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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**  
GENÈVE

**CONSEIL**

**Vingt-quatrième session extraordinaire**  
**Genève, 30 mars 2007**

**EXAMEN DE LA CONFORMITÉ DE LA LÉGISLATION DE LA GÉORGIE**  
**SUR LA PROTECTION DES OBTENTIONS VÉGÉTALES AVEC L'ACTE DE 1991**  
**DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. Par une lettre en date du 1<sup>er</sup> février 2007, adressée au Secrétaire général de l'UPOV, M. David Gabunia, directeur général, Centre national de la propriété intellectuelle (SAKPATENTI) de Géorgie, a demandé l'examen de la conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé l'"Acte de 1991") de la loi sur la protection des obtentions végétales (ci-après dénommée la "loi"), qui a été adoptée par le Parlement géorgien le 29 décembre 2006. L'annexe I du présent document contient une photocopie de la lettre; l'annexe II contient une traduction de la loi en anglais, fournie par le Gouvernement géorgien.
2. La Géorgie, n'ayant pas signé l'Acte de 1991, doit, en vertu de l'article 34.2) de celui-ci, déposer un instrument pour devenir une Partie contractante au titre dudit acte. En vertu de l'article 34.3), la Géorgie ne peut déposer cet instrument que si elle a demandé l'avis du Conseil sur la conformité de sa législation avec les dispositions de l'Acte de 1991 et si la décision du Conseil faisant office d'avis est positive.
3. Le Gouvernement géorgien a déjà entamé la procédure pour devenir membre de l'UPOV, par lettre en date du 1<sup>er</sup> mars 1999, dans laquelle M. Amiran Kavadze, ambassadeur extraordinaire et plénipotentiaire et représentant permanent de la Géorgie, a demandé l'avis du Conseil de l'UPOV sur la conformité avec la Convention UPOV de la loi sur la protection des obtentions végétales, adoptée par le Parlement géorgien le 18 octobre 1996.

4. À sa seizième session extraordinaire, le 26 mars 1999, le Conseil a décidé, sur la base des conclusions tirées par le Bureau de l'Union aux paragraphes 30 et 31 du document C(Extr.)/16/4

a) d'informer le Gouvernement géorgien que la loi sur la protection des obtentions végétales, une fois adopté le règlement d'application approprié, remplira les conditions nécessaires pour devenir un texte de loi conforme à la Convention et qu'il pourra alors déposer un instrument d'adhésion à la Convention;

b) d'inviter le Gouvernement géorgien à corriger aussi rapidement que possible les (éventuelles) anomalies et contradictions marquées dans le document C(Extr.)/16/4;

c) de demander au Bureau de l'Union de proposer son assistance au Gouvernement géorgien en ce qui concerne la rédaction (le cas échéant) de tout règlement, la correction de la loi et l'élaboration d'une traduction plus satisfaisante dans une ou plusieurs langues officielles de l'UPOV;

d) de demander au Secrétaire général d'informer le Gouvernement géorgien de sa décision.

5. La décision ci-dessus, rendue par le Conseil le 26 mars 1999, n'est plus applicable, la loi de 2006 ayant déclaré caduque la loi de 1996 (voir article 44 de la loi). C'est pour cette raison qu'en vertu de l'article 34.3) de l'Acte de 1991, le Gouvernement géorgien a présenté une nouvelle demande (voir paragraphe 1 du présent document) aux fins d'obtenir l'avis du Conseil sur la conformité de la loi avec l'Acte de 1991.

#### Base légale de la protection des obtentions végétales en Géorgie

6. La protection des obtentions végétales est régie en Géorgie par la législation. L'annexe III du présent document contient des informations fournies par le Gouvernement géorgien sur sa Constitution, le code pénal, le code civil et le code de procédure civile concernant la protection des obtentions végétales. L'article 6.2) de la Constitution, en particulier, dispose comme suit :

“2. La législation de la Géorgie doit se conformer aux principes et normes généralement reconnus du droit international. Le traité ou accord international auquel la Géorgie fait partie, pour autant qu'il ne contrevienne pas à la Constitution, loi fondamentale, prime les dispositions de la législation nationale.”

7. L'article 6.2) de la Constitution établit une hiérarchie entre les traités et le droit interne disposant qu'en cas de conflit entre un traité et la législation, le traité l'emporte. Le principe général de l'article 6 de la Constitution palliera toutes lacunes ou tous écarts mineurs par rapport aux dispositions de fond de l'Acte de 1991, relevés dans le présent document.

#### Article premier de l'Acte de 1991 : Définitions

8. L'article 2 de la loi contient les définitions des termes appropriés qui y sont utilisés. En particulier, il reprend la définition de la “variété” figurant au point vi) de l'article premier de

l'Acte de 1991. Il reprend également la définition de l'"obtenteur", objet du point iv) du même article.

9. L'article 2.g) de la loi dispose que "la Convention internationale pour la protection des obtentions végétales s'entend de la 'Convention internationale pour la protection des obtentions végétales' adoptée le 2 décembre 1961;". Les termes "adoptée le 2 décembre 1961" doivent s'entendre "révisée le 19 mars 1991".

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

10. L'article premier de la loi dispose que "la présente loi régit les relations en matière de protection des obtentions végétales [...]" conformément à l'article 2 de l'Acte de 1991.

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

11. L'article premier de la loi dispose que la loi "[...] s'applique à tous les genres et espèces végétaux" conformément à l'article 3.2) de l'Acte de 1991.

#### Article 4 de l'Acte de 1991 : Traitement national

12. La loi ne contient aucune disposition contraire à l'article 4 de l'Acte de 1991. Les nationaux de la Géorgie et les personnes physiques et juridiques ayant leur domicile sur son territoire, de même que les ressortissants étrangers et les personnes physiques et juridiques ayant leur domicile sur un autre territoire ont le droit de déposer des demandes d'octroi d'un droit d'obtenteur.

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

13. Les articles 10 à 14 de la loi contiennent des dispositions relatives aux conditions de protection visées aux articles 5 à 9 de l'Acte de 1991.

14. Aux fins de satisfaire aux dispositions de l'article 6.1) de l'Acte de 1991 concernant le critère de nouveauté, il convient d'ajouter aux articles 11.1) et 16.f) de la loi les termes "ou un produit de récolte", comme suit :

"11.1). La variété est réputée nouvelle si, à la date de dépôt de la demande de droit d'obtenteur, du matériel de reproduction ou de multiplication végétative ou un produit de récolte de la variété n'a pas été vendu ou remis à des tiers d'une autre manière, par l'obtenteur ou avec son consentement, aux fins de l'exploitation de la variété [...]"

"16 La demande doit comprendre :

[...]

f) l'indication de la date, quand du matériel de reproduction ou de multiplication végétative ou un produit de récolte de la variété a été vendu ou remis à des tiers d'une autre manière, par l'obtenteur ou avec son consentement, aux fins de l'exploitation de la variété."

15. Pour l'instant, eu égard au principe général visé à l'article 6 de la Constitution, la loi satisfait aux dispositions de l'article 6.1) de l'Acte de 1991.

16. L'article 11.2) de la loi contient des dispositions concernant un régime de transition en matière de nouveauté pour des variétés de création récente, qui se conforment à la disposition facultative de l'article 6.2) de l'Acte de 1991. Il est recommandé de corriger une erreur, à l'article 11.3) de la loi, en remplaçant "deux" par "quatre", conformément aux délais de grâce prévus à l'article 11.1) de la loi et à l'article 6.1) de l'Acte de 1991.

"3. L'obtenteur peut bénéficier des avantages définis au paragraphe 2 du présent article, si les actes visés aux alinéas dudit paragraphe ont été accomplis depuis plus d'un an, de ~~deux~~ quatre ans et de six ans, tels qu'indiqués au paragraphe 1 du présent article, mais non au-delà de deux ans."

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

17. Les articles 15 à 18 et 20 de la loi contiennent des dispositions sur le dépôt de demandes, conformes à l'article 10 de l'Acte de 1991. Compte tenu du principe d'indépendance de la protection (article 10.3) de l'Acte de 1991), et excepté si une priorité est revendiquée, il faut comprendre que l'information requise au sujet de la première demande en vertu de l'article 18 de la loi est fournie aux fins d'examen.

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

18. L'article 21 de la loi contient des dispositions concernant le droit de priorité conformes à l'article 11 de l'Acte de 1991.

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

19. Les articles 3.2) et 3) et les articles 17, 18, 22, 23, 25, 26, 27, 28 et 30 de la loi contiennent des dispositions concernant l'examen de la demande conformes à l'article 12 de l'Acte de 1991.

#### Article 13 de l'Acte de 1991 : Protection provisoire

20. L'article 31 de la loi contient des dispositions concernant la protection provisoire conformes à l'article 13 de l'Acte de 1991.

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

21. Les articles 32 et 33 de la loi contiennent les dispositions essentielles concernant l'étendue du droit d'obtenteur, conformes à l'article 14.1), 2) et 5) de l'Acte de 1991. Par souci de précision, la mention, à l'article 32.1) de la loi, des termes "obtention végétale" doit s'entendre au sens de matériel de reproduction ou de multiplication de la variété protégée, comme indiqué à l'article 14.1) de l'Acte de 1991.

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

22. L'article 34 de la loi contient des dispositions concernant les exceptions au droit d'obtenteur conformes à l'article 15 de l'Acte de 1991.

23. L'article 34.2) de la loi contient les dispositions essentielles concernant l'exception facultative prévue à l'article 15.2) de l'Acte de 1991. Le renvoi au "paragraphe 1 du présent article" à la fin de l'article 34.2) semble redondant.

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

24. L'article 35 de la loi contient des dispositions concernant l'épuisement du droit d'obtenteur conformes à l'article 16 de l'Acte de 1991.

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

25. L'article 41.1) de la loi dispose qu'"une licence obligatoire ne peut être octroyée, à la demande de tout tiers intéressé, que pour des raisons d'intérêt public" conformément à l'article 17.1) de l'Acte de 1991.

26. L'article 41.7) de la loi dispose qu'"en octroyant la licence obligatoire, l'obtenteur est fondé à recevoir une rémunération équitable" conformément à l'article 17.2) de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

27. La 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

28. L'article 4 de la loi contient des dispositions concernant la durée du droit d'obtenteur conformes à l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination variétale

29. L'article 19 de la loi contient la majorité des dispositions concernant les dénominations variétales de l'article 20 de l'Acte de 1991.

30. Il est recommandé de rajouter dans la loi, dès que possible, les dispositions de l'article 20.5) de l'Acte de 1991 et, dès à présent, dans le règlement d'application, aux fins de disposer qu'une "variété doit être soumise au SAKPATENTI sous la même dénomination que celle proposée ou enregistrée dans d'autres membres de l'UPOV. SAKPATENTI enregistrera la dénomination ainsi proposée, à moins qu'il ne constate la non-convenance de cette dénomination en Géorgie. Dans ce cas, SAKPATENTI exigera que l'obtenteur propose une autre dénomination." L'article 20.5) de l'Acte de 1991 est essentiel pour faciliter l'enregistrement de la même dénomination dans tous les membres de l'Union.

31. Au regard du principe général de l'article 6 de la Constitution, la loi satisfait aux dispositions de l'article 20 de l'Acte de 1991.

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

32. L'article 37 de la loi contient les motifs de nullité du droit d'obtenteur conformes aux dispositions de l'article 21 de l'Acte de 1991.

#### Article 22 de l'Acte de 1991 : Déchéance du droit d'obtenteur

33. L'article 38 de la loi contient les motifs de déchéance du droit d'obtenteur conformes aux dispositions de l'article 22 de l'Acte de 1991.

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

34. Eu égard à l'article 30.1)i) de l'Acte de 1991, le chapitre VIII de la loi intitulé "Atteinte aux droits de l'obtenteur et engagement de la responsabilité" dispose en son article 42 que "le non-respect des prescriptions de la présente loi sera réputé porter atteinte aux droits de l'obtenteur et engagera la responsabilité en vertu de la législation en vigueur en Géorgie". L'annexe III du présent document contient des informations fournies par le Gouvernement géorgien le 1<sup>er</sup> février 2007 relatives aux recours légaux disponibles en Géorgie pour défendre le droit d'obtenteur. Il y est en particulier mentionné l'article 189 du code pénal et les actions civiles prévues par le code civil et le code de procédure civile.

35. L'article 3.1) de la loi dispose que le Centre national de la propriété intellectuelle (SAKPATENTI) est "chargé d'octroyer les droits d'obtenteur", comme prévu à l'article 30.1)ii) de l'Acte de 1991.

36. L'article 3.1) de la loi dispose également que SAKPATENTI assure "l'information du public par la diffusion d'un bulletin officiel sur les demandes de droits d'obtenteur et les droits d'obtenteurs délivrés", l'article 24.2) de la loi prévoit la publication d'une information sur les demandes de droits d'obtenteur, l'article 29.4) de la loi indique les informations à publier en matière d'octroi des droits d'obtenteur et l'article 38.3) de la loi porte sur la publication des décisions rendues en matière de nullité et de déchéance. La loi satisfait aux obligations découlant de l'article 30.1)iii) de l'Acte de 1991.

#### Conclusion générale

37. Le Bureau de l'Union estime que la loi contient les dispositions essentielles de l'Acte de 1991. Le principe général énoncé à l'article 6 de la Constitution palliera, pour le moment, les lacunes par rapport aux articles 6.1) et 20.5) de l'Acte de 1991, telles que mentionnées aux paragraphes 14 et 30 du présent document (voir paragraphes 6 et 7 du présent document).

38. *Le conseil est invité à :*

*a) prendre note des informations fournies dans le présent document, en particulier, que le principe général énoncé à l'article 6 de la Constitution palliera, pour le moment, les lacunes par rapport aux articles 6.1) et 20.5) de l'Acte de 1991;*

*b) rendre une décision positive sur la conformité, avec les dispositions de l'Acte de 1991, de la loi géorgienne sur la protection des obtentions végétales, conformément à l'article 34.3) dudit acte, qui permet à la Géorgie de déposer son instrument d'adhésion à l'Acte de 1991;et*

*c) d'autoriser le secrétaire général à informer le Gouvernement géorgien de cette décision.*

[Les annexes suivent]

ANNEXE I

**Traduction d'une lettre datée du 1<sup>er</sup> février 2007 (référence 8/549)**

**adressée par :** M. David Gabunia, Directeur général du Centre national de la propriété intellectuelle de Géorgie (SAKPATENTI)

**à :** M. Kamil Idris, Secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV)

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que le Parlement géorgien a adopté la loi sur la protection des obtentions végétales le 29 décembre 2006.

La Géorgie a l'intention d'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).

En vertu des dispositions de l'article 34.3) de la Convention UPOV, je serais extrêmement reconnaissant au Conseil de l'UPOV de bien vouloir donner son avis sur la conformité de la loi géorgienne avec les dispositions de la Convention UPOV.

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

(signé:)  
David Gabunia  
Directeur général

Pièce jointe : Traduction officielle en anglais de la loi et des articles pertinents de la Constitution et du code pénal de la Géorgie

[L'annexe II suit]



ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /  
Nur auf englisch / En inglés solamente]

**Law of Georgia for the Protection of New Varieties of Plants**

**Chapter I  
General Provisions**

**Article 1**

This Law regulates relations linked with the legal protection of new varieties of plants and applies to all the botanical genera and species of plants.

**Article 2**

1. The terms used in the Law shall have the following meaning:

(a) Breeder:

(a.a) the person who discovered and developed, or bred a plant variety;

(a.b) the person who is the employer of the person referred to in subparagraph (a.a) or who has commissioned the latter's work;

(a.c) the successor in title of the person referred to in subparagraph (a.a) or (a.b);

(b) Application means the package of documents, necessary for the registration of a new plant variety and the granting of a certificate, drawn up under the requirements established by this Law;

(c) Certificate means the protective document certifying the registration of the new plant variety and the breeder's right under this Law;

(d) Propagation material means the seed, plant or its part intended for the propagation of a plant variety;

(e) Harvest means any output received as a result of the propagation of a plant variety;

(f) Plant variety means a plant grouping within the lowest rank of a single botanical taxon, 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 the combination of genotypes; it is distinguished from any other plant grouping by the expression of at least one of the said characteristics and may be considered as a unit with regard to its suitability for being reproduced unchanged;

(g) The International Convention for the Protection of New Varieties of Plants means "the International Convention for the Protection of New Varieties of Plants" adopted on December 2, 1961;

(h) Initial variety means a plant variety selected by the breeder for breeding a new variety;

(i) Union means the Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants.

### **Article 3**

1. The National Intellectual Property Center “Sakpatenti” (hereinafter “Sakpatenti”) shall ensure granting of the breeder’s right and informing of the public by means of publication of an official bulletin on applications for the new plant varieties and granting of the breeder’s right.
2. Testing of the new plant variety for distinctness, uniformity and stability in Georgia shall be performed by a person accredited by the legal entity of the public law - united national body of accreditation – accreditation center, under the requirements and testing methods approved by the Ministry of Agriculture of Georgia on the basis of an order. On the basis of the results of aforesaid test, the Council of Experts existing at the Ministry of Agriculture of Georgia shall issue a conclusion in regard to the distinctness, uniformity and stability of the plant variety. The Ministry of Agriculture of Georgia shall be responsible for implementation of these procedures.
3. Sakpatenti may also base its decision concerning the grant of the breeder’s right on the results of the tests carried out by competent authorities of other members of the Union or tests carried out by the breeder in regard to distinctness, uniformity and stability.

### **Article 4**

The duration of a breeder’s exclusive rights in the new plant variety shall be 25 years from the day of registration of the new plant variety by Sakpatenti and 30 years for vine, caulescent, fruit, decorative, tea, subtropical cultures and forest varieties, including rootstocks.

## **Chapter II Breeder and Holder of Certificate**

### **Article 5**

1. The breeder shall acquire breeder’s exclusive (economic) rights as a result of the registration of the new plant variety at Sakpatenti and granting of a certificate.
2. If the breeder requests so, Sakpatenti shall be obliged not to publish his name.
3. Where the new plant variety was discovered and developed, or bred as a result of joint intellectual creation of several natural persons, each shall be deemed as a co-breeder.
4. Relations between the co-breeders shall be defined on the basis of a contract.

### **Article 6**

1. A breeder shall be entitled to register the new plant variety and obtain a certificate.
2. The right to register and obtain a certificate for the new plant variety discovered and developed, or bred as a result of intellectual creation of several natural persons shall be enjoyed by all the breeders jointly, as well as each of them, in the case the other breeders refuse to register and obtain a certificate.

### **Article 7**

1. Where discovering and developing, or breeding of the new plant variety is connected with the fulfilment of duties or a special task by the employee, the right to register and obtain the certificate shall be enjoyed by the employer, if the contract concluded between the

employee and employer does not provide for otherwise. If the certificate granted as a result of the registration of the new plant variety belongs to the employer, the employee shall be entitled to receive from the employer the remuneration adequate to the use of the new plant variety, on the basis of their mutual agreement.

2. Where discovering and developing, or breeding of the new plant variety is not connected with the fulfilment of duties or a special task by the employee, the right to register and obtain the certificate shall be enjoyed by the employee. In this case from the day of filing the application, the employer shall enjoy the prior right to obtain a license to use the new plant variety and/or, resulting from registration of the new plant variety and granting of the certificate, to purchase the breeder's exclusive rights.

#### **Article 8**

If the employer refuses to register the new plant variety and obtain the certificate, the employee shall be entitled to register and obtain the certificate.

#### **Article 9**

Where for one and the same new plant variety two or more applications are filed with Sakpatenti at various times, the plant variety shall be registered and a certificate granted in the name of the first applicant.

### **Chapter III Protectability of the New Plant Variety**

#### **Article 10**

1. The new plant variety shall be registered and granted a certificate, if it meets the protectability criteria.
2. Protectability criteria of the new plant variety shall be novelty, distinctness, uniformity, and stability.

#### **Article 11**

1. The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating 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

(a) in the territory of Georgia earlier than one year before filing the application with Sakpatenti;

(b) in the territory of other country, earlier than four years before filing the application with Sakpatenti, and in the case of vines and trees, earlier than six years.

2. Notwithstanding the requirements of paragraph 1 of this Article, granting of the breeder's right shall be possible to the variety of plant, which for the day of enacting of this Law is no longer new, provided that the application was filed with Sakpatenti within one year from the day of entry into force of this Law and one of the following conditions is complied with:

(a) the plant variety was entered in the national catalogue of plants admitted for trade;

(b) the plant variety was protected by the breeder's right in any state member of the Union, or an application was filed in any state member of the Union and filing of this application led to granting of a breeder's right;

(c) there exists an evidence acceptable for Sakpatenti in regard to the date, when the variety was deemed to be no longer new in accordance with paragraph 1 of this Article.

3. The breeder may enjoy advantages defined in paragraph 2 of this Article, if actions referred to in subparagraphs of said paragraph were performed earlier than one year, two years and six years terms fixed in paragraph 1 of this Article, but no longer than during two years.

4. Duration of the breeder's right, granted in accordance with paragraphs 2 and 3 of this Article, shall be calculated from the day of entry in the catalogue referred to in subparagraph (a), paragraph 2 of this Article, from the day of granting of the breeder's right referred to in subparagraph (b), paragraph 2 of this Article or from the day, when the plant variety was deemed to be no longer new, referred to in subparagraph (c), paragraph 2 of this Article. In relevant cases the earliest of these dates shall be used.

5. Where the breeder's right is granted in accordance with the requirements of this Article, the breeder shall be obliged to grant a license on reasonable conditions to enable a third person to continue exploitation of the plant variety, which he had begun in bona fide before filing the application by the breeder with Sakpatenti.

#### **Article 12**

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 with Sakpatenti. In particular, filing of an application for the granting of a breeder's right or for the entering of the variety in the official register of varieties or the catalogue, in any country, shall make the 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 variety in the official register of varieties or the catalogue, as the case may be.

#### **Article 13**

The plant 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.

#### **Article 14**

The plant 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.

**Chapter IV**  
**Examination, Publication, Registration and Granting of Certificate  
for the New Plant Variety**

**Article 15**

1. The breeder shall file the application with the request of the registration of the new plant variety and obtainment of a certificate with Sakpatenti personally or by means of a representative.

**Article 16**

1. The application shall comprise:

- (a) a request, with the indication of the name and address of the breeder;
- (b) the proposed denomination of the new plant variety;
- (c) the description of the new plant variety, the main morphological, biological and botanical characteristics;
- (d) the photographic image of the new plant variety;
- (e) a written obligation of the breeder to supply to the accredited person, under Article 3(2) of this Law, samples of propagating material of the new plant variety within the prescribed term and quantity, free of charge.
- (f) indication of the date, when the propagation material of the plant variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his consent.

2. One application shall be filed for one new plant variety.

3. Where the application is filed by means of a representative, within a month from the day of filing the application, the application materials shall be attached a document confirming the representation.

4. The application shall be filed in the state language, and the other application materials – in any other language. Where the application materials are filed in a foreign language, the applicant within 3 months term shall file their translation into the Georgian language.

5. Where the application is filed by the assignee, within a month from the day of filing the application materials, the application shall be attached a document confirming the assignment.

6. Where the data and materials defined by paragraphs 3 to 5 of this Article are not submitted in relevant terms, the proceeding of the applications shall be terminated.

**Article 17**

If before its filing with Sakpatenti the application was filed with the competent authority of other member of the Union, the country, where this application was filed, the denomination of the new plant variety, the application number and the date of filing shall be indicated.

### **Article 18**

If the new plant variety described in the application is filed in any other member state of the Union, the applicant shall be obliged to attach to the application materials a certified copy of the first application and its translation into the Georgian language.

### **Article 19**

1. The applicant shall propose the denomination of the new plant variety.
2. The denomination shall be the generic denomination of this plant variety and make the variety easily identifiable. It must be distinguishable from every denomination designating the variety of plant of the same or closely related botanic species, must not be contrary to the commonly recognized norms of morality, must not insult religious feelings, must not consist only of figures except, where this is an established practice and must not cause confusion concerning the characteristics, origin, value, identity of the variety, or the breeder.
3. If the denomination does not satisfy the requirements of paragraph 2 of this Article, or if prior right of third party prevent the use of the variety, the applicant shall be obliged to present the new denomination within a month from the receipt of notification, in accordance with paragraph 4 of this Article.
4. Any person who, within the territory of Georgia, offers for sale or markets a plant variety protected within the said territory shall be 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 paragraph (3), prior rights prevent such use.
5. When a plant 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.

### **Article 20**

The application shall be deemed filed with Sakpatenti from the day of the submission of the following materials:

- (a) the request;
- (b) the proposed denomination of the new plant variety;
- (c) the description of the new plant variety.

### **Article 21**

1. Where for one and the same plant variety two or more applications are filed, the priority shall be established for the application filed earlier with Sakpatenti.
2. The applicant wishing to enjoy the priority established under the International Convention for the Protection of New Varieties of Plants shall be obliged to file an application with Sakpatenti within 12 months from filing of the earlier application in the contracting party of this Convention.

3. In the application filed with Sakpatenti the date of filing the application in other country must be indicated. The applicant shall be obliged to present within six months from the day of filing the application with Sakpatenti the copy of the application certified by the competent authority of the country, where the application was first filed, and its translation into the Georgian language.

4. 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, to furnish Sakpatenti any necessary information, document or material required for the purpose of the examination.

#### **Article 22**

1. Sakpatenti shall perform the formal examination of the new plant variety application, that includes completeness of the application materials, checking the execution of the application and the confirmation of the application filing date.

#### **Article 23**

1. Sakpatenti shall confirm the application filing date in 2 days term from the day of filing.

2. The formal examination of the application shall be performed within one month from the day of filing the application.

3. If the application does not meet the requirements of Articles 16 and 21 of this Law, during the formal requirements examination Sakpatenti may request from the applicant to repair the deficiency and submit the relevant materials. The applicant shall be obliged to repair the deficiency or submit relevant materials within one month from the day of receiving the notification.

4. If the applicant complies with the requirement of paragraph 3 of this Article, then the date of fulfilling the above request shall be deemed to be the date of filing of the application. If the applicant fails to comply with the request, the application shall not be considered filed, and the application materials shall be returned to the applicant.

5. If the application does not comply with the conditions of the formal requirements examination, proceeding of the application for the new plant variety shall be terminated.

#### **Article 24**

1. If it is confirmed that the application complies with the conditions of formal requirements examination, Sakpatenti shall publish the data of the new plant variety application in the Official Bulletin and shall take a decision to hand over the plant variety for testing.

2. The following shall be published in the Official Bulletin:

- (a) the data of the breeder;
- (b) the date of filing the application;
- (c) the proposed denomination of the new plant variety;
- (d) the brief reference of the new plant variety.

3. Description of the new plant variety shall be laid open to public for familiarization.

**Article 25**

Any person shall be authorized to present to Sakpatenti a written objection within 3 months from the publication of the new plant variety data in the Official Bulletin:

- (a) if the new plant variety does not comply with the requirements of protectability;
- (b) if the description of the new plant variety does not convey a complete impression for the evaluation of the new plant variety;
- (c) if the data given in the application are falsified;
- (d) if the priority requested, in accordance with paragraph 2 of Article 21 of this Law, for the new plant variety described in the application is baseless according to the application presented for this plant variety in another country.

**Article 26**

1. Within one week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the person referred to in paragraph 2 of Article 3 of this Law. A copy of the objection materials shall be handed over to the applicant of the new plant variety as well.

2. Sakpatenti with respect to the objection shall take a decision on the basis of conclusion made by the person defined under paragraph 2 of Article 3 of this Law.

3. Procedures and terms of the objection shall be determined under the rule established by the Ministry of Agriculture of Georgia.

**Article 27**

1. Following to the completion of the formal requirements examination and the publication of the application materials in the Official Bulletin, the new plant variety shall be handed over within 2 weeks term for testing to the person defined under paragraph 2 Article 3 of this Law.

2. The new plant variety shall be tested for distinctness, uniformity and stability by means of examination.

3. The applicant shall be authorized to request extension of procedure terms of the new plant variety application proceeding or where he fails to comply with the terms, restoration of these terms in accordance with the established rule.

4. The applicant, at any stage of proceeding of the new plant variety application, may withdraw the application or request termination of the application proceeding.

**Article 28**

1. Results of the new plant variety tests shall be done by the person referred to in Article 3(2), that shall be handed over to Sakpatenti within one month term.

2. In the case of the positive conclusion of the new plant variety testing, the person, who performed tests, together with the applicant shall draw up the description of the plant variety that he together with the conclusion shall send to Sakpatenti.



3. Data of the test results shall be a trade secret of the applicant and their transfer to the other person without agreement with Sakpatenti and the applicant, shall be deemed to be a violation and shall result in liability defined under the existing legislation in Georgia.

#### **Article 29**

1. Where the positive conclusion of the new plant variety testing is made, Sakpatenti shall take a decision to register the new plant variety. Sakpatenti shall record the denomination of the new plant variety, description and other data in the Register of New Plant Varieties and issue the certificate, which represents a document certifying the property of the breeder's exclusive right holder.

2. The following shall be recorded in the Register of New Plant Varieties:

- (a) the genus and species of the new plant variety;
- (b) the denomination of the new plant variety;
- (c) the description and photographic image of the new plant variety;
- (d) the name and address of the breeder;
- (e) the number and date of registration.

3. The format of a certificate issued for the new plant variety shall be developed by Sakpatenti.

4. Sakpatenti shall publish in the Official Bulletin: the genus and species of the new plant variety, the denomination of the new plant variety, the description and photographic image of the new plant variety, the name and address of the breeder, the registration number and date.

5. Any person shall be entitled to familiarize with the Register of New Plant Varieties under established order.

#### **Article 30**

1. If the application of the new plant variety filed with Sakpatenti concerns the variety protected in other state member of the Union, that variety shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a variety a certified copy of the official documents confirming the breeder's right issued by the authorized body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application, or within 2 months term from filing the application. For such an application only the formal requirements examination shall be performed.

2. If the application of the new plant variety filed with Sakpatenti concerns the variety for which tests for distinctness, uniformity and stability have been already performed by the person referred to in Article 3(2) of this Law and the positive conclusion has been issued, only the novelty, denomination requirements and the formal requirements examination shall be performed.

3. If the applications referred to in paragraphs 1 and 2 of this Article comply with the conditions of the formal requirements examination, Sakpatenti shall take a decision to register the new plant variety, shall record the data in the Register of New Plant Varieties, issue a certificate and publish the registration data in the Official Bulletin.

### **Article 31**

1. Under Article 24 of this Law from the day of publication of the new plant variety data to the day of registration, the applicant provisionally shall be granted the same rights of the breeder, he would have in the case of registration. If a third party, from the day of publication of the new plant variety data to the day of registration, has carried out acts which require the breeder's authorization, the breeder shall be entitled to demand equitable remuneration only after registration of the new plant variety.

## **Chapter V Rights and Liabilities of the Holder of Breeder's Exclusive Right**

### **Article 32**

1. The exclusive right of the breeder shall be the right to perform, authorize and/or prohibit the following with respect to the new plant variety:

- (a) production or reproduction;
- (b) conditioning for the purpose of propagation;
- (c) offering for sale, alienation or other transfer of rights;
- (d) exporting;
- (e) importing;
- (f) stocking for any of the purposes mentioned in subparagraphs (a), (b),(c), (d), (e), paragraph 1 of the Article.

2. The breeder may authorize the acts referred to paragraph 1 of this Article with certain conditions and restrictions.

3. Taking into account the requirements of Article 34 of this Law, the acts defined by paragraph 1 of this Article 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 exclusive rights in relation to the said propagating material.

4. The exclusive right of the new plant variety breeder shall also apply to:

- (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (b) varieties which are not clearly distinguishable in accordance with Article 12 of this Law from the protected variety, and
- (c) varieties whose production requires the repeated use of the protected variety.

### **Article 33**

1. A variety shall be deemed to be essentially derived from another variety when:

- (a) 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,

(b) it is distinguishable from the initial variety by external properties, except for the differences which result from the act of propagation, and 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.

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

#### **Article 34**

1. Exclusive right of the breeder shall not apply to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes and
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 32(4) apply, acts referred to in Article 32(1) to (3).

2. The Ministry of Agriculture of Georgia, subject to the safeguarding of the legitimate interests of the breeder and within reasonable limits, shall be entitled to restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the propagating material which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 32(4)(a)(b) or paragraph 1 of this Article.

#### **Article 35**

1. The breeder's exclusive right shall not apply to acts concerning any material of the protected variety or any material derived from the said material, which has been included into the civil circulation by the breeder or with his consent in the territory of Georgia, unless such acts

- (a) involve further propagation of the protected variety or
- (b) involve an export of plant material of the protected variety, which enables the propagation of the variety, into a country which does not protect the varieties belonging to this genus and species, except where the exported material is for final consumption purposes.

2. For the purposes of paragraph 1 of this Article, the term "material" means, in relation to a variety,

- (a) propagating material of any kind;
- (b) harvested material, including entire plants and parts of plants;
- (c) any product made from the harvested material.

#### **Article 36**

The breeder shall be obliged to ensure, during the whole period of validity of the exclusive rights, obtainment of the propagating materials of the plant variety enabling to produce the plant variety having the features referred to in the description of the new plant variety.

## **Chapter VI**

### **Cancellation and Nullity of New Plant Variety Registration and Certificate**

#### **Article 37**

Upon request of the interested person, the new plant variety registration and certificate shall be recognized as null from the registration day, only when it is established that at the time of taking the decision concerning the registration and issuing of the certificate of the new variety of plant:

- (a) the plant variety did not comply with the requirements of Articles 11 and 12 of this Law;
- (b) the grant of the breeder's right was based upon information and documents furnished by the breeder, and when granting the breeder's right the requirements of Articles 13 and 14 of this Law were not complied with;
- (c) the breeder's right was granted to a person who was not entitled to it, unless it is transferred to the person who was so entitled.

#### **Article 38**

1. Upon request of the interested person, the new plant variety registration and certificate may be cancelled from the day of taking the relevant decision, when it is established that:

- (a) the new plant variety does no longer fulfil the requirements of Articles 13 and 14 of this Law;
- (b) the breeder failed to present the information, documents or material deemed necessary for verifying the maintenance of the variety in accordance Article 36 of this Law upon the request of the Ministry of Agriculture of Georgia within the fixed term;
- (c) the breeder failed to satisfy the requirements established for maintenance of rights;
- (d) the breeder did not propose, where the denomination of the variety was cancelled after the grant of the right, another suitable denomination.

2. The registration and certificate of the new plant variety may be recognized as null or cancelled on the basis of a written request submitted to Sakpatenti by the breeder.

3. The data of the recognition of the new plant variety registration and certificate as null or cancelled shall be entered by Sakpatenti in the Register of the New Plant Varieties and the reference of the above mentioned shall be published in the Official Bulletin.

#### **Article 39**

On the basis of a written request submitted to Sakpatenti, the breeder during the validity term of the new plant variety registration shall be authorized to enter changes or additions in the registered data of the new plant variety only in respect to the address of the breeder or his representative.

## **Chapter VII**

### **License**

#### **Article 40**

1. The breeder (licensor) shall be authorized to grant a license to use the registered new plant variety to other person (licensee).
2. Granting of the license for the use of the new plant variety shall be admissible for the new plant variety permitted for distribution in the territory of Georgia.
3. The license may be simple or exclusive.
4. On the basis of the simple license agreement, the licensor shall transfer to the licensee the right to use the new plant variety. At the same time, the licensor shall preserve all the exclusive rights and the right to conclude other simple license agreements.
5. On the basis of the exclusive license agreement, the licensor shall transfer the right to use the new plant variety only to the licensee. At the same time, the licensor during the validity term of the exclusive license agreement shall forfeit the exclusive rights transferred on the basis of this agreement as well as the right to conclude other license agreements.
6. The license agreement shall be made in the written form and shall provide for: the accurate data of the new plant variety, types of use, the validity term of the agreement and the territory, amount of the remuneration or the rule of determining the amount and term, as well as other conditions considered essential by the parties.
7. The right to use the new plant variety in any way not provided for directly by the license agreement shall belong to the licensor.
8. The licensee shall not be allowed to transfer the right resulting from the license agreement or to grant a sublicense if it is not provided for directly in the license agreement.

#### **Article 41**

1. The compulsory license may be granted upon the request of any interested person only for reasons of public interest.
2. The compulsory license shall be issued on the basis of a recommendation given by the National Council of Seeds functioning at the Ministry of Agriculture of Georgia, by the decision of the Minister of Agriculture of Georgia.
3. The compulsory license may be issued only when the interested person earlier was trying to obtain the license from the breeder with reasonable conditions and terms, but his attempt was not successful.
4. The decision on granting the compulsory license shall define the scope of use of the new plant variety, duration, rights and obligations of the breeder and the licensee and the amount of remuneration. The decision on granting the compulsory license shall be legalized with the order of the Minister of Agriculture of Georgia.

5. The duration of the compulsory license agreement may be extended if by examination performed by the Ministry of Agriculture of Georgia it is ascertained that conditions of the license agreement are complied with and there is a necessity of extension.

6. If during the validity term of the compulsory license the examination proves that there are no longer grounds for granting the compulsory license, the effect of the compulsory license shall be terminated on the basis of a decision taken by the Ministry of Agriculture of Georgia.

7. At granting of the compulsory license, the breeder shall be entitled to receive the equitable remuneration.

## **Chapter VIII** **Violation of Breeder's Rights and Liability**

### **Article 42**

The failure to observe the requirements of this Law shall be deemed to be a violation of the breeder's rights and shall result in liability under the existing legislation in Georgia.

## **Chapter IX** **Transitional and Final Provisions**

### **Article 43**

1. Applications filed for registration of the new plant varieties with the Center of Protection of Plant Varieties Breeders' Rights of Georgia "Sakjishtsenti" under the Laws of Georgia "on Permission for Distribution of Agricultural Crops, Quality Seeds and Planting Materials" and "on Protection of Selective Achievements", proceeding of which has not been terminated, shall be transferred to the National Intellectual Property Center of Georgia Sakpatenti for continuing the proceeding.

### **Article 44**

The Law of Georgia "on Protection of Selection Achievements" of October 18, 1996 ("Parlamentis utsqebani", N27-28/4, November 21, 1996, p.42) shall be declared invalid.

### **Article 45**

1. Within three months term from the entry into force of this Law, the Ministry of Agriculture of Georgia together with the National Intellectual Property Center "Sakpatenti" shall prepare and approve the rule of consideration of the opposition of the interested persons in connection with publication of the new plant variety data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses.

2. The Ministry of Agriculture of Georgia, within six months after entry into force of this Law, shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new plant variety and methods of testing, taking into account the international practice.

3. The Ministry of Agriculture of Georgia within 2 months from the entry into force of this Law shall ensure establishment of the Council of Experts on the basis of Article 3(2) of this Law and shall approve its regulations.

**Article 46**

The Law shall enter into force on publication.

[Annex III follows/  
L'annexe III suit/  
Anlage III folgt/  
Sigue el Anexo III]

ANNEX III / ANNEXE III / ANLAGE III / ANEXO III

[In English only / En anglais seulement /  
Nur auf englisch / En inglés solamente]

Information provided by the Government of Georgia on February 1, 2007

**The Constitution of Georgia**

Article 6

1. Constitution of Georgia shall be the supreme law. All the other legal acts shall comply with the Constitution.

2. The legislation of Georgia shall comply with the generally recognized principles and norms of the international law. The international treaty or agreement of Georgia, if it does not contradict with the Constitution of Georgia, constitutional agreement, shall have prevalence with respect to the statutory acts of the national law.

Article 23

1. Freedom of the intellectual creativity shall be ensured. The intellectual property right shall be indefeasible.

**The Criminal Code of Georgia**

Article 189. Encroachment of Intellectual Property Rights

1. Misappropriation of authorship or forcing on co-authorship of invention, industrial design, topography of integrated circuit, selection achievement – shall be punishable by penalty or correctional labor up to two years term.

2. The action, provided for in the first part of this Article, committed repeatedly – shall be punishable by custodial restraint up to three years term or detention during the same term.

3. Illegal use of other person's invention, utility model, industrial design, topography of integrated circuit, selection achievement, knowingly, with the purpose of gaining income – shall be punishable by penalty or custodial restraint up to two years term.

4. The action, provided for by the third part of this Article, committed by the group on the basis of a preliminary concord – shall be punishable by custodial restraint up to three years term or detention during the same term.

**The Civil Code and the Civil Procedure Code of Georgia**

The breeder can also enforce his rights on the base of civil action, in accordance with the Civil Code and the Civil Procedure Code of Georgia.

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