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**Attaining SDG 2 (Zero Hunger) in Nigeria: The Role of the Plant Variety
Protection Act 2021**

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Abstract

The achievement of Zero Hunger by 2030 is the focus of the United Nation's Sustainable Development Goal (SDG) 2. Despite its status as a major agricultural producer, Nigeria is confronted with a number of challenges that contribute to food insecurity and widespread hunger. The Plant Variety Protection Act 2021 was signed into law in Nigeria in 2021 to promote increased staple crop productivity for Nigerian smallholder farmers and to encourage investment in plant breeding and crop variety, as well as protect new plant varieties. This paper investigates the role of Nigeria's Plant Variety Protection Act 2021 (PVPA) in achieving sustainable food security under SDG2. The Act, which was passed to promote the protection of plant varieties and breeders' rights, has the potential to make a significant contribution to Nigeria's food security and agricultural sustainability. The challenges and criticisms of the PVPA are also discussed, and solutions to help achieve the target of zero hunger by 2030 are suggested.

Keywords: *SDG2; Food Security; Plant Variety Protection; Zero Hunger; Nigeria, Agriculture.*

1.0 INTRODUCTION

The resolution "Transforming Our World: The 2030 Agenda for Sustainable Development"¹ was adopted by the United Nations' 70th General Assembly in 2015. Agenda 2030 is the most ambitious global agreement ever reached by the United Nations. It promotes the inclusion of social, environmental, and economic aspects of sustainable development in all sectors of policy, as well as the linkage and coherence of governmental and policy frameworks related to the Sustainable Development Goals (SDGs). The "Agenda 2030" consists of 169 targets and 17 Sustainable Development Goals (SDGs) with the goal of eradicating poverty and achieving global sustainable development by 2030. These are specific objectives for the next 15 years that centre on ensuring the "health" of our planet, maintaining regional and global stability, ensuring human dignity, just and resilient societies, and thriving economies. One of these goals, SDG2, calls on member states to "end hunger, achieve food security and improved nutrition, and promote sustainable agriculture" by 2030. It focuses on eliminating hunger and malnutrition as well as enhancing the sustainability of food systems.²

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¹ United Nations, Transforming our world: The 2030 Agenda for Sustainable Development. Resolution (A/RES/70/1, Geneva)

²United Nations, "Sustainable Development Goal 2". <https://sustainabledevelopment.un.org/sdg2>. Accessed 4 July, 2023.

Plant breeding is one way the agricultural sector can help achieve Zero Hunger. Since Nigeria was not a signatory to the International Union for the Protection of New Varieties of Plants (UPOV) Convention, there was no effective regulatory or institutional framework in place to protect, regulate, and enforce plant breeders' rights. Meanwhile, Nigeria is a signatory to the TRIPS Agreement, which recognizes and provides for patentability of inventions in all fields of technology, and specifically calls for the protection of plant varieties through patent, an effective sui generis system, or any combination of the two. As a result, the Federal government's decision to introduce the Plants Variety Protection Act (PVPA) in 2021 was a significant one. In addition, the country has now initiated the procedure to accede to UPOV.³

The Act established a plant variety protection system to incentivise plant breeders while also providing national and multinational agroindustry investors with the opportunity to capitalise on agriculture by adding value to the development of Nigeria's agriculture value chain. Additionally, it was created to encourage investment in plant breeding and crop variety, increase the productivity of staple crops for Nigeria's small-scale farmers, and protect new plant varieties as intellectual property rights. This paper shall examine the role the act plays in attaining food security pursuant to Goal 2 of the SDGs.

2.0 THE CURRENT STATE OF FOOD SECURITY AND HUNGER IN NIGERIA.

³International Union for the Protection of New Varieties of Plants, 'Overview of UPOV' https://www.upov.int/edocs/pubdocs/en/upov_pub_437.pdf accessed 23 October 2023

Nigeria's current food security and hunger situation poses significant challenges. Despite being a major agricultural producer, the country faces challenges that contribute to food insecurity and widespread hunger. Nigeria's food security and nutrition situation is extremely concerning. The precarious food security situation that many Nigerian households face is set against a backdrop of serious socioeconomic challenges, including high rates of poverty, unemployment, and acute malnutrition, particularly among vulnerable groups.⁴

According to the October 2022 Cadre Harmonisé, a Government-led and UN-supported food and nutrition analysis conducted twice a year, nearly 25 million Nigerians face a risk of going hungry between June and August 2023 (the lean season) if immediate action is not taken.⁵ Nigeria is also ranked 103rd out of the 121 nations for which there is enough information to calculate the 2022 Global Hunger Index scores.⁶

The United Nations (UN) has identified Nigeria as one of 15 countries where children are suffering from acute malnutrition and wasting. The Food and Agriculture Organization (FAO), the UN Refugee Agency (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP), and the World Health Organization (WHO) made this announcement in a joint statement. Afghanistan, Burkina Faso, Chad, the Democratic Republic of the Congo,

⁴Bedru B Balana, Adebayo Ogunniyi, Oyeyemi *et al.* 'COVID-19, food insecurity and dietary diversity of households: Survey evidence from Nigeria' *Food Sec.* (2023) (15) 219–241 <<https://doi.org/10.1007/s12571-022-01312-w>> Accessed 4 July, 2023.

⁵UNICEF press release 2023. <https://www.unicef.org/press-releases/25-million-nigerians-high-risk-food-insecurity-2023> Accessed 5 July, 2023.

⁶Global Hunger Index 2022. <https://www.globalhungerindex.org/nigeria.html> Accessed 4 July, 2023.

Kenya, Madagascar, Mali, Niger, and Nigeria were among the worst-affected countries. Over 30 million children are said to be affected across 15 countries.⁷

According to the National Bureau of Statistics, 63% of Nigeria's population (133 million people) is multidimensionally poor.⁸ According to the global consulting firm, KPMG, Nigeria's unemployment rate will rise to 40.6 percent in 2023, a significant increase from the 33.3 percent reported by the National Bureau of Statistics in the fourth quarter of 2020.⁹ According to the National Bureau of Statistics (NBS), Nigeria's headline inflation rate increased to 22.22 percent year on year in April 2023. This is according to the April 2023 NBS Consumer Price Index (CPI) and Inflation Report.¹⁰ Poverty and hunger are inextricably linked, and it is no surprise that the country's poverty rate has resulted in many people going hungry.

Food insecurity in the country is also influenced by ongoing conflict, climate change, and rising food prices. Food access has been hampered by persistent violence in Borno, Adamawa, and Yobe, as well as armed banditry and kidnapping in Katsina, Sokoto, Kaduna, Benue, and Niger. According to the National Emergency Management Agency, widespread flooding during the

⁷ Agency Report, 'UN warns of acute malnutrition in Nigeria, 14 other countries' Premium times <<https://www.premiumtimesng.com/news/headlines/575691-un-warns-of-acute-malnutrition-in-nigeria-14-other-countries.html>> Accessed 5 July, 2023.

⁸ National Bureau of Statistic 2022 <<https://nigerianstat.gov.ng/news/78>> Accessed 5 July, 2023.

⁹ 'Nigeria tops global unemployment rating – Report' <<https://www.vanguardngr.com/2023/08/nigeria-tops-global-unemployment-rating-report/#:~:text=Meanwhile%2C%20in%20a%20recent%20report,seekers%20into%20the%20job%20market.>>> Accessed 5 July, 2023.

¹⁰ CPI and Inflation Report April 2023

2022 rainy season damaged over 676,000 hectares of farmland, reducing harvests and raising the risk of food insecurity for families across the country.¹¹

All the data above point to the need to urgently address food security in Nigeria and promote research and development of agricultural produce to meet the ever increasing needs of its teeming population.

3.0 OVERVIEW OF SUSTAINABLE DEVELOPMENT GOAL 2 AND ITS SIGNIFICANCE

SDG2 aims to 'end hunger, achieve food security and improved nutrition, and promote sustainable agriculture' by 2030.¹²The goal of achieving food security is far more ambitious than the goal of ending hunger. ¹³Food security was defined at the World Food Summit as “when all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”.¹⁴

SDG 2 is implemented through eight targets. SDG 2.1 and 2.2 address hunger as well as micro- and macronutrient deficiencies. SDG 2.3 calls for small-scale farmers' agricultural productivity and incomes to be doubled. SDG 2.4 encourages more sustainable agriculture. SDG 2.5

¹¹ FAO, '25 million Nigerians at high risk of food insecurity in 2023.' <<https://www.fao.org/nigeria/news/detail-events/es/c/1630260/>> Accessed 7 July, 2023.

¹²United Nations, Transforming our world: The 2030 Agenda for Sustainable Development. Resolution (A/RES/70/1, Geneva)

¹³Gonzalez, Carmen 'SDG 2: End Hunger, Achieve Food Security and Improved Nutrition, and Promote Sustainable Agriculture' 2021

¹⁴World Food Summit 1996

addresses the importance of maintaining generic diversity in seeds, cultivated plants, farmed and domesticated animals, and wild species that are related to them. SDG 2.6 promotes agricultural investments, whereas SDG 2.7 promotes agricultural trade. Adopting measures to ensure the proper functioning of food commodity markets and their derivatives is proposed in SDG 2.8. Fourteen indicators are included with the SDG 2 targets to track development over time. Although the use of data that is broken down by region and for specific population segments is encouraged, these indicators are at the national level.¹⁵

Achieving zero hunger is a critical step toward ensuring the fundamental human right to food and improving the well-being and quality of life for millions of people around the world. Hunger and poverty are inextricably linked. The cycle of poverty can be broken by addressing hunger and this can lead to creation of opportunities for economic growth and development. Hunger undermines efforts to achieve sustainable development on multiple fronts. It impedes educational attainment, lowers workforce productivity, and places a strain on healthcare systems. Hunger intersects with areas such as health, education, gender equality, and poverty eradication, hence, addressing it is critical for achieving the broader Sustainable Development Goals.

Nigeria faces specific obstacles in achieving SDG2. She has a rapidly growing population, which makes meeting rising food demand difficult with a population of 218,541,212 people, according

¹⁵United Nations, Transforming our world: The 2030 Agenda for Sustainable Development. Resolution (A/RES/70/1, Geneva)

to the World Bank data (2022).¹⁶The country's population growth is outpacing agricultural productivity, resulting in food scarcity and insecurity.

Poverty and income inequality remain widespread in Nigeria thereby limiting people's access to adequate and nutritious food. Individuals and communities are unable to purchase nutritious food due to poverty and limited income opportunities, perpetuating food insecurity and malnutrition. According to the National Bureau of Statistics, 63% of Nigeria's population (133 million people) is multidimensionally poor.¹⁷Nigeria's food inflation is currently at 18.37%, with a projection that 19.4 million more people will face a food crisis or food insecurity in the near future as a result of the country's current level of food inflation.¹⁸ The implication is that, while food prices are too high for Nigerians to have food security, the majority of the population is also impoverished.

Nigeria's agricultural sector is also confronted with challenges that have an impact on productivity. These include a deficient land tenure system, insufficient irrigation farming, climate change, and land degradation. Others are low technology, high production costs and poor input distribution, limited financing, high post-harvest losses, and limited market access.

¹⁶ World Bank, 'Population Total – Nigeria'

(2022)<<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NG>> Accessed 3 July, 2023.

¹⁷ National Bureau of Statistic, 'Nigeria Launches its Most Extensive National Measure of Multidimensional Poverty' 2022 <<https://nigerianstat.gov.ng/news/78>> Accessed 3 July, 2023

¹⁸ Ode Aduu, 'Increasing Food Inflation puts 19.4 Million Nigerians on the Verge of a Food Crisis.' (2022) <<https://www.dataphyte.com/latest-reports/increasing-food-inflation-puts-19-4-million-nigerians-on-the-verge-of-a-food-crisis/>> Accessed 3 July, 2023.

Nigeria has several opportunities to achieve SDG2, particularly because it has significant agricultural potential with abundant arable land, favourable climatic conditions, and diverse agro-ecological zones. Using modern techniques like precision farming and improved seed varieties can boost yields, reduce post-harvest losses, and optimize resource utilization. Land tenure, agricultural financing, market access, and value chain development are examples of reforms that can boost productivity, attract investment, and improve food security outcomes. Addressing these challenges and capitalizing on these opportunities will require coordinated efforts from the government and the private sector, allowing Nigeria to make significant progress toward SDG2 and ensuring zero hunger for its people.

4.0 PLANT VARIETY PROTECTION ACT 2021 (PVP ACT)

In May 2021, President Muhammadu Buhari of the Federal Republic of Nigeria signed the Plant Variety Protection (PVP) Act 2021, and the International Union for the Protection of New Varieties of Plants (UPOV) reaffirmed Nigeria's conformity with the UPOV Convention's 1991 Act on August 27, 2021, allowing Nigeria to become a UPOV member.

According to the explanatory memorandum, the goal is to "promote increased staple crop productivity for smallholder farmers in Nigeria and encourage investment in plant breeding and crop variety development".¹⁹ Through research and innovation, the Act hopes to advance plant

¹⁹ Plant Variety Protection Act 2021

breeding activities and foster the creation of new plant varieties. It aims to motivate plant breeders to make investments in developing enhanced and adapted plant varieties. By giving them exclusive rights over their newly created plant varieties, it also aims to safeguard the rights of plant breeders. Plant breeders can use the legal tools provided to stop the unlicensed use, reproduction, or commercialization of their protected varieties. The Act aims to make it easier for farmers, horticulturists, and the agricultural sector to access and find improved plant varieties.

The Act applies to a breeder and any plant genera and species.

4.1 Some Key Provisions of the Act

The Act established the Plant Variety Protection Office which is domiciled in the National Agricultural Seeds Council. The Office would facilitate the transfer and licensing of plant breeders' rights, as well as collaborate with local and international bodies whose functions relate to plant breeders' rights. A breeder of a new variety may apply for the grant of a breeder's right for that variety, as provided for in section 17 of the Act. The breeder is responsible for designating the variety with a denomination that will serve as its generic designation and submitting this denomination to the Registrar. According to the Act, any breeder who has filed an application for the protection of a variety in a member state of an international organization dealing with plant breeder's rights to which Nigeria is a party will have priority for a period of up to twelve (12) months.

The application will be announced in either the Federal Government Gazette or two (2) national daily newspapers. Any objections to the application must be submitted in writing within one month of the notice's publication date. When the deadline for objections and responses has passed, the Registrar will review the application and decide whether to grant the breeder's right. When the breeder's right is granted, the Registrar will issue the holder a certificate of registration, enter the variety into the register, and publish a notice of the grant of the breeder's right and the approved denomination in the Federal Government Gazette. Any decision of the Registrar regarding the refusal, nullification, or cancellation of a breeder's right may be appealed to the Minister of Agriculture under the Act's provisions. However, the Act states that any decision made by the Minister is final. Because such a decision is final, an appellant loses the right to seek redress in a court of law.

Plant breeder's rights expire 20 years after the date of grant, with the exception of trees and vines, whose breeder's rights expire 25 years after the date of grant. The grant for the above breeders can be extended for an additional 5 years by notifying the Registrar 6 months before the original term expires. The Act provides for the right of a plant breeder to assign or authorize any activity relating to a registered plant variety. For record purposes, the assignee must notify the Registrar of the assignment through which plant breeders will be granted rights and information on plant breeders' rights issued in Nigeria can be obtained. The Office would facilitate the transfer and licensing of plant breeders' rights, as well as collaborate with local and international bodies whose functions relate to plant breeders' rights.

The Act provides for the Registrar to grant protection to plant varieties that are new (novel), distinct, uniform, and stable, in line with the requirements of UPOV. To satisfy the novelty requirements as specified in section 14, a plant variety would be considered new if, at the time of filing the application for a breeder's right, propagating or harvested material of the variety had not been commercialized, sold, or otherwise disposed of to any person with the breeder's consent, for purposes of exploitation of the variety in Nigeria earlier than one year before the date of filing the application; and a territory other than Nigeria earlier than 4 years or 6 years before the said date in the case of a tree or vine. Section 15 of the Act stipulates that a variety is considered distinct when it is clearly distinguishable from any other variety whose existence is common knowledge at the time the application is filed. The filing of an application for the granting of a breeder's right or the entry of another variety into the official register of varieties in any country is deemed to make that other variety "common knowledge" from the date of the application, provided that the application results in the granting of a breeder's right or the entry of the said other variety into the official register of varieties. Section 16 mentions uniformity and stability as requirements for a proposed new variety. A variety is considered uniform if, subject to the variation that can be expected from the specific features of its propagation, its relevant characteristics are sufficiently uniform. Uniformity refers to plant characteristics that are consistent from plant to plant within a variety. The criteria of stability for a new variety is met when its relevant characteristics remain intact following repeated propagation or, in the case of a specific propagation cycle, at the end of each such cycle. Stability denotes that the plant features

are genetically fixed and thus remain the same from generation to generation, or after a reproductive cycle in the case of hybrid types.

The scope of the breeder's rights is enumerated in sections 28 and 29 of the Act. A plant breeder has exclusive rights to propagate materials of a protected variety. Authorization must be obtained from such breeder for the production and reproduction (multiplication), conditioning for propagation; offering for sale; selling or marketing; exporting; importing and stocking in relation to any of the mentioned purposes. The holder of a breeder's right is also entitled to equitable remuneration from any person who, between the date the application for the grant of a breeder's right was published and the date the right was granted, performed acts that, once the right was granted, required the breeder's authorization as specified in Section 29 of the Act.

However, a plant breeder's exclusive rights cannot prevent a third party from performing the following acts without authorization: Private and non-commercial purposes; experimental purposes; breeding any other variety, unless it is essentially derived from an initially protected variety. There is also the farmer's privilege, which allows a grower to propagate the protected variety on his own holding. In essence, the contracting party may allow a farmer to use farm saved seeds for propagation purposes.

A suit by the holder of breeder's right against any person who infringes the breeder's right may be brought to the court in criminal or civil law.

5.0 ROLE OF THE PLANT VARIETY PROTECTION ACT IN ATTAINING SDG2 ZERO HUNGER

Plant breeding is the science-driven creative process of developing new plant varieties, which includes cultivar development, crop improvement, and seed improvement.²⁰ Plant variety rights are granted to encourage innovation in plant breeding and to provide incentives for breeders to invest in the development of new and improved plant varieties.

The PVP Act encourages investment in plant breeding activities and fosters innovation in the creation of new plant varieties by giving plant breeders exclusive rights and legal protection. Breeders are encouraged to devote time, money, and expertise to improving and adapting varieties so they are more resilient, productive, and disease-resistant. Due to the availability of these varieties, agricultural productivity and crop yields can see an increase, in line with the SDG2 targets. The PVPA's primary role is to promote plant breeding activities in the country. The significance of plant breeding in achieving SDG2 cannot be overstated.

When it comes to industrial and high market commodity food crops, plant breeding is important not only for meeting market demands in terms of increased quantity, but also for quality adjustments to meet requirements for industrial processes and consumer preferences.²¹ This

²⁰ Kor Oldenbroek, & Liesbeth van der Waaij, *Textbook animal breeding: animal breeding and genetics for BSc students* (Groen Kennisnet 2014)

²¹ Marie-Louise Avana-Tientcheu & Christian Tiambo, *Breeding and Productivity in Ending Hunger and Achieving Food Security and Nutrition. In Zero Hunger* (Cham: Springer International Publishing 2020) 130-146

highlights the PVPA's role in achieving Demand-Led Breeding for quality adapted to market needs in order to meet SDG2 target 3.

Plant breeding is also important in the aftermath of climate change, which causes unexpected droughts, heavy rains, and crop failures and continues to pose new challenges, such as the emergence of previously thought-to-be-normal harmful organisms. Breeders must now work on new, adapted varieties to ensure agricultural yield stability, putting breeding at the forefront of achieving SDG2-targets 3, 4, and 5.²²

Poverty and hunger are inextricably linked, and eradicating poverty will have a direct impact on eradicating hunger. Farmers' livelihoods are improved when they have access to improved plant varieties, which increase crop yields, improve quality, and create market opportunities. As a result, the Act directly contributes to the abolition of hunger by allowing farmers to grow more food and, as a result, sell more crops. This helps to reduce poverty, develop rural areas, and raise income levels.

The Act also establishes the Plant Variety Protection Office in Nigeria to promote increased staple crop productivity among smallholder farmers, highlighting the act's goal to achieve the target of doubling the productivity and income of small-scale food producers.

The new law for Nigerian plant breeders can play a significant role in achieving SDG2 in a variety of ways, including the provision of a regulatory framework protecting IP in new plant

²²ibid

varieties and breeder's rights, promoting foreign collaboration and partnerships with plant breeders in Nigeria; increased research; promoting competition; price reductions for end-products for consumers, allowing poorer people to gain access to food; improved product quality; and improved product safety.²³

6.0 CRITICISMS OF THE PVP ACT 2021 AND ITS IMPLEMENTATION

The Plant Variety Rights Protection Act 2021 has the potential to aid in the goal of ending hunger, but it also has some challenges and limitations, most of which were highlighted in the petition by the Health Of Mother Health Foundation HOMEF rejecting the PVP Act2021.²⁴

The major criticism of the act is centered on its foreign nature, with critics condemning Nigeria's adoption of a UPOV91-based PVP law. The government has been urged to create indigenous plant variety protection laws that are appropriate for the country's environment. The PVP law's development process has also been criticized, with no public hearings and a lack of consultations and participation from smallholder farmers.

The Act fails to take into account the country's specific seed and agricultural context. According to studies, local seed systems are valuable and have provided farmers with seed security over time. These systems are innovative in that they acquire materials and adapt to new technologies

²³ Ngozi Idih, Mirikweh Ikemefuna, 'Intellectual Property Protection for Food Security in Nigeria: An Overview of the Nigerian Plant Variety Protection (Pvp) Act 2021', *IRLJ* (2022) (4) (3)

²⁴ HOMEF Petition: Nigerians Reject the UPOV-91 Based Plant Variety Protection Law.

<<https://homef.org/2021/08/23/petition-nigerians-reject-the-upov-91-based-plant-variety-protection-law/>> Accessed 4 July, 2023.

as they emerge.²⁵ As long as resources are scarce, formal sector seed supply to marginal sectors will always be problematic. Small-scale farmers account for 80% of the farming population in Nigeria, and they rely on traditional practices such as saving, reusing, exchanging, and selling farm-saved seed to make a living. In this regard, the formal seed system is bound to have a significant impact on small-scale farmers.

The law creates a climate in which farmer rights are not balanced adequately and commercial seed trumps farmers and local seed systems. The Act prioritizes the rights of breeders over the rights of and support for smallholder farmers, who produce the majority of the food consumed in the country and have long served as food custodians. It might not value farmers' contributions to the advancement and preservation of plant genetic resources or traditional knowledge. This oversight has the potential to undermine local seed systems and result in the extinction of traditional crop varieties.

The Act is more likely to serve the needs of large seed companies or breeders who have exclusive rights to protected varieties, rather than the needs of small-scale farmers who make up the majority of the agricultural sector. This concentration has the potential to reduce competition and diversity in the seed market, potentially limiting farmers' options and increasing their reliance on a limited range of commercial seeds.

²⁵ Conny Almekinders and Niels Louwaars 'The Importance of the Farmers' Seed Systems in a Functional National Seed Sector', *Journal of New Seeds* (2002) (4) (1)

Another major critique of the Act is the provisions of Section 43(2) of the PVP Act. The Act establishes the Registrar's office, which monitors the grant of breeder's rights and maintains the register for the provision of information on breeder's rights issued in Nigeria. The Act also empowers the Registrar to make decisions that affect the rights of breeders and applicants alike, such as the denial of a breeder's right application, as well as the nullification and cancellation of breeder's rights. If a party is dissatisfied with the Registrar's judgment, Sections 42 and 43 of the Act provide for an appeal to the Minister, who will then make a decision based on the facts. Section 43(2) of the Act, in particular, renders the Minister's judgment final. This section has sparked much debate because a strict interpretation of finality implies that appeals from the Minister's decision to the Courts are not permitted.²⁶ This would imply that the Minister's decision is final both administratively and legally, and as such, will not be subject to appeal or adjudication before the Court, which makes it an ouster clause.

It is vital to note that Section 43(2) of the PVP Act contradicts the requirements of the Constitution of the Federal Republic of Nigeria 1999. By Section 6 (6) (b) of the Constitution, the Courts' judicial powers "... shall extend to all matters between persons, or between government or authority and any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to that person's civil rights and obligations". This constitutional provision preserves the Court's jurisdiction notwithstanding any statutorily

²⁶ Ifeanyi Okonkwo, Blessing Udo, Kayode Ikumelo, 'Overview of Nigeria's Plant Variety Protection Act 2021 and the Impact of Section 43(2) on Plant Breeders (2021)' <https://ssrn.com/abstract=3928965> Accessed 29 July, 2023.

provided ouster clause.²⁷ Furthermore, Section 4(8) of the 1999 constitution forbids the legislature from implementing any law that ousts or attempts to expel the jurisdiction of a Court of law, rendering ouster clauses unconstitutional. It is also worth noting that Section 43(2) of the PVP Act violates the principle of fair hearing enshrined in Section 36(1) of the Constitution. The provisions of Section 43(2) of the PVP Act cannot prevent the Court from assuming jurisdiction over an appeal against the Minister's decision since they are inconsistent with Section 36(1) of the Constitution. Sections 4(8) and 6(6)(b) of the 1999 constitution also call into question the legitimacy of Section 43(2) of the PVP Act, as the Court will not relinquish its jurisdiction if it finds the same provision to be unconstitutional and exceeding the Legislature's powers. More so, section 43(2) PVP Act is null and void in accordance with the provisions of Section 1(3) of the Constitution which invalidates any other law which contravenes the provisions of the Constitution.²⁸

Furthermore, section 26(4) of the PVP Act has also been criticised. Although the Registrar can object to an application for registration of a plant variety, section 26(4) allows the Minister to reply to any objection made against the Federal Government. This is also against one of the twin pillars of natural justice to wit *nemo judex in causa sua* (No one should be a judge in his own cause). First, the Registrar is supervised and under the authority of the Minister and appeals lie from the Registrar to the Minister. Where the Minister replies an objection, then he will be both a

²⁷ Ibid

²⁸ D O Oriakhogba and I A Olubiyi, *Intellectual Property Law in Nigeria: Emerging Trends, Theories and Practice* (Paclerd Press, 2023) 70

party and a judge at the same time in matters before him. More so, the entire conundrum may mean approval of all applications brought on behalf of the Federal Government due to the Minister being the authority over the Registrar. This does not afford freedom to operate for quality assurance but will likely prejudice applications in favour of those brought by the Federal Government. This is another reason why the activities of the Registrar must be brought within the checks and balances provided by the courts.

In addition, the Act has been criticised for containing criminal sanctions particularly terms of imprisonment which are considered extreme and unnecessary for the purpose of attaining food security.²⁹

7.0 CONCLUSION AND RECOMMENDATIONS

The passage of the Plant Protection Variety Act heralds a plethora of opportunities in the agricultural sector, as plant breeders will be able to commercialize their intellectual property by assigning or authorizing any activity relating to any registered plant variety. This also creates investment opportunities for investors interested in exploring this aspect of agriculture, as well as job opportunities for people with agricultural skills. This development would act as a catalyst in the agricultural sector, enabling high yields by stakeholders and resulting in a massive contribution to Nigeria's GDP.

²⁹ Ibid, 71

However, the Act contains some flaws that needed to be addressed, as well as some policies that should be implemented by the Federal Government to achieve those objectives. It is recommended that Small-scale farmers need thorough training on the implications of contemporary biotechnology, seed treaties, and the threat to farmers' rights. To facilitate thorough understanding, information and terminologies on genetic engineering technology and seed issues should be clarified. Farmers should be involved in the creation of laws and policies governing agricultural systems and seeds. Farmers' participation is required in this regard. A thorough, objective, and realistic multidisciplinary assessment of the local situation is required, taking into account the type of seed supply system in place, as well as the extent to which farmers freely save, exchange, and sell seed/propagating material. The public seed supply system should be designed in such a way that it utilizes the local seed system for seed production and distribution. Also, the Act must not obstruct their access to and use of traditional varieties. Collaborations between formal plant breeders and local communities are also needed to leverage traditional knowledge for the development of improved varieties and to diversify the seed market.

Provisions of the PVP Act which are unconstitutional or do not align with the principles of nature justice including fair hearing must be revoked or amended. Hence, section 43(2) and 26(4) must be revoked. There is no need for section 26(4) since section 26(2) already stipulates that an applicant can respond to an objection made to the application for registration. There is therefore no need to specifically stipulate that the Minister may reply for objections made against

the Federal Government. Every application for registration has an applicant designated in the application already, let such applicant be allowed to respond. Section 26(4) may be seen as an intimidation and against principles of natural justice, it should therefore be revoked and removed from the law.

Furthermore, section 43(2) must be revoked and the decisions of the Registrar should be made appealable to the Court (Federal High Court) like it obtains in the registration of other intellectual property rights such as copyright,³⁰ trademarks,³¹ patents and designs.³² Finally, payment and fines should suffice as penalties for infringing under the Act. The overcriminalisation of infringement by providing for terms of imprisonment needs to be addressed. The monetary penalties can be channelled into research and development by the government enhancing food security. There is no need to imprison offenders thereby adding to the population of the overcrowded Nigerian prisons.

³⁰Copyright Act, 2022, section 103

³¹Trademarks Act 1965, sections 54 -56

³²Patents and Designs Act, 1970, section 26