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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**  
GENÈVE

**CONSEIL**

**Quarante-quatrième session ordinaire**  
**Genève, 21 octobre 2010**

**EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI SUR LA PROTECTION DES  
VARIÉTÉS VÉGÉTALES DE LA RÉPUBLIQUE DU TADJIKISTAN  
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. L'article 34.3) de l'Acte de 1991 dispose que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de sa législation avec les dispositions de la présente Convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé."

2. Par une lettre datée du 27 août 2010, adressée au secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV), S. E. M. Kasyn Kasymov, Ministre de l'agriculture de la République du Tadjikistan (Tadjikistan), a demandé l'examen du projet de loi sur la protection des variétés végétales (ci-après dénommé "le projet de loi"), du point de vue de sa conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La lettre est reproduite dans l'annexe I du présent document. L'annexe II contient la traduction officielle vérifiée en anglais du projet de loi fournie par le Gouvernement du Tadjikistan le 7 septembre 2010.

### Rappel

3. Le Gouvernement du Tadjikistan a déjà soumis une loi au Conseil pour examen. Le 16 août 1999, S.E. M. Sh. Kabirov, Ministre de l'agriculture du Tadjikistan, a demandé l'avis du Conseil de l'UPOV sur la conformité avec l'Acte de 1991 de la loi sur les obtentions dans le domaine des plantes cultivées qui avait été adoptée par le Parlement du Tadjikistan le 4 novembre 1995.

4. À sa trente-troisième session ordinaire, tenue le 20 octobre 1999, le Conseil a décidé

- “a) d'aviser le Gouvernement tadjik que la loi tadjike, une fois complétée par un règlement approprié, fournira la base d'un système de protection conforme à la Convention et qu'il pourra dès lors déposer un instrument d'adhésion à la Convention;
- “b) d'inviter en outre le Gouvernement tadjik à remédier le plus tôt possible aux différences et incompatibilités mineures (...);
- “c) de prier le Bureau de l'Union d'offrir son concours au Gouvernement tadjik pour l'élaboration du règlement d'application et la modification de la loi” (voir le paragraphe 13 du document C/33/18 “Compte rendu”).

5. Le 9 mai 2005, le Bureau de l'Union a été informé de l'élaboration d'une nouvelle loi par le Gouvernement tadjik. Par conséquent, la décision rendue par le Conseil le 20 octobre 1999 reproduite ci-dessus n'est plus pertinente.

6. À la demande du Gouvernement du Tadjikistan, le 9 avril 2010, le Bureau de l'Union a apporté son concours pour l'élaboration du projet de loi sur la base du document UPOV/INF/6/1 “Orientations en vue de la rédaction de lois fondées sur l'Acte de 1991 de la Convention UPOV” et a informé les autorités compétentes que le projet de loi devrait être soumis au Conseil qui l'examinerait du point de vue de sa conformité avec l'Acte de 1991. Comme indiqué dans le paragraphe 2, le Gouvernement du Tadjikistan a demandé l'avis du Conseil concernant la conformité du projet de loi avec l'Acte de 1991.

### Base de la protection des obtentions végétales au Tadjikistan

7. Au Tadjikistan, la protection des obtentions végétales sera régie par le projet de loi, lorsque celui-ci aura été adopté et sera en vigueur, conformément à l'article 2 dudit projet qui dispose ce qui suit :

“Article 2. Législation applicable à la protection juridique des variétés végétales

“La législation de la République du Tadjikistan applicable à la protection juridique des obtentions végétales est fondée sur la Constitution de la République du Tadjikistan et comprend la présente loi, d'autres instruments juridiques de la République du Tadjikistan ainsi que les instruments juridiques internationaux reconnus par la République du Tadjikistan.”

On trouvera ci-après une analyse du projet de loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

8. L'article 1 du projet de loi contient des définitions conformes aux définitions correspondantes figurant dans l'article premier de l'Acte de 1991.

Article 2 de l'Acte de 1991 : Obligation fondamentale des Parties contractantes

9. La première phrase du projet de loi dispose : "la présente loi régit la protection juridique des obtentions végétales et définit les bases juridiques de l'octroi et de la protection des droits d'obtenteur", ce qui est conforme à l'obligation fondamentale prévue à l'article 2 de l'Acte de 1991.

Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

10. L'article 3 du projet de loi se lit comme suit :

"Champ d'application de la loi

"La présente loi sera appliquée aux genres et espèce végétaux inscrits dans les listes approuvées par l'organisme public habilité de la République du Tadjikistan chargé de la gestion de l'agriculture à la date de son entrée en vigueur, et à tous les genres et espèces végétaux au plus tard à l'expiration d'un délai de 10 ans à compter de la date d'entrée en vigueur de la présente loi."

11. Les dispositions de l'article 3 du projet de loi sont conformes aux obligations énoncées à l'article 3.2 de l'Acte de 1991. Il convient de noter que, conformément à l'article 36.1)ii) de l'Acte de 1991, lors du dépôt de son instrument d'adhésion le Gouvernement du Tadjikistan devra notifier dans sa déclaration la liste en vigueur des genres et espèces végétaux (qui doit compter au moins 15 genres ou espèces végétaux).

Article 4 de l'Acte de 1991 : Traitement national

12. Les dispositions de l'article 27 du projet de loi satisfont aux obligations énoncées à l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

13. Les articles 7 à 11 du projet de loi contiennent des dispositions sur les conditions de protection qui sont conformes aux dispositions des articles 5 à 9 de l'Acte de 1991.

Article 10 de l'Acte de 1991 : Dépôt de demandes

14. L'article 12 du projet de loi contient des dispositions relatives au dépôt des demandes. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 10 de l'Acte de 1991.

Article 11 de l'Acte de 1991 : Droit de priorité

15. L'article 13 du projet de loi contient des dispositions sur le droit de priorité qui sont conformes aux dispositions de l'article 11 de l'Acte de 1991.

Article 12 de l'Acte de 1991 : Examen de la demande

16. L'article 14 du projet de loi contient des dispositions relatives à l'examen de la demande qui sont conformes à celles de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

17. L'article 15 du projet de loi contient des dispositions sur la protection provisoire qui sont conformes à celles de l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

18. L'article 16 du projet de loi contient des dispositions sur l'étendue du droit d'obtenteur qui correspondent aux dispositions de l'article 14 de l'Acte de 1991.

Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

19. L'article 17 du projet de loi contient des dispositions relatives aux exceptions obligatoires au droit d'obtenteur qui correspondent aux dispositions de l'article 15.1) de l'Acte de 1991.

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

20. L'article 18 du projet de loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui correspondent aux dispositions de l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

21. L'article 19 du projet de loi contient des dispositions relatives à la limitation de l'exercice du droit d'obtenteur qui correspondent aux dispositions de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

22. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

23. L'article 20 du projet de loi contient des dispositions sur la durée du droit d'obtenteur qui correspondent aux dispositions de l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination de la variété

24. Les articles 22 et 23 du projet de loi contiennent des dispositions sur les dénominations variétales qui correspondent aux dispositions de l'article 20 de l'Acte de 1991.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

25. L'article 24 du projet de loi contient des dispositions sur la nullité du droit d'obtenteur qui correspondent aux dispositions de l'article 21 de l'Acte de 1991.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

26. L'article 25 du projet de loi contient des dispositions sur la déchéance de l'obtenteur qui correspondent aux dispositions de l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

27. En ce qui concerne l'obligation de "prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), l'article 28 projet de loi comporte les dispositions suivantes :

"Article 28. Protection des droits d'obtenteur

"Les droits d'obtenteur sont protégés par les mesures conservatoires, civiles, douanières et pénales prévues par la législation de la République du Tadjikistan."

28. En ce qui concerne l'obligation visée à l'article 30.1)ii) de l'Acte de 1991, l'article 4.2) du projet de loi dispose que :

"2) L'organisme public habilité octroie un droit d'obtenteur à l'obtenteur d'une variété végétale et, conformément à la procédure prescrite, délivre un certificat de droit d'obtenteur qui atteste que l'obtenteur est titulaire d'un droit de protection d'une variété végétale."

29. L'article 29 du projet de loi reprend l'obligation de publier les renseignements sur les demandes de droits d'obtenteur, les droits d'obtenteur délivrés et les dénominations proposées et approuvées, telle qu'elle est énoncée à l'article 30.1)iii) de l'Acte de 1991.

Conclusion générale

30. De l'avis du Bureau de l'Union, le projet de loi contient les dispositions de fond de l'Acte de 1991. Ainsi, une fois que le projet de loi aura été adopté, sans changement, et la loi sera entrée en vigueur, le Tadjikistan sera en mesure de "donner effet" aux dispositions de l'Acte de 1991 comme le requiert l'article 30.2) de celui-ci.

*31. Le Conseil est invité*

*a) à prendre note de l'analyse faite dans le présent document;*

*b) à rendre une décision positive sur la conformité du projet de loi de la République du Tadjikistan sur la protection des obtentions végétales avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales; une fois que le projet de loi aura été adopté, sans changement, et la loi sera entrée en vigueur, la République du Tadjikistan pourra ainsi déposer son instrument d'adhésion à l'Acte de 1991; et*

*c) à autoriser le secrétaire général à informer le Gouvernement du Tadjikistan de cette décision.*

[Les annexes suivent]

ANNEXE I

**Traduction d'une lettre datée du 27 août 2010**

adressée par : M. Kasym Kasymov  
Ministre de l'agriculture de la République du Tadjikistan

à : M. Francis Gurry  
Secrétaire général  
Union internationale pour la protection des obtentions végétales (UPOV)  
34, Chemin des Colombettes  
1211 Genève 20, Suisse

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que le projet de loi sur la protection des variétés végétales a été approuvé par le Gouvernement du Tadjikistan à sa réunion du 30 juin 2010 et est soumis au Parlement de la République du Tadjikistan pour examen et adoption.

La République du Tadjikistan envisage d'adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV).

Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je saurais gré au Conseil de l'UPOV de bien vouloir examiner la conformité du projet de loi de la République du Tadjikistan sur la protection des variétés végétales avec les dispositions de la Convention UPOV.

Veillez agréer, Monsieur le Secrétaire général, les assurances de ma très haute considération.

(Signé :) M. Kasym Kasymov  
Ministre de l'agriculture  
de la République du  
Tadjikistan

**Pièce jointe :** Traduction officielle en anglais du projet de loi de la République du Tadjikistan sur la protection des variétés végétales.

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

DRAFT LAW ON PLANT VARIETY PROTECTION  
OF THE REPUBLIC OF TAJIKISTAN

This law regulates the legal protection of plant varieties and defines legal basis for granting and protecting breeders' rights.

CHAPTER 1. GENERAL PROVISIONS

Article 1. Main definitions

The following main definitions are used in this law:

- variety – a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and, considered as a unit with regard to its suitability for being propagated unchanged.
- plant breeder - the person who bred, or discovered and developed, a variety or the person who is the employer of the aforementioned person or who has commissioned the latter's work or the successor in title of the first or second aforementioned person, as the case may be;
- certificate of breeder's right – a document, which certifies the breeder's right on the protection of his plant variety;
- Register of protected varieties (hereinafter – Register) – a source of public information about protected plant varieties, which is maintained by the state authorised body;
- breeder's right – the right of the breeder provided for in this Law;
- protected plant variety - a selection achievement of the breeder that is acknowledged as a subject matter of an intellectual property right by the grant of the breeder's right when the variety complies with the conditions of protection stipulated in Article 7 of this Law;
- UPOV - the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants (the UPOV Convention);
- member of UPOV - a State party or a Contracting Party to the Convention for the protection of new varieties of plants (UPOV Convention).



## Article 2. Legislation on the legal protection of plant varieties

Legislation of the Republic of Tajikistan on legal protection of plant varieties is based on the Constitution of the Republic of Tajikistan and consists of this Law, other regulatory legal acts of the Republic of Tajikistan as well as international regulatory legal acts, recognized by the Republic of Tajikistan.

## Article 3. Scope of the law

This law shall be applied, on the date of its coming into force, to plant genera and species registered on the lists approved by authorized state body of the Republic of Tajikistan for agriculture management and to all plant genera and species at the latest by the expiration of a period of 10 years from the date of this law coming into force.

## Article 4. Authorized state body for testing, registration and protection of plant varieties

1. The authorised state body responsible for testing, registration and protection of plant varieties (hereinafter - the authorised state body) provides for the maintenance of a single policy in plant varieties protection on the territory of the Republic of Tajikistan. The authorised state body is assigned by the Government of the Republic of Tajikistan.

2. The authorised state body grants breeder's rights to the breeder of a plant variety and in accordance with the prescribed procedure issues a certificate of the breeder's right that certifies the breeder's right for protection of plant variety.

3. The authorized state body is responsible for the following functions in protecting plant varieties:

- Maintains the Register and provides for its public accessibility;
- Deals with issues related to application examination;
- Where the variety meets the criteria under articles 8 to 11 of this Law, issues a certificate for the breeder's right;
- Other responsibilities in accordance with the legislation of the Republic of Tajikistan.

4. The authorised state body establishes rules and guidelines in the manner prescribed by the legislation of the Republic of Tajikistan on issues of plant variety protection, including the procedure of application review, for the grant of the breeder's rights, the denomination of the plant variety, application examinations, the regular publication of information, the appeal procedure, the date of the registration of the plant variety in the Register to be approved by the authorised state body for agriculture management of the Republic of Tajikistan.

## Article 5. Provision of charged services

The authorised state body has the right to charge the interested parties for the services in line with the legislation of the Republic of Tajikistan and to make use of the income in accordance with the legislation.

## CHAPTER 2. CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT FOR PLANT VARIETIES

### Article 6. Right to apply for protection of plant variety

In accordance with this Law a plant breeder shall be entitled to apply for breeder's right.

### Article 7. Criteria for protection of a plant variety

1. A right to be known as a breeder's right shall be granted where the variety meets the criteria for plant variety protection.
2. The criteria are:
  - novelty;
  - distinctness;
  - uniformity;
  - stability.
3. The grant of the breeder's right shall not be subject to any further or different conditions, other than listed in paragraph 2 of this article, provided that the variety is designated by a denomination in accordance with the provisions of Article 22 of this Law, that the applicant complies with the formalities provided for in this Law.

### Article 8. Novelty of the plant variety

1. A plant variety shall be considered new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the plant variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the plant variety in the territory of Tajikistan earlier than one year before the date of filing of the application to the authorised state body.
2. A plant variety shall be considered new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the plant variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the plant variety in a territory other than that of Tajikistan earlier than four years before the date of filing of the application to the authorised state body or, in the case of trees or of vines, earlier than six years before the said date.

### Article 9. Distinctness of plant variety

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of a variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

#### Article 10. Uniformity of plant variety

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

#### Article 11. Stability of plant variety

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

### CHAPTER 3. APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

#### Article 12. Filing of Applications

1. An applicant for the protection of a variety shall file an application in the prescribed form with the authorized state body.
2. The application form for the grant of the breeder's right, the amount of fees for services, information and the material as well as the filing date are set forth by the authorised state body of the Republic of Tajikistan responsible for Agriculture management.
3. The authorized state body shall accord the filing date of the application, the date of receipt of the application duly filed.
4. The right for filing of application for the grant of the breeder's right can be transferred to third parties.
5. The authorised state body shall not refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

#### Article 13. Right of Priority

1. Any breeder who has duly filed an application for the protection of a variety in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authorised state body, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.
2. In order to benefit from the right of priority, the breeder shall, in the application filed with the authorised state body, claim the priority of the first application. The authorised state body shall require the breeder to furnish, within a period of three months from the filing date of the application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.
3. The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such

rejection or withdrawal, in which to furnish, to the authorised state body, any necessary information, document or material required for the purpose of the examination under Article 14.

4. Events occurring within the period provided for in paragraph 1, such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

#### Article 14. Examination of the Application

1. Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 8 to 11. In the course of the examination, the authorised state body may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

2. For the purposes of examination, the authorised state body may require the breeder to furnish all the necessary information, documents or material as specified by the authorised state body for agriculture management of the Republic of Tajikistan.

#### Article 15. Provisional Protection

1. Provisional protection is provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right. During this period the authorised state body takes measures to safeguard the interests of the breeder.

2. The holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the period provided in paragraph (1), has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 16. Legal action in respect of provisional protection can only be initiated after the right is granted.

### CHAPTER 4. THE RIGHTS OF THE BREEDER AND DURATION OF THE BREEDER'S RIGHT

#### Article 16. The breeder's right

1. The following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned above.

2. The breeder may make his authorization subject to conditions and limitations.
3. The acts referred to in paragraph 1 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.
4. The provisions of paragraphs 1 to 3 shall also apply in relation to:
  - varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
  - varieties which are not clearly distinguishable in accordance with Article 9 of this Law from the protected variety
  - varieties whose production requires the repeated use of the protected variety.
5. A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when:
  - it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
  - it is clearly distinguishable from the initial variety and
  - except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
6. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

#### Article 17. Exceptions to the breeder’s right

1. The breeder’s right shall not extend to:
  - acts done privately and for non-commercial purposes;
  - acts done for experimental purposes; and
  - acts done for the purpose of breeding other varieties, and, except where the provisions of Article 16(4) to (6) of this Law apply, acts referred to in Article 16 (1) to (3) in respect of such other varieties.

#### Article 18. Exhaustion of the breeder’s right

1. The breeder’s right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 16 (4) to (6) which has been sold

or otherwise marketed by the breeder or with his consent in the territory of the Republic of Tajikistan, or any material derived from the said material, unless such acts:

- involve further propagation of the variety in question or;
- involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

2. For the purposes of paragraph 1, “material” means, in relation to a variety:

- propagating material of any kind,
- harvested material, including entire plants and parts of plants, and
- any product made directly from the harvested material.

#### Article 19. Restrictions on the Exercise of the breeder’s right

Free exercise of a breeder’s right can be restricted only in cases of public interest foreseen by the legislation of the Republic of Tajikistan.

When any such restriction has the effect of the authorised state body authorizing a third party to perform any act for which the breeder’s authorization is required, the breeder shall receive equitable remuneration.

#### Article 20. Measures Regulating Commerce

The breeder’s right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of the legislation of the Republic of Tajikistan on plant variety protection.

#### Article 21. Duration of the breeder’s right

The breeder’s right shall be granted for a period of 20 years from the date of the grant of the breeder’s right. For trees and vines, the said period shall be 25 years from the said date.

### CHAPTER 5. VARIETY DENOMINATION

#### Article 22. Variety Denomination

1. The variety shall be designated by a denomination which will be its generic designation as suggested by the breeder to the authorised state body and which is entered in the Register at the time of the grant of the breeder’s right. Subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder’s right.

2. The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the

variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

3. If it is found that the denomination does not satisfy the requirements of paragraph 2, the authorised state body shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period.

4. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph 1 of Article 23 of this Law, is obliged to use it, the authorised state body shall require the breeder to submit another denomination for the variety.

5. A variety must be submitted to all members of UPOV under the same denomination. The authorised state body shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

6. The authorised state body ensures that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authorised state body.

#### Article 23. Use of plant variety denomination

1. Any person who offers for sale or markets propagating material of a variety protected within the territory of the Republic of Tajikistan is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph 4 of Article 22 of this Law, prior rights prevent such use.

2. When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

### CHAPTER 6. NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

#### Article 24. Nullity of the breeder's right

1. The breeder's right shall be declared null and void by the authorised state body when it is established:

- that the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right;
- that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 10 or 11 were not complied with at the time of the grant of the breeder's right;

- that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.
2. No breeder's right shall be declared null and void for reasons other than those referred to in paragraph 1 of this article.

#### Article 25. Cancellation of the breeder's right

1. The authorized state body may cancel the breeder's right if it is established that the conditions laid down in Articles 10 or 11 are no longer fulfilled.
2. Furthermore, the breeder's right may be cancelled if, after being requested to do so and within the prescribed period:
- the breeder does not provide the authorised state body with the information, documents or material deemed necessary for verifying the maintenance of the variety;
  - the breeder fails to pay such fees as may be payable to keep his right in force;
  - the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.
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3. No breeder's right shall be cancelled for reasons other than those referred to in paragraph 1 and 2 of this article.

#### Article 26. Early termination of the breeder's right

1. If the holder of the breeder's right files an application to the authorised state body wishing to terminate the breeder's right, then the breeder's right is terminated before the prescribed deadline.
2. If the date of termination of the breeder's right is not indicated in the application, then the date of filing of the application requesting the termination to the authorised state body is deemed to be the date of termination of the breeder's right.

### CHAPTER 7. FINAL PROVISIONS

#### Article 27. Rights of foreign nationals and legal persons

1. Without prejudice to the rights specified in this law, nationals of a member of UPOV as well as natural persons resident and legal entities having their registered offices within the territory of a member of UPOV shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of the Republic of Tajikistan the same treatment as is accorded by this law to the nationals of the Republic of Tajikistan.



2. For the purposes of paragraph 1, “nationals” means, where the member of UPOV is a State, the nationals of that State and, where the member of UPOV is an intergovernmental organization, the nationals of the States which are members of that organization.

Article 28. Protection of breeder’s rights

Breeder’s rights are protected by the provisional, civil, customs and criminal measures stipulated in the legislation of the Republic of Tajikistan.

Article 29. Publication of information

The authorised state body must provide the public with information by means of periodical publication of information regarding:

- Applications for the grant of breeders rights and rights granted;
- Proposed and approved denominations.

Article 30. Liability for infringement of the breeder’s right

Physical or legal persons infringing this law are liable in accordance with the legislation of the Republic of Tajikistan.

Article 31. The declaration of repealing of the law of the Republic of Tajikistan «On breeding achievements of agricultural crops»

The law of the Republic of Tajikistan «On breeding achievements of agricultural crops» of 4 November, 1995 (Vedomosti Majlisi Oli of the Republic of Tajikistan, 1995, №22, article 257, Akhbori Majlisi Oli of the Republic of Tajikistan, 2002. №11, article 732) is hereby repealed.

Article 32. The procedure of entering into force of this law

This law shall enter into force after it is officially published.

President  
Republic of Tajikistan

[End of Annex II and of document/  
Fin de l’annexe II et du document/  
Ende der Anlage II und des Dokuments/  
Fin del Anexo II y del documento]