

Conseil**C/53/11****Cinquante-troisième session ordinaire
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EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI DE LA MONGOLIE SUR LES SEMENCES ET LES VARIÉTÉS 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 5 septembre 2019, reçue le 26 septembre 2019, adressée au Secrétaire général de l'UPOV, S. E. M. Ulaan Chultem, ministre de l'alimentation, de l'agriculture et des industries légères de la Mongolie, a demandé l'examen de la conformité des parties pertinentes du projet de loi de la Mongolie sur les semences et les variétés (ci-après dénommé "projet de loi") avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). Cette lettre fait l'objet de l'annexe I du présent document. L'annexe II contient une traduction en anglais des parties pertinentes du projet de loi, établie par le Gouvernement de la Mongolie.

CONTEXTE

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 sa législation 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 septembre 2018, le Bureau de l'Union a aidé le Gouvernement de la Mongolie à élaborer une législation conforme à l'Acte de 1991. Dans une lettre datée du 4 septembre 2018, S. E. M. Batzorig Batjargal, ministre de l'alimentation, de l'agriculture et des industries légères de la Mongolie, a invité un expert du Bureau de l'Union à rencontrer le Groupe de travail chargé de l'élaboration du projet de loi de la Mongolie sur les semences et les variétés (ci-après dénommé "groupe de travail"). Le 13 septembre 2018, le Bureau de l'Union a reçu la traduction anglaise d'un projet de loi sur les semences et les variétés végétales.

4. Les 5 et 6 novembre 2018, à Oulan-Bator (Mongolie), le Bureau de l'Union a participé à des consultations juridiques dans le but de fournir une assistance au groupe de travail et de formuler des observations au sujet du projet de loi du 13 septembre 2018. Le 4 janvier 2019, le Bureau de l'Union a reçu une version actualisée du projet de loi, accompagnée d'une demande de commentaires.

5. Du 28 au 30 janvier 2019, à Genève, au cours des réunions bilatérales tenues avec la délégation de la Mongolie durant l'"Atelier sur la rédaction d'une législation conforme à la Convention UPOV" (atelier sur les lois), le Bureau de l'Union a examiné les dispositions pertinentes de l'Acte de 1991 concernant le projet de loi du 4 janvier 2019.

6. Le 1^{er} mai 2019, le Bureau de l'Union a reçu une nouvelle version du projet de loi. Le 31 mai 2019, le Bureau de l'Union a tenu une conférence téléphonique avec les membres du groupe de travail afin d'examiner les dispositions pertinentes du projet de loi du 1^{er} mai 2019, compte tenu des options de l'Acte de 1991, et les étapes suivantes de la procédure pour devenir membre de l'UPOV.

7. Le 24 septembre 2019, le Bureau de l'Union a reçu une confirmation selon laquelle la version du 1^{er} mai 2019 du projet de loi tenait compte des commentaires convenus durant la conférence téléphonique.

BASE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES EN MONGOLIE

8. En Mongolie, 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 dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

9. L'article 4 du projet de loi contient les définitions des termes obtenteur et variété qui correspondent aux définitions énoncées 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

10. L'article 1 du projet de loi contient des dispositions qui correspondent à l'obligation fondamentale énoncée à l'article 2 de l'Acte de 1991.

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

11. L'article 3.2) du projet de loi prévoit ce qui suit :

“3.2. En ce qui concerne la protection des obtentions végétales, conformément au chapitre VI de la loi, la présente loi s'applique à tous les genres et espèces.”

12. L'article 3.2) du projet de loi correspond à l'obligation énoncée à l'article 3.2) de l'Acte de 1991.

Article 4 de l'Acte de 1991 : Traitement national

13. L'article 3.3) du projet de loi contient des dispositions sur le 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

14. L'article 14.3) du projet de loi contient des dispositions sur les conditions de protection qui correspondent aux dispositions des articles 5 à 9 de l'Acte de 1991.

15. Les articles 1 à 3 des “Dispositions transitoires de la loi sur les semences et les variétés” (voir l'annexe II, page 11) contiennent des dispositions relatives à la disposition facultative de l'article 6.2) “Variétés de création récente” de l'Acte de 1991, comme suit :

“Article premier. Lorsque la présente loi s'applique 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 14.3.1 de l'article 14 même si la vente ou la remise à des tiers mentionnés dans ledit alinéa a eu lieu sur le territoire de la Mongolie dans les quatre ans précédant la date du dépôt de la demande ou, dans le cas des arbres et de la vigne, dans les six ans précédant cette date.

“Article 2. Les dispositions de l'article premier des mesures transitoires s'appliquent 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 3. Les présentes mesures transitoires entrent en vigueur le jour de l'entrée en vigueur de la loi sur les semences et les variétés (version révisée).”

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

16. L'article 14.1) et 2), du projet de loi contient des dispositions relatives au dépôt des demandes. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 10 de l'Acte de 1991.

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

17. L'article 17 du projet de loi contient des dispositions sur le 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

18. L'article 14.4) à 7), du projet de loi contient des 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

19. L'article 18 du projet de loi contient des 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

20. L'article 19 du projet de loi contient des dispositions sur l'étendue du droit d'obtenteur qui correspondent aux dispositions de l'article 14 de l'Acte de 1991.

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

21. L'article 20.1) du projet de loi contient des dispositions relatives aux exceptions obligatoires au droit d'obtenteur qui correspondent aux dispositions de l'article 15.1) de l'Acte de 1991.

22. L'article 20.2) et 3), du projet de loi contient des dispositions concernant l'exception facultative prévue à l'article 15.2) de l'Acte de 1991, comme suit :

"20.2. Nonobstant l'article 19, le droit d'obtenteur ne s'applique pas aux agriculteurs qui, dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes du titulaire du droit d'obtenteur, 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 à l'article 19.3.1 ou 19.3.2.

"20.3. Le Membre du gouvernement chargé des politiques du secteur agricole définit dans la réglementation ce que l'on entend par "limites raisonnables" et "sauvegarde des intérêts légitimes du titulaire du droit d'obtenteur" et établit la liste des genres et espèces de plantes afin de mettre en œuvre l'exception prévue à l'alinéa 20.2 de la présente loi."

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

23. L'article 21 du projet de loi contient des 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

24. L'article 22 du projet de loi contient des 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

25. L'article 23 du projet de loi contient des dispositions relatives à la réglementation économique qui correspondent aux dispositions de l'article 18 de l'Acte de 1991, comme suit :

"23.1 Le droit d'obtenteur est indépendant de toute mesure visant à réglementer la production, le contrôle et la commercialisation du matériel de la variété ou l'importation et l'exportation de ce matériel. En tout état de cause, ces mesures ne doivent pas porter atteinte à l'application des dispositions du chapitre Six de la présente loi."

26. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 18 de l'Acte de 1991.

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

27. L'article 24 du projet de loi contient des 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

28. Les articles 15 et 16 du projet de loi contiennent des dispositions sur 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

29. L'article 25 du projet de loi contient des dispositions sur 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

30. L'article 26 du projet de loi contient des dispositions sur 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

31. En ce qui concerne l'obligation de "prévo[i]r les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), l'article 30.2) du projet de loi contient des dispositions sur les mesures disponibles pour la défense des droits d'obtenteur, comme suit :

"30.2. Les personnes physiques ou morales qui violent la présente loi verront leur responsabilité engagée conformément aux dispositions du Code pénal ou de la législation sur les atteintes aux droits."

32. L'article 28.4)10) du projet de loi correspond à l'obligation d'octroyer des droits d'obtenteur à laquelle est soumise l'autorité centrale de production agricole, comme le requiert l'article 30.1)ii) de l'Acte de 1991, comme suit :

"28.4. L'autorité centrale de production agricole a pleine compétence pour exécuter les fonctions ci-après :

[...]

"28.4.10. pour octroyer le droit d'obtenteur à des obtenteurs de nouvelles variétés végétales, comme prévu dans la présente loi;"

33. L'article 13.1) et 3), ainsi que les articles 14.2), 16.8) et 28.4)6) du projet de loi correspondent à l'obligation de publier des renseignements sur les demandes de droits d'obtenteur et les droits d'obtenteur délivrés et les dénominations proposées et approuvées, comme le requiert l'article 30.1)iii) de l'Acte de 1991.

Conclusion générale

34. De l'avis du Bureau de l'Union, le projet de loi contient les dispositions de droit matériel 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, la Mongolie sera en mesure de "donner effet" aux dispositions de l'Acte de 1991, comme le requiert l'article 30.2) de celui-ci.

34. 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 des parties pertinentes du projet de loi de la Mongolie sur les semences et les variétés ("projet de loi") avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, qui permette à la Mongolie, dès que le projet de loi aura été adopté sans modification et que la loi sera entrée en vigueur, de déposer son instrument d'adhésion à l'Acte de 1991 et

c) à autoriser le Secrétaire général à informer le Gouvernement de la Mongolie de cette décision.

[Les annexes suivent]

Traduction d'une lettre datée du 5 septembre 2019 (référence 01/3395)

adressée par : M. Ulaan Chultem, Ministre de l'alimentation, de l'agriculture et des industries légères de la Mongolie

à : M. Francis Gurry, Secrétaire général
Union internationale pour la protection des obtentions végétales (UPOV)
34, chemin des Colombettes, 1211 Genève 20 Suisse

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que le Parlement de la Mongolie est sur le point d'adopter le projet de loi sur les semences et les variétés.

La Mongolie 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 de la partie pertinente du projet de loi sur les semences et les variétés de la Mongolie avec les dispositions de la Convention UPOV.

Je vous prie d'agréer, Monsieur, l'expression de ma haute considération.

[Signé par :
M. Ulaan Chultem, Ministre de l'alimentation,
de l'agriculture et des industries légères
de la Mongolie

[L'annexe II suit]

[DRAFT] LAW OF MONGOLIA

Ulaanbaatar

ON CROP SEED AND VARIETY

CHAPTER ONE. GENERAL PROVISIONS

Article 1. Purpose of the law

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

Article 2. Legislation on crop seed and variety

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

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

Article 3. Scope of Applicability

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

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

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

Article 4. Definitions

4.1. The following definitions shall apply in this law :

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

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

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

- 4.1.4. “seed lot” means a specified quantity of seed from the same harvest and of same origin and quality;
- 4.1.5. “seed quality” means the entirety of attributes to demonstrate varietal identity and purity and seed health;
- 4.1.6. “variety” means a group of plants within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be
- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics and
 - considered as a unit with regard to its suitability for being propagated unchanged;
- 4.1.7. “breeder” means a natural or legal person that bred, or discovered and developed, a variety, or the person who is the employer of the aforementioned person, or who has commissioned the latter’s work, or the successor in title of the first or second aforementioned person, as the case may be;
- 4.1.8. “variety description” means a specified quantity of distinct agronomic and biological characteristics of a variety that are determinable via field tests and laboratory analysis;
- 4.1.9. “variety testing” means a trial for genomic validation of a new crop variety and for determining the yield and agronomic and biological values of the new variety through comparison with a control variety;
- 4.1.10. “breeder’s right” means the right granted to the breeder of a new variety under this law;
- 4.1.11. “national register of varieties” means register of varieties that have been tested in comparison with control varieties and distinguished by their yields and agronomic and biological characteristics;
- 4.1.12. “protected variety” means a variety protected by the breeder’s right provided in this law;
- 4.1.13. “plant genetic resources of food and agricultural crops” means food and agricultural crops or parts of such crops or any other object containing germplasm of such crops;
- 4.1.14. “germplasm of food and agricultural crops” means food and agricultural crops or parts of such crops, including seed, cells and tissues and other parts containing genetic material in the form of DNA and/or RNA.

CHAPTER TWO. SEED PRODUCTION

[...]

CHAPTER THREE. CONTROL AND CERTIFICATION OF SEED QUALITY

[...]

CHAPTER FOUR. SEED TRADE

[...]

CHAPTER FIVE. REGISTRATION OF VARIETIES

[...]

CHAPTER SIX. PROTECTION OF NEW VARIETIES

Article 13. Registration of protected varieties

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

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

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

Article 14. Granting of the breeder's right

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

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

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

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

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

14.3.3. The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

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

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

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

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

14.4.3. cause the growing trials or other necessary trials.

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

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

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

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

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

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

Article 15. Variety denomination

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

15.2. Subject to paragraph 15.6, n° rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

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

15.4. A variety's denomination must not be liable to mislead or to cause confusion about the characteristics, value or identity of the variety, or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any contracting party to an international treaty on plant variety protection, to which Mongolia is party to, an existing variety of the same plant species or of a closely related species.

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

15.6. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of article 16.6 of this law, is obliged to use it, the Central Authority for Crop Production shall require the breeder to submit another denomination for the variety.

Article 16. Registration and use of variety denomination

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

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

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

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

16.5. A variety must be submitted to all contracting parties to an international treaty on plant variety protection, to which Mongolia is party to, under the same denomination. The Central Authority for Crop Production shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

16.6. Any person who offers for sale or markets propagating material of a variety protected within the territory of Mongolia is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of article 15.6 of this law, prior rights prevent such use.

16.7. When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. In such cases, the denomination must be easily recognizable.

16.8. The Central Authority for Crop Production ensures that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Central Authority for Crop Production.

Article 17. Right of priority

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

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

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

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

17.5. Events occurring within the period provided for in paragraph 17.1, such as the filing of another application or publication or use of the variety that is the subject matter of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 18. Provisional protection of the breeder's right

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

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

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

Article 19. Scope of the breeder's right

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

19.1.1. propagation or reproduction (multiplication);

19.1.2. conditioning for the purpose of propagation;

19.1.3. offering for sale;

19.1.4. selling or other marketing;

19.1.5. exporting;

19.1.6. importing;

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

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

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

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

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

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

19.4. A variety shall be deemed to be essentially derived from another variety (hereinafter referred to as "the initial variety") when the variety is predominantly derived from the initial variety or from another variety that itself is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; the variety is clearly distinguishable from the initial variety and; except for the differences which result from the act of derivation, the variety conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

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

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

Article 20. Exceptions to the breeder's right

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

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

20.1.2. acts performed for experimental purposes; and

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

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

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

Article 21. Exhaustion of the breeder's right

21.1. The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of articles 19.3 to 19.5 of this law which has been sold or otherwise marketed by the breeder or with his consent in Mongolia, or any material derived from the said material unless such acts involve :

21.1.1. further propagation of the variety in question, or

21.1.2. export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

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

21.2.1. propagating material of any kind,

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

21.2.3. any product made directly from the harvested material.

Article 22. Restriction of the breeder's right

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

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

Article 23. Measures for trade regulation

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

Article 24. Duration of the breeder's right

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

Article 25. Nullity of the breeder's right

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

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

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

25.1.3. the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is lawfully entitled to it.

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

Article 26. Cancellation of the breeder's right

26.1. The Central Authority for Crop Production may cancel a breeder's right if it is established that the conditions laid down in article 14.3.3 or 14.3.4 of this Law are n° longer fulfilled.

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

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

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

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

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

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

CHAPTER SEVEN. GENE BANK OF FOOD AND AGRICULTURAL CROPS

[...]

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

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

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

[...]

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

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

[...]

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

[...]

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

[...]

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

[...]

CHAPTER NINE. MISCELLANEOUS

Article 29. Service fees

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

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

Article 30. Liability for breach of law

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

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

Article 31. Entry into force

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

LAW OF MONGOLIA

... (date)

Ulaanbaatar

TRANSITIONAL PROVISIONS OF THE LAW ON CROP SEED AND VARIETY

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

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

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

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