

Consejo

C/51/21

**Quincuagésima primera sesión ordinaria
Ginebra, 26 de octubre de 2017****Original:** Inglés
Fecha: 26 de septiembre de 2017**EXAMEN DE LA CONFORMIDAD DEL PROYECTO DE LEY SOBRE LA PROTECCIÓN DE LAS
OBTENCIONES VEGETALES DE MYANMAR CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV***Documento preparado por la Oficina de la Unión**Descargo de responsabilidad: el presente documento no constituye un documento de política u orientación de la UPOV*

1. En una carta fechada el 18 de septiembre de 2017, dirigida al secretario general de la UPOV, el Sr. Naing Kyi Win, director general del Departamento de Investigaciones Agrícolas del Ministerio de Agricultura, Ganadería y Riego de Myanmar, solicitó el examen del proyecto de Ley sobre la Protección de las Obtenciones Vegetales (en adelante denominado el “proyecto de Ley”) de este país para determinar su conformidad con el Acta de 1991 del Convenio de la UPOV (en adelante denominada el “Acta de 1991”). La carta se reproduce en el Anexo I del presente documento. En el Anexo II figura una traducción oficiosa al inglés del proyecto de Ley elaborado por el Gobierno de Myanmar.

ANTECEDENTES

2. En el Artículo 34.3) del Acta de 1991 se dispone que “[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de [sus proyectos de ley] con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión”.

3. Desde diciembre de 2012, la Oficina de la Unión ha prestado asistencia al Gobierno de Myanmar en la elaboración de legislación de conformidad con el Acta de 1991. El 5 de enero de 2013, la Sra. Khin San Wai, directora de la División de Biotecnología, Recursos Fitogenéticos y Protección Vegetal del Departamento de Investigaciones Agrícolas perteneciente al Ministerio de Agricultura y Riego, solicitó que se formularan observaciones sobre un proyecto de Ley anterior. El 15 de marzo de 2013 y el 20 de diciembre de 2013, la Oficina de la Unión envió sus observaciones sobre las diferentes versiones del proyecto de Ley.

4. Los días 28 y 29 de junio de 2016, en Ginebra, durante una consulta jurídica con una Delegación de Myanmar, se informó a la Oficina de la Unión que se había aprobado la Ley de Protección de las Obtenciones Vegetales (Ley N° 15 de 2016) el 20 de enero de 2016. Aunque la Ley N° 15 de 2016 contiene varias disposiciones del Acta de 1991, otras disposiciones faltan o no parecen corresponderse con dicha Acta.

5. El 8 de agosto de 2016, el Gobierno de Myanmar solicitó que se le formularan observaciones detalladas sobre las propuestas de modificación de la Ley N° 15 de 2016. La Oficina de la Unión facilitó observaciones detalladas sobre el nuevo proyecto de Ley el 14 de octubre de 2016 y proporcionó más orientaciones durante las reuniones que tuvieron lugar en Myanmar el 6 de diciembre de 2016, el 18 de enero de 2017 y el 12 de septiembre de 2017.

BASE DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN MYANMAR

6. En Myanmar, la protección de las obtenciones vegetales de conformidad con el Acta de 1991 estará regida por el proyecto de Ley, una vez que este haya sido aprobado. A continuación, se analiza el proyecto de Ley siguiendo el orden en que figuran las disposiciones fundamentales del Acta de 1991.

Artículo 1 del Acta de 1991 Definiciones

7. El artículo 2 del proyecto de Ley contiene definiciones de “obtentor” y “variedad” que están en conformidad con las definiciones que figuran en el Artículo 1)iv) y vi) del Acta de 1991, respectivamente.

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

8. En el artículo 3 del proyecto de Ley se establecen disposiciones que se ajustan a la obligación fundamental prevista en el Artículo 2 del Acta de 1991.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

9. En el artículo 17 del proyecto de Ley se dispone que “El Ministerio establecerá los géneros y especies vegetales a los que se aplica la Ley. Esta se aplicará a todos los géneros y especies vegetales lo más tarde al vencimiento de un plazo de diez años a partir de la fecha de su entrada en vigor”, lo que está en conformidad con el Artículo 3.2)ii) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

10. En los artículos 15 y 16 del proyecto de Ley se establecen disposiciones sobre el trato nacional que están en conformidad con las disposiciones del Artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección, la novedad, la distinción, la homogeneidad y la estabilidad

11. En los artículos 9 a 13 del proyecto de Ley se establecen disposiciones sobre las condiciones de protección que están en conformidad con lo dispuesto en los Artículos 5 a 9 del Acta de 1991.

12. En el artículo 10.b) y c) se establecen disposiciones relativas a la excepción facultativa del Artículo 6.2), “Variedades de reciente creación”, del Acta de 1991, en los términos siguientes:

“b) cuando, de conformidad con el artículo 17, se aplique a un género o a una especie vegetal a la que no se aplicase anteriormente, se considerará que las variedades pertenecientes a ese género o especie vegetal satisfacen la condición de novedad definida en el apartado a), incluso si la venta o la entrega a terceros descrita en dicho párrafo hubiese tenido lugar en Myanmar dentro de un plazo de cuatro años antes de la fecha de presentación o, en el caso de los árboles y las vides, dentro de un plazo de seis años antes de esa fecha;

“c) la disposición prevista en el apartado b) del presente artículo se aplicará únicamente a las solicitudes de derecho de obtentor presentadas en el plazo máximo de un año a partir de la aplicación de las disposiciones de la Ley a los géneros o especies en cuestión.”

Artículo 10 del Acta de 1991: Presentación de solicitudes

13. En el artículo 18 del proyecto de Ley se establecen disposiciones relativas a la presentación de solicitudes. No parece haber en el proyecto de Ley disposición alguna que sea incompatible con el Artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

14. En el artículo 21 del proyecto de Ley se establecen disposiciones sobre el derecho de prioridad que están en conformidad con las disposiciones del Artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

15. En los artículos 19 y 20 del proyecto de Ley se establecen disposiciones sobre el examen de la solicitud que están en conformidad con las disposiciones del Artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

16. En el artículo 22 del proyecto de Ley se establecen disposiciones sobre la protección provisional que están en conformidad con las disposiciones del Artículo 13 del Acta de 1991.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

17. En los artículos 23 a 27 del proyecto de Ley se establecen disposiciones sobre el alcance del derecho de obtentor que están en conformidad con las disposiciones del Artículo 14 del Acta de 1991.

18. En el artículo 26 se establecen disposiciones relativas a la excepción facultativa del Artículo 14.3), "Actos respecto de ciertos productos", del Acta de 1991, en los términos siguientes:

"26 A reserva de lo dispuesto en los artículos 28 y 29, los actos que se mencionan en el artículo 23 respecto de los productos fabricados directamente a partir de un producto de la cosecha de la variedad protegida cubierto por la disposición del artículo 25, obtenido por la utilización no autorizada de dicho producto de la cosecha, requerirán la autorización del obtentor, a menos que el obtentor haya podido ejercer razonablemente su derecho en relación con dicho producto de la cosecha".

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

19. En el artículo 28.a) del proyecto de Ley se establecen disposiciones relativas a las excepciones obligatorias al derecho de obtentor que están en conformidad con las disposiciones del Artículo 15.1) del Acta de 1991.

20. En el artículo 28 b), c) y d) del proyecto de Ley se establecen disposiciones relativas a la excepción facultativa prevista en el Artículo 15.2) del Acta de 1991:

"b) En relación con las variedades incluidas en una lista de plantas agrícolas, según establezca el Ministerio, no se considerará infracción al derecho de obtentor la utilización por los pequeños agricultores, en su propia explotación y con fines de reproducción o de multiplicación, del producto de la cosecha que hayan obtenido por el cultivo en su propia explotación de la variedad protegida o de una variedad amparada por los apartados a) y b) del artículo 27 de la presente Ley, siempre y cuando dicha utilización se efectúe dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor.

"c) Quedan excluidas de la excepción prevista en el apartado b) del presente artículo las variedades de plantas frutales, ornamentales, forestales y de hortalizas.

"d) Los límites razonables y las medidas para salvaguardar los intereses legítimos del obtentor a los que se hace referencia en el apartado b) del presente artículo se estipularán en el Reglamento."

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

21. En el artículo 29 del proyecto de Ley se establecen disposiciones relativas al agotamiento del derecho de obtentor que están en conformidad con las disposiciones del Artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

22. En el artículo 30 se establecen las disposiciones relativas a la limitación del ejercicio del derecho de obtentor que están en conformidad con las disposiciones establecidas en el Artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

23. En el artículo 31 del proyecto de Ley se establecen disposiciones relativas a la reglamentación económica que están en conformidad con las disposiciones del Artículo 18 del Acta de 1991. No parece haber en el proyecto de Ley disposición alguna que sea incompatible con el Artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

24. En el artículo 32 del proyecto de Ley se establecen disposiciones relativas a la duración del derecho de obtentor que están en conformidad con las disposiciones del Artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

25. En el artículo 14 del proyecto de Ley se establecen disposiciones sobre las denominaciones de las variedades que están en conformidad con las disposiciones del Artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

26. En los artículos 35 y 36 del proyecto de Ley se establecen disposiciones sobre la nulidad del derecho de obtentor que están en conformidad con las disposiciones del Artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

27. En los artículos 37 y 38 del proyecto de Ley se establecen disposiciones sobre la caducidad del derecho de obtentor que están en conformidad con las disposiciones del Artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

28. En lo que respecta a la obligación de “prever los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (Artículo 30.1)i) del Acta de 1991), en los artículos 40, 41 y 43 del proyecto de Ley se establecen disposiciones sobre las medidas que pueden tomarse para defender los derechos de obtentor.

29. En lo que respecta a la obligación prevista en el Artículo 30.1)ii) del Acta de 1991, en el artículo 8 del proyecto de Ley se contempla lo siguiente:

“8. Cuando un obtentor solicite un derecho de protección de una obtención vegetal, el Comité Central la concederá y emitirá un certificado de reconocimiento de esa obtención vegetal si la variedad cumple las condiciones de la protección.”

30. El artículo 42 del proyecto de Ley se ajusta a la obligación de publicar información relativa a las solicitudes de derecho de obtentor y a los títulos concedidos, así como a las denominaciones propuestas y aprobadas, según se exige en el Artículo 30.1)iii) del Acta de 1991.

Conclusión general

31. En opinión de la Oficina de la Unión, el proyecto de Ley recoge las disposiciones sustantivas del Acta de 1991. A la luz de lo antedicho, una vez que el proyecto de Ley haya sido aprobado, sin modificación alguna, y la Ley haya entrado en vigor, Myanmar estará en condiciones de “dar efecto” a las disposiciones del Acta de 1991, como se estipula en su Artículo 30.2).

32. *Se invita al Consejo a:*

a) tomar nota del análisis expuesto en el presente documento;

b) tomar una decisión positiva respecto de la conformidad del “proyecto de Ley sobre la Protección de las Obtenciones Vegetales” (“proyecto de Ley”) con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, de modo que, una vez que el proyecto de Ley haya sido aprobado, sin modificación alguna, y la Ley haya entrado en vigor, Myanmar pueda depositar su instrumento de adhesión al Acta de 1991; y

c) autorizar al secretario general a informar de dicha decisión al Gobierno de Myanmar.

[Siguen los Anexos]

[Traducción por la Oficina de la Unión de una carta con fecha 18 de septiembre de 2017]

Enviada por: Sr. Naing Kyi Win,
Director general,
Departamento de Investigaciones Agrícolas,
Ministerio de Agricultura, Ganadería y Riego de Myanmar.

Destinatario: Sr. Francis Gurry,
Secretario general,
Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV).

Estimado secretario general:

Me complace informarle que el Parlamento de Myanmar se encuentra inmerso en el proceso de aprobación del proyecto de Ley sobre la Protección de las Obtenciones Vegetales.¹

Myanmar tiene la intención de adherir al Convenio Internacional para la Protección de las Obtenciones Vegetales de fecha 2 de diciembre de 1961, revisado en Ginebra el 10 de noviembre de 1972, el 23 de octubre de 1978 y el 19 de marzo de 1991 (Convenio de la UPOV).

De conformidad con las disposiciones del Artículo 34.3) del Convenio de la UPOV, agradecería que el Consejo de la Unión examinara la conformidad del proyecto de Ley de Myanmar con las disposiciones de dicho Convenio.

Naing Kyi Win

Documento adjunto: traducción del proyecto de Ley al inglés.

[Sigue el Anexo II]

**The New Plant Variety Protection Draft Law
(The Pyidaungsu Hluttaw Law No. ----, 2017)
The -----, 1379 M.E.
(---, ---, 2017)**

**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) **“Plant”** means any plant in the plant kingdom other than micro-organisms;
 - (b) **“Plant Variety”** means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be
 - (i) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - (ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics and
 - (iii) considered as a unit with regard to its suitability for being propagated unchanged;
 - (c) **Plant Breeder** means
 - (i) the person who bred or discovered and developed a variety,
 - (ii) the person who is the employer of the aforementioned person or who has commissioned the latter’s work, or
 - (iii) the successor in title of the first or second aforementioned person, as the case may be;
 - (d) **“Plant Breeder’s Right”** means a right to be enjoyed for a protected new plant variety by a plant breeder if the acts in Sections 23, 24, 25, 26, 27 of this Law are carried out;
 - (e) **“Propagating material”** means the entire plants or parts of plants used for propagation;
 - (f) **“Harvested material”** means entire plants or parts of plants obtained through the use of propagating material;
 - (g) **“Recognition Certificate”** means a certificate issued under this Law to a plant breeder for the protection of a new plant variety;
 - (h) **“Ministry”** means the Ministry of Agriculture, Livestock and Irrigation of the Union Government;
 - (i) **“Central Committee”** means the Central Committee for National New Plant Variety Protection formed under this Law;
 - (j) **“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) to protect the rights of plant breeders;
 - (b) to develop the plant breeding activity;
 - (c) to improve local and foreign investment in the plant breeding activity;
 - (d) to assist the development of the agricultural sector by breeding of new plant varieties.

CHAPTER III FORMATION OF THE CENTRAL COMMITTEE

4. The Ministry 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 from the relevant departments and organizations under the Ministries which are applicable to this Law as members.
5. The Ministry may determine and assign duty to the Vice-Chairperson and Joint-Secretary, if necessary, in forming the Central Committee with the approval of the Union Government.
6. The Ministry may reform the Central Committee with the approval of the Union Government from time to time.

CHAPTER IV DUTIES AND POWERS OF THE CENTRAL COMMITTEE

7. The Central Committee shall:
 - (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 for the development of the agricultural sector;
 - (b) cooperate and coordinate with the relevant Government departments, international organizations, local and foreign organizations and private entrepreneurs to develop the plant breeding activity;
 - (c) establish 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. 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 of such new plant variety protection if the variety complies with the conditions of protection.

CHAPTER V
STIPULATIONS TO RECOGNIZE AS A NEW PLANT VARIETY

9. The breeder's right shall be granted where 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 conditions, provided that 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 and that he pays the required fees.

10. The variety shall be deemed to be new if,
- (a) 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 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 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 (a) of this section even where the sale or disposal of to others described in that paragraph 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) the provision under paragraph (b) of this section, shall only apply to applications for a breeder's right filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned.

11. 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.

12. 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.

13. 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.

14. A new plant variety shall be named in accordance with the following provisions:
- (a) The variety shall be designated by a denomination which will be is generic designation.
 - (b) It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.
 - (c) It may not consist solely of figures except where there is an established practice for designating varieties.

- (d) Subject to subsection (f), 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) 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) 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 provision of subsection (j), is obliged to use it, the Central Committee shall require the breeder to submit another denomination for the variety.
- (g) 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.
- (h) 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 the applicant to furnish a new denomination within the prescribed period.
- (i) The denomination shall be registered by the Central Committee at the same time as the breeder's right is granted.
- (j) 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 subsection (f), prior rights prevent such use.
- (k) The Central Committee 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 Committee.

CHAPTER VI

APPLICATION OF THE RIGHT OF A NEW PLANT VARIETY PROTECTION

15. 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
 - (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 plant variety protection.
16. Without prejudice to the rights specified in this law, the persons under the subsection (b) and (c) of Section 15, shall enjoy the same treatment as the *nationals* of the Republic of the Union of Myanmar insofar as the grant and protection of breeders' rights are concerned, provided that 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 Law applies shall be prescribed by the Ministry. The Law will apply to 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 this Law.
18. 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. Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Sections 9 to 13. 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;
 - (b) cause the growing of the variety or the carrying out of the necessary tests by an independent institute, or relevant experts;
 - (c) take into account the results of growing tests or other trials which have already been carried out.
20. For the purposes of examination, the Central Committee may require the breeder to furnish all the necessary information, documents or material as specified in the rules/decisions of the Ministry.
21. An applicant for a breeder's right of a new plant variety shall enjoy the right of priority as follows:
- (a) an applicant for a breeder's right of a new plant variety shall enjoy the right of priority for a period of twelve months from 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, 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 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 or material required for the purpose of the examination under Sections 19 and 20.
 - (d) Events occurring within the period provided for in Sub-section (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 the period between the publication of the application and the grant of that right;
 - (b) the applicant is considered to be the holder of a breeder's right in relation to any person who, during the 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. 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 PLANT BREEDER'S RIGHT

23. Subject to the provisions of Sections 28 and 29, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) exporting;
- (f) importing;
- (g) stocking for any of the purposes mentioned in (a) to (f), above;

24. The breeder may make his authorization under Section 23 subject to conditions and limitations.

25. Subject to the provisions of Sections 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. Subject to provisions of Sections 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 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. The provisions in Sections 23, 24, 25, 26 shall also apply in relation to

- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety.

A variety shall be deemed to be essentially derived from another variety ("the initial variety") when

- (i) it is predominantly derived from the 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 11 from the protected variety;
- (c) varieties whose production requires the repeated use of the protected variety.

28. (a) The breeder's right shall not extend to:
- (i) acts done privately and for non-commercial purposes;
 - (ii) acts done for experimental purposes and
 - (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Section 27 apply, acts referred to in Sections 23 to 26 in respect of such other varieties.
- (b) Small farmers shall not 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, 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.
- (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. (a) 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 Section 27 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) involve further propagation of the variety in question or
 - (a-2) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (b) For the purposes of subsection (a), "material" means, in relation to a variety,
- (b-1) propagating material of any kind,
 - (b-2) harvested material, including entire plants and parts of plants, and
 - (b-3) any product made directly from the harvested material.
30. (a) No person shall carry out the acts provided for in Sections 23 to 27 without the authorization of the plant breeder to a new plant variety.
- (b) 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) When any such restriction 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 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

35. 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 were not complied with at the time of granting the breeder's right of a new plant variety;
- (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 were not complied with at the time of granting the breeder's right of a new plant variety;
- (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. A plant breeder's right shall not be declared null and void for other reasons than those referred to in Section 35.
37. 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 12 and 13 are no longer fulfilled.
- (b) if, after being requested to do so and within the prescribed period,
- (b-i) the breeder does not provide the Central Committee with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (b-ii) the breeder fails to pay such fees as may be payable to maintain his right in force; or
- (b-iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.
38. A plant breeder's right shall not be cancelled for other reasons than those referred to in Section 37.

CHAPTER X

OFFENCES AND PENALTIES

39. 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.

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

CHAPTER XI MISCELLANEOUS

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

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. 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.

46. 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.

47. In implementing the provisions in this Law:

(a) the Ministry may issue rules, regulations and by-laws with approval of the Union Government

(b) the Ministry and the Central Committee may issue notifications, orders, directives and procedures.

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

Sd/ HtinKyaw

President

The Republic of the Union of Myanmar

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