

Council

C/52/19

**Fifty-Second Ordinary Session
Geneva, November 2, 2018****Original:** English
Date: October 24, 2018**EXAMINATION OF THE CONFORMITY OF THE PLANT VARIETY PROTECTION ACT OF
AFGHANISTAN WITH THE 1991 ACT OF THE UPOV CONVENTION***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. By letter dated September 27, 2018, addressed to the Secretary-General of UPOV, His Excellency Mr. Hamdullah Hamdard, Deputy Minister for Agriculture and Livestock of the Ministry of Agriculture, Irrigation and Livestock of Afghanistan, requested the examination of the "Plant Variety Protection Act" (hereinafter referred to as the "Act") for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a translation into English of the Act provided by the Government of Afghanistan. The accuracy of the translation and the terminology used will, in a number of cases, require verification with the original of the Act. Until that verification has been completed, it will not be known whether certain apparent inconsistencies with the 1991 Act are a result of inaccurate translation or reflect the original text of the Act.

BACKGROUND

2. On March 7, 2018, the Office of the Union received a communication from Mr. Mahboob Nang, Director for Seed Certification, expressing the interest of Afghanistan to initiate the procedure for becoming a UPOV member. On April 16, 2018, the Office of the Union received a translation of the Act in English with a request for comments in relation to the 1991 Act. On September 10, 2018, the Office of the Union provided comments on the Act, identifying those provisions that did not correspond to the 1991 Act. On September 19, 2018, the Office of the Union held a conference call with Mr. Nang and explained the comments on the Act and the next steps of the procedure to become member of UPOV. On September 28, 2018, Mr. Nang confirmed the decision to submit the Act for its examination by the Council at its fifty-second ordinary session, to be held on November 2, 2018, and to continue the collaboration with the Office of the Union concerning the next steps of the procedure to become a UPOV member.

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN AFGHANISTAN

3. Article 34(3) of the 1991 Act provides that "any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

4. In order for Afghanistan to be in a position to give effect to the provisions of the 1991 Act, it is recommended that the Act incorporates the additional provisions and amendments as proposed in this document. An analysis of the Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

5. Article 36 of the Act contains a provision on the definition of breeder that does not correspond to the definition of "breeder" in Article (iv) of the 1991 Act. It is recommended to amend the Act in accordance with the definition of "breeder" in Article (iv) of the 1991 Act.

6. Article 3 1. of the Act seems to contain provisions on the notion of “variety”. The translation of the definition of “variety” requires verification with the original text of the Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

7. Article 2 of the Act provides as follows:

“The objectives of this Act are:

1. Establishment of an effective system for protection of plant varieties.
2. Definition of rights and obligations of breeders and farmers.
3. Creating basis for research, development and utilization of new plant varieties.
4. Encouragement of private investment, industry growth for propagation of national, local and indigenous plant varieties.
5. Regulation of other affairs in relation to protection of new plant varieties.”

Article 3 of the 1991 Act: Genera and Species to be Protected

8. The Act does not contain provisions on “Genera and Species to be Protected”. It is recommended to incorporate in the Act the provisions on “Genera and Species to be Protected” in accordance with the provisions of Article 3(2) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

9. Article 5 of the Act does not contain the minimum requirements of Article 4 of the 1991 Act on national treatment for legal entities having their registered offices in the Contracting Parties to the UPOV Convention. It is recommended to amend Article 5 of the Act in accordance with the provisions of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

10. Article 9 of the Act contains provisions on the conditions of protection. The translation of Article 9(2) 3. and 4. requires verification with the original text of the Act in relation to the terminology in Articles 8 and 9 of the 1991 Act on the conditions of “Uniformity” and “Stability”, respectively.

11. It is also recommended to:

(a) amend Article 9(2)1. of the Act on “Novelty” in accordance with the provisions of Article 6 of the 1991 Act; and

(b) amend Article 9(2) 2. of the Act on “Distinctness” in accordance with the provisions of Article 7 of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

12. Article 10 (2) 3. and (9) of the Act provides as follows:

“Article Ten:

[...]

(2) The application listed in paragraph (1) of this article shall contain the following information:

[...]

3. Description of registered inbred and location of appearance of plant variety in the country. Whether the inbred is derived from national, local, indigenous or new varieties or is a new variety registered in other countries.

[...]

(9) Whereas the applicant for registration listed in paragraph (8) of this article is not able to complete the information, the Registration Agency shall reject the application and notify the applicant.”

13. It is recommended to clarify the wording of the provisions in Article 10 (2) 3. and (9) of the Act in relation to the provisions of Article 5(2) and Article 12 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

14. Article 11 of the Act appears to contain provisions on the right of priority. The translation of Article 11 requires verification with the original text of the Act in relation to the terminology in Article 11 of the 1991 Act. For instance, reference to “an appropriate time” in Article 11(3) of the 1991 Act does not appear in the translation of Article 11 of the Act.

Article 12 of the 1991 Act: Examination of the Application

15. Article 12 contains certain provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

16. Article 17 of the Act provides as follows:

“The applicant shall be entitled to provisional protection right from the date of provisional acceptance of new plant variety until the registration of the variety in the national list of new plant varieties provided that the variety is non-commercial and applicant act on provocation of his rights.”

17. Article 17 of the Act appears to contain provisions that do not correspond to Article 13 of the 1991 Act. It is recommended to amend the Act in accordance with the provisions of Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder's Right

18. Article 20(1) to (6) of the Act contains provisions on the “Scope of the Breeder's Right”. The translation of Article 20(1) to (6) of the Act requires verification with the original text of the Act in relation to the terminology in Article 14 of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

19. Article 20(7) of the Act contains provisions on the “Compulsory exceptions to the breeder's right”, as follows:

“The following shall be extended from the provisions listed in paragraphs 1-6 of this article:

1. Acts done privately and for non-commercial purposes
2. Acts done for experimental purposes
3. Acts done for the purpose of development of other new plant varieties excluding the items 1-4 of paragraph 5 of this article.”

20. The translation of Article 20(7) of the Act requires verification with the original text of the Act in relation to the terminology in Article 15(1) of the 1991 Act, in particular if the terms “shall be extended” should be understood as “shall be excepted”.

21. It is recommended to amend Article 20(7) 3. of the Act in accordance with the provisions of Article 15(1)(iii) of the 1991 Act.

22. Article 22 of the Act appears to contain provisions concerning the optional exception under Article 15(2) of the 1991 Act, as follows:

“(1) The farmers can use the new registered plant varieties of private ownership which are derived from products of new plant varieties for propagation purposes in their farms and stock the propagation materials for use in subsequent seasons.

(2) Farmers indicated in paragraph (1) of this article are not allowed to use the propagation of new registered plant variety materials of private ownership for commercial reproduction.”

23. It is recommended to amend Article 22 of the Act in order to incorporate the missing provisions of Article 15(2) of the 1991 Act.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

24. Article 21 of the Act contains provisions on the "Exhaustion of the Breeder's Right". The translation of Article 21 of the Act requires verification with the original text of the Act in relation to the terminology in Article 16(1) of the 1991 Act. It is also recommended to incorporate in Article 21 of the Act the provisions of Article 16(2) of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

25. Article 23 of the Act contains provisions on the "Restrictions on the Exercise of the Breeder's Right" in accordance with the provisions in Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

26. Certain provisions in the Act do not relate to the protection of new plant varieties (see Article 2 (paragraph 4), Article 3 (paragraphs 3, 4, and 5) and Chapter two "Registration and Denomination of Plant Varieties of Public Ownership").

27. Article 18 of the 1991 Act provides that "[t]he breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory 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 this Convention."

Article 19 of the 1991 Act: Duration of the Breeder's Right

28. Article 24 of the Act contains provisions on the "Duration of the Breeder's Right" which correspond to the provisions of Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

29. Article 18 of the Act contains provisions on "Variety Denomination". The translation of Article 18 of the Act requires verification with the original text of the Act in relation to the terminology in Article 20(2), (4) and (7) of the 1991 Act.

30. It is recommended to amend Article 18 of the Act to incorporate the provisions of Article 20(8) of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

31. Article 25 of the Act contains provisions on the "Nullity of the Breeder's Right" that do not correspond to Article 21 of the 1991 Act. It is recommended to amend Article 25 of the Act in accordance with the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

32. Article 26 of the Act contains provisions on the "Cancellation of the Breeder's Right". The translation of Article 26 of the Act requires verification with the original of the Act in relation to the terminology in Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

33. Article 27 of the Act contains the following provisions on the enforcement of breeders' rights:

"(1) If a person suffers loss /damages due to violation provisions indicated in this Act, shall have the right, in line with the law, to refer to a judicial authority.

"(2) The judicial authorities shall have authority to order the violator indicated paragraph (1) of this article to pay compensation to injured party, attorney's fee and other preventive measures."

34. In relation to the obligation under Article 30(1)(ii) of the 1991 Act, Article 15 of the Act provides as follows:

"If no objection is submitted on preliminary acceptance of a plant variety as within the period indicated in article 14 of this act or objections are rejected, the Registration Agency shall register the new plant variety in the national list of varieties and shall issue a certificate thereof upon the collection of prescribed fees defined by the Ministry of the Agriculture, Irrigation and Livestock to the applicant."

35. In relation to the obligation under Article 30(1)(iii) of the 1991 Act, Article 13 provides as follows:

"If the applicant of filing new plant variety meets the requirements listed in article twelve of this Act, the Registration Agency shall accept primarily the application and announce it through public media on the expenses of the applicant."

36. It is recommended to incorporate in the Act the provisions corresponding to the obligation to publish information concerning grants of breeders' rights, and proposed and approved denominations as required under Article 30(1)(iii) of the 1991 Act.

General Conclusion

37. It is recommended that, in order for Afghanistan to be in a position to give effect to the provisions of the 1991 Act, as required by its Article 30(2), the Act would need to incorporate the amendments as proposed in this document. Furthermore, the accuracy of the translation and the terminology used requires verification with the original text of the Act. Until that verification has been completed, it will not be known whether apparent inconsistencies with the 1991 Act are a result of inaccurate translation or reflect the original text of the Act.

38. *The Council is invited to:*

(a) *note the analysis in this document;*

(b) *recommend that Afghanistan incorporates the amendments in the "Plant Variety Protection Act", as provided in this document, and recommend that, once the amendments have been incorporated in the Act, the amended Act be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;*

(c) *request the Office of the Union to offer its assistance, at the earliest opportunity, to Afghanistan in drafting the necessary amendments to the Act; and*

(d) *authorize the Secretary-General to inform Afghanistan of that decision.*

[Annexes follow]

Mr. Francis Gurry
Secretary-General
International Union for the Protection of New Varieties of Plants (UPOV) 34,
chemin des Colombettes
1211 Geneva 20
Switzerland

9/27/2018

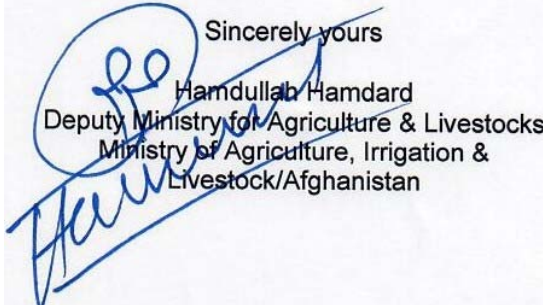
Dear Secretary-General Gurry,

I have the pleasure to inform you that Afghanistan has developed the Plant Variety Protection Act.

Afghanistan intends to adhere to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991(UPOV Convention).

Pursuant to the provisions of Article 34(3) of the UPOV Convention, I would appreciate it if the Council of UPOV could examine the conformity of the Act of Afghanistan with the provisions of the UPOV Convention.

Sincerely yours
Hamdullah Hamdard
Deputy Ministry for Agriculture & Livestocks
Ministry of Agriculture, Irrigation &
Livestock/Afghanistan



Enclosure: Translation of the Act in English

Official Gazette
Table of Contents
Plant Variety Protection Act

Chapter 1: General provisions	3
<u>Basis</u>	3
<u>Article One:</u>	3
<u>Objectives</u>	3
<u>Article Two:</u>	3
<u>Definition</u>	3
<u>Article 4:</u>	3
<u>Enforcement Authority</u>	4
<u>Article Four:</u>	4
<u>Equal Enforcement of Act</u>	4
<u>Article Five:</u>	4
Chapter 2: <u>Registration of Plant Varieties of public property</u>	5
<u>Registration of Plant Varieties</u>	5
<u>Article Six:</u>	5
<u>Denomination of Plant Varieties</u>	5
<u>Article Seven:</u>	5
<u>Ownership of Registered Plant Varieties</u>	5
<u>Article Eight:</u>	5
Chapter 3: <u>Registration of New Plant Varieties of Private property</u>	5
<u>Registration of New Plant Varieties</u>	5
<u>Article Nine:</u>	5
<u>Request for Application</u>	6
<u>Article Ten:</u>	6
<u>Priority of Registration Application in a Foreign Country</u>	7
<u>Article Eleven:</u>	7
<u>Technical Examination of New Plant Variety</u>	7
<u>Article Twelve:</u>	7
<u>Preliminary Acceptance and its Announcement</u>	8
<u>Article Thirteen:</u>	8
<u>Right of Objection</u>	8
<u>Article Fourteen:</u>	8
<u>Registration and Issuance of Certificate</u>	8
<u>Article Fifteen:</u>	8
<u>Information Inquiry</u>	8
<u>Article Sixteen:</u>	8
<u>Provisional Protection Right</u>	8
<u>Article Seventeen:</u>	8
<u>New Plant Variety Denomination</u>	9
<u>Article Eighteen:</u>	9
<u>Ownership Rights for New Plant Variety:</u>	10
<u>Article Nineteen:</u>	10
<u>Breeder's Right</u>	10

Article Twenty:	10
Limitation of Breeder's Right	11
Article Twenty One:	11
Utilization of Newly Registered Plant Varieties by Farmers	12
Article Twenty Two:	12
Compulsory Licensing	12
Article Twenty Three:	12
Term of Protection	12
Article Twenty Four:	12
Nullification of the Breeder's Right	12
Article Twenty Five:	12
Cancellation of the Breeder's Right	13
Article Twenty Six:	13
Chapter 4: Final Provisions	13
Reference to Court	13
Article Twenty Seven:	13
Enactment of Regulations and Procedures	13
Article Twenty Eight:	13
Date of Enforcement	13
Article Twenty Nine:	13

Plant Variety Protection Act
CHAPTER ONE

General Provisions

Basis

Article One:

This Act is enacted under the Article 14 of the Constitution of Islamic Republic of Afghanistan.

Objectives

Article Two:

The objectives of this Act are:

1. Establishment of an effective system for protection of plant varieties.
2. Definition of rights and obligations of breeders and farmers.
3. Creating basis for research, development and utilization of new plant varieties.
4. Encouragement of private investment, industry growth for propagation of national, local and indigenous plant varieties.
5. Regulation of other affairs in relation to protection of new plant varieties.

Definition

Article Three:

The terms indicated in this Act defines the following:

1. Variety: A plant grouping which is in a specific botanical rank; irrespective of whether the conditions for granting the breeder rights are completely met or not. Varieties are separated by one of the following characteristics:
 - Defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes.
 - Is at least distinguished by one of indicated characteristics within the specified group.
 - Is considered a suitable unit for propagation and capable to preserve its characteristics in subsequent generations.
2. Propagation materials: Seed, cutting, a part of plant or whole plant which is produced using sexual or asexual approaches and is utilized for re-plantation.
3. National Variety: Plant groupings that were new or already introduced and the sources of their genetic materials are from domestic or international research centers; are released by Agriculture Research Institute of Afghanistan - Ministry of Agriculture, Irrigation and Livestock and are considered public properties.

4. Local varieties: Plant groupings that are selected in long periods of time by one or more farmers due their characteristics and are utilized for the purpose of production and are considered public properties.
5. Indigenous varieties: Plant groupings which are adapted in the form of wild plants in different agro-ecological zones of the country and are not improved due to certain characteristics and are included in the natural generations of plants which are considered public properties.
6. Breeder: Is a person who introduces new plant varieties under the provisions of this Act.
7. Breeder's right: is a right which is granted to a breeder after registration of a new plant variety within the provisions of this Act.
8. Registration Agency: Is an agency created within the structure of Ministry of Agriculture, Irrigation and Livestock which is responsible for registration of plant varieties.
9. Inbred line: Is a plant that its genetic characteristics are used to create new, national or local plant varieties using sexual or asexual breeding methods.

Enforcement Authority

Article Four:

Ministry of Agriculture, Irrigation and livestock is the enforcement authority for the provisions indicated this Act.

Equal Enforcement of Act

Article Five:

The provisions of this Act are equally applicable on the following persons:

1. Afghanistan nationals
2. Nationals of those countries where Afghanistan has an intellectual property agreement with them.
3. Citizens of other countries who have resident in those countries where Afghanistan have an intellectual agreement with them or have commercial and industrial activities within Afghanistan's territory.

CHAPTER TWO
Registration and Denomination the Plant Varieties of Public Ownership

Registration of Plant Varieties

Article Six:

- (1) Agriculture research institute of Afghanistan, hereinafter referred to as Institute, is obliged to name the national, local and indigenous plant varieties considering the botanical and agricultural characteristics with the coordination of related agencies and to present them to Registration Agency for listing.
- (2) New plant varieties which are registered as private property and in accordance to article twenty five of this Act and the duration for their variety right are expired shall be considered as public plant varieties.
- (3) Proceedings for registration of national, local and indigenous varieties shall be regulated in separate procedures.

Denomination of Plant Varieties

Article Seven:

In order to avoid misunderstandings on characteristics, value or identity of plant varieties the Institute is obliged to define a generic name for each national, local and indigenous variety; the denomination shall be within scope of plant and shall not be against the national values, or similar to registered national, local or indigenous varieties of the country or other countries.

Ownership of Registered Plant Varieties:

Article Eight:

Plant varieties registered under the provision of article six of this Act, are considered public properties and no person has the breeder right as intellectual property.

CHAPTER THREE
Registration of New Plant Varieties
Private Ownership

Registration of New Plant Varieties

Article Nine:

- (1) If plant variety is new, distinguished, uniform and stable and there is no verbal or written evidence showing the existence of said variety as national, local or indigenous, such plant variety shall be registered and the rights of breeder shall be granted.
- (2) New, distinguished, uniform and stable indicated in paragraph (1) of this article are defined as below:
 1. New: On the date of filing of the application for obtaining breeder's right or right of priority date indicated in article eleven of this Act, propagation or harvested material there from

have not been transferred for purposes of exploitation for at least one year in Afghanistan, and for at least four years (six years in the case of a fruit tree or vine) in other countries.

2. Distinct: its characteristics at the time of filing application for breeder's right, is clearly distinguishable in at least one character from other registered new, national, local and indigenous plant varieties.
 3. Uniform: The characteristics condition of the variety shall be sufficiently uniform in its relevant characteristics providing that the uniformity is maintained after repeated propagation.
 4. Stability: is the characteristic of a plant variety which is remained unchanged and stable during each planting season or repeated propagation.
- (3) Whereas a breeder develop a new variety from one or several inbreds derived from national, local or indigenous plant varieties, the variety would be registered only if it possesses the conditions indicated in paragraph (1) of this article.
- (4) Breeder indicated in paragraph (3) of this article is obliged to make prescribed suitable fee for proportion of a new variety to the registration agency.

Request for Application

Article Ten:

- (1) Applicant for registration shall present its request for application of registration for a new variety to the Registration Agency.
- (2) The application listed in paragraph (1) of this article shall contain the following information:
 1. Botanical taxon of requested plant (kind and species)
 2. Commercial denomination of the specified plant
 3. Description of registered inbred and location of appearance of plant variety in the country. Whether the inbred is derived from national, local, indigenous or new varieties or is a new variety registered in other countries.
 4. Other required information
- (3) Registration of each new plant variety is performed in separate requests.
- (4) Applicant for registration, based on the provisions of this Act, is obliged to present a sample of the plant variety with the application to the Registration Agency.
- (5) Whereas the application is filed by an applicant who is not national or resident of the country, the person shall be obliged to appoint a legal representative who shall be a national of Afghanistan to the Registration Agency.

- (6) Time of presenting the application from registration applicant and filing the plant variety sample shall be considered the Application Date.
- (7) The Registration Agency shall review the application and in case the information listed in paragraph (2) of this article is not fulfilled, the agency is obliged to notify the applicant.
- (8) The applicant for registration is obliged to complete the information within 22 working days after information is received and resubmit the application. The day of receiving the application shall be considered the application date.
- (9) Whereas the applicant for registration listed in paragraph (8) of this article is not able to complete the information, the Registration Agency shall reject the application and notify the applicant.

Priority of Registration Application in a Foreign Country

Article Eleven:

- (1) An applicant who has duly filed an application for the protection of a variety in a country with which Afghanistan has concluded an intellectual property pact shall, for the purpose of filing an application for registration of the same variety in Afghanistan, enjoy a right of priority for a period of 12 months. This duration shall be counted from the date of his application in the foreign country.
- (2) The applicant for registration shall present his request to exercise his priority right listed in paragraph (1) of this article to the Registration Agency.
- (3) The applicant who claims the priority right listed in paragraph (1) of this article is obliged within three months of his application, to present a certified copy of his application documents which were presented in a foreign country with the sample and other evidence showing that both applications were related to the same new plant variety to the Registration Agency.
- (4) Whereas, the duration listed in paragraph (1) of this article is expired, the Registration Agency shall provide two years break; in case of rejection of the first application or withdrawal by applicant, for technical evaluation in accordance with the article twelve of this Act and for presenting information and documentation, an appropriate deadline shall be granted to the applicant.

Technical Examination of New Plant Variety

Article Twelve:

- (1) Registration Agency, after assuring the completion of conditions listed in article ten of this Act, shall refer application along with the sample of new plant variety to the Institute for technical examination and adaptation of new plant variety with the conditions listed in paragraph (1) of article nine of this Act.

- (2) The Registration Agency, based on the request of the Institute shall demand the applicant for registration information, documents and necessary materials for technical examination based on the related procedures.
- (3) Whereas the applicant listed in paragraph (2) of this article, is not able to present information, documentation or necessary relevant materials to the Registration Agency, the Registration Agency shall reject the application.
- (4) The Costs of tests for new plant variety for examination shall be calculated by the Institute and paid by applicant.

Preliminary Acceptance and its Announcement

Article Thirteen:

If the applicant of filing new plant variety meets the requirements listed in article twelve of this Act, the Registration Agency shall accept primarily the application and announce it through public media on the expenses of the applicant.

Right of Objection

Article Fourteen:

In case natural or legal persons have objection on preliminary acceptance of new plant variety they can file their objection within 120 days after the announcement in the Registration Agency.

Registration and Issuance of Certificate

Article Fifteen:

If no objection is submitted on preliminary acceptance of a plant variety as within the period indicated in article 14 of this act or objections are rejected, the Registration Agency shall register the new plant variety in the national list of varieties and shall issue a certificate thereof upon the collection of prescribed fees defined by the Ministry of the Agriculture, Irrigation and Livestock to the applicant.

Information Inquiry

Article Sixteen:

Any person has the right to request for information on the new plant varieties that are registered within scope of this Act from the Registration Agency.

Provisional Protection Right

Article Seventeen:

The applicant shall be entitled to provisional protection right from the date of provisional acceptance of new plant variety until the registration of the variety in the national list of new plant varieties provided that the variety is non-commercial and applicant act on provocation of his rights.

New Plant Variety Denomination:

Article Eighteen:

- (1) The application shall designate a generic name within the scope of the plant variety for the new variety.
- (2) The registered denomination for the new plant variety listed in paragraph (10) of this article after expiration of breeder's right shall not impede the free use of that denomination in connection with other plant varieties.
- (3) The applicant shall designate the denomination in an identifiable manner so that it does not mislead or cause confusion concerning the characteristics, value or identity of the new plant variety or the identity of the breeder. The designated denomination must not be similar, identical or equivalent to other new plant varieties within Afghanistan or any country that Afghanistan has concluded an intellectual property treaty.
- (4) The denomination of the new plant variety shall be submitted to the Registration Agency by the Applicant. If it is found that the denomination does not meet the requirements of the paragraph (3) of this article, the Registration Agency shall request the applicant to propose another denomination within an appropriate period.
- (5) Whereas the denomination listed in paragraph (4) of this article is accepted, the Registration Agency shall register the variety and grant the breeder's right to the applicant.
- (6) Whereas the denomination of the new plant variety is submitted to authorized authorities in countries listed in paragraph (3) of this article, the Registration Agency shall register the variety.
- (7) Whereas the designated denomination of a new plant variety is in contradiction to the defined values of the country, the Registration Agency shall oblige the breeder to propose another denomination.
- (8) The registration agency shall ensure that the related authorities and agencies in all the countries listed in paragraph(3) of this article are informed of matters concerning denomination of new plant variety, in particular the submission, registration and cancellation of denominations.
- (9) Any person who markets or sells the propagation materials of the new variety protected in Afghanistan shall use the new variety denomination of the concerned variety after the expiration of the breeder's right, except where, in accordance with the provision of paragraph (10) of this article priority rights prevent such use.
- (10) If, by reason of a priority right, the use of the denomination of a new plant variety is forbidden for a person in accordance to paragraph (9) of this article, the Registration Agency without the infringement of rights of the third party shall require the applicant to submit another denomination.

Ownership Rights for New Plant Variety:

Article Nineteen:

- (1) The registration right of the new plant variety shall belong to the breeder and in case of decease the right shall be transferred to the successors.
- (2) If a new plant variety is the result of the joint efforts of more several breeders, the right of registration shall belong to all of them, unless agreed otherwise.
- (3) If a variety is developed independently by several persons, the right of register shall belong to the first person who files an application for registration.
- (4) If a new plant variety is developed pursuant to an employment contract which requires the employee to carry out such development the right to registration shall belong to the employer, unless otherwise agreed.

Breeder's Right

Article Twenty:

- (1) After the registration of a new protected plant variety the breed shall be granted with the following exclusive rights:
 1. Its production and reproduction
 2. Development for the purpose of extension or propagation
 3. Selling, offering or other related marketing activities
 4. Exporting and Importing
 5. Stocking for the purposes indicated in this paragraph
- (2) No one is allowed to practice the rights indicated in paragraph (1) of this article without the authorization of the breeder.
- (3) The breeder may make authorizations listed in paragraph (1) of this article subject to limitations and conditions.
- (4) Items listed in paragraph (1) of this article in respect of product of new plant variety including entire plants or parts of plants obtained through unauthorized use of propagating material of a protected variety is forbidden without the authorization of the breeder, unless the breeder had reasonable opportunity to exercise his right in relation to the propagation material.
- (5) Provisions indicated in paragraph 1-4 of this article shall also apply on the following new plant varieties:
 1. Varieties that are derived from the protected variety, provided that new protected variety is not derived from other new varieties.

2. When the following conditions are met, the new plant variety is considered as a new derived variety from the other plant varieties:
 - The new plant variety is derived from the initial variety or another plant variety that retain the expression of the genetic characteristic or combination of genetic characteristics of the initial variety.
 - Is distinct from the original new plant variety
 - The basic genetical structure or the combination of genetical structures of the original new plant variety without considering the differences resulting from the practice of derivation in the context of a new plant variety, shall also be expressed in a new plant variety.
 3. New plant variety that is not distinguished from the protected plant variety.
 4. New plant varieties whose production requires the repeated use of the protected variety.
- (6) New derived plant varieties indicated in paragraph (5) of this article may be obtained through natural change in genetic structure by artificial pollination or selection of a variant from plants of the initial variety, backcrossing or other methods of genetic engineering.
- (7) The following shall be extended from the provisions listed in paragraphs 1-6 of this article:
1. Acts done privately and for non-commercial purposes
 2. Acts done for experimental purposes
 3. Acts done for the purpose of development of other new plant varieties excluding the items 1-4 of paragraph 5 of this article.

Limitation of Breeder's Right

Article Twenty One:

The breeder's right indicated in paragraphs 1-6 of article 20 of this article does not extend to activities related to material of the protected variety, or any product derived directly from the new protected plant variety which the breeder has sold either directly or with his own consent or act on its marketing in Afghanistan unless such activities include the following:

- 1- Further propagation of the variety in question.
- 2- Exportation of the new protected plant variety to a country where its propagation is not subject to protection, unless the exported material is for final consumption purposes.

Utilization of New Protected Plant Varieties by Farmers

Article Twenty Two:

- (1) The farmers can use the new registered plant varieties of private ownership which are derived from products of new plant varieties for propagation purposes in their farms and stock the propagation materials for use in subsequent seasons.
- (2) Farmers indicated in paragraph (1) of this article are not allowed to use the propagation of new registered plant variety materials of private ownership for commercial reproduction.

Compulsory Licensing

Article Twenty Three:

- (1) The Registration Agency, for the reasons of public interest, without the consent of the breeder may grant the compulsory licensing for exploitation of new plant varieties to third parties based on the direction of the Minister of Agriculture, Irrigation and Livestock. In such case, the third party shall pay an equitable remuneration to the breeder. This process shall be defined in separate set of procedures.
- (2) The Registration Agency may, on the request of Minister of Agriculture, Irrigation and Livestock or upon the request of the breeder's request indicated in paragraph (1) of this article cancel the compulsory licensing if the licence owner violates any of the conditions thereof or the granting are no longer applicable.
- (3) Cancellation of the license indicated in paragraph (2) of this article shall not affect the rights of others having interest in the license.
- (4) The conditions for compulsory licensing shall be set forth in regulations.

Term of Protection

Article Twenty Four:

The term of protection of the breeder's right in protected varieties of trees and vines shall be twenty five years from beginning date of the grant of the breeders right and for other new plant varieties it shall be twenty years.

Nullification of the Breeder's Right

Article Twenty Five:

The breeder's right shall be nullified by any of the following cases:

- 1- If it is established after the registration of a new plant variety at the period indicated in article twenty four of this Act, that the new plant variety was not new, distinct, stable and uniform from other new, national, local and indigenous varieties at the time of granting the breeder's right.
- 2- If it is established that at the period indicated in article twenty four of this Act, the breeder's right was granted to a person who was not entitled to it.

Cancellation of the Breeder's Right

Article Twenty Six:

The breeder's right shall be cancelled by any of the following cases:

- 1- If the breeder does not provide to the Registration Agency the information, documents or materials deemed necessary for verification and maintenance of new plant varieties.
- 2- If the breeder does not pay the costs of examining, maintenance, and protection of the new plant variety.
- 3- If the Institute under the provisions of Article 18 of this Law, proceed in changing the denomination of the new plant variety and breeder fails to provide a suitable denomination for the variety.
- 4- If it is established that uniformity and stability of new plant variety is not applicable.

CHAPTER FOUR FINAL PROVISIONS

Reference to Court

Article Twenty Seven:

- (1) If a person suffers loss /damages due to violation provisions indicated in this Act, shall have the right, in line with the law, to refer to a judicial authority.
- (2) The judicial authorities shall have authority to order the violator indicated paragraph (1) of this article to pay compensation to injured party, attorney's fee and other preventive measures.

Enactment of Regulations and Procedures

Article Twenty Eight:

Ministry of Agriculture, Irrigation and Livestock, for better implementation of the provisions of this law, may propose and impose regulations and procedures that are not in contradiction with provisions of this Law.

Date of Enforcement

Article Twenty Nine:

This law shall come to force after the signature and shall be published in Official Gazette.

[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]