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## GUIDE TO PLANT VARIETY IN UGANDA





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### Introduction

Plant variety protection is a crucial component of agricultural innovation and food security. It grants breeders exclusive rights over new and distinct plant varieties, encouraging investment in research and development. For a country like Uganda, where agriculture plays a vital role in the economy and sustenance, effective PVP can drive the creation of improved crop varieties, leading to enhanced productivity, resilience to climate change, and sustainable agricultural growth. This guide aims to equip breeders, farmers, legal practitioners, and other stakeholders with the essential knowledge needed to navigate the PVP system. By understanding the legal framework, application processes, and rights associated with PVP, stakeholders can better protect and leverage their innovations in plant breeding.

### Background of Plant Variety Protection in Uganda

The concept of plant variety protection (PVP) has its roots in the broader intellectual property rights movement that emerged globally in the 20th century. Initially driven by the need to incentivize innovation in agriculture, countries began to recognize the importance of granting exclusive rights to breeders of new plant varieties. This shift was marked by the adoption of the International Union for the Protection of New Varieties of Plants (UPOV) Convention in 1961, which set the foundation for modern PVP systems<sup>1</sup>.

Uganda, with its rich agricultural heritage and reliance on farming, recognized the potential benefits of PVP in enhancing agricultural productivity and sustainability. The enactment of the Plant Variety Protection Act in Uganda was influenced by the global movement towards recognizing breeders' rights and the need to align with international standards such as those set by the UPOV Convention. Although Uganda is not currently a member of the UPOV, it is an observer.

### Legal Framework for Plant Variety Protection in Uganda

The legal framework for plant variety protection in Uganda is the Plant Variety protection Act, 2014<sup>2</sup>. Under the law, the Minister for Agriculture, who oversees general PVP, constitutes the Plant Variety Protection Committee, and creates implementing regulations. The Office of the Commissioner of Crop Inspection and Certification manages the plant variety register, processes and examines applications, publishes related documents, issues certificates, and enforces plant breeders' rights. The registrar,

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<sup>1</sup> International IPR Agreements Regulating Plant Varieties and Plant Breeders' Rights, accessed at: <https://www.fao.org/4/y5714e/y5714e03.htm>

<sup>2</sup> Uganda Plant Variety Protection Act, 2014 accessed at: <https://ulii.org/akn/ug/act/2014/16/eng@2014-12-24/source>





appointed by the Minister, leads this Office, maintaining the register and handling daily administration while reporting to the Commissioner for crop protection. The Plant Variety Protection Committee, constituted by the Minister, advises on policies, approves varieties for registration, reviews policies, and performs other assigned duties.

### Who can apply for PVP Protection in Uganda?

Based on Uganda's PVP law, the following people or entities can apply for plant breeders' rights in Uganda:

1. **A Breeder of a New Plant Variety:** This is the person or entity that has developed a new plant variety. They can apply for plant breeders' rights regardless of whether they are a citizen of Uganda, a foreigner, a resident, or non-resident, and regardless of whether the variety was bred in Uganda or abroad.
2. **Successor of a Breeder:** A person who has inherited or otherwise taken over the rights of the original breeder can also apply for plant breeders' rights.
3. **Joint Breeders:** If two or more people or entities have jointly bred a new plant variety, they can make a joint application for plant breeders' rights. [N: B - *If a new plant variety is bred jointly by two or more people, none of them can apply for plant breeders' rights individually without the consent of the others. Any application must be made jointly or with written consent from the other joint breeders*].
4. **Independent Breeders with Entitlement:** If two or more people are entitled to make an application independently, they can also choose to make a joint application.

### What qualifies a plant for PVP Protection in Uganda?

For a plant to qualify for Plant Variety Protection (PVP) in Uganda, the following criteria must be met according to the law:

1. **No Objection Filed:** There should be no objections filed against the application. This means that no one has raised concerns or challenges regarding the application for the plant breeders' rights
2. **The Plant Variety is New, Distinct, Uniform, and Stable:** The plant variety must meet specific criteria:
  - **New:** A plant variety is considered "new" if it hasn't been sold or commercially exploited before specific time limits:
    - In Uganda: No sale or disposal within one year before applying.
    - In other countries: No sale or disposal within four years before applying.
    - For trees and vines: No sale or disposal within six years before applying.
    - Existing varieties created within the last four years are also considered "new" even if they were sold earlier.
  - **Distinct:** A plant variety is "distinct" if it can be clearly differentiated from any other variety known at the time of application. Additionally, a variety becomes





known when an application for its protection or registration is filed and leads to its formal recognition.

- **Uniform:** A plant variety is considered "uniform" if its characteristics are consistent across all individual plants within the variety.
  - **Stable:** A plant variety is considered "stable" if its relevant characteristics remain consistent after repeated propagation, or at the end of each propagation cycle.
3. **Eligible Applicant:** The applicant must be part of the eligible persons to apply for plant breeders' rights in Uganda.
  4. **Rights Have Not Been Granted to Another Person:** The plant breeders' rights for this variety must not have already been granted to another person.
  5. **No Earlier Application Pending:** There should be no earlier application for the same plant breeders' rights that is still pending or has not been withdrawn or resolved.

### What is the procedure for applying for PVP rights in Uganda?

The procedure for applying for Plant Variety Protection (PVP) in Uganda involves several steps, as outlined in the law:

- a. **Filing the Application:** The applicant must submit an application for plant breeders' rights to the Registrar. The application must be filled out in the prescribed form and must pay the prescribed application fees. The applicant must comply with the national variety testing and evaluation requirements as prescribed by regulations under this Act.
- b. **Review by the Registrar:** Once the Registrar receives the application and is satisfied that all the above requirements are met, the Registrar will accept the application for further processing.
- c. **Presentation to the Plant Variety Protection Committee:** Within six months of receiving the application, the Registrar will present the application to the Plant Variety Protection Committee for review.
- d. **Committee Decision:** The Plant Variety Protection Committee will meet and make a decision on the application within six months of receiving it from the Registrar.
- e. **Notification of the Decision:** The Registrar will inform the applicant of the Committee's decision. If the application is rejected, the Registrar must provide the reasons for the rejection.







## Publication of grant and opposition procedure

Once plant breeders' rights are granted, the Registrar must publish the details of these rights within thirty days. The rights must be published in both the Gazette and a newspaper of wide circulation to ensure broad visibility.

If a person is dissatisfied with a decision made regarding an application for plant breeders' rights, they can appeal to the Minister within sixty days of the decision. The ground for opposition includes concerns about commercial impact or non-compliance with criteria. The Office will notify the applicant of any objections, and the public can access and obtain copies of the relevant documents. If the appellant is not satisfied with the Minister's decision, they may take the matter to court for further proceedings.

## What happens after grant of PVP right without any opposition?

After the grant of Plant Variety Protection (PVP) rights without any opposition, the Registrar will comprehensively document all relevant details such as: description and photograph of the variety, name of the variety, pedigree of the variety (if available), name and address of the breeder, date and time of the grant, etc about the granted plant breeders' rights in the official register.

This section outlines the requirements for validating the characteristics of plant varieties that originate outside Uganda when applying for Plant Variety Protection (PVP). It ensures that these characteristics are proven to be accurate and relevant in the Ugandan context. Here's what it means:

## Matters relating to foreign plant variety seeking protection in Uganda

For a plant variety from outside Uganda to be recognized as having certain characteristics, it must undergo statistically valid trials in Uganda.

- a. For annual crops, trials must be conducted over at least three growing seasons.
- b. For perennials, trials must span two breeding cycles.

The Plant Variety Protection Committee must also be convinced of the following:

- Statistically valid trials conducted outside Uganda must demonstrate that the variety has the claimed characteristics.
- The environment where these trials were conducted must be similar to Uganda's.
- Test growing of the variety outside Uganda must show it has the claimed characteristics.
- The test growing in Uganda must be equivalent to the tests conducted outside.
- If test growing in Uganda would take more than **two years** to prove the characteristics, this must be acknowledged.





- The breeder should provide, if possible, the variety's pedigree, including information about parent varieties.

### **What is the duration of plant breeders right in Uganda?**

The terms of protection for plant breeders' rights in Uganda are as follows:

- a. Annual Crops: Plant breeders' rights are granted for a period of twenty years.
- b. Trees, Vines, and Other Perennials: Plant breeders' rights are granted for a period of twenty-five years.

The protection period begins on the day the application is filed.

### **What remedies does a PVP right owner have in the case of infringement?**

Infringement of plant breeders' rights can be pursued by the holder of the rights. The remedies for infringement of plant breeders' rights in Uganda include the following:

- Damages: Compensation for losses suffered.
- Injunction: A court order to stop the infringing activities.
- Other Relief: Any other remedies deemed appropriate by the court.

A defendant in an infringement case may counterclaim for the revocation of plant breeders' rights on the grounds that: the variety was not new and that facts existed that, if known at the time of granting the rights, would have led to the refusal of the grant.

If the court finds that the grounds for revocation are valid, it may revoke the plant breeders' rights. If the court revokes the plant breeders' rights, it must order the defendant to provide the Office with a copy of the revocation order.

### **What can lead to revocation of PVP rights in Uganda?**

Revocation for plant breeders' rights can be mandatory or based on discretion.

- a. Mandatory Revocation: The Committee must revoke the rights if: The plant variety was not new, facts exist that would have led to the refusal of the grant if known earlier or the revocation is in the public interest.
- b. Discretionary Revocation: The Committee may revoke the rights if The breeder or assignee has failed to comply with the Act.

Any affected person may apply to the Committee for revocation of the rights. The Committee will consider all applications for revocation. If the rights are not revoked, the Committee will notify the applicant of the decision and grounds within 14 days. If the rights are revoked, the Committee will notify the breeder with reasons within 14 days. The Committee must provide the breeder and any assignees with details of the proposed revocation and a 21-day period to submit written responses before making a final





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decision. The breeder can challenge the revocation in court within 60 days of receiving the revocation notice. Revocation takes effect: After the period for court review expires, or if a court application is made, when the application is withdrawn or finally determined.

## Conclusion

Understanding PVP is essential for breeders, farmers, and stakeholders in Uganda's agricultural sector, as it not only safeguards innovation but also contributes to the advancement of agriculture. As Uganda continues to develop its agricultural sector, effective PVP will play a pivotal role in fostering new crop varieties that can enhance productivity, resilience, and sustainability. By navigating the application processes, adhering to legal criteria, and recognizing the rights and responsibilities associated with PVP, stakeholders can better contribute to and benefit from advancements in plant breeding.

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