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EXAMINATION OF THE CONFORMITY OF THE DRAFT LAW OF MONGOLIA ON CROP SEED AND VARIETY 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 5, 2019, received on September 26, 2019, addressed to the Secretary-General of UPOV, His Excellency Mr. Ulaan Chultem, Minister for Food, Agriculture and Light Industry of Mongolia, requested the examination of the relevant parts of the Draft Law of Mongolia on Crop Seed and Variety (hereinafter referred to as the "Draft Law"), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a translation in English of the relevant parts of the Draft Law provided by the Government of Mongolia.

BACKGROUND

2. Article 34(3) of the 1991 Act provides that "[a]ny 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 Draft Laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

3. Since September 2018, the Office of the Union has provided assistance to the Government of Mongolia in the development of legislation in accordance with the 1991 Act. By letter of September 4, 2018, H. E. Mr. Batzorig Batjargal, Minister for Food, Agriculture and Light Industry of Mongolia, invited an expert from the Office of the Union to meet with the Working Group responsible for the development of the Draft Law of Mongolia on Crop Seed and Variety (Working Group). On September 13, 2018, the Office of the Union received the English translation of a Draft Law on Seed and Plant Varieties.

4. On November 5 and 6, 2018, in Ulaanbaatar, Mongolia, the Office of the Union participated in a legal consultation to assist the Working Group and provided comments in relation to the Draft Law of September 13, 2018. On January 4, 2019, the Office of the Union received an updated version of the Draft Law, with a request for comments.

5. From January 28 to 30, 2019, in Geneva, during bilateral meetings with the Delegation of Mongolia held in conjunction with the "Workshop on drafting legislation in accordance with the UPOV Convention" (Workshop for Laws), the Office of the Union discussed relevant provisions of the 1991 Act with regard to the Draft Law of January 4, 2019.

6. On May 1, 2019, the Office of the Union received a new version of the Draft Law. On May 31, 2019, the Office of the Union held a conference call with members of the Working Group in order to discuss relevant provisions of the Draft law of May 1, 2019, in relation to the options of the 1991 Act and the next steps of the procedure to become a member of UPOV.

7. On September 24, 2019, the Office of the Union received confirmation that the May 1, 2019, version of the Draft Law incorporated the comments agreed during the conference call.

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN MONGOLIA

8. In Mongolia, the protection of new plant varieties in accordance with the 1991 Act will be governed by the Draft Law, once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act Definitions

9. Article 4 of the Draft Law contains definitions of breeder and variety corresponding to the definitions in Article 1(iv) and (vi) of the 1991 Act, respectively.

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

10. Article 1 of the Draft Law contains provisions corresponding to the basic obligation provided by Article 2 of the 1991 Act.

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

11. Article 3(2) of the Draft Law provides as follows:

“3.2. In relation to protection of new varieties, in accordance with Chapter 6 of the Law, this Law shall apply to all genera and species.”

12. Article 3(2) of the Draft Law corresponds to the obligation under Article 3(2) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

13. Article 3(3) of the Draft Law contains provisions on national treatment corresponding to 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

14. Article 14(3) of the Draft Law contains provisions on the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

15. Articles 1 to 3 of the “Transitional Provisions of the Law on Crop Seed and Variety” (see Annex II, page 11) contain provisions concerning the optional provision of Article 6(2) “Varieties of recent creation” of the 1991 Act, as follows:

“Article 1. Where this Law applies to plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph 14.3.1 of Article 14 even where the sale or disposal of to others described in that paragraph took place in the territory of Mongolia within four years before the date of filing of the application, or, within six years in the case of trees and vines.

“Article 2. The provisions under Article 1 of the transitional provisions, shall only apply to applications for breeders’ rights filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned.

“Article 3. These transitional provisions shall enter into force on the day on which the Law on Crop Seed and Variety (revised version) becomes effective.”

Article 10 of the 1991 Act: Filing of Applications

16. Article 14(1) and (2) of the Draft Law contains provisions on the filing of applications. The Draft Law does not appear to contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

17. Article 17 of the Draft Law contains provisions on the right of priority corresponding to the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

18. Article 14(4) to (7) of the Draft Law contains provisions concerning the examination of the application corresponding to the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

19. Article 18 of the Draft Law contains provisions on provisional protection corresponding to the provisions of Article 13 of the 1991 Act.

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

20. Article 19 of the Draft Law contains provisions on the scope of the breeder's right corresponding to the provisions of Article 14 of the 1991 Act.

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

21. Article 20(1) of the Draft Law contains provisions concerning the compulsory exceptions to the breeder's right corresponding to the provisions of Article 15(1) of the 1991 Act.

22. Article 20(2) and (3) of the Draft Law contains provisions concerning the optional exception under Article 15(2) of the 1991 Act, as follows:

"20.2. Notwithstanding Article 19, the breeder's right shall not extend to farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting on their own holdings, the protected variety or a variety covered by Article 19.3.1 or 19.3.2.

"20.3. The Member of Government in charge of crop sector policies shall define in the regulations the reasonable limits, the safeguarding of the legitimate interests of the holder of the breeder's right and the list of the crop genera and species in order to implement the exception provided for in paragraph 20.2 of this law."

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

23. Article 21 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which correspond to the provisions of Article 16 of the 1991 Act.

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

24. Article 22 of the Draft Law contains provisions concerning the restrictions on the exercise of the breeder's right which correspond to the provisions of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

25. Article 23 of the Draft Law contains provisions concerning measures regulating commerce which correspond to the provisions of Article 18 of the 1991 Act, as follows:

"23.1. The breeder's right is independent of any measure to regulate the production, certification and marketing of material of the variety, or importing or exporting of the said material. In any case, such measures shall not affect the application of the provisions of Chapter Six of this Law."

26. The Draft Law does not appear to contain provisions which conflict with Article 18 of the 1991 Act.

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

27. Article 24 of the Draft Law contains provisions concerning 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

28. Articles 15 and 16 of the Draft Law contain provisions on variety denominations corresponding to the provisions of Article 20 of the 1991 Act.

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

29. Article 25 of the Draft Law contains provisions on the nullity of the breeder's right corresponding to the provisions of Article 21 of the 1991 Act.

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

30. Article 26 of the Draft Law contains provisions on the cancellation of the breeder's right corresponding to the provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

31. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), Article 30(2) of the Draft Law contains provisions on the available measures for the enforcement of breeders' rights, as follows:

"30.2. Natural or legal persons that have violated this law will be charged with liabilities defined in the Criminal Code or the Law on Infringement."

32. Article 28(4)(10) of the Draft Law corresponds to the obligation to grant of breeders' rights by the Central Authority for Crop Production as required by Article 30(1)(ii) of the 1991 Act, as follows:

"28.4. The Central Authority for Crop Production shall be fully authorised to execute the following functions:

[...]

"28.4.10. to grant the breeder's right to breeders of new plant varieties, as provided for in this law;"

33. Articles 13(1) and (3), 14(2), 16(8) and 28(4)(6) of the Draft Law correspond to the obligation to publish information concerning applications for and grant of breeders' rights, and proposed and approved denominations as required in Article 30(1)(iii) of the 1991 Act.

General Conclusion

34. In the opinion of the Office of the Union, the Draft Law incorporates the substantive provisions of the 1991 Act. On that basis, once the Draft Law is adopted with no changes and the Law is in force, Mongolia would be in a position "to give effect" to the provisions of the 1991 Act, as required by its Article 30(2).

34. *The Council is invited to:*

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

(b) *take a positive decision on the conformity of the relevant parts of the Draft Law of Mongolia on Crop Seed and Variety, ("Draft Law") with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Mongolia once the relevant parts of the Draft Law are adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act; and*

(c) *authorize the Secretary-General to inform the Government of Mongolia of the above decision.*

[Annexes follow]



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Date 05 September 2019
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MR. FRANCIS GURRY
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Dear Secretary-General Gurry,

I have the pleasure to inform you that the Parliament of Mongolia is in the process of adopting the draft Law on Seed and Variety.

Mongolia 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 will be appreciate if the Council of UPOV could examine the conformity of the relevant part of the draft Law on Seed and Variety of Mongolia with the provisions of the UPOV Convention.

Sincerely,

ULAAN CHULTEM

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[DRAFT] LAW OF MONGOLIA

Ulaanbaatar

ON CROP SEED AND VARIETY

CHAPTER ONE. GENERAL PROVISIONS

Article 1. Purpose of the law

1.1. The purpose of this law is to regulate issues related to supporting the development of the sector of crop seeds, stimulating research and innovation in the seed sector, establishing fair trade of seeds, protection and sustainable use of plant genetic resources, creation of new plant varieties, protection of breeder's rights and ensuring food safety.

Article 2. Legislation on crop seed and variety

2.1. The legislation on crop seed and variety consists of the Constitution of Mongolia, the Law on Crop Production, this law and other legislative acts issued in conformity therewith.

2.2. If an international treaty, to which Mongolia is a party, provides otherwise, the provisions of the international treaty shall prevail.

Article 3. Scope of Applicability

3.1. This law shall apply to issues related to propagation and trade of domestically produced and imported seeds of all crops, and supporting the creation of new plant varieties.

3.2. In relation to protection of new varieties, in accordance with Chapter 6 of the Law, this Law shall apply to all genera and species.

3.3. Natural or legal persons from a country or intergovernmental organization that is a contracting party to an international treaty on plant variety protection, to which Mongolia is party to, shall be entitled to the same rights and responsibilities under this law as citizens of Mongolia insofar as the grant and protection of breeders' rights is concerned.

Article 4. Definitions

4.1. The following definitions shall apply in this law:

4.1.1. "seed" means plants or parts of plants, including seed, seedlings, tubers, bulbs, rhizomes, roots and cuttings, which are used for reproduction of crop varieties;

4.1.2. "field inspection" means examination of seed propagation fields by authorized inspectors to determine the specified identity and purity of a variety, and weed, pest and disease infestation;

4.1.3. "laboratory analysis" means analysis conducted in a laboratory to determine seed quality and varietal identity and purity;

- 4.1.4. "seed lot" means a specified quantity of seed from the same harvest and of same origin and quality;
- 4.1.5. "seed quality" means the entirety of attributes to demonstrate varietal identity and purity and seed health;
- 4.1.6. "variety" means a group of plants 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;
- 4.1.7. "breeder" means a natural or legal person that 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;
- 4.1.8. "variety description" means a specified quantity of distinct agronomic and biological characteristics of a variety that are determinable via field tests and laboratory analysis;
- 4.1.9. "variety testing" means a trial for genomic validation of a new crop variety and for determining the yield and agronomic and biological values of the new variety through comparison with a control variety;
- 4.1.10. "breeder's right" means the right granted to the breeder of a new variety under this law;
- 4.1.11. "national register of varieties" means register of varieties that have been tested in comparison with control varieties and distinguished by their yields and agronomic and biological characteristics;
- 4.1.12. "protected variety" means a variety protected by the breeder's right provided in this law;
- 4.1.13. "plant genetic resources of food and agricultural crops" means food and agricultural crops or parts of such crops or any other object containing germplasm of such crops;
- 4.1.14. "germplasm of food and agricultural crops" means food and agricultural crops or parts of such crops, including seed, cells and tissues and other parts containing genetic material in the form of DNA and/or RNA.

CHAPTER TWO. SEED PRODUCTION

[...]

CHAPTER THREE. CONTROL AND CERTIFICATION OF SEED QUALITY

[...]

CHAPTER FOUR. SEED TRADE

[...]

CHAPTER FIVE. REGISTRATION OF VARIETIES

[...]

CHAPTER SIX. PROTECTION OF NEW VARIETIES

Article 13. Registration of protected varieties

13.1. All varieties that meet the requirements specified in articles 14 and 15 of this law shall be registered in the register of protected varieties and publicly announced.

13.2. The Central Authority for Crop Production shall maintain and periodically update the register of protected varieties.

13.3. The Member of Government in charge of crop sector policies shall approve regulations concerning applications for and the granting of the breeders' rights to the protected varieties in accordance with paragraph 13.1 of this law and procedures of public announcing.

Article 14. Granting of the breeder's right

14.1. Breeders shall submit their applications to obtain the breeder's right for new varieties to the Central Authority for Crop Production.

14.2. The Central Authority for Crop Production shall, following official receipt of an application for the breeder's right along with the proposed variety denomination, immediately announce the receipt.

14.3. The breeder's right shall be granted where the variety is new, distinct, uniform and stable. Novelty, distinctness, uniformity and stability of a variety shall be determined by the following criteria:

14.3.1. The variety shall be deemed new if propagating or harvest material of that variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of that variety, in the territory of Mongolia earlier than one year before the date of filing of the application; in a territory other than that of Mongolia earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

14.3.2. The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety commonly known 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 another variety in the official register of varieties, in any country, shall render that other variety to be deemed as commonly known from the date of filing of the application under the assumption that the application leads to the granting of the breeder's right or to the entering of the said other variety in the register of varieties, as the case may be.

14.3.3. 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.

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

14.4. In the course of the examination, the Central Authority for Crop Production may:

14.4.1. require the breeder to furnish all necessary information, documents and materials;

14.4.2. grow or conduct the growing trials of the variety or other necessary trials;

14.4.3. cause the growing trials or other necessary trials.

14.5. The results of growing trials or other trials that had been completed before may be recognised.

14.6. The expenses related to the procedures specified in paragraph 14.5 of this law shall be borne by breeders.

14.7. Granting of a breeder's right shall not be subject to any other requirements besides the requirements specified in paragraph 14.3 and article 15 of this law.

14.8. The breeder's right of varieties, whose creation was funded from the state budget, shall be held by the Central Authority for Crop Production.

14.9. The Member of Government in charge of crop sector policies shall approve regulations related to determination of novelty, distinctness, uniformity and stability of new varieties.

14.10. The Central Authority for Crop Production shall collaborate with other contracting parties to an international treaty on plant variety protection, to which Mongolia is party to, on mutual recognition of reports of determination of distinctness, uniformity and stability of new varieties.

Article 15. Variety denomination

15.1. A variety shall be designated by a denomination which will be its generic designation and must enable the variety to be identified.

15.2. Subject to paragraph 15.6, 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.

15.3. A variety's denomination may not solely consist of figures except where this is an established practice for designating varieties.

15.4. A variety's denomination must not be liable to mislead or to cause confusion about 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 contracting party to an international treaty on plant variety protection, to which Mongolia is party to, an existing variety of the same plant species or of a closely related species.

15.5. The Member of Government in charge of crop sector policies shall approve regulations related to variety denomination.

15.6. 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 Article 16.6 of this law, is obliged to use it, the Central Authority for Crop Production shall require the breeder to submit another denomination for the variety.

Article 16. Registration and use of variety denomination

16.1. The request for registering the denomination of a variety shall be submitted by the breeder to the Central Authority for Crop Production.

16.2. If the denomination of a variety does not fulfil the requirements specified in article 15 of this law the Central Authority for Crop Production shall refuse to register the denomination.

16.3. If a denomination is refused, as provided for in paragraph 16.2 of this law, the breeder shall be required to propose another denomination within a prescribed period.

16.4. The Central Authority for Crop Production shall register a variety denomination that fulfils the requirements provided for in article 15 of this law simultaneously with the granting of the breeder's right.

16.5. A variety must be submitted to all contracting parties to an international treaty on plant variety protection, to which Mongolia is party to, under the same denomination. The Central Authority for Crop Production 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.

16.6. Any person who offers for sale or markets propagating material of a variety protected within the territory of Mongolia 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 Article 15. 6 of this law, prior rights prevent such use.

16.7. 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. In such cases, the denomination must be easily recognizable.

16.8. The Central Authority for Crop Production 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 Central Authority for Crop Production.

Article 17. Right of priority

17.1. A breeder who has filed an application for variety protection in a contracting party to an international agreement on plant variety protection (hereinafter referred to as "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the Central Authority for Crop Production, have the right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application but it does not include the day that the first application was filed on.

17.2. In order to benefit from the right of priority, the breeder may claim the priority of the first application in filing of the subsequent application with the Central Authority for Crop Production.

17.3. The Central Authority for Crop Production that received the subsequent application may require the breeder to furnish, within a period of not less than three months from the filing of the subsequent application, a certified copy of the documents which constituted the first application and confirmation that proves that the subject matter of both applications is the same.

17.4. The breeder shall be allowed a period of two years after the expiration of the right of priority or, where the first application was rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the Central Authority for Crop Production, any necessary information, documents or materials required for the purpose of examination of the application for compliance with the requirements specified in article 14 of this law.

17.5. Events occurring within the period provided for in paragraph 17.1, such as the filing of another application or publication or use of the variety that is the subject matter 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 18. Provisional protection of the breeder's right

18.1. Provisional protection is provided in this law to safeguard the interests of the breeder during the period between the publication of the application for a breeders' right and the granting of the breeder's right.

18.2. The holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the period specified in paragraph 18.1 of this law, has carried acts that, once the breeder's right is granted, require the breeder's authorisation as provided in Article 19.

18.3. Provisional protection shall be deemed not to have been conferred if the breeder's right is not granted.

Article 19. Scope of the breeder's right

19.1. Subject to Articles 20 and 21, the following acts in respect of the propagating material of the protected variety shall require the breeder's authorisation:

19.1.1. propagation or reproduction (multiplication);

19.1.2. conditioning for the purpose of propagation;

19.1.3. offering for sale;

19.1.4. selling or other marketing;

19.1.5. exporting;

19.1.6. importing;

19.1.7 stocking for any of the purposes specified in paragraphs 19.1.1 to 19.1.6 of this law.

19.2. Subject to Articles 20 and 21, acts specified in paragraphs 19.1.1 to 19.1.7 of this law in relation to harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the breeder's authorisation, unless the breeder of that protected variety has had reasonable opportunity to exercise the breeder's right in relation to the said propagating material.

19.3. The provisions of paragraphs 19.1 and 19.2 of this law, shall also apply to the following varieties :

19.3.1. a variety that has been essentially derived from a protected variety, where the protected variety itself is not essentially derived;

19.3.2. a variety that is not clearly distinguishable in accordance with Article 14.3.2 from a protected variety;

19.3.3. a variety whose production requires the repeated use of the protected variety.

19.4. A variety shall be deemed to be essentially derived from another variety (hereinafter referred to as "the initial variety") when the variety is predominantly derived from the initial variety or from another variety that itself is 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; the variety is clearly distinguishable from the initial variety and; except for the differences which result from the act of derivation, the variety 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.

19.5. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering.

19.6. The breeder may make his authorization subject to conditions and limitations.

Article 20. Exceptions to the breeder's right

20.1. The breeder's right shall not extend to the following acts:

20.1.1. acts performed privately and for non-commercial purposes;

20.1.2. acts performed for experimental purposes; and

20.1.3. acts performed for the purpose of breeding other varieties, and, except where the provisions of Article 19.3 to 19.5 apply, acts referred to in Article 19.1 and 19.2 in respect of such other varieties.

20.2. Notwithstanding Article 19, the breeder's right shall not extend to farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting on their own holdings, the protected variety or a variety covered by Article 19.3.1 or 19.3.2.

20.3. The Member of Government in charge of crop sector policies shall define in the regulations the reasonable limits, the safeguarding of the legitimate interests of the holder of the breeder's right and the list of the crop genera and species in order to implement the exception provided for in paragraph 20.2 of this law.

Article 21. Exhaustion of the breeder's right

21.1. 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 s 19.3 to 19.5 of this law which has been sold or otherwise marketed by the breeder or with his consent in Mongolia, or any material derived from the said material unless such acts involve:

21.1.1. further propagation of the variety in question, or

21.1.2. 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.

21.2. For the purposes of paragraph 21.1, "material" means, in relation to a variety,

21.2.1. propagating material of any kind,

21.2.2. harvested material, including entire plants and parts of plants, and

21.2.3. any product made directly from the harvested material.

Article 22. Restriction of the breeder's right

22.1. The State may restrict the possibility of a breeder to exercise the breeder's right for the purpose of protecting the public interest.

22.2. Where the restriction specified in paragraph 22.1 of this law causes interruption or discontinuation of acts performed within the breeder's authorisation provided to a third party, the State shall take measures required for enabling the breeder to receive equitable remuneration.

Article 23. Measures for trade regulation

23.1. The breeder's right is independent of any measure to regulate the production, certification and marketing of material of the variety, or importing or exporting of the said material. In any case, such measures shall not affect the application of the provisions of Chapter Six of this Law.

Article 24. Duration of the breeder's right

24.1. The breeder's right shall be valid for 20 years from the date of granting. For trees and vines, this period shall be 25 years.

Article 25. Nullity of the breeder's right

25.1. The Central Authority for Crop Production shall nullify the breeder's right and publicly announce the nullity of the breeder's right when it is established that:

25.1.1. the conditions specified in paragraphs 14.3.1 or 14.3.2 were not complied with at the time of the granting of the breeder's right;

25.1.2. where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions specified in paragraphs 14.3.3 or 14.3.4 of this law were not complied with at the time of the grant of the breeder's right.

25.1.3. 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 lawfully entitled to it.

25.2. No breeder's right shall be nullified for reasons other than those specified in paragraph 25.1 of this law.

Article 26. Cancellation of the breeder's right

26.1. The Central Authority for Crop Production may cancel a breeder's right if it is established that the conditions laid down in Article 14.3.3 or 14.3.4 of this Law are no longer fulfilled.

26.2. A breeder's right may be cancelled if the breeder, after being requested to do so, did not fulfil the following requirements within the period prescribed by the Central Authority for Crop Production:

26.2.1. the breeder did not provide the information and documents that are required for verification of the maintenance of the variety,;

26.2.2. the breeder did not pay the fees required for the maintenance of the validity of the breeder's right;

26.2.3. the breeder did not propose another suitable denomination where the denomination of the variety was cancelled after the granting of the breeder's right.

26.3. No breeder's right shall be cancelled for reasons other than those specified in paragraphs 26.1 to 26.2 of this law.

26.4. Breeders shall be entitled, at any time, to file a request to the State Authority for Seed and Variety for early termination of the breeder's right. The date of termination of the breeder's right shall be stated in the request.

CHAPTER SEVEN. GENE BANK OF FOOD AND AGRICULTURAL CROPS

[...]

CHAPTER EIGHT. RESPONSIBILITIES OF THE STATE AUTHORITY FOR CROP SEED AND VARIETY

Article 28. Responsibilities of the State Authority for Crop Seed and Variety

28.1. The responsibilities for planning, management, coordination and implementation of policy actions related to crop seed and variety shall be assumed by the Central Authority for Crop Production and the state authority responsible [...] testing, registration and protection of new plant varieties at the state level, [...].

[...]

28.4. The Central Authority for Crop Production shall be fully authorised to execute the following functions:

28.4.1. to elaborate policies and legislation in the seed and variety sector and ensure their enforcement;

[...]

28.4.6. to maintain a register of national and protected varieties and publish and periodically update the official list of registered varieties;

[...]

28.4.10. to grant the breeder's right to breeders of new plant varieties, as provided for in this law;

[...]

28.4.12. to carry out other responsibilities specified in this law.

[...]

CHAPTER NINE. MISCELLANEOUS

Article 29. Service fees

29.1. Breeders shall be liable for payment of the service fees for variety registration and granting of the breeder's right and maintenance of the validity of the breeder's right.

29.2. Issues related to determination of the rates of the service fees and collecting of the fees shall be regulated by the Law on Fees for Public Services.

Article 30. Liability for breach of law

30.1. If a breach of this law by an official does not constitute a criminal offence, liabilities defined in the Law on Civil Service shall apply.

30.2. Natural or legal persons that have violated this law will be charged with liabilities defined in the Criminal Code or the Law on Infringement.

Article 31. Entry into force

31.1. This law will enter into force on 1 January 2020.

LAW OF MONGOLIA

... (date)

Ulaanbaatar

TRANSITIONAL PROVISIONS OF THE LAW ON CROP SEED AND VARIETY

Article 1. Where this Law applies to plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph 14.3.1 of Article 14 even where the sale or disposal of to others described in that paragraph took place in the territory of Mongolia within four years before the date of filing of the application, or, within six years in the case of trees and vines.

Article 2. The provisions under Article 1 of the transitional provisions, shall only apply to applications for breeders' rights filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned.

Article 3. These transitional provisions shall enter into force on the day on which the Law on Crop Seed and Variety (revised version) becomes effective.

[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]