

Council

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EXAMINATION OF THE CONFORMITY OF THE DRAFT PLANT VARIETY PROTECTION ACT OF AFGHANISTAN WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

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1. By letter dated September 25, 2019, addressed to the Secretary-General of UPOV, Mr. Mahboobullah Nang, Acting Deputy Minister, Ministry for Agriculture and Livestock of Afghanistan, requested the examination of the Draft Plant Variety Protection Act of Afghanistan (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 Draft Law provided by the Government of Afghanistan.

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 laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

3. The Government of Afghanistan already initiated the procedure to become a member of UPOV by letter dated September 27, 2018, in which His Excellency Mr. Hamdullah Hamdard, Deputy Minister, Ministry of Agriculture and Livestock of Afghanistan, requested the examination of the "Plant Variety Protection Act" for conformity with the 1991 Act of the UPOV Convention. The Council examined the Plant Variety Protection Act, at its fifty-second ordinary session, held in Geneva on November 2, 2018, and decided to (see document [C/52/20](#) "Report", paragraph 8):

"(a) take note of the analysis in document C/52/19;

"(b) recommend that Afghanistan incorporate the amendments in the 'Plant Variety Protection Act', as provided in document C/52/19, 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;

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

4. From January 28 to 30, 2019, in Geneva, during bilateral meetings with the Delegation of Afghanistan 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 and provided comments with regard to a Draft Law provided on January 6, 2019, identifying those provisions that did not comply with the Council decision of 2018.

5. On May 5, 2017, Mr. Nang informed the Office of the Union that the Government of Afghanistan was updating its Draft Law in accordance with the comments of the Office of the Union of January 2019, in order to comply with the Council decision of 2018. A copy of the Draft Law was provided on that occasion. On May 17, 2019, the Office of the Union provided detailed comments on the Draft Law.

6. On August 29, 2019, the Office of the Union received an updated version of the Draft Law. On September 11, 2019, the Office of the Union recommended certain changes to the Draft Law in accordance with the Council decision of 2018. On September 26, 2019, the Office of the Union received the updated version for the Draft Law for examination by the Council.

7. In accordance with the above decision of the Council of November 2, 2018, and pursuant to Article 34(3) of the 1991 Act, the Government of Afghanistan has made a new request (see paragraph 1 of this document), in order to ask the advice of the Council in respect of the conformity of the Draft Law with the 1991 Act.

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN AFGHANISTAN

8. In Afghanistan, 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 3 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 2 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 4 of the Draft Law provides as follows:

[...]

“This Act shall be applied to the plant genera and species designated by decisions of the Minister of Agriculture and by the expiration of a period of 10 years from the date of coming into force of this at the latest, to all plant genera and species.”

12. The provisions of Article 4 of the Draft Law correspond to the obligations under Article 3(2) of the 1991 Act. It should be noted that in accordance with Article 36(1)(ii) of the 1991 Act, when depositing its instrument of accession, the Government of Afghanistan must notify in its declaration the applicable list of plant genera and species (the minimum requirement is 15 plant genera or species).

Article 4 of the 1991 Act: National Treatment

13. Article 5 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 6 of the Draft Law contains provisions on the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

15. Article 7 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

16. Article 8 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

17. Article 9 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

18. Article 14 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

19. Article 17 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

20. Article 17(8) 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.

21. Article 19 of the Draft Law contains provisions concerning the optional exception under Article 15(2) of the 1991 Act, as follows:

"(1) Small farmers shall not infringe the breeder's right, in relation to varieties included in a list of agricultural plants, if they 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 paragraph (5) 1. or 2. of article 17 of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

"(2) The varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (1) of this Article."

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

22. Article 18 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

23. Article 20 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

24. Article 6(4) of the Draft Law provides as follows:

"(4) The method for registration of traditional, local and indigenous varieties shall be regulated under separate legislation."

25. 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

26. Article 21 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

27. Article 15 of the Draft Law contains 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

28. Article 22 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

29. Article 23 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

30. 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 25 of the Draft Law contains the following provisions on the enforcement of breeders' rights:

"(1) If a person suffers loss/ damage due to violating the provision indicated in this Act, shall have the right, in line with Afghan Laws to refer to a judicial authority.

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

31. Article 12 of the Draft Law provides that the authority entrusted with the task of granting breeders' rights is the Registration Agency as required by Article 30(1)(ii) of the 1991 Act.

32. Article 27 of the Draft Law corresponds 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

33. 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, Afghanistan 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 "Draft Plant Variety Protection Act of Afghanistan" ("Draft Law") with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Afghanistan once the Draft Law is 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 Afghanistan of the above decision.*

[Annexes follow]



دکړه ننی ، اېو لگولو او مالداري وزارت
وزارت زراعت آبیاری و مالداري

د افغانستان اسلامي جمهوریت
جمهوری اسلامی افغانستان



Islamic Republic of Afghanistan

Ministry of Agriculture, Irrigation and Live stock

Date: 25, 09, 2019 Seed Certification Directorate NO : 1012

Letter from:

Mahboobullah Nang, Acting Deputy Minister for Agriculture & Livestock, Ministry of Agriculture, Irrigation and Livestock/Kabul/Afghanistan

To:

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

Subject: Membership of UPOV – initial review of the Draft Plant Variety Protection Act

Dear Mr. Francis Gurry,

It is our pleasure to write to you regarding membership of the International Union for the Protection of New Varieties of Plants. The Government of the Islamic Republic of Afghanistan became a member of the World Trade Organization in July 2016 and subsequently adopted a Plant Variety Protection Act in October 2016, which is under the amendment in order to get UPOV membership. The Ministry of Agriculture, Irrigation and Livestock is named as the enforcement authority within the draft Act.

Afghanistan recognizes its obligations under WTO/TRIPS to implement a functional system for Plant Breeder's Rights and, further, it believes that it is in the interest of agricultural development in Afghanistan to encourage the development of new varieties of crop plants through this system. The Government is committed to this process and has determined that an application for membership of UPOV provides the best route toward establishing an internationally recognized system of Plant Breeder's rights in Afghanistan.

As a preliminary step towards applying for membership of UPOV, I would be most grateful if the UPOV Council could review the draft Act (an English translation is attached) and inform us whether you believe the Act complies with the 1991 Act of the UPOV Convention. If you identify issues where you believe the Act is not in compliance it would be most helpful if you could identify the issues and the articles in question.

I thank you in advance providing us this service.

Regards

Mahboob Nang

آدرس : بادام باغ ، کابل افغانستان /

**DRAFT PLANT VARIETY PROTECTION ACT OF AFGHANISTAN PREPARED BY THE REVISION
COMMITTEE OF THE MINISTRY OF AGRICULTURE, IRRIGATION AND LIVESTOCK, AFGHANISTAN**

**CHAPTER ONE
General Provisions**

**Article 1
Basis**

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

**Article 2
Objectives**

The objectives of this Act are:

1. Establishment of an effective system for protection of plant varieties.
2. Define the rights and obligations of breeders and farmers.
3. Create the basis for research, development, registration and utilization of new plant varieties.
4. Regulation of other affairs in relation to protection of new plant varieties.

**Article 3
Definitions**

The terms indicated in this Act defines the following:

1. Variety: A plant grouping within a single botanical taxon of the lowest rank, which grouping, irrespective of whether the conditions for granting the breeder's right are completely met, can be
 - defined by the expression of the characteristics resulting from a given genotype or a combination of genotypes,
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics and
 - considered as a suitable unit for propagation and capable to maintain its characteristics in subsequent generations.
2. Propagating material: Seed, cutting, part of a plant or whole plant which is produced through sexual and asexual approaches and is utilized for reproduction.
3. Breeder: is
 - the person who bred, or discovered and developed, a variety
 - 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. Breeder's right: is the right which is granted to the breeder after registration of a new plant variety within the provisions of this Act.
5. Registration Agency: Is an agency created within the framework of the Ministry of Agriculture, Irrigation and Livestock for registration of new plant varieties.
6. "UPOV" means the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in the 1991 Act.
7. "Member of UPOV" means a State party to the UPOV Convention of 1961 / Act of 1972 or the Act of 1978 or a Contracting Party to the 1991 Act.

Article 4 **Implementation Authority**

Ministry of Agriculture, Irrigation and Livestock is the implementation authority for the provisions of this Act.

This Act shall be applied to the plant genera and species designated by decisions of the Minister of Agriculture and by the expiration of a period of 10 years from the date of coming into force of this at the latest, to all plant genera and species.

Article 5 **Equal implementation of Act**

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

1. Afghan nationals and residents
2. Nationals of a member of UPOV as well as natural person resident and legal entities having their registered offices within the territory of a member of UPOV. The said nationals, natural persons or legal entities shall comply with the conditions and formalities imposed on the national of Afghanistan.

For the purpose of this provision, "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.

CHAPTER TWO **Registration of New Plant Varieties**

Article 6 **Registration of New Plant Varieties**

(1) If plant variety is new, distinct, uniform and stable, such plant varieties shall be registered and the rights of breeder shall be granted. The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 15 that the applicant complies with the formalities provided for in this Act and procedure and that he pays the required fees.

(2) New, distinct, 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 a breeder's right or right of priority date indicated in article 8 of this Act, propagation or harvested material of the variety concerned has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety.
 - (i) in the territory of Afghanistan earlier than one year before the date of filing of the application and
 - (ii) in a territory other than that of Afghanistan earlier than four years and six years in the case of trees and vines, before the said date.

2. **Distinct:** The variety shall be deemed to be distinct if it is clearly distinguishable from any other varieties 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 another 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.
 3. **Uniform:** 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.
 4. **Stability:** 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.
- (3) The breeder shall pay a prescribed suitable fee in proportion to a new variety to the registration agency.
 - (4) The method for registration of traditional, local and indigenous varieties shall be regulated under separate legislation.

Article 7 Request for Application

- (1) The breeder shall present the 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 taxonomy (Genera and species).
 2. Denomination of the variety or breeder's reference.
 3. Description of the variety.
 4. Other required information at the administrative level as prescribed by the procedure.
- (3) Registration of each new plant variety is done by separate application.
- (4) The breeder, 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) If 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 to the Registration Agency who shall be a national of Afghanistan.
- (6) The date of presenting the application by the breeder as prescribed by the Regulations shall be considered the application date.
- (7) The Registration Agency shall review the application and in case the information provided is not complete, the agency is obliged to notify the applicant.

Article 8 Priority of Registration Application in a foreign country

- (1) Any breeder who has duly filed an application for the registration of a variety protection 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 in Afghanistan, 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 in the foreign country. The day of filing shall not be included in the latter period.
- (2) The breeder shall claim the priority of the first application, in the application filed with the Registration Agency to exercise his priority right listed in paragraph (1) of this article.

(3) The breeder who claims the priority right listed in paragraph (1) of this article in Afghanistan is obliged to present a certified copy of his application documents which constitute the first application and samples or other evidence showing that both applications were related to the same variety to the Registration Agency within three months of his application.

(4) If the period listed in paragraph (1) of this article is expired, the Registration Agency shall give to the breeder two years deadline or, in case of rejection or withdrawal of the first application, an appropriate time after such rejection or withdrawal in which to furnish to the Registration Agency any necessary information, document or material required for the purpose of the technical evaluation in accordance with the article 9 of this Act.

Article 9 Technical Examination of New Plant Variety

(1) Registration Agency, after ensuring the fulfillment of requirements listed in article 7 of this Act, may refer the application along with a sample of the variety to the institute for technical examination and adaptation of the variety with the conditions listed in Paragraph (1) of article 6 of this Act.

(2) The Registration Agency, based on the request of the institute shall demand the breeder information documents and necessary materials for technical examination according to specified time in related procedures.

(3) If the breeder 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 for examination of a variety shall be calculated by the institute and payable by applicant.

(5) The Registration Agency 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. For the purposes of examination, the Registration Agency may require the breeder to furnish all the necessary information, documents or material as specified in this Law.

Article 10 Preliminary Confirmation and announcement of New Plant Variety

If a variety, for which an application has been filed, fulfils the requirements listed in article 9 of this Act, the Registration Agency shall confirm that application and announce it through public media on the expenses of the applicant, provided that the variety is designated by a denomination in accordance with article 15 of this Act, that the breeder of that variety complies with all formalities provided for by the Law and that the said breeder pays the required fees.

Article 11 Right of Objection

In case natural or legal persons have objection on preliminary confirmation of an application for a variety, they can submit their objection to Registration Agency within 120 days after the announcement.

Article 12

Registration and Issuance of Certificate

If no objection is submitted on preliminary confirmation of an application for a variety within the period indicated in article 11 of this Act or objections are rejected, the Registration Agency shall register the variety in the national list of the varieties, shall grant the breeder's right and shall issue a certificate to the breeder upon the collection of prescribed fees defined by The Ministry of Agriculture, Irrigation and Livestock.

Article 13

Information Inquiry

Any person has the right to request the Registration Agency for information about the varieties that are registered within the directions of this Act.

Article 14

Provisional Protection Right

The holder of a breeder's right shall be entitled to provisional protection right from the date of publication of the application until the date of registration of the variety.

The holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the period of provisional protection has carried out acts which, once the breeder's right is granted, require the breeder's authorization as provided in article 17 of this Act.

Article 15

New Plant Variety Denomination

- (1) The variety shall be designated by a denomination which will be its generic designation.
- (2) Subject to paragraph (10) of this article, no rights in the designation registered as the denomination of the variety shall hamper the free use of that denomination in connection with the variety, even after the expiration of the breeder's right.
- (3) 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, the denomination 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.
- (4) The denomination of the variety shall be submitted to the Registration Agency by the breeder. If it is found that the denomination does not meet the requirements of paragraph (3) of this article, the Registration Agency shall refuse to register it and shall require the breeder to propose another denomination within an appropriate period.
- (5) If the denomination listed in paragraph (4) of this article is confirmed, the Registration Agency shall register it at the same time as the breeder's right is granted.
- (6) If the denomination of the variety has been submitted to responsible authorities of one or more members of UPOV, the Registration Agency shall register the denomination.
- (7) If the denomination of a variety is unsuitable, the Registration Agency shall oblige the breeder to propose another denomination.
- (8) The Registration Agency shall ensure that the relevant authorities and agencies 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 Registration Agency.

(9) Any person who offers for sale or markets propagating material of a variety protected in Afghanistan shall use the denomination of that variety, even after the expiration of the breeder's right in that variety, unless, in accordance with the provision of paragraph (10) of this article, prior rights prohibit such use.

(10) 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 to paragraph (9) of this article is obliged to use it, the Registration Agency shall require the breeder to submit another denomination for the variety.

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

Article 16 Ownership Rights for New Plant Variety

(1) The breeder's right is granted to the breeder and in case of his death the right shall be transferred to the successor.

(2) If a variety is the result of the joint efforts of several breeders, the breeder's right belongs to all of them, unless agreed otherwise.

(3) If a variety is developed independently by several persons, the breeder's right shall belong to the person who first applied an application for a breeder's right.

(4) If a variety is developed pursuant to an employee contract which requires the employee to carry out such development, the breeder's right shall belong to the employer, unless otherwise agreed.

Article 17 Breeder's Right

(1) Subject to paragraph (8) of article 17 and to articles 18 and 19 of this Act, the following acts in relation to the propagation material of the protected variety shall require the authorization of the breeder:

1. Production or reproduction (multiplication),
2. Conditioning for the purpose of propagation,
3. Offering for sale, selling, supplying or other 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 his authorization listed in paragraph (1) of this article subject to limitations and conditions.

(4) Subject to paragraph (8) of article 17 and to articles 18 and 19 of this Act, the acts listed in paragraph (1) of this article in respect of harvested material, including entire plants and parts of plants, obtained through 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.

- (5) Provisions indicated in Paragraph (1) to (4) of this article shall also apply in relation to:
1. varieties which are essentially derived from the new protected plant variety, provided that the new protected plant variety is not itself an essentially derived variety.
 2. varieties which are not clearly distinguishable in accordance with paragraph (2)2 of article 6 from the protected variety and
 3. varieties whose production requires the repeated use of the protected variety.
- (6) For the purpose of paragraph (5)1 of this article, 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.
- (7) Essentially derived varieties indicated in paragraph (5) of this article may be obtained for example by the selection of a natural or induced mutant, or a somaclonal variant, or the selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering.
- (8) The following activities shall be excepted from the provisions listed in paragraph (1) to (7) of this article:
1. Activities done privately and for non-commercial purposes
 2. Activities done for experimental purposes
 3. Activities done for the purpose of development of other varieties, and, except where the provisions of paragraphs (5), (6) and (7) of this article apply, acts referred to in paragraphs (1) to (4) in respect of such other varieties.

Article 18 **Limitation of Breeder Right**

The breeder's right indicated in paragraph (1) to (7) of article 17 of this Act shall not extend to activities concerning any material of the protected variety, or of a variety covered by the provisions of paragraphs (5), (6) and (7) of article 17 of this Act, which the breeder sold or otherwise marketed either directly or with his own consent in the territory of Afghanistan, or any material derived from the said material unless such activities involve the following:

- 1- Further propagation of the variety in question
- 2- Export of material of the plant 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.

For the purpose of this Article, 'material' means, in relation to a variety,

- (i) propagating material of any kind
- (ii) harvested material, including entire plants and parts of plants and
- (iii) any product made directly from the harvested material.

Article 19
Utilization of New Registered Plant Varieties by Farmers

(1) Small farmers shall not infringe the breeder's right, in relation to varieties included in a list of agricultural plants, if they 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 paragraph (5) 1. or 2. of article 17 of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

(2) The varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (1) of this Article.

Article 20
Compulsory Licensing

(1) The Registration Agency, for the sake 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 procedure.

(2) The Registration Agency may, on the instruction from the Minister of Agriculture, Irrigation and Livestock or upon the request of the breeder as indicated in paragraph (1) of this article cancel the compulsory licensing if the license owner violates any of the conditions thereof or the reasons of public interest are no longer applicable.

(3) The conditions for compulsory licensing and suitable equitable remuneration shall be set forth in regulations.

Article 21
Term of Protection

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

Article 22
Invalidation of the Breeder's right

The breeder's right shall be declared null and void when it is established

- 1- that the variety was not new or distinct at the time of granting the breeder's right,
- 2- that, where the grant of the breeder's right has been essentially based upon information and documentation furnished by the breeder, the variety was not uniform or stable at the time of granting the breeder's right,
- 3- that the breeder's right was granted to a person who was not entitled to it, unless it is transferred to the person who is so entitled.

Article 23
Cancellation of the Breeder's right

The breeder's right shall be cancelled due to the following reasons:

- 1- If the breeder, after being requested to do so and within the prescribed period, does not provide to the Registration Agency the information, documents or materials deemed necessary for verification of the maintenance of the varieties.
- 2- If the breeder, after being requested to do so and within the prescribed period, does not pay such fees as may be payable to keep his right in force.

- 3- If the breeder fails to provide, where the Institute under the provisions of article 15 of this Act proceed in changing the denomination of the variety, another suitable denomination for the variety.
- 4- If it is established that the variety is no longer uniform and stable.

Article 24
Fees

1. The technical examination of a new variety, issuance of certificate, publication and other services that are regulated in accordance with this Act, is subject to payment of the fee, commensurate with the supply of the service.
2. The fee referred to in paragraph (1) of this Article shall be determined on the proposal of the National Seed Board, approved by the Ministers' Council, collected by the Directorate and Institute and delivered to the Bank account of the Government.

CHAPTER THREE
MISCELLANEOUS PROVISIONS

Article 25
Reference to Court

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

Article 26
Enactment of Regulations and procedures

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

Article 27
Publication

The public shall be informed through the regular publication of information concerning

- applications for and grants of breeders' rights, and
- proposed and approved denominations.

Article 28
Date of enforcement

This Act shall come into force after ratification, approval and publication in official Gazette.

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Fin de l'Annexe II et du document /
Ende der Anlage II und des Dokuments /
Fin del Anexo II y del documento]