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EXAMEN DE LA CONFORMITE DU PROJET DE LOI SUR LA PROTECTION DES OBTENTIONS VEGETALES DU MYANMAR AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV

Document établi par le Bureau de l'Union

Avertissement : le présent document ne représente pas les principes ou les orientations de l'UPOV

1. Dans une lettre datée du 18 septembre 2017, adressée au Secrétaire général de l'UPOV, M. Naing Kyi Win, directeur général du Département de la recherche agricole au Ministère de l'agriculture, de l'élevage et de l'irrigation du Myanmar, a demandé l'examen de la conformité du projet de loi sur la protection des obtentions végétales (ci-après dénommé "projet de loi") avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La lettre fait l'objet de l'annexe I du présent document. L'annexe II contient une traduction non officielle en anglais du projet de loi, établie par le Gouvernement du Myanmar.

GENERALITES

2. L'article 34.3) de l'Acte de 1991 prévoit que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de [ses projets de loi] avec les dispositions de la présente Convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé."

3. Depuis décembre 2012, le Bureau de l'Union a aidé le Gouvernement du Myanmar à élaborer une législation conforme à l'Acte de 1991. Le 5 janvier 2013, Mme Khin San Wai, directrice de la Division de la biotechnologie, des ressources phytogénétiques et de la protection des obtentions végétales du Département de la recherche agricole au Ministère de l'agriculture et de l'irrigation, a sollicité des commentaires sur un précédent projet de loi. Le 15 mars 2013 et le 20 décembre 2013, le Bureau de l'Union a envoyé des commentaires sur les différentes versions du précédent projet de loi.

4. Les 28 et 29 juin 2016 à Genève, au cours d'une consultation juridique avec une délégation du Myanmar, le Bureau de l'Union a été informé de l'adoption, le 20 janvier 2016, de la loi sur la protection des obtentions végétales (loi n° 15 de 2016). La loi n° 15 de 2016 renfermait plusieurs dispositions de l'Acte de 1991. Néanmoins, d'autres dispositions n'étaient pas conformes à l'Acte de 1991 et certaines dispositions de l'Acte de 1991 faisaient défaut.

5. Le 8 août 2016, le Gouvernement du Myanmar a demandé des observations détaillées sur les propositions de modifications de la loi n° 15 de 2016. Le Bureau de l'Union a fourni des observations détaillées au sujet du projet de loi le 14 octobre 2016 ainsi que des orientations au cours de réunions au Myanmar le 6 décembre 2016, le 18 janvier 2017 et le 12 septembre 2017.

BASE POUR LA PROTECTION DES OBTENTIONS VEGETALES AU MYANMAR

6. Au Myanmar, la protection des obtentions végétales conformément à l'Acte de 1991 sera régie par le projet de loi lorsque celui-ci aura été adopté. On trouvera ci-après une analyse de ce projet de loi, dans l'ordre des dispositions de fond de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

7. L'article 2 du projet de loi contient les définitions des termes "obteneur" et "variété" qui correspondent aux définitions figurant aux alinéas iv) et vi), respectivement, de l'article premier de l'Acte de 1991.

Article 2 de l'Acte de 1991 : Obligation fondamentale des parties contractantes

8. L'article 3 du projet de loi contient les dispositions relatives à l'obligation fondamentale prévue à l'article 2 de l'Acte de 1991.

Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

9. L'article 17 du projet de loi prévoit que "les genres et espèces végétaux auxquels la loi s'applique sont prescrits par le Ministère. La loi s'appliquera à tous les genres et espèces végétaux au plus tard à l'expiration d'un délai de 10 ans à compter de la date d'entrée en vigueur de la présente loi", ce qui correspond aux dispositions de l'article 3.2)ii) de l'Acte de 1991.

Article 4 de l'Acte de 1991 : Traitement national

10. Les articles 15 et 16 du projet de loi contiennent les dispositions relatives au traitement national qui correspondent aux dispositions de l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

11. Les articles 9 à 13 du projet de loi contiennent les dispositions relatives à la protection qui correspondent aux dispositions des articles 5 à 9 de l'Acte de 1991.

12. Les alinéas b) et c) de l'article 10 contiennent les dispositions concernant la disposition facultative prévue à l'article 6.2) intitulé "Variétés de création récente" de l'Acte de 1991, comme suit :

"b) lorsque, conformément à l'article 17, la présente loi devient applicable à des genres ou espèces végétaux auxquels elle ne s'appliquait pas précédemment, les variétés appartenant à ces genres ou espèces végétaux sont considérées comme satisfaisant à la condition de nouveauté définie à l'alinéa a) du présent article même si la vente ou la remise à des tiers décrite dans ledit alinéa a eu lieu au Myanmar dans les quatre ans précédant la date de dépôt de la demande ou, dans le cas des arbres ou de la vigne, dans les six ans précédant cette date;

"c) la disposition prévue à l'alinéa b) du présent article s'applique uniquement aux demandes de droit d'obteneur déposées dans un délai maximum d'un an après que les dispositions de la loi sont devenues applicables aux genres ou espèces concernés."

Article 10 de l'Acte de 1991 : Dépôt de demandes

13. L'article 18 du projet de loi contient les dispositions relatives au dépôt des demandes. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 10 de l'Acte de 1991.

Article 11 de l'Acte de 1991 : Droit de priorité

14. L'article 21 du projet de loi contient les dispositions relatives au droit de priorité qui correspondent aux dispositions de l'article 11 de l'Acte de 1991.

Article 12 de l'Acte de 1991 : Examen de la demande

15. Les articles 19 et 20 du projet de loi contiennent les dispositions relatives à l'examen de la demande qui correspondent aux dispositions de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

16. L'article 22 du projet de loi contient les dispositions relatives à la protection provisoire qui correspondent aux dispositions de l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

17. Les articles 23 à 27 du projet de loi contiennent les dispositions relatives à l'étendue du droit d'obtenteur qui correspondent aux dispositions de l'article 14 de l'Acte de 1991.

18. L'article 26 contient les dispositions concernant la disposition facultative prévue à l'article 14.3) intitulé "Actes à l'égard de certains produits" de l'Acte de 1991, comme suit :

"26 Sous réserve des articles 28 et 29, l'autorisation de l'obtenteur est requise pour les actes mentionnés à l'article 23 accomplis à l'égard des produits fabriqués directement à partir d'un produit de récolte de la variété protégée couvert par les dispositions de l'article 25 par utilisation non autorisée dudit produit de récolte, à moins que l'obtenteur ait raisonnablement pu exercer son droit en relation avec ledit produit de récolte."

Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

19. L'article 28.a) du projet de loi contient les dispositions relatives aux exceptions obligatoires au droit d'obtenteur qui correspondent à l'article 15.1) de l'Acte de 1991.

20. Les alinéas b), c) et d) de l'article 28 du projet de loi contiennent les dispositions concernant l'exception facultative prévue à l'article 15.2) de l'Acte de 1991, comme suit :

"b) Les petits agriculteurs ne portent pas atteinte au droit d'obtenteur, à l'égard des variétés figurant dans la liste de plantes agricoles prescrites par le Ministère, s'ils utilisent à des fins de reproduction ou de multiplication, sur leur propre exploitation, le produit de la récolte qu'ils ont obtenu par la mise en culture, sur leur propre exploitation, de la variété protégée ou d'une variété visée aux alinéas a) et b) de l'article 27 de la présente loi, à la condition que cette utilisation reste dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes de l'obtenteur.

"c) Les variétés de plantes fruitières, ornementales, potagères et forestières sont exclues de l'exception prévue à l'alinéa b) du présent article.

"d) Les limites raisonnables et les mesures de sauvegarde des intérêts légitimes de l'obtenteur dont il est question à l'alinéa b) du présent article seront prescrites par la réglementation."

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

21. L'article 29 du projet de loi contient les dispositions relatives à l'épuisement du droit d'obtenteur qui correspondent aux dispositions de l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

22. L'article 30 contient les dispositions relatives à la limitation de l'exercice du droit d'obtenteur qui correspondent aux dispositions de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

23. L'article 31 du projet de loi contient les dispositions relatives à la réglementation économique qui correspondent aux dispositions de l'article 18 de l'Acte de 1991. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 18 de l'Acte de 1991.

Article 19 de l'Acte 1991 : Durée du droit d'obtenteur

24. L'article 32 du projet de loi contient les dispositions relatives à la durée du droit d'obtenteur qui correspondent aux dispositions de l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination de la variété

25. L'article 14 du projet de loi contient les dispositions relatives à la dénomination de la variété qui correspondent aux dispositions de l'article 20 de l'Acte de 1991.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

26. Les articles 35 et 36 du projet de loi contiennent les dispositions relatives à la nullité du droit d'obtenteur qui correspondent aux dispositions de l'article 21 de l'Acte de 1991.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

27. Les articles 37 et 38 du projet de loi contiennent les dispositions relatives à la déchéance de l'obtenteur qui correspondent aux dispositions de l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

28. En ce qui concerne l'obligation de "prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), les articles 40, 41 et 43 du projet de loi contiennent les dispositions relatives aux mesures prévues pour la défense des droits d'obtenteur.

29. En ce qui concerne l'obligation prévue à l'article 30.1)ii) de l'Acte de 1991, l'article 8 du projet de loi prévoit ce qui suit :

"8. Si un obtenteur dépose une demande de droit d'obtenteur sur une nouvelle variété végétale, le Comité central lui octroie ce droit et publie un certificat de reconnaissance de l'obtention si la variété concernée satisfait aux conditions de protection."

30. L'article 42 du projet de loi reprend l'obligation de publier les renseignements sur les demandes de droits d'obtenteur, les droits d'obtenteur délivrés et les dénominations proposées et approuvées, telle qu'elle est énoncée à l'article 30.1)iii) de l'Acte de 1991.

Conclusion

31. De l'avis du Bureau de l'Union, le projet de loi comprend les dispositions de fond de l'Acte de 1991. Ainsi, dès que le projet de loi aura été adopté sans modification et que la loi sera entrée en vigueur, le Myanmar sera en mesure de "donner effet" aux dispositions de l'Acte de 1991, comme le requiert l'article 30.2) de celui-ci.

32. *Le Conseil est invité*

a) *à prendre note de l'analyse faite dans le présent document,*

b) *à rendre une décision positive quant à la conformité du "projet de loi sur la protection des obtentions végétales" (le "projet de loi") avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, qui permette au Myanmar de déposer son instrument d'adhésion dès que le projet de loi aura été adopté sans modification et que la loi sera entrée en vigueur, et*

c) *à autoriser le Secrétaire général à informer le Gouvernement du Myanmar de cette décision.*

[Les annexes suivent]

Traduction d'une lettre datée du 18 septembre 2017 (référence [xx])

adressée par : M. Naing Kyi Win
Directeur général
Département de la recherche agricole
Ministère de l'agriculture, de l'élevage et de l'irrigation

à : M. Francis Gurry
Secrétaire général
Union internationale pour la protection des obtentions végétales
(UPOV)

Monsieur le Secrétaire général,

J'ai le plaisir de vous annoncer que le Parlement du Myanmar est sur le point d'adopter le projet de loi sur la protection des obtentions végétales¹.

Le Myanmar souhaite adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV).

Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je saurais gré au Conseil de l'UPOV d'examiner la conformité du projet de loi du Myanmar avec les dispositions de la Convention UPOV.

Veillez agréer, Monsieur le Secrétaire général, l'assurance de ma considération distinguée.

(Signé :
Naing Kyi Win
Directeur général
Département de la recherche agricole
Yezin)

Pièces jointes : 1. Traduction du projet de loi en anglais

[l'annexe II suit]

¹ Il convient de rappeler qu'un gouvernement peut soumettre au Conseil la version officielle finale d'un projet de loi telle qu'elle serait présentée au Parlement. Cette version du projet de loi peut donner lieu à une décision positive du Conseil quant à l'adhésion à la Convention UPOV, pour autant que des modifications ne soient pas apportées au projet de loi au cours de la procédure parlementaire.

**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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