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SPECIAL BILL SUPPLEMENT

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THE PLANT HEALTH ACT, 2020

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dodoma,
9th January, 2020

JOHN W. H. KIJAZI
Secretary to the Cabinet

***A Bill
for***

An Act to make provisions for control of pesticides, phytosanitary measures, importation and use of plants and plant products, prevention of introduction and spread of pests, establishment of the Tanzania Plant Health and Pesticides Authority and for related matters.

ENACTED by Parliament of United Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

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|------------------------------|--|
| Short title and commencement | 1. This Act may be cited as the Plant Health Act, 2020 and shall come into operation on such date as the Minister may, by notice in the <i>Gazette</i> , appoint. |
| Application | 2. This Act shall apply to Mainland Tanzania in relation to plant health, phytosanitary matters and management of pesticides. |
| Interpretation | 3. In this Act, unless the context requires otherwise- “active ingredient” means the biologically active part of the pesticide present in a pesticide formulation; “adulterated” with respect to a pesticide, means that- |

- (a) any constituent has, in whole or in part, been omitted or abstracted;
 - (b) damage or inferiority has been concealed in any manner;
 - (c) any substance has been substituted wholly or partly;
 - (d) any substance has been added to it, mixed or packed with it so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or
 - (e) any constituent exceeds the amount stated on the label or permitted by this Act;
 - (f) its nature, substance, or quality has been injuriously affected;
- “advertising” means the promotion of the sale or use of pesticides by printed or electronic media, signs, displays, gift, demonstration or word of mouth;
- “analyst” means any person appointed or designated as such under section of 38 this Act;
- “application equipment” means any technical aid, equipment, implement or machinery which is used for the application of pesticides and includes all range of ground and aerial pesticides application equipment;
- “area of low pest prevalence” means an area declared by the Authority in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;
- “Authority” means the Tanzania Pesticides and Plant Health Authority established under section 4;
- “banned pesticide” means a pesticide for which all registered uses have been prohibited by the Minister or for which all requests for registration or equivalent action for all uses have, for health and environmental reasons, not been granted;
- “bio-efficacy trial” shall include any study-
- (a) of the biology, ecology and behaviour of pests with a view to understanding their nature so as to find ways of controlling them by use of pesticides and other biological control agents; and
 - (b) with the view of evaluating the efficacy of pesticides in killing, repelling or attracting, inhibiting the feeding or arresting the growth of insects, weeds, pathogens,

- fungi, rodents, bird pests or any other kind of pests;
- “bio-pesticide” means a biological control agent, usually a pathogen formulated and applied in a manner similar to a chemical pesticide;
- “biological control agent” means a natural enemy, antagonist or competitor or another organism, used for pest control;
- “Board” means the Board of Directors of the Authority established in section 7;
- “buffer zone” means an area surrounding or adjacent to an area officially delimited for-
- (a) phytosanitary purpose order to minimize the probability of spread of the target pest into or out of the delimited area, and subject to phytosanitary or other control measures, if appropriate; or
 - (b) application of pesticide in order to minimize the probability of spread of the candidate pesticide in or out of the delimited area or a non-target area;
- “container” means anything in which or by which pesticides are encased, covered, enclosed, contained, or packed, including material in contact with the pesticide, box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper, or any other thing in which any plants, plant products or regulated articles is placed or packed;
- “consignment” means a quantity of plants, plant products or regulated articles being imported into the country or exported to another country and covered, when required, by single phytosanitary certificate and shall be composed of one or more commodities;
- “consignment in transit” means a consignment which passes through Tanzania without being imported, and that may be subject to phytosanitary measures;
- “conveyance” means any vessel, aircraft, train, truck, car, cart, cargo, container, animal or other device whereby goods, soil or other things may be moved from one place to another;
- “detention” means keeping a consignment in official custody or confinement, as a phytosanitary measure, and “detain” shall have a corresponding meaning;
- “Director General” means the Director General of the Authority appointed under section 10;
- “disposal” means any operation to recycle, neutralize, destroy

- or isolate any unwanted pesticide, used or unwanted pesticide empty containers, or contaminated materials;
- “endangered area” means an area where ecological factors favour the establishment of a pest whose presence in the area will result in significant economical loss;
- “formulation” means the combination of various ingredients designed to render a pesticide product useful and effective for the purpose claimed, or the form of the pesticide as purchased by users;
- “hazard” means the inherent property of a substance, agent, or situation having the potential to cause undesirable consequences such as adverse effects or damage to human or animal health, the environment, or property;
- “infestation” means presence in commodity of a living pest of the plant products concerned;
- “inspector” means any person appointed or designated as such under this Act;
- “label” means the written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereof and the outside container or wrapper of the pesticide package;
- “Minister” means the Minister responsible for agriculture;
- “national pest of concern” means a non-regulated pest with a significant economic impact whose biological and epidemiological characteristics determine that its control in Tanzania shall be performed at more than a local level, requiring the official intervention of the Authority for its management, for technical coordination or for enforcement;
- “outbreak” means a recently detected pest population, including an incursion, or a sudden significant increase in an established pest population of an area;
- “packaging” means any material used in supporting, protecting or carrying commodity, or container together with the protective wrapping used to carry pesticide products;
- “pest free area” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially regulated and maintained;
- “pest risk analysis” means the process of evaluating biological

or other scientific and economic evidence to determine whether an organism is a pest that need to be regulated and the strength of any phytosanitary measures to be taken against it;

“pest” means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products and includes invasive alien species;

“pesticide” means substance, a mixture of substances or a living organism which includes-

- (a) insecticides, herbicides, fungicides, rodenticides, nematocides, avicides, molluscicides and antimicrobials intended for preventing, destroying, repelling, or mitigating or used or intended to be used, either alone or together with other material or substance intended for preventing, destroying, repelling, or mitigating of-
 - (i) any type of pest; and
 - (ii) unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport, or marketing of food, agricultural commodities, wood and wood products, or animal feedstuffs; and
- (b) substances intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport to include bio-pesticides, bio-control agents, biochemical and gradients;

“pesticides application” means getting pesticides formulation in a suitable form to the intended target pest for the intended purpose of pest control, using acceptable standard pesticides application equipment in such a prescribed manner of required dosage and application rates;

“pesticide dealer” means a person engaged in the formulation, manufacture, packing, re-packing, labeling, import, export, storage, sale, distribution, transport, or application of pesticides for profit including spraying, fogging, fumigation and timber treatment;

“phytosanitary action” means an official operation, such as inspection, testing, surveillance or treatment, undertaken

- to implement phytosanitary measures;
- “phytosanitary requirements” means any condition to be met by a particular consignment of particular plant, plant products or other regulated articles from a specific origin, having as its purpose the prevention of the introduction or spread of quarantine pests or limitation of the economic impact of regulated non-quarantine pests in Tanzania;
- “phytosanitary security” in relation to consignment, means the maintenance of integrity and prevention of re-infestation after phytosanitary certification and prior to export;
- “plant products” means any un-manufactured material of plant origin and those manufactured products which, by their nature or that of their processing, may create a risk for the introduction into or the spreading of pests over Tanzania;
- “plant” means any living plants or the parts thereof, including seeds and germplasm;
- “point of entry” means any seaport, airport, river or lake station, railway station, post office, transport terminal or border post, which the Minister may declare to be a point of entry under section 33 of this Act;
- “quarantine” means official confinement of plants, plant products or other regulated articles for surveillance and research or for further inspection, testing or treatment;
- “quarantine area” means an area where a quarantine pest is present and is being officially controlled;
- “quarantine pest” means a pest of potential economic importance to the area endangered thereby and not yet present there or present but not widely distributed and being officially controlled;
- “Registrar” means the Registrar of Pesticides appointed under section 13;
- “regulated articles” means any plant, plant products, storage place, packaging, conveyance, container, soil or any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures;
- “regulated non-quarantine pest” means a non-quarantine pest whose presence in plants and plant products affects the intended use of those plants and plant products with an economically unacceptable impact, and which is declared as such in this Act;

- “regulated pest” means a quarantine pest or regulated non-quarantine pest;
- “repackaging” means the authorized transfer of a pesticide from any commercial package into any other, usually smaller container for subsequent sale;
- “restricted use pesticide” means a pesticide declared by the Minister under this Act to be unsafe for use;
- “surveillance” means an official process which collects, records and processes data on pest occurrence or absence by survey, monitoring and evaluating other procedures;
- “treatment” means an official procedure for the killing, inactivation or removal of pests or for rendering pests infertile or for devitalization; and
- “wood packaging material” means wood or wood products, excluding paper products, used in supporting, protecting or carrying a commodity includes dunnage.

PART II

ESTABLISHMENT OF THE AUTHORITY

Establishment
of Tanzania
Pesticides Plant
and Health
Authority

4.-(1) There is hereby established an Authority to be known as Tanzania Pesticides and Plant Health Authority to be known in its acronym as TPPHA.

(2) The Authority established under subsection (1) shall be a body corporate with perpetual succession and a common seal and shall, in its own name be capable of-

- (a) suing and being sued;
- (b) acquiring, holding and alienating movable or immovable property;
- (c) exercising the powers and performing the functions conferred upon it by or under this Act; and
- (d) borrowing and lending.

Functions and
powers of
Authority

5.-(1) The Authority shall be responsible for plant health in the country.

(2) Without prejudice to the provision of subsection (1), the Authority shall perform the followings functions:

- (a) issuance of certificates relating to the phytosanitary certificate in accordance to the provision of this Act;

- (b) surveillance of growing plants, including both areas under cultivation and wild flora and of plants and plant products in storage or in transportation, particularly with the object of reporting the occurrence, outbreak and spread of pests, and of controlling such pests;
- (c) disinfestation or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic to meet phytosanitary requirements;
- (d) protection of endangered areas;
- (e) designation, maintenance, surveillance and declaration of pest free areas and areas of low pest prevalence;
- (f) conduct of pest risk analysis;
- (g) ensure through appropriate procedures that the phytosanitary security of consignments after certification regarding composition, substitution and reinfestation is maintained prior to export;
- (h) maintaining a list of quarantine pests, regulated articles and pests of national concern;
- (i) approving and implementing phytosanitary actions and measures;
- (j) regulating the movement of biological control agents within, from or into the country;
- (k) establishing procedures for accreditation of any post entry quarantine station, official analyst, official laboratory or any other person or institution;
- (l) carry out and promote the carrying out of bio-efficacy trials and analysis of pesticides;
- (m) evaluate the fundamental aspects of pesticides application equipment and its applicability in relation to control of pests;
- (n) evaluate pesticides residues to determine maximum residual levels;
- (o) approve the recommended use of pesticides for crop quality;
- (p) conduct pesticides formulation analysis for quality assurance;
- (q) register pesticides and bio-pesticides;

- (r) licensing of pesticides and bio-pesticides dealers;
 - (s) manage obsolete pesticides and pesticides empty containers;
 - (t) regulate importation, exportation, manufacturing, distribution, sale and use of pesticides;
 - (u) establish and maintain a National Herbarium which shall coordinate and render services on the plant taxonomy and related subjects;
 - (v) maintain a pesticides poisoning node that shall feed into the National Poisoning Center;
 - (w) promote Integrated Pest Management Approach;
 - (x) set up mechanism for coordination and collaboration with relevant bodies to ensure effective compliance to the regional and international obligations on plant health; and
 - (y) such other functions as may be required for effective implementation of this Act.
- (3) National Herbarium established pursuant to section 5(2)(u) shall-
- (a) be a center of collection of preserved plants specimen and associated information from the country and which shall be stored, catalogued and arranged systematically for study or reference as may be maintained from time to time by the Authority in accordance with the provisions of this Act; and
 - (b) coordinate and render services on the plant taxonomy and related subjects;
- (4) The Authority shall, in the performance of its functions under this Act have powers to:
- (a) demand any information, document, record or report in respect of plant, plant products, pesticide or regulated articles;
 - (b) to enter and inspect any premises, vessel, aircraft, cart, bicycle, motorcycle, animal, container or anything that is used for plants, plant products, pesticides or other regulated articles;
 - (c) suspend for prescribed time, the distribution, sale or use of any plant, plant products, pesticide or regulated articles, which he has reason to believe is being distributed, sold or used in contravention of

- the provisions of this Act;
- (d) seize any plant, plant products, pesticide or regulated articles believed to be used, distributed, or sold in contravention of this Act;
- (e) carry out pest surveillance and maintain up-to-date information on the pest status in the country;
- (f) examine records or other documents and take copies or extracts therefrom;
- (g) declare phytosanitary emergencies; and
- (h) manage complaints which may arise from implementation of this Act;

Power of delegation

6. The Authority may delegate some or any of its functions stipulated in this Act to any person or institution dealing with pesticides or plants.

PART III

ADMINISTRATION OF THE AUTHORITY

Board of Directors

7.-(1) There shall be a Board of Directors which shall be the governing body responsible for overseeing the business and affairs of the Authority.

(2) Without prejudice to the generality of subsection (1), the Board shall-

- (a) administer the properties of the Authority;
- (b) administer funds and other assets of the Authority;
- (c) signify the acts of the Authority by using the official seal;
- (d) receive and implement Government directives and proposals for the Authority;
- (e) appoint such officers of the Authority as it may deem necessary;
- (f) provide for the welfare of the staff of the Authority;
- (g) make guidelines for the implementation of this Act; and
- (h) do all acts which may, in the opinion of the Board be necessary for the proper carrying out of the functions of the Authority.

Composition

8.-(1) The composition, tenure, quorum, proceedings

and procedures of Board and meetings of the members of the Board shall be as provided for in the Schedule.

(2) For proper discharge of its functions under this Act, the Board may establish such number of committees consisting members from amongst the members of the Board.

Minister to give directions **9.** Notwithstanding section 7, the Minister may give to the Board directions of a general or specific nature which shall be consistent with the purposes and provisions of this Act and the Board shall give effect to the directions given by the Minister.

Appointment of Director General **10.**-(1) There shall be a Director General to be appointed by the President and who shall be the chief executive officer of the Authority.

(2) The Director General shall be responsible for proper administration and management of the functions and affairs of the Authority and shall, in the performance of his functions be accountable to the Board.

(3) The Director General shall be appointed from among persons holding a degree from a recognized university in the field of agricultural or physical science or related field and have at least eight years working experience in the relevant field.

Recruitment of staff **11.**-(1) The Authority may recruit such number of staff as may be considered necessary or desirable for the efficient and effective discharge of the functions of the Authority and on such terms and conditions of service as may be determined by the Board subject to the provision of Public Service Act.

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(2) In discharging the duty imposed by subsection (1), the Authority shall be guided by the laws governing employment in the public service.

(3) In the performance of their functions under this Act, staff of the Authority shall be accountable and report to the Director General.

Conflict of interest **12.** For avoidance of conflict of interest, a member of the Board, staff, agent of the Authority or any person having contractual agreement with Authority shall not, during the term of his employment or engagement and one year thereafter,

carry out the business relating to the importation or exportation of pesticide, plant, plant products or regulated articles under this Act.

Registrar of Pesticides

13.-(1) The Director General shall, for the purpose of this Act, be the Registrar of Pesticides.

(2) The powers and functions of the Registrar shall be to-

- (a) register pesticides in accordance with this Act;
- (b) register premises for pesticides manufacturing, storage, sale and supply;
- (c) establish and maintain a pesticides register in accordance with this Act;
- (d) monitor the sale, quality and use of pesticides;
- (e) collect and maintain statistical and other information concerning the import, manufacture, distribution, sale and use of pesticides and pesticide residues;
- (f) prescribe code and guidelines of good practice in pesticide management;
- (g) advise the Board on guidelines for registration procedures and processes;
- (h) allow the continued use, restrict or prohibit the use of pesticides on reassessment of their safety and availability of safer alternatives;
- (i) establish pesticide empty container collection scheme;
- (j) maintain a national register of pesticides and pesticides dealers; and
- (k) perform any other function in relation to pesticides as the Authority may require.

PART IV

REGISTRATION, LICENSING AND PERMIT

(a) *Registration*

Registration of pesticides

14.-(1) A pesticide dealer shall not formulate, manufacture, import, pack, re-pack, sell, store, label, distribute or use a pesticide unless such pesticide is registered in accordance with this Act.

(2) A person applying for registration of a pesticide

shall comply with procedures and requirements prescribed in the regulations.

Bio-efficacy trial and analysis

15.-(1) The Authority shall, before registration of any pesticides, carry out bio-efficacy trials and analysis.

(2) The time for conducting field or laboratory analysis and release of the results shall be provided for in the regulations.

(3) The Authority may coordinate and cooperate with other recognized institutions or individual experts to undertake the pesticides bio-efficacy trials.

Cap. 191

(4) Every person engaged in pesticide bio-efficacy trials shall comply with the provisions of the Environmental Management Act.

Use of information from other countries

16. The information on a review or evaluation of a pesticide by the registration authority of a country having harmonised system of pesticides regulation with Tanzania, may be used in Tanzania, if-

(a) the proposed uses of the pesticide are similar to those reviewed in such other country; and

(b) the pesticide contains one or more active ingredients present in any pesticide already registered.

Re-evaluation of registration

17. The Registrar may initiate a re-evaluation of a registered pesticide if there is reasonable ground.

Temporary prohibitions

18. Where it has been demonstrated that the use of a registered pesticide has resulted in damage to human health, animal health or environment, the Registrar may, upon recommendation by the Authority, temporarily prohibit the importation, sale, distribution and use of that pesticide.

Registration of pesticide equipment

19.-(1) A person shall not import, distribute or sell any pesticide application equipment unless the equipment is registered by the Authority.

(2) Procedures for application for registration, testing, evaluation and calibration of pesticides application equipment shall be prescribed in the regulations.

may, without undue delay modify or revoke phytosanitary requirements, phytosanitary measures and prohibitions.

(3) The Authority may evaluate and accept alternative phytosanitary measures proposed by the authority or equivalent institution of the exporting country as being equivalent to the phytosanitary requirements and measures required under subsection (1).

Packaging
Material

24.-(1) A person shall not introduce into Tanzania any packaging material including hay, straw, rice husks, peat, chaff or other substance likely to harbour or support harmful organisms.

(2) Without prejudice to subsection (1), no person shall import or introduce into the country any wood packaging material unless it is treated.

Importation of
unregistered
pesticide

25.-(1) The Registrar may permit the importation of an unregistered pesticide in prescribed quantities and according to prescribed conditions where, the pesticide is-

(a) imported for research or experimental purposes only; or

(b) is in transit through Tanzania and the Registrar is satisfied that the pesticide is permitted to enter the country of destination.

(2) The Minister may, based on pest risk analysis, permit the importation of specified plant, plant products or other regulated articles for scientific research or experiment.

(3) The importation under subsection (2) shall be done subject to terms and conditions prescribed in the regulations.

(4) A permit issued under subsection(1)(a) shall remain in force for a period of one year from the date of issue, or for such extended period as may be specified by the Registrar.

(5) The Registrar may cancel a permit issued under subsection(1)(a) upon satisfaction that its terms and conditions are being or have been violated, or that the continued use of that pesticide is likely to cause substantial adverse effects on animal health, human health or the environment.

Emergencies

26. The Minister may, in the event of phytosanitary emergency and where no other available alternative exists,

permit importation and distribution of unregistered pesticides for such time and in such quantities as may be specified in a notice.

Duty to declare plants, plant products or regulated articles

27. Any person arriving in the country with a plants, plant products or regulated articles, shall declare such items to the inspector at the point of entry.

Detention, destruction and reshipment

28.-(1) Where a consignment is not accompanied by all relevant documentation required by this Act or fails to comply with any requirements under this Act, an inspector shall serve a written notice on the importer that part of or whole of the consignment is subject within, a prescribed period of time, to the following actions-

- (a) detention until the collection of additional information or the completion of sampling and testing;
- (b) removal, for treatment, to a quarantine station or any other location identified by the Authority;
- (c) reshipment; or
- (d) destruction.

(2) Where an inspector is of the opinion that destruction of a consignment is urgently required and giving of notice is impracticable, the inspector may order destruction of the consignment and give written justification to the Authority for the action taken under this section.

(3) Any consignment which does not comply with phytosanitary requirements shall be destroyed in a manner prescribed in the regulations.

Post entry quarantine stations

29. The Authority may designate certain places as post entry quarantine stations where plant, plant products or other regulated articles shall be kept for phytosanitary observation, research, inspection, testing, treatment or removal for such period as shall be specified by the Authority.

Export

30.-(1) Where the issuance of a phytosanitary certificate is required by an importing country, the exporter shall-

- (a) apply in the prescribed form to the Authority for a phytosanitary certificate;
- (b) provide all documentation as shall be prescribed;
- (c) make the consignment available for inspection; and
- (d) pay any applicable fees as may be prescribed.

(2) Where the exporter has complied with conditions stipulated in subsection (1), the Authority shall inspect the consignment and issue a phytosanitary certificate.

(3) Without prejudice to subsection (2), where the consignment needs to be treated before shipment, the inspector shall supervise treatment.

(4) The exporter shall export the consignment in compliance with instructions of the Authority in order to maintain the phytosanitary security and physical integrity of a consignment after certification.

(5) Where the conditions for import in the country of destination are not complied with, the Authority shall deny certification.

Re-export

31.-(1) Where a consignment of plants, plant products or regulated articles is imported into Tanzania and then exported to a country of destination, the exporter shall-

- (a) apply to the Authority for a re-export phytosanitary certificate;
- (b) provide all documentation as shall be prescribed;
- (c) pay any applicable fee as shall be prescribed; and
- (d) make the consignment available for inspection.

(2) The Authority shall verify the documents presented and inspect the consignment to determine whether the consignment is free from pests or disease.

(3) The exporter shall re-export the consignment in compliance with instructions of the Authority to maintain phytosanitary security.

(4) All original documentation and phytosanitary certificates from the country of origin shall accompany any consignment to be re-exported.

(5) Where a consignment for re-export has been exposed to infestation or contamination by pests, has lost phytosanitary security or has been processed to change its

nature, the Authority shall order the exporter to treat the consignment and issue a new phytosanitary certificate which shall indicate the country of origin of the consignment.

Consignments
in transit

32.-(1) A consignment of plant, plant products or other regulated articles in transit shall be cleared by written notice of the Authority upon receipt of a transit application by the importer and subject to the payment of such fees as shall be prescribed.

(2) Phytosanitary import requirements of this Act shall not apply to a consignment in transit where the-

- (a) consignment has been packed in such a way that there is no risk of the spread of regulated pests that might be present in the consignment;
- (b) consignment as well as the accompanying documents comply with the phytosanitary requirements of the country of destination;
- (c) phytosanitary certificate of the country of origin is in conformity with the consignment; and
- (d) consignment has not been exposed to pests or become infested with pests.

Point of entry

33. The Minister may, from time to time, by notice published in the Gazette declare any-

- (a) points of entry to be the only points-
 - (i) where pesticides, plant, plant products, harmful organisms, beneficial organisms, soil or any other material or substance provided under this Act, may be imported into Tanzania; and
 - (ii) of entrance of passengers in possession of plants, plant products or regulated articles; and
- (b) suitable premises to be quarantine stations, or post entry quarantine stations.

Phytosanitary
certificate

34. The Phytosanitary certificate referred to in this Act, means a certificate issued to show that the consignment has been examined and certified that, the consignment-

- (a) is free from harmful pests or plant diseases;
- (b) has been treated; or

- (c) it meets the phytosanitary requirements of importing country.

Inspection at importers or exporters facility

35.-(1) An importer or exporter may apply to the Authority, for a consignment to be inspected at the importers' or exporters' facility-

- (a) if the facility is approved or certified by the Authority; and
(b) upon payment of the prescribed fees.

(2) Where the importer makes an application under subsection (1), the consignment shall be sealed and labeled.

(c) Licensing

Pesticides and bio-pesticides dealer's licence

36.-(1) Any person who intends to manufacture, formulate, pack, repack, import, export, store, sell, distribute or transport pesticide, bio-pesticides or offer pesticide application services shall apply to the Authority for a dealer's licence in such form and manner as may be prescribed in the regulations.

(2) An applicant for dealers licence shall indicate in the application compliance to pesticide empty container collection scheme that encourages end users to return containers and unused pesticides to dealers.

Training in pesticides management

37.-(1) A person shall not manufacture, formulate, pack, repack, import, export, store, sell, distribute or transport pesticides or offer pesticide application services unless that person is trained in pesticide management and has attained necessary qualifications specified in the regulation.

(2) Possession of training referred under subsection (1) shall be pre-condition for the issuance of a pesticides dealer's license.

(3) Without prejudice to the requirement under subsection (1), commercial applicators, fumigators and any other persons dealing in restricted use pesticides shall undergo special training and attain necessary qualifications specified in the regulations.

PART V
ENFORCEMENT

Appointment of
inspectors and
analysts

38.-(1) The Minister shall, by notice published in the *Gazette*, appoint or designate any person with qualifications to be inspectors and analysts for the purposes of enforcement of this Act.

(2) A person shall not, being an inspector appointed under subsection (1), engage directly or indirectly in any trade or business connected with the manufacture, importation, sale or distribution of pesticides.

Powers and
functions of
inspectors

39.-(1) An inspector may, in the performance of his duties under this Act-

- (a) detain, open, inspect, take sample and submit for examination, direct removal from quarantine station, remove from treatment and treat any plants, plant products, pesticides or regulated articles to which this Act applies in such manner as he thinks fit;
- (b) enter and inspect any area or premises, vehicle, vessel, cart, bicycle, motorcycle, container, animal or aircraft in which any pesticide, plants, plant products or regulated articles is under cultivation, kept or in transport or in which he has reasonable grounds for suspecting that any pesticide, plants, plant products or regulated articles is cultivation, kept or in transport in order to report the existence, outbreak and spread of pests;
- (c) inspect consignments of plants, plant products or other regulated articles intended for import into or export from the country or in transit, to determine whether they are infested by regulated pests and, where necessary, verify the pest status of consignments;
- (d) order the treatment, disposal, destruction, reshipment or confinement in a quarantine station, of pests, any plant, plant products or regulated articles imported into the country or in transit, whether or not covered by import permit or

- phytosanitary certificate, where he considers it necessary for the prevention of spread of any pest reasonably believed to be amongst such plant, plant products or regulated articles;
- (e) seize or suspend the distribution, sale or use of any plant, plant products, pesticide or regulated articles, which he has reason to believe is being distributed, sold or used in contravention of the provisions of this Act;
 - (f) handle and dispose garbage from conveyance in manner prescribed in the regulations;
 - (g) require any person to produce any information or documentation concerning pesticides, plants, plant products and regulated articles from the owner or person in charge of the pesticides, plants, plant products or regulated articles;
 - (h) inspect, examine, make copies of such documentation or take extracts of registers or records and relating to plants, plant products or regulated articles;
 - (i) stop and search without a warrant any person, baggage, packaging, conveyance or any other regulated articles, upon entry into, movement within or exit from the country;
 - (j) ensure that the phytosanitary security of consignments after certification is maintained up to the time of export;
 - (k) carry out pest surveillance and maintain up-to-date information on the pest status in the country; and
 - (l) carry out any phytosanitary action required under this Act.

(2) In the exercise of his powers and discharge of his duties under subsection (1), an inspector may apply any appropriate examination methodology including visual, electronic, animal sniffing examination, taking of samples and testing of these samples or otherwise.

Management of samples

40.-(1) The inspector may take sample of any pesticide substance, plant protection substance, plants or plant products and submit to an analyst or authorised laboratory technician for analysis, examination or laboratory diagnostic.

(2) A sample shall be taken, managed, retained and disposed in a manner prescribed in the regulations.

(3) The Authority shall not be liable for any change of form or alteration to a sample that may occur during and after analysis if that change or alteration does not affect the original nature of the plant or chemical composition.

Duties of other officers

41.-(1) Officers in the customs and postal services shall offer assistance to inspectors in the performance of their functions and the exercise of their powers under this Act, and in particular shall-

- (a) notify an inspector of the importation of anything to which this Act applies; and
- (b) handover to an inspector any such thing for inspection and subsequent action in accordance with this Act.

(2) Harbours, airports, post offices, railways and other authorities at points of entry shall provide on their premises, for the purposes of this Act-

- (a) a suitable area for office and inspection facilities;
- (b) suitable containers for holding garbage and conveying it for destruction; and
- (c) suitable and adequate space for display of public notices regarding the requirements of this Act.

PART VI CONTROL OF PESTS

Declaration of regulated pests

42.-(1) The Authority may, by notice published in the *Gazette*, declare a pest to be-

- (a) a quarantine pest or a regulated non-quarantine pest, based on pest risk analysis;
- (b) a national pest of concern, based on pest surveillance and the potential local economic impact of the pest.

(2) The Authority shall maintain and periodically review the list of regulated pests of concern and shall submit such list to the Minister for approval and publication.

(3) The Authority shall, upon request and on such terms and conditions as it may considers appropriate, provide the list of

regulated pests, pest free areas and national pests to international, regional organisations or other national plant protection organisations.

Pest free area **43.** The Authority shall, upon approval of the Minister, establish, declare and maintain pest free areas and areas of low prevalence.

Duty of notification **44.** An occupier or owner of any land or premises on which a quarantine pest is present or suspected to be present shall immediately notify an officer of the Authority or agricultural officer at the local authority of the respective area who shall report the matter to the Authority.

Phytosanitary measures during quarantine pest outbreaks **45.**-(1) Where an inspector believes that a quarantine pest may be present at an area, he shall-

- (a) enter such area or premises, inspect plants, plant products or other regulated articles and take such samples as necessary, in accordance with this Act; and
- (b) declare such place to be a provisional quarantine area.

(2) Upon declaration of a provisional quarantine area, the Authority may take emergency measures.

(3) Where a provisional quarantine area has been declared in accordance with subsection (1), the Authority may within thirteen days-

- (a) by notice published in a *Gazette*, declare the area or premises that is infested or is suspected to be infested as a quarantine pest area and specify the period of quarantine and conditions for subsequent renewals of the declaration; or
- (b) revoke the provisional quarantine area declaration.

(4) A notice of declaration under subsection (3) may, for the purposes of containing the spread of the quarantine pest-

- (a) prescribe the measures for the treatment or disposal;
- (b) specify the period of quarantine;
- (c) prohibit, restrict or otherwise specify measures for controlling the removal of a quarantine pest or a plant material, soil or associated packaging from an infected area; and

- (d) provide that, within a period specified in the notice, any plant specified in the notice or propagative material of that plant, shall not be planted in an infected area or place declared to be an infected area.

Phytosanitary
control
measures

46.-(1) The Authority shall, for purposes of controlling infestation or suspected infestation, take necessary phytosanitary action and approve phytosanitary measures as necessary.

(2) The Authority may, by written notice served on the owner or occupier, instruct phytosanitary control measures in accordance with such notice, and within a specified period of time.

(3) Where under subsection (2) the inspector does not know the identity of the owner or occupier of any premises or land or the said premises or land is otherwise not occupied by any person, the officer may affix the notice in a conspicuous place on the premises or land and the notice shall be deemed to have been served on the owner and occupier for the purposes of the subsection (2).

(4) Where the owner or occupier of land on whom notice has been served under this section fails to comply with the requirement of the notice, the inspector may enter the premises or land and carry out the required measures for the purpose of complying with the notice.

(5) The owner or occupier referred to in this section shall, be liable for all reasonable expenses incurred by the inspector under subsection (4) and the amount so incurred shall be recovered from the owner or occupier as a debt due to the Government.

(6) Any area that is infested or suspected to be infested by a regulated pest, as well as any pest free area, area of low pest prevalence or buffer zone may be subject to the following phytosanitary measures-

- (a) treatment or destruction;
- (b) prohibition or restriction of movement;
- (c) prohibition of planting or replanting specific plants in a specified location; or
- (d) any other phytosanitary measures which the Authority deems necessary.

PART VII
PESTICIDES SAFETY

Packaging and labeling of pesticides

- 47.** A person shall not import, distribute or sell any pesticide unless it is in a container, which is-
- (a) appropriate for storage, handling or use and is adequate to prevent any harm to human or animal health and the environment;
 - (b) prominently and legibly labeled in English and Kiswahili and the said label-
 - (i) cannot easily be detached;
 - (ii) is printed with indelible ink; and
 - (iii) contains such information as shall be prescribed by regulations.

Re-packaging of pesticides

- 48.** A person shall not repack pesticide except-
- (a) where repackaging is necessary for prevention of contamination in cases of damage to the original packaging; and
 - (b) specific authorisation from the Registrar has been obtained and conditions for the repackaging are provided.

Advertising

49. Any person advertising registered pesticides shall comply with rules and conditions for advertising prescribed in the regulations.

Transportation of pesticides

- 50.**(1) A person who transports pesticides shall comply with such regulations as may be prescribed.
- (2) A person shall not transport any pesticides in passenger compartments of transport vehicles, in the same compartments as animals or in the same compartment as food, feed, drugs toys, clothing cosmetics or any other item that can be hazardous to human health if contaminated.
- (3) Any spillages, leaks or contamination during transport shall be reported to the Registrar or local government authority of the particular area.

Storage of

51.(1) A person shall not store pesticides in the same

pesticides premises as food products or consumables, feedstuffs or animals.

(2) Storehouses for pesticides shall not be close to hospitals, schools, shops, densely populated urban areas, protected areas or water bodies.

(3) All pesticides shall be stored in a manner and in such facilities as prescribed in the regulations.

Restricted and
banned
pesticides

52.-(1) A person shall not import, manufacture, formulate, transport, distribute, export or sell restricted or banned pesticides in the country.

(2) Subject to subsection (1), the Registrar shall, by notice in the *Gazette*, publish a list of banned or restricted pesticides.

Obsolete
pesticides and
pesticides
empty
containers

53.-(1) Any person who deals, formulates, manufactures, imports or distributes pesticides shall take steps and precautions to ensure obsolete pesticides and pesticides empty containers are appropriately disposed of.

(2) A person shall not dispose obsolete pesticides and pesticides empty containers without obtaining a permit from the Authority.

(3) A permit for disposal of obsolete pesticides or pesticides empty containers shall be issued after consultation with the National Environment Management Council or any other authority as the Board may determine.

(4) A person who fails to comply with the requirements provided under this section commits an offence.

Pesticides
control order

54.-(1) Where there are reasonable grounds to believe that the use, handling, storage, sale, disposal, display or method of application or of transportation of a pesticide or of a substance containing a pesticide-

- (a) causes or is likely to cause injury or damage to or impairment of the quality of the natural environment;
- (b) causes or is likely to cause injury or damage to property, plant or animal life;
- (c) adversely affects or is likely to adversely affect the health or safety of any person; or

- (d) renders or is likely to render, directly or indirectly, any property, plants or animal life unfit for use by human beings,

the Authority shall issue a pesticide control order to a person responsible for the pesticide or the substance containing pesticide.

(2) The order referred to in subsection (1) may direct the person to remove, dispose or reship such pesticide or substance containing substance within time as the Authority may determine.

(3) Where a person fails to comply with the pesticide control order, the Authority shall comply with the order and the cost incurred in effecting compliance with an order shall be-

- (a) paid on demand by the person to whom the order was directed; and
(b) recoverable by the Minister as a debt due to the Government.

(4) Any person who fails to comply with the pesticide control order commits an offence.

(5) The Authority shall make guidelines for proper implementation of this section.

Substandard, counterfeit, fake, and adulterated pesticides

55.-(1) A person who sells adulterated pesticides or pesticide reasonably believed to be substandard, counterfeit, fake or adulterated commits an offence.

(2) Any person, who has reason to believe that a substandard, counterfeit, fake or adulterated pesticide is being sold, shall immediately notify an inspector.

(3) The Registrar may order any substandard, counterfeit, fake or adulterated pesticides to be, destroyed or shipped back to the country of origin, at the expense of the importer.

PART VIII FINANCIAL PROVISIONS

Funds and resources of Authority

56.-(1) The funds and resources of the Authority shall consist of-

- (a) monies appropriated by the Parliament;

- (b) all other payments or property due to the Authority in respect of any matter incidental to its functions;
- (c) any grants, donations, bequests, monies or other contributions made to the Authority;
- (d) any other monies legally acquired or received by the Authority for the execution of its functions; and
- (e) any monies derived from loans or other payments or property due to the Authority in respect of any matter incidental to its functions.

(2) The Board shall ensure that the funds of the Authority are effectively utilized for the purpose of achieving the objectives of this Act.

Accounts and
audit

57.-(1) The Authority shall keep proper books of accounts and maintain proper records of its operation in accordance with public sector accounting standards and any other approved national accounting standards.

(2) The accounts of the Authority may, at any time and shall, at the end of each financial year, be audited by the Controller and Auditor-General or any other person appointed by him.

(3) The Authority shall cause to be kept all proper books and audited records of accounts of the income, expenditure, assets and liabilities of the Authority.

(4) The Authority shall, within a period of three months after the end of each financial year, submit to the Controller and Auditor-General the accounts of the Authority together with-

- (a) a statement of financial performance during the year;
- (b) a statement of the financial position of the Authority on the last day of that year;
- (c) a statement of change in equity during the year;
- (d) a statement of cash flow for the year; and
- (e) notes, comprising of a summary of significant accounting policies and other explanatory notes.

Annual report

58.-(1) The Authority shall, on or before the 30th September of each year, prepare an annual report in respect of

that financial year up to the preceding 30th June and submit it to the Minister who shall lay it before the National Assembly.

- (2) The annual report shall consist of-
- (a) a detailed information regarding the physical and financial performance of the Authority during the year to which it relates;
 - (b) a copy of the audited accounts of the Authority together with the Controller and Auditor-General's report; and
 - (c) any other information as the Authority may be required to include in the annual report by this Act.

PART IX
OFFENCES AND PENALTIES

Offences and
penalty

- 59.**-(1) Any person who-
- (a) wilfully delays, obstructs, threatens or assaults an inspector or officer of the Authority in the course of executing his functions under this Act;
 - (b) wilfully refuses to provide any information required by the Authority or any other officer carrying out his functions under this Act;
 - (c) wilfully destructs or tampers with any information required for proper administration of this Act;
 - (d) fails to comply with an order issued under this Act;
 - (e) tampers with any sample taken or anything seized in terms of this Act;
 - (f) having been duly summoned to appear before the Authority, fails without lawful excuse to enter appearance;
 - (g) not being qualified as an analyst or inspector, purports to act in that capacity;
 - (h) exports or imports a plant, plant products, pesticides or a regulated articles otherwise than in accordance with this Act;
 - (i) possesses, keeps, distributes or introduces pesticides, plant, plant products or regulated articles contrary to this Act;
 - (j) fails to perform any duty or obligation imposed on

him by this Act;

- (k) uses or causes another person to use pesticide application equipment which has not been approved by the Authority;
- (l) knowingly provides information which is false or misleading in material respect for any purpose under this Act;
- (m) defaces, destroys, forges or alters any document provided for under this Act; or
- (n) contravenes any provisions of this Act,

commits an offence and shall upon conviction be liable to-

- (a) in the case of a body corporate, to a fine of not less than ten million shillings but not exceeding five hundred million shillings; or
- (b) in the case of a natural person, to a fine of not less than fifty thousand shillings but not exceeding ten million shillings or to a term of imprisonment for a term of not less than three months but not exceeding three years or both.

(2) The court may, in addition to a penalty imposed under this Act, order forfeiture of any article in respect of which such offence is committed or used for the commission of such offence.

Compounding
of offences

60.-(1) Notwithstanding the provisions of this Act relating to penalties, where a person admits in writing that he has committed an offence under this Act or any other sector legislation, the Director General or a person authorised by him in writing may, at any time prior to the commencement of the proceedings by a court of competent jurisdiction, compound such offence and order such person to pay a sum of money not exceeding two thirds of the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence.

(2) Where the person fails to comply with the compounding order issued under this section within the prescribed period, the Director General or a person authorised by him may, in addition to the sum ordered, require the person to pay an interest at the rate prescribed in the regulations.

(3) Where the person fails to comply with subsection

(2), the Director General may enforce the compounding order and interest accrued thereof in the same manner as a decree of a court.

(4) The Director General shall submit quarterly reports of all compounded offences under this section to the Director of Public Prosecutions.

(5) The forms and manner of compounding of offences shall be as prescribed in the regulations made under this Act.

Compensation
for damage or
loss suffered

61. Where a person has suffered a direct damage or loss of property due to commission of an offence by another person, the court may, in addition to the penalty provided under this Act, order compensation for the loss suffered or damage caused.

Indemnity
Cap.16

62. Without prejudice to the provisions of section 284A of the Penal Code, no matter done by any person exercising or purporting to exercise any function under this Act shall, if done in good faith in the execution or purported execution of his functions under any of the provisions of this Act subject such person to any action, liability, claim or demand whatsoever.

Appeals

63. A person who is aggrieved by the decision of the Authority may, within thirty days upon receipt of such decision, appeal to the Minister.

**PART X
GENERAL PROVISIONS**

Power to make
regulations

64.-(1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), Minister may make regulations prescribing-

- (a) manner in which bio-efficacy trial will be conducted;
- (b) registration of pesticides and pesticide application equipment;
- (c) procedure and condition for review, revocation or modification of import permit;
- (d) manner and procedure for destruction of

- consignments which do not comply with phytosanitary requirements;
- (e) import and export of any plant, plant products, pesticides or regulated articles;
 - (f) procedures for processing, handling, packaging, distribution, sale, disposition, loading, unloading and movement of pesticides;
 - (g) movement of plant, plant products or other regulated articles that are or could be infested with pests or that constitute or could constitute biological control agents to the control of pests;
 - (h) issuance, renewal, amendment, suspension and revocation of permits, certificates or licence;
 - (i) for manner of disposal of plant related garbage, obsolete pesticides and empty pesticides containers;
 - (j) for manner of investigations and survey for detection of pests and identification areas of infestation;
 - (k) procedures for implementation of phytosanitary measures and establishing emergency plans;
 - (l) procedures for surveillance, inspection, sampling, testing, analysis, examination and treatment;
 - (m) use of places and disposition of things, that are or are suspected to be infested with pests and of things that are, or are suspected to be pests or infested with pests or that constitute or could constitute biological obstacles to the control of pests;
 - (n) procedures regarding inspection;
 - (o) procedures for establishment and treatment of centres and quarantine stations;
 - (p) the treatment and subsequent issuance of phytosanitary certificate for plant or plant products before export;
 - (q) fees, rates and charges chargeable for the services rendered by the Authority;
 - (r) procedures for appeal under this Act;
 - (s) manner of keeping records by manufacturers, importers and sellers of pesticides;
 - (t) minimum standards for composition and efficacy of pesticides and substances capable of being

used in the manufacture of pesticide; and

- (u) prescribing anything which may be prescribed under this Act.

Repeal
Caps. 133 and
161

65.-(1) The Plant Protection Act and the Tropical Pesticides Research Institute Act are hereby repealed.

(2) Notwithstanding the repeal of the Plant Protection Act and the Tropical Pesticides Research Institute Act, any contract, document, licence, permission or resolution prepared, made, granted, or approved under the repealed Acts, shall so far as it is not inconsistent with the provisions of this Act or any other written laws, continue to exist and be deemed to have been prepared, made, granted or approved under the provisions of this Act until revoked, replaced or rescinded.

(3) Any subsidiary legislation and all exemptions made or given under the provisions of the repealed Acts, which were in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, remain in force as if they were made under this Act.

(4) The repeal of the Plant Protection Act and the Tropical Pesticides Research Institute Act shall not affect any public right, interest, title, power established or exercisable or any status or capacity existing prior to the repeal or affect any duty, obligation, liability or burden of proof imposed, created or incurred prior to the repeal or affect any investigations, legal proceeding or remedy in respect of any right, interest, power, duty, obligation, liability or otherwise.

Provision
regarding
employees
Cap. 298

66. The provisions of the Public Service Act shall apply in relation to matters relating to employees of the former schemes.

Rights of
person in
undertaking

67. This Act shall not operate so as to affect in a prejudicial way the rights of any person under any undertaking or licence granted in connection with pesticides, plants or plant products prior to the effective date of this Act or any undertaking entered into prior to the effective date of this Act.

Transfer of
assets and
liabilities

68.-(1) As from the commencement date, all assets, interests, rights, privileges, liabilities or obligations vested in

the Tropical Pesticides Research Institute shall be transferred to and be vested in the Authority without further assurance

(2) Where any question arises as to whether any particular property, or any particular asset, interest, right, privilege, liability or obligation has been transferred to or vested in accordance with provisions of subsection (1), a certificate under the hand of the Minister shall be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

Transfer of pesticides and plant protection regulatory functions

69. As from the date of commencement of this Act, the pesticides and plant protection regulatory functions formerly performed by Tropical Pesticides Research Institute and Ministry responsible for Agriculture shall be transferred to and performed by the Authority.

SCHEDULE

(Made under section 8)

COMPOSITION AND PROCEDURES OF THE BOARD

Composition of Board and its operational procedures

1.-(1) The Board shall consist of the Chairperson to be appointed by the President and other members to be appointed by the Minister as follows:

- (a) a representative from the Ministry responsible for agriculture;
- (b) a representative from the Ministry responsible for industry;
- (c) a representative from the Ministry responsible for local government;
- (d) a representative from the Ministry responsible for environmental matters;
- (e) a representative from the Office of the Attorney General;
- (f) a representative from the Government Chemistry Laboratory Authority;
- (g) a representative from private sector associations responsible for pesticides; and
- (h) a representative from farmers association responsible for horticulture.

Plant Health

(2) At least two of the members appointed under subparagraph (1) shall be women.

(3) The Director General shall be the Secretary to the Board.

(4) The Board may co-opt any person to attend its meetings as may be deemed appropriate for the purposes of rendering technical advice but such co-opted person shall have no right to vote.

(5) Any member of the Board or a sub-committee of the Board, who is engaged in any trade or business of importation, manufacturing, distribution or sale of any plant, plant products, pesticide or regulated articles shall, while holding such membership, not participate in the decision making of the Board or sub-committee, if the Board is of the opinion that such trade or business may prejudice his opinion on that particular subject matter.

Procedures of Board

2. The Board shall regulate its own procedure and the conduct of its business in conformity with this Act.

Vice Chairman

3. The members shall elect one among them to be the Vice-Chairman of the Board and shall, subject to his continuing to be a member, hold office for a term of one year from the date of election, and shall be eligible for re-election.

Tenure of office of members of Board

4. Every members of the Board shall hold office for a term of not exceeding three years and shall be eligible for re-appointment for one further term.

Termination and cessation of membership

5. The appointment of a member of the Board may be terminated where the member-

- (a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (b) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without option of fine;
- (c) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or
- (d) becomes, for any reason, incapable of properly performing the functions of the office of a member.

Alternate members

6. Where a member dies, resigns or otherwise vacates office before the expiry of the term of office, the appointing authority shall appoint another person in place of such member who shall hold office for remainder of the term of office of his predecessor.

Plant Health

Meetings and
procedures of
Board

7.-(1) Subject to subparagraph (2), the Board shall hold its meetings at least four times in a year for the transaction of its business.

(2) The Board may hold an extra-ordinary meeting if requested in writing by half of the members or at any other time where necessity so requires.

(3) The Secretary of the Board shall give to each member adequate notice of the time and place of each meeting.

(4) The Board may invite any person who is not a member to participate in the deliberation of any meeting of the Board, but any person so invited shall not be entitled to vote.

(5) Where at any meeting of the Board the Chairman is absent the Vice- Chairman shall preside.

(6) In the absence of both the Chairman and the Vice-Chairman at any meeting of the Board, the members present shall, from amongst their number elect, a temporary Chairman who shall preside at the meeting.

(7) The Chairman or a person presiding at the meeting of the Board shall in the event of an equality of votes have a casting vote in addition to his deliberative vote.

Quorum for
meeting

8.-(1) The quorum at any meeting of the Board shall be one half of the members.

(2) Where a member of the Board who is a member by virtue of his holding some other office is unable for any reason to attend any meeting he may nominate in writing another person from his Ministry or Authority to attend the meeting in his lace.

(3) All decisions by the Board shall be arrived at unanimously except in the case of disagreement the decision shall be made by a majority vote.

(4) Notwithstanding sub-paragraph (3), a decision may be made by the Board without meeting by circulation of the relevant papers among the members, and the expression in writing of the view of the majority of the members.

(5) Each member of the Board shall have one vote.

Minutes of
Board meetings

9.-(1) The Board shall cause to be recorded and kept minutes of all business conducted or transacted at its meeting and the minutes of each meeting of the Board shall be read and confirmed or amended and confirmed, at the next meeting of the Board and signed by the person presiding at the meeting.

(2) Any minutes purporting to be signed by the person presiding at a meeting of the Board shall, in the absence of proof or

error, be deemed to be a correct record of the meeting, whose minutes they purport to be.

Vacancy not to invalidate proceedings

10. The validity of any act or proceeding of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

Orders, directions of the Board

11. All orders, directions, notices or other documents issued by or on behalf of the Board shall be signed by:
(a) the Chairman; or
(b) the Secretary or any officer or officers of the Authority authorised in writing in that behalf by the Board.

Common seal

12. The common seal of the Authority shall be duly affixed if witnessed under the hand of the Chairman, the Director General or any other member of the Board and such affixation on any document executed or authenticated shall be judicially noticed.

OBJECTS AND REASONS

This Bill intends to provide for an enactment of the Plant Health Act, 2020 with a view to consolidating the Plant Protection Act and the Tropical Pesticides Research Institute Act, Caps. 133 and 161 respectively and putting in place a consolidated legal framework for plant health and pesticides, and to establish the Tanzania Plant Health and Pesticides Authority which shall be the main regulatory body for pesticides and plant health. The proposed legal framework will also provide for provision that to facilitate competition and efficiency in plants and plant products trade in the country and internationally. Further to that, the Bill also intends to introduce provisions for safeguarding human health and the environment (ecosystem) by ensuring sustainable and efficient management of pesticides, plant health, and phytosanitary issues through effective monitoring and surveillance system of inspectors and reputable laboratory analysis.

This Bill is divided into X Parts.

Part I contains preliminary provisions which include short title, commencement date, application and interpretation of various terms and phrases used in the Bill.

Part II contains provisions relating to the establishment of the Tanzania Plant Health and Pesticides Authority and also provides for powers and functions of the Authority.

Part III deals with administration of the Authority. It provides for the establishment, powers and functions of the Board, its composition and procedures and observance of impartiality and matters relating to conflict of interest. Further, the Part makes provisions for the management and staff of the Authority, appointment of Director General who shall also be the Registrar of Pesticides.

Part IV deals with registration, licensing and permit for pesticides dealers. It provides for registration of pesticides, bio-pesticides and pesticide application equipment. Further to that, the Part provides for bio-efficacy trial and analysis as well power of the Authority to cooperate with private individuals or institutions that also conduct bio-efficacy trials.

Part V contains provisions for enforcement. It provides for the appointment and designation of analysts and inspectors as well as providing for their powers and functions. The Part makes provisions for handling of samples and duties of other officials who are necessary in assisting inspectors to perform their functions under the Act.

Part VI provides for control of pests. This Part provides for the power of declaration of regulated pests and of pest free areas. Further, the Part provides for phytosanitary measures to be used during quarantine pest outbreak and phytosanitary control measures to be taken by the Authority.

Part VII deals with pesticides safety. The provisions in this Part relate to the manner of packing, re-packaging, labeling, storage and transportation of pesticides. The Part also provides for prohibition in dealing with restricted and banned pesticides and substandard, counterfeit, fake or adulterated pesticides. The procedures for disposal of obsolete pesticides and empty pesticide containers are also contained in this Part.

Part VIII provides for financial provisions. It contains provisions relating to funds of the Authority, budget, accounts and audit and annual

report. The Authority is required to prepare annual report for each financial year and submit it to the Minister who shall lay it the report before the National Assembly.

Part IX deals with offences and penalties, compensation for damage and loss and the power of the Director to compound offences under the Act.

Part X deals with general provisions which including the power of the Minister to make regulations, repeal of laws, transfer of staff and employees of the Tropical Pesticides Research Institute and their rights and transfer of assets and liabilities.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa kwa Sheria ya Afya ya Mimea ya mwaka 2020. Lengo la Sheria pendekezwa ni kuunganisha Sheria ya Hifadhi ya Mimea, Sura 133 na Sheria ya Taasisi ya Utafiti wa Viuatilifu vya Kitropikia (TPRI), Sura 161 ili kuweka mfumo wa pamoja wa kisheria ambao utasimamia hifadhi ya mimea na viuatilifu. Vilevile Mswada huu unapendekeza kuanzisha Mamlaka ya Afya ya Mimea na Viuatilifu kama chombo kikuu cha usimamizi wa hifadhi ya mimea, udhibiti wa viatilifu, kuweka masharti ya kusimamia uhifadhi wa afya ya mimea, kuzuia, kuingiza na kuenea kwa visumbufu, udhibiti wa usafi wa mimea, udhibiti wa viuatilifu, udhibiti na usimamizi wa majaribio ya ufanisi wa viuatilifu, kuwezesha biashara ya mimea na mazao ya mimea pamoja na mambo mengine yanayohusiana na hayo kufanyika kwa ufanisi na kwa ushindani.

Muswada huu umegawanyika katika Sehemu Kumi.

Sehemu ya Kwanza inahusu masharti ya utangulizi ambayo yanajumuisha jina la Muswada, tarehe ya kuanza kutumika kwa sheria, matumizi na tafsiri ya maneno na misemo mbalimbali iliyotumika katika Muswada pendekezwa.

Sehemu ya Pili ya Muswada inahusu kuanzishwa kwa Mamlaka ya Afya ya Mimea na Viuatilifu ambayo ndio itakuwa na jukumu la kusimamia

uhifadhi wa afya ya mimea na udhibiti wa viuatilifu. Sehemu hii inaainisha pia mamlaka na majukumu ya Mamlaka hiyo.

Sehemu ya Tatu inajumuisha masharti ya utawala wa Mamlaka. Sehemu hii inaelezea uanzishaji na majukumu ya Bodi, muundo wake, umuhimu wa kuzingatia usawa na masuala yanayohusu mgongano wa maslahi. Sehemu hii inaweka pia masharti ya usimamizi wa watumishi wa Mamlaka, uteuzi wa Mkurugenzi ambae ndie atakuwa Msajili wa Viuatilifu.

Sehemu ya Nne inahusu usajili wa viuatilifu, utoaji wa leseni kwa watu wanaojihusisha na mimea, mazao ya mimea na viuatilifu pamoja na vibali. Sehemu hii inaweka pia masharti ya ufanyaji wa majaribio na tathmini ya ubora pamoja na ushirikiano na watu au taasisi nyingine zinazofanya shughuli za majaribio na tathmini ya ubora.

Sehemu ya Tano inahusu masharti ya usimamizi wa sheria. Sehemu hii inajumuisha masharti ya uteuzi wa wachunguzi na wakaguzi pamoja na mamlaka na majukumu yao. Sehemu hii pia inaweka utaratibu utakaotumiwa na wakaguzi kuchukua sampuli na kuainisha majukumu ya maafisa wengine ambao ni muhimu kushirikiana na wakaguzi katika utekelezaji wa majukumu yao chini ya Sheria inayopendekezwa.

Sehemu ya Sita inahusu udhibiti wa visumbufu. Sehemu hii inatoa mamlaka kwa Mamlaka kutangaza visumbufu vinavyodhibitiwa na maeneo ya visumbufu na hatua zitakazochukuliwa na Mamlaka wakati wa mlipuko wa visumbufu.

Sehemu ya Saba inahusu usalama wa viuatilifu. Masharti katika Sehemu hii yanahusiana na utaratibu wa kufungasha, kuweka lebo, utunzaji na usafirishaji wa viuatilifu. Sehemu hii pia inaweka zuio kwa matumizi ya viuatilifu vilivyozuiliwa au viuatilifu bandia ama visivyokidhi viwango na kuainisha utaratibu wa utupaji wa viuatilifu visivyofaa na makopo tupu ya viuatilifu.

Sehemu ya Nane ya Muswada inaweka masharti ya fedha ambayo yanajumuisha vyanzo vya mapato vya Mamlaka, bajeti, ukaguzi wa hesabu na taarifa ya mwaka ya utekelezaji wa shughuli za Mamlaka. Kwa mujibu wa Sheria inayopendekezwa, Mamlaka inapaswa kuandaa taarifa ya mwaka

kwa kila mwaka wa fedha na kuiwasilisha kwa Waziri ambaye naye ataiwasilisha Bungeni.

Sehemu ya Tisa inahusiana na makosa na adhabu, fidia kwa madhara au hasara itokanayo na makosa ya mtu mwingine pamoja na mamlaka na utaratibu wa Mkurugenzi Mkuu kufililisha makosa chini ya sheria.

Sehemu ya Kumi inahusiana na masharti ya jumla ikiwa ni pamoja na mamlaka ya Waziri kutengeneza Kanuni za kutekeleza Sheria pendekezwa, kufutwa kwa Sheria, kuhamishwa kwa watumishi wa Taasisi ya Utafiti wa Viuatilifu (TPRI) na haki zao na kuhamisha mali na madeni ya TPRI.

Dodoma,
7 Januari, 2020

JAPHET N. HASUNGA,
Minister for Agriculture