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EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI SUR LA PROTECTION DES OBTENTIONS VÉGÉTALES DE L'AFGHANISTAN 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 25 septembre 2019, adressée au Secrétaire général de l'UPOV, M. Mahboobullah Nang, vice-ministre par intérim, Ministère de l'agriculture de l'irrigation et de l'élevage de l'Afghanistan, a demandé l'examen de la conformité du projet de loi sur la protection des obtentions végétales de l'Afghanistan (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 du projet de loi, établie par le Gouvernement de l'Afghanistan.

GÉNÉRALITÉS

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. Le Gouvernement de l'Afghanistan a déjà engagé la procédure pour devenir membre de l'UPOV en envoyant une lettre datée du 27 septembre 2018 dans laquelle M. Hamdullah Hamdard, vice-ministre, Ministère de l'agriculture de l'irrigation et de l'élevage de l'Afghanistan, a demandé l'examen de la conformité de la "Loi sur la protection des variétés végétales" avec l'Acte de 1991 de la Convention UPOV. À sa cinquante-deuxième session tenue à Genève le 2 novembre 2018, le Conseil a examiné la loi sur la protection des variétés végétales et a décidé (voir le paragraphe 8 du document [C/52/20](#) "Compte rendu") :

"a) de prendre note de l'analyse figurant dans le document C/52/19,

"b) de recommander à l'Afghanistan d'incorporer dans la 'Loi sur la protection des variétés végétales' les modifications proposées dans le document C/52/19 et, une fois ces modifications incorporées dans la loi, de soumettre la loi ainsi modifiée au Conseil pour examen, conformément à l'article 34.3) de l'Acte de 1991,

"c) de demander au Bureau de l'Union d'offrir son concours à l'Afghanistan, à la première occasion, pour la rédaction des modifications nécessaires de la loi, et

"d) d'autoriser le Secrétaire général à informer le Gouvernement de l'Afghanistan de cette décision."

4. Du 28 au 30 janvier 2019, à Genève, au cours des réunions bilatérales tenues avec la délégation de l'Afghanistan 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 et formulé des commentaires concernant un projet de loi fourni le 6 janvier 2019, recensant les dispositions qui ne respectaient pas la décision de 2018 du Conseil.

5. Le 5 mai 2017, M. Nang a informé le Bureau de l'Union que le Gouvernement de l'Afghanistan était en train d'actualiser son projet de loi conformément aux commentaires formulés par le Bureau de l'Union en janvier 2019, pour respecter la décision de 2018 du Conseil. Un exemplaire du projet de loi a été fourni à cette occasion. Le 17 mai 2019, le Bureau de l'Union a fourni des commentaires détaillés sur le projet de loi.

6. Le 29 août 2019, le Bureau de l'Union a reçu une version actualisée du projet de loi. Le 11 septembre 2019, le Bureau de l'Union a recommandé d'apporter certaines modifications au projet de loi conformément à la décision de 2018 du Conseil. Le 26 septembre 2019, le Bureau de l'Union a reçu la version actualisée du projet de loi pour examen par le Conseil.

7. Conformément à la décision du 2 novembre 2018 du Conseil et en vertu de l'article 34.3) de l'Acte de 1991, le Gouvernement de l'Afghanistan a présenté une nouvelle demande (voir le paragraphe 1 du présent document) pour obtenir l'avis du Conseil sur la conformité du projet de loi avec l'Acte de 1991.

BASE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES EN AFGHANISTAN

8. En Afghanistan, 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 3 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 2 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 4 du projet de loi est le suivant :

[...]

"La présente loi s'applique aux genres et espèces végétaux désignés par décision du ministre de l'agriculture et, au plus tard à l'expiration d'un délai de 10 ans à partir de sa date d'entrée en vigueur, à tous les genres et espèces végétaux."

12. Les dispositions de l'article 4 du projet de loi correspondent à l'obligation énoncée à l'article 3.2) de l'Acte de 1991. Il convient de noter que, selon l'article 36.1)ii) de l'Acte de 1991, au moment du dépôt de son instrument d'adhésion, le Gouvernement de l'Afghanistan doit notifier dans sa déclaration la liste des genres et espèces végétaux auxquels il appliquera les dispositions de la Convention UPOV (au moins 15 genres ou espèces végétaux).

Article 4 de l'Acte de 1991 : Traitement national

13. L'article 5 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 6 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.

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

15. L'article 7 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

16. L'article 8 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

17. L'article 9 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

18. L'article 14 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

19. L'article 17 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

20. L'article 17.8) 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.

21. L'article 19 du projet de loi contient les dispositions suivantes concernant l'exception facultative prévue à l'article 15.2) de l'Acte de 1991, comme suit :

"1) Les petits agriculteurs ne portent pas atteinte au droit d'obtenteur, à l'égard des variétés figurant dans la liste de plantes agricoles, 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 5)1 ou 2 de l'article 17 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.

"2) Les variétés de plantes fruitières, ornementales, potagères et forestières sont exclues de l'exception prévue à l'alinéa 1) du présent article."

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

22. L'article 18 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

23. L'article 20 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

24. L'article 6.4) du projet de loi prévoit ce qui suit :

"4) L'enregistrement des variétés traditionnelles, locales ou autochtones est régi par une législation distincte."

25. 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

26. L'article 21 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

27. L'article 15 du projet de loi contient 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

28. L'article 22 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

29. L'article 23 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

30. 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 25 du projet de loi contient les dispositions suivantes en ce qui concerne la défense des droits d'obtenteur :

"1) Toute personne qui subit une perte ou un préjudice par suite d'une atteinte aux dispositions de la présente loi est en droit de faire appel à l'autorité judiciaire, conformément à la législation afghane.

"2) Les autorités judiciaires pourront imposer à l'auteur de l'atteinte visée à l'alinéa 1) du présent article le dédommagement de la partie lésée, le remboursement des frais d'avocat, ainsi que d'autres mesures préventives."

31. L'article 12 du projet de loi prévoit que le service chargé d'octroyer des droits d'obtenteur est l'administration chargée des enregistrements, comme le requiert l'article 30.1)ii) de l'Acte de 1991.

32. L'article 27 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 générale

33. 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, l'Afghanistan 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 du "projet de loi sur la protection des obtentions végétales de l'Afghanistan" (le "projet de loi") avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, qui permette à l'Afghanistan, 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 l'Afghanistan de cette décision.

[Les annexes suivent]

ANNEXE I

Traduction d'une lettre datée du 25 septembre 2019 (référence 1012)

adressée par : M. Mahboobullah Nang, vice-ministre par intérim de l'agriculture et de l'élevage auprès du Ministère de l'agriculture, de l'irrigation et de l'élevage de l'Afghanistan, Kaboul (Afghanistan)

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

Objet : adhésion à l'UPOV – examen initial du projet de loi sur la protection des obtentions végétales

Monsieur le Secrétaire général,

J'ai l'honneur de vous écrire au sujet de l'adhésion de la République islamique d'Afghanistan à l'Union internationale pour la protection des obtentions végétales. L'Afghanistan est devenu membre de l'Organisation mondiale du commerce en juillet 2016 et a adopté une loi sur la protection des variétés végétales en octobre 2016. Cette loi est actuellement en train d'être modifiée afin que l'Afghanistan puisse devenir membre de l'UPOV. Le Ministère de l'agriculture, de l'irrigation et de l'élevage est désigné dans le projet de loi comme service chargé d'octroyer des droits d'obteneur.

L'Afghanistan reconnaît qu'en vertu de l'Accord sur les ADPIC il lui incombe de mettre en œuvre un système fonctionnel de protection des droits d'obteneur et qu'il est dans l'intérêt du développement agricole en Afghanistan d'encourager la mise au point de nouvelles variétés de plantes par l'intermédiaire d'un tel système. Le Gouvernement, déterminé à suivre cette voie, a décidé que le meilleur moyen d'établir un système internationalement reconnu de protection des obtentions végétales en Afghanistan consistait à devenir membre de l'UPOV.

Comme première étape en vue de l'adhésion de l'Afghanistan à l'UPOV, je saurais gré au Conseil de l'UPOV de bien vouloir examiner le projet de loi (une traduction en anglais de cette loi est jointe à la présente) et de nous donner son avis sur la conformité de ce projet de loi avec l'Acte de 1991 de la Convention UPOV. Je saurais également gré au Conseil de l'UPOV de bien vouloir nous indiquer, en cas de non-conformité de cette loi, les points qui posent problème et les articles concernés.

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

[Signé par :
M. Mahboob Nang, vice-ministre par intérim de
l'agriculture et de l'élevage auprès du Ministère de
l'agriculture, de l'irrigation et de l'élevage de l'Afghanistan

[L'annexe II suit]

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

**CHAPTER ONE
General Provisions**

**Article 1
Basis**

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

**Article 2
Objectives**

The objectives of this Act are :

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

**Article 3
Definitions**

The terms indicated in this Act defines the following :

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

Article 4 Implementation Authority

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

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

Article 5 Equal implementation of Act

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

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

For the purpose of this provision, "nationals" means, where the member of UPOV is a State, the nationals of that State and, where the member of UPOV is an intergovernmental organization, the nationals of the States which are members of that organization.

CHAPTER TWO Registration of New Plant Varieties

Article 6 Registration of New Plant Varieties

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

(2) New, distinct, uniform and stable indicated in paragraph (1) of this article are defined as below :

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

2. **Distinct** : The variety shall be deemed to be distinct if it is clearly distinguishable from any other varieties whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.
 3. **Uniform** : The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.
 4. **Stability** : The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.
- (3) The breeder shall pay a prescribed suitable fee in proportion to a new variety to the registration agency.
- (4) The method for registration of traditional, local and indigenous varieties shall be regulated under separate legislation.

Article 7 **Request for Application**

- (1) The breeder shall present the request for application of registration for a new variety to the Registration Agency.
- (2) The application listed in paragraph (1) of this article shall contain the following information :
 1. Botanical taxonomy (Genera and species).
 2. Denomination of the variety or breeder's reference.
 3. Description of the variety.
 4. Other required information at the administrative level as prescribed by the procedure.
- (3) Registration of each new plant variety is done by separate application.
- (4) The breeder, based on the provisions of this Act, is obliged to present a sample of the plant variety with the application to the Registration Agency.
- (5) If the application is filed by an applicant who is not national or resident of the country, the person shall be obliged to appoint a legal representative to the Registration Agency who shall be a national of Afghanistan.
- (6) The date of presenting the application by the breeder as prescribed by the Regulations shall be considered the application date.
- (7) The Registration Agency shall review the application and in case the information provided is not complete, the agency is obliged to notify the applicant.

Article 8 **Priority of Registration Application in a foreign country**

- (1) Any breeder who has duly filed an application for the registration of a variety protection in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety in Afghanistan, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application in the foreign country. The day of filing shall not be included in the latter period.
- (2) The breeder shall claim the priority of the first application, in the application filed with the Registration Agency to exercise his priority right listed in paragraph (1) of this article.

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

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

Article 9 **Technical Examination of New Plant Variety**

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

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

(3) If the breeder listed in paragraph (2) of this article, is not able to present information, documentation or necessary relevant materials to the Registration Agency, the Registration Agency shall reject the application.

(4) The costs for examination of a variety shall be calculated by the institute and payable by applicant.

(5) The Registration Agency may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the Registration Agency may require the breeder to furnish all the necessary information, documents or material as specified in this Law.

Article 10 **Preliminary Confirmation and announcement of New Plant Variety**

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

Article 11 **Right of Objection**

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

Article 12

Registration and Issuance of Certificate

If n° objection is submitted on preliminary confirmation of an application for a variety within the period indicated in article 11 of this Act or objections are rejected, the Registration Agency shall register the variety in the national list of the varieties, shall grant the breeder's right and shall issue a certificate to the breeder upon the collection of prescribed fees defined by The Ministry of Agriculture, Irrigation and Livestock.

Article 13

Information Inquiry

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

Article 14

Provisional Protection Right

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

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

Article 15

New Plant Variety Denomination

- (1) The variety shall be designated by a denomination which will be its generic designation.
- (2) Subject to paragraph (10) of this article, n° rights in the designation registered as the denomination of the variety shall hamper the free use of that denomination in connection with the variety, even after the expiration of the breeder's right.
- (3) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, the denomination must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.
- (4) The denomination of the variety shall be submitted to the Registration Agency by the breeder. If it is found that the denomination does not meet the requirements of paragraph (3) of this article, the Registration Agency shall refuse to register it and shall require the breeder to propose another denomination within an appropriate period.
- (5) If the denomination listed in paragraph (4) of this article is confirmed, the Registration Agency shall register it at the same time as the breeder's right is granted.
- (6) If the denomination of the variety has been submitted to responsible authorities of one or more members of UPOV, the Registration Agency shall register the denomination.
- (7) If the denomination of a variety is unsuitable, the Registration Agency shall oblige the breeder to propose another denomination.
- (8) The Registration Agency shall ensure that the relevant authorities and agencies of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Registration Agency.

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

(10) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance to paragraph (9) of this article is obliged to use it, the Registration Agency shall require the breeder to submit another denomination for the variety.

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

Article 16 Ownership Rights for New Plant Variety

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

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

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

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

Article 17 Breeder's Right

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

1. Production or reproduction (multiplication),
2. Conditioning for the purpose of propagation,
3. Offering for sale, selling, supplying or other marketing activities
4. Exporting and importing
5. Stocking for the purposes indicated in this paragraph.

(2) No one is allowed to practice the rights indicated in Paragraph (1) of this article without the authorization of the breeder.

(3) The breeder may make his authorization listed in paragraph (1) of this article subject to limitations and conditions.

(4) Subject to paragraph (8) of article 17 and to articles 18 and 19 of this Act, the acts listed in paragraph (1) of this article in respect of harvested material, including entire plants and parts of plants, obtained through unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

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

Article 18 **Limitation of Breeder Right**

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

- 1- Further propagation of the variety in question
- 2- Export of material of the plant variety, which enables the propagation of the variety into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

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

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

Article 19
Utilization of New Registered Plant Varieties by Farmers

(1) Small farmers shall not infringe the breeder's right, in relation to varieties included in a list of agricultural plants, if they use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by paragraph (5) 1. or 2. of article 17 of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

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

Article 20
Compulsory Licensing

(1) The Registration Agency, for the sake of public interest, without the consent of the breeder may grant the compulsory licensing for exploitation of new plant varieties to third parties based on the direction of the Minister of Agriculture, Irrigation and Livestock. In such case, the third party shall pay an equitable remuneration to the breeder. This process shall be defined in separate procedure.

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

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

Article 21
Term of Protection

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

Article 22
Invalidation of the Breeder's right

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

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

Article 23
Cancellation of the Breeder's right

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

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

- 3- If the breeder fails to provide, where the Institute under the provisions of article 15 of this Act proceed in changing the denomination of the variety, another suitable denomination for the variety.
- 4- If it is established that the variety is n° longer uniform and stable.

Article 24
Fees

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

CHAPTER THREE
MISCELLANEOUS PROVISIONS

Article 25
Reference to Court

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

Article 26
Enactment of Regulations and procedures

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

Article 27
Publication

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

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

Article 28
Date of enforcement

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

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