obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the International Convention for the Protection of New Varieties of Plants.

The Committee further acknowledges that the Bill is not new to the House. It was introduced in the Sixth Parliament but later withdrawn for further consultations. In that regard, the Committee recommends to the House to adopt this Report and to pass the Plant Variety Protection Bill, 2020 in accordance with Article 106 of the Constitution.

Respectfully submitted.



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HON. BEN ABDALLAH BANDA
(CHAIRMAN, COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS)



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AKUA DUROWAA OWUSU-AGYEKUM (MRS)
(CLERK TO THE COMMITTEE)