

## Council

C/53/14

**Fifty-Third Ordinary Session  
Geneva, November 1, 2019**

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**DEVELOPMENTS ON THE NEW PLANT VARIETY PROTECTION LAW OF MYANMAR**

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

1. The purpose of this document is to invite the Council to consider whether developments concerning the New Plant Variety Protection Law of Myanmar of 2019 (Law) affect the decision of the Council of October 26, 2017.

## BACKGROUND

2. The Government of Myanmar initiated the procedure to become a member of UPOV by letter dated September 18, 2017, addressed to the Secretary-General of UPOV, in which Mr. Naing Kyi Win, Director General, Department of Agricultural Research (DAR), Ministry of Agriculture, Livestock and Irrigation of Myanmar (MOALI), requested the examination of the Draft Law on New Plant Variety Protection (Draft Law) for conformity with the 1991 Act of the UPOV Convention. The Council, at its fifty-first ordinary session, held in Geneva on October 26, 2017, examined the Draft Law and decided to (see document [C/51/22](#) "Report", paragraph 17):

"(a) note the analysis in document C/51/21;

"(b) take a positive decision on the conformity of the "Draft Law on New Plant Variety Protection" ("Draft Law") with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Myanmar 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 Myanmar of the above decision."

3. By letter dated September 28, 2019, Mr. Naing Kyi Win, Director General, DAR, MOALI, addressed to the Secretary-General of UPOV, reported that the Parliament of Myanmar had adopted the "New Plant Variety Protection Law of Myanmar", on September 17, 2019 and that the Law had been enacted by the President and published in the Official Gazette on September 24, 2019. Mr. Win also informed the Secretary-General that, during the parliamentary procedure, certain changes were introduced in the Draft law of 2017, and requested the confirmation of the positive decision of 2017 by the Council of UPOV. The letter is reproduced in Annex I to this document. The translation of the Law attached to the letter can be consulted at [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=50801](https://www.upov.int/meetings/en/details.jsp?meeting_id=50801).

**CHANGES INTRODUCED IN THE NEW PLANT VARIETY PROTECTION LAW OF MYANMAR OF 2019 IN RELATION TO THE TEXT PRESENTED TO THE COUNCIL IN 2017**

4. The changes introduced in the text of the Law as a result of the parliamentary procedure, in relation to the text of the English translation of the Draft Law submitted to the Council in 2017, are presented in revision mode in Annex II to this document (in English only).

5. The text of Section 2(c) of the Law contains the definition of "New Plant Variety", which was not provided in the text of the Draft Law of 2017, as follows:

"Section 2 [...]

"(c) 'New Plant Variety' means a plant variety which expresses at least one clearly distinct character from the existing plant varieties, reveals uniformity in characters when it is cultivated and there is no change in characters through propagation; has been granted a plant breeder's right, it must be new in accordance with Section 8 and must be denominated according to Sections 12 and 13 of this Law;"

6. There is no definition of “New Plant Variety” in the 1991 Act. The definition of “Plant Variety” in Section 2(b) of the Law is in accordance with Article 1(vi) of the 1991 Act.

7. The text of Section 26(a) of the Law contains provisions concerning essentially derived varieties under Article 14(5) of the 1991 Act, that are different to the text of the corresponding provisions of the Draft Law of 2017, as follows:

“Section 26. The provisions in Sections 23, 24, ~~and 25, 26~~ shall also apply in relation to ~~the following~~ varieties.

“(a) ~~Varieties~~, which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety, ~~which may be obtained by the selection of a natural or induce mutants, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformed by genetic engineering. A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when.~~

~~A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when~~

“(i) it is predominantly derived from ~~the another variety (“initial variety;”) or from the 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,~~

“(ii) it is clearly distinguishable from the initial variety and

“(iii) 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.

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

“(b) varieties which are not clearly distinguishable in accordance with Section ~~14 9~~ from the protected variety;

“(c) varieties whose production requires the repeated use of the protected variety.”

8. The text of Section 27(b) and (c) of the Law contains provisions concerning the optional exception under Article 15(2) of the 1991 Act, that are different to the text of the corresponding provisions of the Draft Law of 2017, as follows:

“Section 27 [...]

“(b) ~~Small farmers~~ ~~Farmers~~ shall not ~~be considered that they~~ infringe the breeder’s right, ~~in relation to varieties included in a list of agricultural plants in the manner prescribed by the Ministry,~~ if they use for propagating purposes, on their own holdings, ~~only for their home consumption~~, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Section ~~27 (a) and (b) of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder. 26 (a) or (b) of this Law.~~

“(c) Varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception under subsection (b) of this Section.

~~“(d) The reasonable limits and the measures for safeguarding of the legitimate interests of the breeder referred to in subsection b) of this Section shall be prescribed in the Regulations.”~~

9. In the letter of September 28, 2019, addressed to the Secretary-General of UPOV (see Annex II), Mr. Win, stated that “[i]n relation to Article 27(b) of the Law, the regulations will provide for the implementation of the term ‘only for their home consumption’ ‘within reasonable limits and subject to the safeguarding of the legitimate interest of the breeder’ as required by Article 15 (2) of the 1991 Act of the UPOV Convention.”

CONCLUSION

10. On the above basis, in the opinion of the Office of the Union the changes introduced in the Law during the parliamentary procedure, do not affect the substantive provisions of the 1991 Act of the UPOV Convention.

11. *The Council is invited to:*

*(a) note that the New Plant Variety Protection Law of Myanmar, which was adopted by the Parliament on September 17, 2019 and published in the Official Gazette on September 24, 2019, contained changes in relation to the text of the Draft Law presented to the Council in 2017 (see document C/51/22 "Report", paragraph 17, and paragraph 2, above);*

*(b) agree that the changes, as presented in this document and its Annex II, do not affect the substantive provisions of the 1991 Act of the UPOV Convention and, subject to that agreement; and*

*(c) reaffirm the decision on conformity of October 26, 2017, and inform the Government of Myanmar that the instrument of accession of Myanmar may be deposited.*

[Annexes follow]



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Reference: PVP/2019/ 31၉၀  
28<sup>th</sup> September 2019

Dear Secretary-General Gurry,

By letter dated September 18, 2017, I requested the examination by the UPOV Council of the Draft Law on New Plant Variety Protection ("Draft Law") for conformity with the 1991 Act of the UPOV Convention ("1991 Act").

On October 26, 2017, the UPOV Council decided to take a positive decision on the conformity of the Draft Law with the provisions of the 1991 Act, which allows Myanmar 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.

I have the pleasure to inform you that the Parliament of Myanmar adopted the "New Plant Variety Protection Law", on September 17, 2019 and that, after the enactment of the Law by the President has been published with Myanmar version on September 24, 2019. This Law is translated from Myanmar version to English by TWG of our department as draft. During the parliamentary procedure, some changes were introduced in the Draft Law, 2017. The Union Attorney General Office of Myanmar will translate this Law into English and it will be official be published.

In relation to Article 27(b) of the Law, the regulations will provide for the implementation of the term "only for their home consumption" "within reasonable limits and subject to the safeguarding of the legitimate interest of the breeder" as required by Article 15 (2) of the 1991 Act of the UPOV Convention.

In order to complete the membership procedure, I would like to request to the Office of the Union to prepare a document with the changes to the text of the Draft Law considered by the UPOV Council in 2017, in order to invite the UPOV Council to reaffirm its decision of conformity of 2017.

An English translation of the 2019 "New Plant Variety Protection Law", (draft) of Myanmar is attached for ease of reference.



Yours sincerely,

*Naing Kyi Win*  
28/9/2019

Naing Kyi Win  
Director General  
Department of Agricultural Research Ministry  
of Agriculture, Livestock and Irrigation of  
Myanmar

Cc: Office Flyer

[Annex II follows]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

CHANGES INTRODUCED IN THE NEW PLANT VARIETY PROTECTION LAW OF MYANMAR OF 2019 IN  
RELATION TO THE TEXT PRESENTED TO THE COUNCIL IN 2017

The changes introduced in the text of the Law, as a result of the parliamentary procedure, in relation to the text of the English translation of the Draft Law submitted to the Council in 2017 are presented in revision mode in in this Annex

**~~Strikethrough~~** indicates deletion from the text presented to the Council in 2017.

**Underlining** indicates insertion to the text presented to the Council in 2017.

**The New Plant Variety Protection ~~Draft~~ Law**

( The Pyidaungsu Hluttaw Law No. ~~—, 2017~~29, 2019)

The ~~—, 1379~~11<sup>th</sup> Waning day of Tawtalin, 1381 M.E.

~~(—, —, 2017)~~

(24, September 2019)

The Pyidaungsu Hluttaw hereby enacts this Law.

**CHAPTER (I)**

**TITLE AND DEFINITION**

1. ~~(a)~~ This Law shall be called the **New Plant Variety Protection Law**.  
~~(b) — This Law shall come into force on such date as the President may, by notification, appoint.~~
2. The following expressions contained in this Law shall have the meanings given hereunder:
  - ~~(a)~~ (a) “Plant” means any plant in the plant kingdom ~~other than~~, including micro-organisms;
  - ~~(b)~~ “(b) “Plant Variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping complies with the following specific characters and features, irrespective of whether the conditions ~~for the grant of a breeder’s right~~ of the protection of new plant variety in accordance with this law are fully met, can be
    - ~~(i)~~ (i) defined by the expression of the related characteristics resulting from a given genotype or combination of genotypes,
    - ~~(ii)~~ (ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics and
    - ~~(iii)~~ (iii) considered as a unit with regard to its suitability for being propagated unchanged;
  - (c) “New Plant Variety” means a plant variety which expresses at least one clearly distinct character from the existing plant varieties, reveals uniformity in characters when it is cultivated and there is no change in characters through propagation; has been granted a plant breeder’s right, it must be new in accordance with Section 8 and must be denominated according to Sections 12 and 13 of this Law;

~~(c)~~ (d) **“Plant Breeder”** means

~~(i)~~ the person who bred or discovered and developed a ~~variety~~;

~~(ii)~~ new plant variety or a plant variety. In this definition, it also included 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 aforementioned persons, as the case may be;

~~(iii) the successor in title of the first or second aforementioned person, as the case may be;~~

~~(e)~~ (e) **“Plant Breeder’s Right”** means a right to be authorized and enjoyed for a protected new plant variety by a plant breeder if the acts in Sections 23, 24, 25, and ~~26, 27~~ of this Law are carried out by any other person;

~~(f)~~ (f) **“Propagating material”** means the entire plants or parts of plants of plant variety used for propagation;

~~(g)~~ (g) **“Harvested material”** means entire plants or parts of plants obtained through the use of propagating ~~material~~ materials of plant variety;

~~(h)~~ (h) **“Recognition Certificate”** means a certificate issued under this Law to a plant breeder for ~~the~~ protection of a new plant variety;

~~(i)~~ (i) **“Ministry”** means the Ministry of Agriculture, Livestock and Irrigation of the Union Government;

~~(j)~~ (j) **“Central Committee”** means the Central Committee for National New Plant Variety Protection formed under this Law;

~~(k)~~ (k) **“Department”** means the Department of Agricultural Research ~~under~~ the Ministry of Agriculture, Livestock and Irrigation.

## CHAPTER (II)

### OBJECTIVES

3. The objectives of this Law are as follows:

~~(a)~~ (a) to protect the rights of plant breeders;

~~(b)~~ (b) to develop the plant breeding activity;

~~(c)~~ (c) to ~~improve~~ promote local and foreign investment in the plant breeding activity;

~~(d)~~ (d) to ~~assist~~ support the development of the ~~agricultural sector by breeding~~ national economy through the utilization for production of new plant varieties.

### CHAPTER (III)

#### FORMATION OF THE CENTRAL COMMITTEE

4. The Ministry:

(a) shall, with the approval of the Union Government, form the Central Committee for National New Plant Variety Protection comprising the Deputy Minister for the Ministry as the Chairperson, the Director General of the Department as the Secretary, ~~representatives, experts~~ and other suitable persons, expert representatives from the relevant departments and organizations under the Ministries which are applicable to this Law as members.

~~5. The Ministry~~

(b) may determine and assign duty to the Vice-Chairperson and Joint-Secretary, if necessary, in ~~forming the Central Committee~~ accordance with ~~the approval of the Union Government~~ subsection (a).

~~6. The Ministry~~

(c) may reform the Central Committee, in accordance with subsection (a), with the approval of the Union Government from time to time.

### CHAPTER (IV)

#### DUTIES AND POWERS OF THE CENTRAL COMMITTEE

~~7~~5. The Central Committee shall:

~~(a)~~(a) lay down policies with the approval of the Union Government to create an enabling environment to ~~ensure independence in decision-making on plant breeders' rights in order to~~ encourage plant breeding and to support plant breeders' rights for the development of the agricultural sector;

~~(b)~~(b) cooperate and coordinate with the relevant Government departments, international organizations, local and foreign organizations and private entrepreneurs to develop the plant breeding ~~activity;~~ activities, research and technology activities.

~~(e)~~ ~~establish~~(c) organize the Technical Committee and sub-Committee for a New Plant Variety Testing and reform them from time to time, and assign the function and duty.

~~8.~~~~6.~~ When a plant breeder applies for a breeder's right of a new plant variety protection, the Central Committee shall ~~grant protection and~~ issue a recognition certificate in accordance with the evaluation on recommendations of ~~such new plant variety protection if the~~ the Technical Committee for a New Plant Variety Testing whether the applied variety complies with the conditions of protection ~~or not.~~

## CHAPTER (V)

### STIPULATIONS TO RECOGNIZE AS A NEW PLANT VARIETY

~~9. The~~

7. An applied variety in order to grant plant breeder's right for new plant variety protection shall comply with the variety is

~~(i) new,~~

~~(ii) distinct,~~

~~(iii) uniform and~~

~~(iv) stable~~

~~The grant of the breeder's right shall not be subject to any further or different~~ following conditions, provided that:

(a) novelty

(b) distinctness

(c) uniformity

(d) stability and

(e) the variety is designated by a denomination in accordance with the provisions of Section 14 that the applicant complies with the formalities provided for in this Law Section 12 and that he pays the required fees, Section 13.

48. The applied variety shall be deemed to be as a new plant variety.

~~(a)~~ (a) if at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of commercial exploitation of the variety earlier than one year within Myanmar before the date of filing the application, in other foreign countries earlier than four years or earlier than six years in case of trees and vines before the said date;

~~(b) where according to section 17, this Law applies to a plant genus~~

(b) if propagating or harvested materials of the applied variety, which it did ~~was~~ not previously possible to apply, in the past, such varieties belonging to such plant genus or species shall may be considered to satisfy the condition of novelty defined in paragraph (a) of this section deemed to be new even where if the sale or disposal for the purposes of commercial exploitation of to others described in that paragraph propagating or harvested materials of such variety took place in Myanmar within four years before the filing date or, in the case of trees or of vines, within six years before the said date;

~~(c)~~ (c) the provision under paragraph subsection (b) of this section Section, shall ~~only~~ apply to the applications for a breeder's right filed within one year, at the latest, only after the provisions enactment of the this Law apply to the genera or species concerned.

~~44~~9. The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

\_\_\_ In particular, the filing of an application for the granting of a breeder's right or for the entering of 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.

~~42~~10. 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.

~~43~~11. 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.

~~44~~12. (a) A new plant variety shall be named ~~in accordance with the following provisions:~~

- (a) (i) \_\_\_ The variety shall be designated by a denomination which will be is generic designation.
- (b) (ii) \_\_\_ It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. ~~In particular, it~~ It must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.
- (c) (iii) \_\_\_ It may not consist solely of figures except where there is ~~an~~ usually established practice for designating varieties.
- (d) (iv) \_\_\_ Subject to subsection (fvi), 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.
- (e) (v) \_\_\_ A variety must be submitted to all members of UPOV under the same denomination. ~~The Central Committee shall register the denomination so submitted, unless it considers the denomination unsuitable.~~
- (f) (vi) \_\_\_ 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~~ for a person who, in accordance with the provision of [Section 13](#) subsection (ja-iii), is obliged to use it, the Central Committee shall require the breeder to submit another denomination for the variety.

- ~~(a)~~ (b) When a protected 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 an indication is so associated, the denomination must nevertheless be easily recognizable.

13. (a) In relation to denominations the following applies:

- ~~(i)~~ (i) Where a denomination of a new plant variety is rejected by the Central Committee -in accordance with the provisions in ~~subsections (a) to (f), the Central Committee may require~~ Section 12 subsection (a), the applicant ~~to~~may furnish a new denomination within the prescribed period.
- ~~(ii)~~ (ii) The denomination shall be registered by the Central Committee at the same time as the breeder's right is granted.
- ~~(iii)~~ (iii) Any person who offers for sale or markets propagating material of a variety protected within Myanmar 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 Section 12, subsection ~~(a-vi)~~, prior rights prevent such use.
- ~~(b)~~ (b) The Central Committee ensures that the authorities of the members of UPOV are informed of matters concerning the 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 Committee.

## **CHAPTER (VI)**

### **APPLICATION OF THE RIGHT OF A NEW PLANT VARIETY PROTECTION\_\_**

~~15~~

14. The following persons can apply for the grant of the breeder's right ~~for a new plant variety:~~
- (a) any national
- (b) any foreigner and their organizations, including natural persons and legal entities, who have their permanent residence in ~~the Republic of the Union of~~ Myanmar, and
- ~~(a)~~ (c) any national from, as well as natural person or legal entity resident in, foreign countries and intergovernmental organizations, which have entered with Myanmar into agreements on new plant variety protection.

~~16. — Without prejudice to the rights specified in this law, the~~

15. The persons under the subsection (b) and (c) of Section 14, shall enjoy the same treatment concerning plant breeders' rights as the nationals of the Republic of the Union of Myanmar insofar as the grant and protection of breeders' rights are concerned, provided that if they comply with the conditions and formalities imposed on the nationals of the Republic of the Union of Myanmar.

~~17. — The plant genera or species to which the existing Law applies shall be prescribed by the Ministry, laws, rules and regulations and disciplines.~~

16. The Law will plant breeder can apply to for a plant breeder's right for all plant genera and species at the latest by the expiration of a period of 10 years from the date of coming into force of in accordance with this Law.

~~18~~

17. An applicant for the breeder's right of a new plant variety shall apply to the Central Committee in accordance with the provisions in the rules and the filing date of the application for a breeder's right shall be the date of the receipt of the application duly filed as prescribed by this Law and its rules.

~~19. —~~

18(a) Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Sections 8 to 12. In the course of the examination, the Central Committee may –

~~(a) assign the duty to grow the variety or carry out other necessary tests in the designated locations to the Technical Committee for a New Plant Variety Testing comprising the experts from the relevant Government departments with the approval of the Ministry or;~~ an independent institute, or relevant experts;

~~(b) cause (b) According to subsection (a), the growing of the variety or the carrying out of the necessary tests by an~~ Technical Committee for a New Plant Variety Testing, or independent institute, or relevant experts;

~~(c) may take into account the results of the growing tests or other necessary testing or other trials which have already been carried out or checking the test trial documents.~~

~~20. For~~

(c) The Technical Committee shall send the results of the purposes of examination, test report to the Central Committee and send a copy of the report to the plant breeder.

19. The Central Committee may ~~require~~ask to the breeder to furnish all the necessary information, documents or material for the purpose of examination as specified in the ~~rules/decisions,~~ by-laws of the Ministry.

~~24~~20. An applicant for a breeder's right of a new plant variety ~~shall enjoy the right of priority as follows:~~

- (a) shall enjoy the right of priority for a period of twelve months from the day after the date of filing of the first application if he/she applies a subsequent application for the same new plant variety ~~in Myanmar~~ after applying the right of protection in a foreign country or intergovernmental organization which has entered with Myanmar into agreements on plant variety protection. ~~The day of filing shall not be included in the latter period.~~
- (b) ~~the applicant is required to furnish~~ shall submit, within a period of three months from the filing date of the application, a copy of documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.
- (c) ~~the breeder~~ shall ~~be allowed~~ allow a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the Central Committee, any necessary information, ~~document~~ documents or ~~material~~ materials required for the purpose of the examination ~~under Sections 19 and 20.~~

~~(d)~~

21. Events occurring within the priority period provided for in ~~Sub-section~~ Section 20, subsection (a), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

~~22. Provisional protection is provided to the breeder as follows:~~

~~(a) it is provided to safeguard the interests of the breeder during~~

(a) During the period between the publication of the application by Central Committee and the grant of that right, the breeder shall enjoy provisional protection to safeguard the interests of the breeder.

~~(b) the~~ (b) The applicant is considered to be the holder of a breeder's right in relation to any person who, during the provisional period ~~provided in Sub-section (a)~~ has carried out acts which, once the right is granted, require the breeder's authorization as provided in Sections ~~23 to 27~~, 24, 25 and 26. The applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the publication date the breeder's right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.

## **CHAPTER VII**

### **CHAPTER (VII)**

#### **PLANT BREEDER'S RIGHT**

~~23. (a)~~ (a) Subject to the provisions of Sections ~~28 27~~ and ~~29 28~~, the following acts in respect of the propagating material of the protected variety shall ~~require~~ not be done by any other person without out the authorization of the breeder:

~~(a) (i).~~ (i). production or reproduction ~~(multiplication);~~

~~(a) (ii)~~ (ii) conditioning for the purpose of propagation;

~~(a) (iii)~~ (iii) offering for sale;

~~(a) (iv)~~ (iv) selling or other marketing;

~~(a) (v)~~ (v) exporting;

~~(a) (vi)~~ (vi) importing;

~~(a) (vii)~~ (vii) stocking for any of the purposes mentioned in ~~(a) i~~ to ~~(a) vi~~, above;

~~24. (b)~~ (b) The breeder may make his authorization under ~~Section 23~~ subsection (a) to others subject to ~~conditions and limitations~~ agreement between them.

~~25~~24. Subject to the provisions of Sections 27 and 28 ~~and 29~~, the acts referred to in Section 23 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

~~26~~25. Subject to provisions of Sections 27 and 28 ~~and 29~~, the acts referred to in Section 23 in respect of products made directly from harvested material of the protected variety falling within the provisions of Section ~~25~~24 through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

~~27~~26. The provisions in Sections 23, 24, and 25 ~~and 26~~ shall also apply in relation to the following varieties.

~~(a)~~ (a) Varieties, which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety, which may be obtained by the selection of a natural or induce mutants, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformed by genetic engineering. A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when-

~~A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when~~

~~(i)~~ (i) it is predominantly derived from ~~the~~ another variety (“initial variety”) or from the 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,

~~(ii)~~ (ii) it is clearly distinguishable from the initial variety and

~~(iii)~~ (iii) 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.

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

~~(b)~~ (b) varieties which are not clearly distinguishable in accordance with Section ~~44~~9 from the protected variety;

~~(c)~~ (c) varieties whose production requires the repeated use of the protected variety.

- ~~28.~~(27).(a) The breeder's right shall not extend to the following:
- ~~(i)~~ (i) acts done privately and for non-commercial purposes;
  - ~~(ii)~~ (ii) acts done for experimental purposes and
  - ~~(iii)~~ (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Section ~~27~~26 apply, acts referred to in Sections ~~23 to 26~~, 24 and 25 in respect of such other varieties.
- (b) Farmers shall not be considered that they infringe the breeder's right, ~~in relation to varieties included in a list of agricultural plants in the manner prescribed by the Ministry, if they use for propagating purposes, on their own holdings, only for their home consumption, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Section 26 (a) or (b) of this Law, 27 (a) and (b) of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.~~
- (c) Varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception under subsection (b) of this Section.
- ~~(d) The reasonable limits and the measures for safeguarding of the legitimate interests of the breeder referred to in subsection (b) of this Section shall be prescribed in the Regulations.~~
- ~~29.~~(28).(a) The breeder's right shall not extend to acts concerning any ~~material~~materials of the protected variety, or of a variety covered by the provisions of Section ~~27~~26 which has been sold or otherwise marketed by the breeder or with his consent in the territory of Myanmar or any material derived from the said material, unless such acts
- ~~(a-1)~~ (i) involve further propagation of the variety ~~in question of,~~
  - ~~(a-2)~~ (ii) involve an export of material of the variety, which enables the propagation of the variety, into a foreign 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.
- ~~(b)~~ (b) For the purposes of subsection (a), "material" means, in relation to a variety,
- ~~(b-1)~~ (i) propagating ~~material of any kind~~materials,
  - ~~(b-2)~~ (ii) harvested ~~material, including entire plants~~materials and ~~parts of plants, and~~
  - ~~(b-3)~~ (iii) any product made directly from the harvested material.

29. ~~Any~~~~30.~~ ~~(a) No person~~

(a) shall not carry out the acts provided for in Sections ~~23 to 27~~, 24, 25 and 26 without the authorization of the plant breeder to a protected new plant variety.

~~(b) Except~~ (b) shall not restrict for reasons other than public interest except where expressly provided in this Law, the free exercise of a breeder's right ~~shall not be restricted for reasons other than of public interest.~~

~~(c) 30.~~ When any such restriction, in accordance with Section 29(b), has the effect of the Central Committee, authorizing a ~~third~~ party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

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

32. The protection period of a plant breeder's right is 25 years for trees and vines and 20 years for other new plant varieties commencing ~~from~~ from the date of the grant of the breeder's right.

## CHAPTER (VIII)

### APPEAL

~~33. (a) A person dissatisfied with an order or decision passed by the Technical Committee under this Law may file an appeal to the Central Committee in accordance with the stipulations within 60 days from the date of the receipt of such order or decision.~~

~~(b) The Central Committee may approve, cancel or amend the order of decision passed by the Technical Committee relating to the appeal under subsection (a).~~

~~34. A person dissatisfied with an order or decision passed by the Central Committee may file an appeal to the court in accordance with the stipulations within 90 days from the date of the receipt of such order or decision.~~

### CHAPTER IX

## NULLITY AND CANCELLATION OF A PLANT BREEDER'S RIGHT

~~33.~~ 33. A plant breeder's right shall be declared null and void when it is established

(a) that the conditions laid down in Sections ~~10 and 11~~ 8 or 9 were not complied with at the time of granting the breeder's right of a new plant variety;

~~(b)~~ (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Sections ~~12 and 13~~ 10 or 11 were not complied with at the time of granting the breeder's right of a new plant variety;

~~(c)~~ (c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled. -

~~36~~34. A plant breeder's right shall not be declared null and void for other reasons than those referred to in Section ~~35~~33.

~~37~~35. The Central Committee shall cancel the breeder's right for the following reasons:

(a) if it is established that the conditions laid down in Sections ~~42 and 43~~10 or 11 are no longer fulfilled.

~~(b)~~ (b) if, after being requested to do so and within the prescribed period,  
~~(b)~~ the breeder does not provide the Central Committee with the information, documents or material deemed necessary for verifying the maintenance of the variety;

~~(b)~~ ~~(c)~~ (c) if, after being requested to do so and within the prescribed period, the breeder fails to pay such fees as may be payable to maintain his right in force; ~~or~~

~~(b)~~ ~~(d)~~ (d) if, after being requested to do so and within the prescribed period, the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

~~38~~36. A plant breeder's right shall not be cancelled for other reasons than those referred to in Section ~~37~~35.

## CHAPTER (IX)

### APPEALS

37.(a) A person dissatisfied with evaluation report passed by the Technical Committee for a New Plant Variety Testing under this Law may file an appeal to the Central Committee in accordance with the stipulations within 60 days.

(b) The Central Committee may approve, cancel or amend the evaluation report passed by the Technical Committee for a New Plant Variety Testing relating to the appeal under subsection (a). The decision of Central Committee is final.

(c) A person dissatisfied with an order of decision passed by the Central Committee may file an appeal to the court in accordance with the stipulations within 90 days from the date of the receipt of such order of decision.

## CHAPTER (X)

### OFFENCES AND PENALTIES

~~Supervision over the implementation of this Law and its rules shall be performed by the Central Committee based on the findings of the Technical Committee.~~

~~40. (a) The holder of a breeder's right may request to the Central Committee to take the following actions with regard to a person who infringes or is likely to infringe his/her breeder's right~~  
~~— (a-i) to discontinue or refrain from such infringement or preserve evidence,~~  
~~— (a-ii) to destruct the propagating material, the harvested material or the processed products~~  
~~— which is a component of the act of infringement.~~

~~— (b) The legal remedies in the applicable laws for the enforcement of other intellectual property rights shall be available for the enforcement of breeders' rights.~~

44. 38. Whoever violates any provision in Sections ~~23 to 27~~, 24, 25 and 26 without authorization of the plant breeder to a new plant variety shall, on conviction, be punished with imprisonment for a term ~~from of~~ a minimum of six months to a maximum of three years or with a fine from a minimum of one million kyats to a maximum of five million kyats or with both.

## CHAPTER (XI)

### MISCELLANEOUS

~~42. The public~~

39. Applicants shall comply with the requirements specified in this Law and pay the designated fees; a plant breeder's right shall not be restricted by any other conditions.

~~40. be informed by the The Central Committee through the regular publication of information shall~~  
announce to the public concerning applications for and grants of breeders' rights and proposed and approved denominations. through the regular publication of information.

41. Supervision over the implementation of this Law and its rules shall be performed by the Central Committee based on the findings of the Technical Committee.

~~43. If an exhibit involved in any offence prosecuted under this Law is not easily producible before the Court, such exhibit needs not be produced before the Court but a report or other relevant documentary evidence as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the Court and the relevant Court may dispose of the same in accordance with the applicable law.~~

44

- 42.(a) The holder of a breeder's right may request to the Central Committee to take the following actions with regard to a person who infringes his/her breeder's right  
(i) to discontinue or refrain from such infringement or preserve evidence.  
(ii) to destruct the propagating material, the harvested material or the processed products which are components of the breeder's right of infringement.
- (b) The Central Committee may apply the provisions of intellectual property rights Laws in connection with plant breeders' rights.

43. The members of the Central Committee and of the Technical Committee for a Plant Variety Testing who are not government employees are entitled to enjoy emolument determined by the Ministry.

~~45. The applicant shall pay the prescribed fees concerning the filing and examination of applications.~~

~~44.~~ 44. The Central Committee shall, with the approval of the Ministry, determine the fees to be paid by the applicant to get the right of protection to a new plant variety. ~~The complete schedule of fees will be provided in the rules.~~

45. The applicant, to get the right of protection to a new plant variety, shall pay the prescribed fees concerning the filing and examination of applications to the Central Committee.

46. ~~47.~~ In implementing the provisions ~~in~~of this Law:

- (a) ~~the~~ the Ministry may issue ~~rules~~by-laws, regulations and ~~by-laws~~rules with approval of the Union Government,
- (b) the Ministry and the Central Committee may issue notifications, orders, directives and procedures.

47. The Plant Variety Protection Law, which enacted at (2016 year by The Pyidaungsu Hluttaw Law No. 15), shall be declared void by this Law.

I hereby sign under the Constitution of the Republic of the Union of Myanmar.

\_\_\_\_\_ Sd/ ~~Htin~~Kyaw Win Myint  
- \_\_\_\_\_ President  
- \_\_\_\_\_ The Republic of the Union of Myanmar