

## Consejo

C/53/14

Quincuagésima tercera sesión ordinaria  
Ginebra, 1 de noviembre de 2019

Original: Inglés  
Fecha: 14 de octubre de 2019

---

**NOVEDADES QUE SE HAN PRODUCIDO EN RELACIÓN CON LA LEY DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES DE MYANMAR**

*Documento preparado por la Oficina de la Unión*

*Descargo de responsabilidad: el presente documento no constituye un documento de política u orientación de la UPOV*

1. El presente documento tiene por finalidad invitar al Consejo a que considere si las novedades acontecidas en relación con la Ley de 2019 de Protección de las Obtenciones Vegetales de Myanmar (la "Ley") afectan a la decisión adoptada por el Consejo el 26 de octubre de 2017.

**ANTECEDENTES**

2. El Gobierno de Myanmar inició el procedimiento de adhesión a la UPOV mediante un carta fechada el 18 de septiembre de 2017, dirigida al secretario general de la UPOV, en la que el Sr. Naing Kyi Win, director general del Departamento de Investigaciones Agrícolas del Ministerio de Agricultura, Ganadería y Riego de Myanmar, solicitó el examen del proyecto de Ley sobre la Protección de las Obtenciones Vegetales (el "proyecto de Ley") a fin de determinar su conformidad con el Acta de 1991 del Convenio de la UPOV. En su quincuagésima primera sesión ordinaria, celebrada en Ginebra el 26 de octubre de 2017, el Consejo examinó el proyecto de Ley y decidió lo siguiente (véase el párrafo 17 del documento [C/51/22](#) "Informe"):

- a) tomar nota del análisis expuesto en el documento C/51/21;
- b) tomar una decisión positiva respecto de la conformidad del "proyecto de Ley sobre la Protección de las Obtenciones Vegetales" ("proyecto de Ley") con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, de modo que, una vez que el proyecto de Ley haya sido aprobado, sin modificación alguna, y la Ley haya entrado en vigor, Myanmar pueda depositar su instrumento de adhesión al Acta de 1991; y
- c) autorizar al secretario general a informar de dicha decisión al Gobierno de Myanmar."

3. En una carta fechada el 28 de septiembre de 2019, dirigida al secretario general de la UPOV, el Sr. Naing Kyi Win, director general del Departamento de Investigaciones Agrícolas del Ministerio de Agricultura, Ganadería y Riego de Myanmar, comunicó que el Parlamento de Myanmar había aprobado la "Ley de Protección de las Obtenciones Vegetales de Myanmar" el 17 de septiembre de 2019, y que la Ley había sido promulgada por el presidente y publicada en el Boletín Oficial el 24 de septiembre de 2019. El Sr. Win comunicó asimismo al secretario general que, durante el trámite parlamentario, se habían introducido algunas modificaciones en el proyecto de Ley de 2017, y solicitó que el Consejo de la UPOV confirme la decisión positiva adoptada en 2017. La carta se reproduce en el Anexo I del presente documento. La traducción de la Ley que figura adjunta a la carta puede consultarse en la siguiente dirección: [https://www.upov.int/meetings/es/details.jsp?meeting\\_id=50801](https://www.upov.int/meetings/es/details.jsp?meeting_id=50801).

**MODIFICACIONES INTRODUCIDAS EN LA LEY DE 2019 DE PROTECCIÓN DE LAS OBTENCIONES VEGETALES DE MYANMAR RESPECTO DEL TEXTO PRESENTADO AL CONSEJO EN 2017**

4. Las modificaciones respecto de la traducción al inglés del proyecto de Ley presentado al Consejo en 2017, introducidas en el texto de la Ley a raíz del trámite parlamentario, se exponen con marcas de revisión en el Anexo II del presente documento (en inglés exclusivamente).

5. En el texto del artículo 2.c) de la Ley consta la siguiente definición de “obtención vegetal”, que no figuraba en el texto del proyecto de Ley de 2017:

“Artículo 2 [...]

“c) Se entiende por “obtención vegetal” toda variedad vegetal que expresa al menos un carácter claramente distinto de las variedades vegetales existentes y cuyos caracteres muestran homogeneidad al ser cultivada y no varían con la reproducción o la multiplicación; se le ha concedido el derecho de obtentor, ha de ser nueva con arreglo al artículo 8 y ha de ser designada por una denominación conforme a lo dispuesto en los artículos 12 y 13 de la presente Ley.”

6. El Acta de 1991 no incluye una definición de “obtención vegetal”. La definición de “variedad vegetal” del artículo 2.b) de la Ley está en conformidad con la que figura en el artículo 1.vi) del Acta de 1991.

7. El texto del artículo 26.a) de la Ley contiene las siguientes disposiciones relativas a las variedades esencialmente derivadas conforme al artículo 14.5) del Acta de 1991, que difieren de las disposiciones correspondientes del proyecto de Ley de 2017:

“Artículo 26. También se aplicarán las disposiciones de los artículos 23, 24 y ~~25, 26~~ en relación con las siguientes variedades.

a) Las variedades derivadas esencialmente de la variedad protegida, cuando esta no sea a su vez una variedad esencialmente derivada, que podrán obtenerse por selección de un mutante natural o inducido, o de un variante somaclonal, selección de un individuo variante entre las plantas de la variedad inicial, retrocruzamientos o transformaciones por ingeniería genética. Se considerará que una variedad es esencialmente derivada de otra variedad (“la variedad inicial”) si:

Se considerará que una variedad es esencialmente derivada de otra variedad (“la variedad inicial”) si

i) se deriva principalmente de la otra variedad (“variedad inicial”) o de una variedad que a su vez se deriva principalmente de la variedad inicial, conservando al mismo tiempo las expresiones de los caracteres esenciales que resulten del genotipo o de la combinación de genotipos de la variedad inicial,

ii) se distingue claramente de la variedad inicial, y

iii) salvo por lo que respecta a las diferencias resultantes de la derivación, es conforme a la variedad inicial en la expresión de los caracteres esenciales que resulten del genotipo o de la combinación de genotipos de la variedad inicial.

Las variedades esencialmente derivadas podrán obtenerse por selección de un mutante natural o inducido o de un variante somaclonal, selección de un individuo variante entre las plantas de la variedad inicial, retrocruzamientos o transformaciones por ingeniería genética.

b) las variedades que no se distinguen claramente de la variedad protegida de conformidad con lo dispuesto en el artículo ~~14~~ 9;

c) las variedades cuya producción necesite el empleo repetido de la variedad protegida.”

8. El texto del artículo 27.b) y c) de la Ley contiene las siguientes disposiciones relativas a la excepción facultativa conforme al artículo 15.2) del Acta de 1991, que difieren de las disposiciones correspondientes del proyecto de Ley de 2017:

“Artículo 27 [...]

b) En relación con las variedades incluidas en una lista de plantas agrícolas de conformidad con lo que dicte el Ministerio, No se considerará infracción al derecho de obtentor la utilización por pequeños agricultores, con fines de reproducción o multiplicación, en su propia explotación y únicamente para su consumo en el ámbito doméstico, del producto de la cosecha que hayan obtenido por el cultivo, en su propia explotación, de la variedad protegida o de una variedad cubierta por el artículo 27.a) y b) de la presente Ley, siempre y cuando dicha utilización se efectúe dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor. ~~26.a) o b) de la presente Ley.~~

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

d) En el Reglamento se especificarán los límites razonables y los medios de salvaguardar los intereses legítimos del obtentor a los que se hace mención en el párrafo b) del presente artículo.”

9. En la carta fechada el 28 de septiembre de 2019, dirigida al secretario general de la UPOV (véase el Anexo II), el Sr. Win indica que “[e]n relación con el artículo 27.b) de la Ley, en el Reglamento se especificará la aplicación de los términos “únicamente para su consumo en el ámbito doméstico” “dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor”, tal como se estipula en el artículo 15.2) del Acta de 1991 del Convenio de la UPOV.”

## CONCLUSIÓN

10. Con arreglo a lo que antecede y a juicio de la Oficina de la Unión, las modificaciones introducidas en la Ley durante el trámite parlamentario no afectan a las disposiciones fundamentales del Acta de 1991 del Convenio de la UPOV.

11. *Se invita al Consejo a:*

a) *tomar nota de que la Ley de Protección de las Obtenciones Vegetales de Myanmar, que fue aprobada por el Parlamento el 17 de septiembre de 2019 y publicada en el Boletín Oficial el 24 de septiembre de 2019, contiene modificaciones respecto del texto del proyecto de Ley presentado al Consejo en 2017 (véanse el párrafo 17 del documento C/51/22 “Informe” y el párrafo 2 anterior);*

b) *acordar que las modificaciones que se exponen en el presente documento y en su Anexo II no afectan a las disposiciones fundamentales del Acta de 1991 del Convenio de la UPOV y, en virtud de dicho acuerdo,*

c) *reafirmar la decisión sobre la conformidad de 26 de octubre de 2017 y comunicar al Gobierno de Myanmar que puede depositarse el instrumento de adhesión de dicho país.*

[Siguen los Anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 28 de septiembre de 2019]

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

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

Ref.: PVP/2019/3120

Estimado Secretario General:

Mediante una carta fechada el 18 de septiembre de 2017, solicité que el Consejo de la UPOV examinara el proyecto de Ley sobre la Protección de las Obtenciones Vegetales (el “proyecto de Ley”) a fin de determinar su conformidad con el Acta de 1991 del Convenio de la UPOV.

El 26 de octubre de 2017, el Consejo de la UPOV decidió adoptar una decisión positiva respecto de la conformidad del proyecto de Ley con las disposiciones del Acta de 1991, de modo que, una vez que el proyecto de Ley hubiera sido aprobado sin modificación alguna y la Ley hubiera entrado en vigor, Myanmar podría depositar su instrumento de adhesión al Acta de 1991.

Tengo el agrado de comunicarle que, el 17 de septiembre de 2019, el Parlamento de Myanmar aprobó la “Ley de Protección de las Obtenciones Vegetales” y que, tras su promulgación por el presidente, dicha Ley fue publicada en el Boletín Oficial, en el idioma de Myanmar, el 24 de septiembre de 2019. Un grupo de trabajo técnico de nuestro departamento ha traducido la Ley, de forma preliminar, del idioma de Myanmar al inglés. Durante el trámite parlamentario se introdujeron algunas modificaciones en el proyecto de Ley de 2017. La Oficina de la Fiscalía General de la Unión de Myanmar traducirá la Ley al inglés y se publicará con carácter oficial.

En relación con el artículo 27.b) de la Ley, en el Reglamento se especificará la aplicación de los términos “únicamente para su consumo en el ámbito doméstico” “dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor”, tal como se estipula en el artículo 15.2) del Acta de 1991 del Convenio de la UPOV.

Con objeto de completar el procedimiento de adhesión, quisiera solicitar a la Oficina de la Unión que elabore un documento con las modificaciones del texto del proyecto de Ley que fue examinado por el Consejo de la UPOV en 2017, a fin de invitar a dicho Consejo a que reafirme su decisión de conformidad de 2017.

Para facilitar su consulta, se adjunta una traducción al inglés de la Ley de 2019 de Protección de las Obtenciones Vegetales de Myanmar (preliminar).

Muy atentamente,

(Firmada)

[Sigue el Anexo II]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

MODIFICACIONES INTRODUCIDAS EN LA LEY DE 2019 SOBRE LA PROTECCIÓN DE LAS OBTENCIONES  
VEGETALES DE MYANMAR RESPECTO DEL TEXTO PRESENTADO AL CONSEJO EN 2017

Las modificaciones respecto de la traducción al inglés del proyecto de Ley presentado al Consejo en 2017, introducidas en el texto de la Ley a raíz del trámite parlamentario, se exponen con marcas de revisión en el presente Anexo.

Se indica mediante **tachado** el texto suprimido del proyecto de Ley presentado al Consejo en 2017.

Se indica mediante **subrayado** el texto insertado en el proyecto de Ley presentado al Consejo en 2017.

**The New Plant Variety Protection ~~Draft~~ Law**

( The Pyidaungsu Hluttaw Law No. ~~—, 2017~~29, 2019)

The ~~—, 1379~~11<sup>th</sup> Waning day of Tawtalin, 1381 M.E.

~~(—, —, 2017)~~

(24, September 2019)

The Pyidaungsu Hluttaw hereby enacts this Law.

**CHAPTER (I)**

**TITLE AND DEFINITION**

1. ~~(a)~~ This Law shall be called the **New Plant Variety Protection Law**.  
~~(b) — This Law shall come into force on such date as the President may, by notification, appoint.~~
2. The following expressions contained in this Law shall have the meanings given hereunder:
  - ~~(a)~~ (a) “Plant” means any plant in the plant kingdom ~~other than,~~ including micro-organisms;
  - ~~(b)~~ “(b) “Plant Variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping complies with the following specific characters and features, irrespective of whether the conditions ~~for the grant of a breeder’s right~~ of the protection of new plant variety in accordance with this law are fully met, can be
    - ~~(i)~~ (i) defined by the expression of the related characteristics resulting from a given genotype or combination of genotypes,
    - ~~(ii)~~ (ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics and
    - ~~(iii)~~ (iii) considered as a unit with regard to its suitability for being propagated unchanged;
  - (c) “New Plant Variety” means a plant variety which expresses at least one clearly distinct character from the existing plant varieties, reveals uniformity in characters when it is cultivated and there is no change in characters through propagation; has been granted a plant breeder’s right, it must be new in accordance with Section 8 and must be denominated according to Sections 12 and 13 of this Law;

~~(c)~~ (d) **“Plant Breeder”** means

~~(i)~~ the person who bred or discovered and developed a ~~variety~~;

~~(ii)~~ new plant variety or a plant variety. In this definition, it also included 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 aforementioned persons, as the case may be;

~~(iii) the successor in title of the first or second aforementioned person, as the case may be;~~

~~(e)~~ (e) **“Plant Breeder’s Right”** means a right to be authorized and enjoyed for a protected new plant variety by a plant breeder if the acts in Sections 23, 24, 25, and 26, 27 of this Law are carried out by any other person;

~~(f)~~ (f) **“Propagating material”** means the entire plants or parts of plants of plant variety used for propagation;

~~(g)~~ (g) **“Harvested material”** means entire plants or parts of plants obtained through the use of propagating ~~material~~ materials of plant variety;

~~(h)~~ (h) **“Recognition Certificate”** means a certificate issued under this Law to a plant breeder for ~~the~~ protection of a new plant variety;

~~(i)~~ (i) **“Ministry”** means the Ministry of Agriculture, Livestock and Irrigation of the Union Government;

~~(j)~~ (j) **“Central Committee”** means the Central Committee for National New Plant Variety Protection formed under this Law;

~~(k)~~ (k) **“Department”** means the Department of Agricultural Research ~~under~~ the Ministry of Agriculture, Livestock and Irrigation.

## CHAPTER (II)

### OBJECTIVES

3. The objectives of this Law are as follows:

~~(a)~~ (a) to protect the rights of plant breeders;

~~(b)~~ (b) to develop the plant breeding activity;

~~(c)~~ (c) to ~~improve~~ promote local and foreign investment in the plant breeding activity;

~~(d)~~ (d) to ~~assist~~ support the development of the ~~agricultural sector by breeding~~ national economy through the utilization for production of new plant varieties.

### CHAPTER (III)

#### FORMATION OF THE CENTRAL COMMITTEE

4. The Ministry:

(a) shall, with the approval of the Union Government, form the Central Committee for National New Plant Variety Protection comprising the Deputy Minister for the Ministry as the Chairperson, the Director General of the Department as the Secretary, ~~representatives, experts~~ and other suitable persons, expert representatives from the relevant departments and organizations under the Ministries which are applicable to this Law as members.

~~5. The Ministry~~

(b) may determine and assign duty to the Vice-Chairperson and Joint-Secretary, if necessary, in ~~forming the Central Committee~~ accordance with ~~the approval of the Union Government~~ subsection (a).

~~6. The Ministry~~

(c) may reform the Central Committee, in accordance with subsection (a), with the approval of the Union Government from time to time.

### CHAPTER (IV)

#### DUTIES AND POWERS OF THE CENTRAL COMMITTEE

~~7~~5. The Central Committee shall:

~~(a)~~(a) lay down policies with the approval of the Union Government to create an enabling environment to ~~ensure independence in decision-making on plant breeders' rights in order to~~ encourage plant breeding and to support plant breeders' rights for the development of the agricultural sector;

~~(b)~~(b) cooperate and coordinate with the relevant Government departments, international organizations, local and foreign organizations and private entrepreneurs to develop the plant breeding ~~activity;~~ activities, research and technology activities.

~~(e)~~ ~~establish~~(c) organize the Technical Committee and sub-Committee for a New Plant Variety Testing and reform them from time to time, and assign the function and duty.

~~8.~~~~6.~~ When a plant breeder applies for a breeder's right of a new plant variety protection, the Central Committee shall ~~grant protection and~~ issue a recognition certificate in accordance with the evaluation on recommendations of ~~such new plant variety protection if the~~ the Technical Committee for a New Plant Variety Testing whether the applied variety complies with the conditions of protection ~~or not.~~

## CHAPTER (V)

### STIPULATIONS TO RECOGNIZE AS A NEW PLANT VARIETY

~~9. The~~

7. An applied variety in order to grant plant breeder's right for new plant variety protection shall ~~be granted where~~ comply with the variety is

~~(i) new,~~

~~(ii) distinct,~~

~~(iii) uniform and~~

~~(iv) stable~~

~~The grant of the breeder's right shall not be subject to any further or different~~ following conditions, provided that:

(a) novelty

(b) distinctness

(c) uniformity

(d) stability and

(e) the variety is designated by a denomination in accordance with the provisions of Section 14 that the applicant complies with the formalities provided for in this Law Section 12 and that he pays the required fees, Section 13.

48. The applied variety shall be deemed to be as a new plant variety.

~~(a)~~ (a) if at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of commercial exploitation of the variety earlier than one year within Myanmar before the date of filing the application, in other foreign countries earlier than four years or earlier than six years in case of trees and vines before the said date;

~~(b) where according to section 17, this Law applies to a plant genus~~

(b) if propagating or ~~species to~~ harvested materials of the applied variety, which it did ~~was~~ not previously possible to apply, in the past, such varieties belonging to such plant genus or species shall may be considered to satisfy the condition of novelty defined in paragraph (a) of this section deemed to be new even where if the sale or disposal for the purposes of commercial exploitation of ~~to others described in that paragraph~~ propagating or harvested materials of such variety took place in Myanmar within four years before the filing date or, in the case of trees or of vines, within six years before the said date;

~~(c)~~ (c) the provision under ~~paragraph~~ subsection (b) of this ~~section~~ Section, shall ~~only~~ apply to the applications for a breeder's right filed within one year, ~~at the latest, only~~ after the provisions enactment of the this Law ~~apply to the genera or species concerned.~~

~~44~~9. The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

\_\_\_ In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

~~42~~10. 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.

~~43~~11. 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.

~~44~~12. (a) A new plant variety shall be named ~~in accordance with the following provisions:~~

- (a) (i) The variety shall be designated by a denomination which will be is generic designation.
- (b) (ii) It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. ~~In particular, it~~ It must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.
- (c) (iii) It may not consist solely of figures except where there is ~~an~~ usually established practice for designating varieties.
- (d) (iv) Subject to subsection (fvi), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.
- (e) (v) A variety must be submitted to all members of UPOV under the same denomination. ~~The Central Committee shall register the denomination so submitted, unless it considers the denomination unsuitable.~~
- (f) (vi) 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~~ for a person who, in accordance with the provision of Section 13 subsection (ja-iii), is obliged to use it, the Central Committee shall require the breeder to submit another denomination for the variety.

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

13. (a) In relation to denominations the following applies:

- ~~(h)~~ (i) Where a denomination of a new plant variety is rejected by the Central Committee -in accordance with the provisions in ~~subsections (a) to (f), the Central Committee may require~~ Section 12 subsection (a), the applicant ~~to~~may furnish a new denomination within the prescribed period.
- ~~(i)~~ (ii) The denomination shall be registered by the Central Committee at the same time as the breeder's right is granted.
- ~~(j)~~ (iii) Any person who offers for sale or markets propagating material of a variety protected within Myanmar is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of Section 12, subsection ~~(a-vi)~~, prior rights prevent such use.
- ~~(k)~~ (b) The Central Committee ensures that the authorities of the members of UPOV are informed of matters concerning the variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Central Committee.

## **CHAPTER (VI)**

### **APPLICATION OF THE RIGHT OF A NEW PLANT VARIETY PROTECTION\_\_**

~~45~~

14. The following persons can apply for the grant of the breeder's right ~~for a new plant variety:~~
- (a) any national
  - (b) any foreigner and their organizations, including natural persons and legal entities, who have their permanent residence in ~~the Republic of the Union of~~ Myanmar, and
  - ~~(a)~~ (c) any national from, as well as natural person or legal entity resident in, foreign countries and intergovernmental organizations, which have entered with Myanmar into agreements on new plant variety protection.

~~16. — Without prejudice to the rights specified in this law, the~~

15. The persons under the subsection (b) and (c) of Section 14, shall enjoy the same treatment concerning plant breeders' rights as the nationals of the Republic of the Union of Myanmar insofar as the grant and protection of breeders' rights are concerned, provided that if they comply with the conditions and formalities imposed on the nationals of the Republic of the Union of Myanmar.

~~17. — The plant genera or species to which the existing Law applies shall be prescribed by the Ministry, laws, rules and regulations and disciplines.~~

16. The Law will plant breeder can apply to for a plant breeder's right for all plant genera and species at the latest by the expiration of a period of 10 years from the date of coming into force of in accordance with this Law.

~~18~~

17. An applicant for the breeder's right of a new plant variety shall apply to the Central Committee in accordance with the provisions in the rules and the filing date of the application for a breeder's right shall be the date of the receipt of the application duly filed as prescribed by this Law and its rules.

~~19. —~~

18(a) Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Sections 8 to 12. In the course of the examination, the Central Committee may –

(a) assign the duty to grow the variety or carry out other necessary tests in the designated locations to the Technical Committee for a New Plant Variety Testing comprising the experts from the relevant Government departments with the approval of the Ministry or, an independent institute, or relevant experts;

~~(b) cause~~ (b) According to subsection (a), the growing of the variety or the carrying out of the necessary tests by an Technical Committee for a New Plant Variety Testing, or independent institute, or relevant experts;

(c) may take into account the results of the growing tests or other necessary testing or other trials which have already been carried out or checking the test trial documents.

~~20. For~~

(c) The Technical Committee shall send the results of the purposes of examination, test report to the Central Committee and send a copy of the report to the plant breeder.

19. The Central Committee may ~~require~~ask to the breeder to furnish all the necessary information, documents or material for the purpose of examination as specified in the ~~rules/decisions,~~ by-laws of the Ministry.

~~24~~20. An applicant for a breeder's right of a new plant variety ~~shall enjoy the right of priority as follows:~~

- (a) shall enjoy the right of priority for a period of twelve months from the day after the date of filing of the first application if he/she applies a subsequent application for the same new plant variety ~~in Myanmar~~ after applying the right of protection in a foreign country or intergovernmental organization which has entered with Myanmar into agreements on plant variety protection. ~~The day of filing shall not be included in the latter period.~~
- (b) ~~the applicant is required to furnish~~ shall submit, within a period of three months from the filing date of the application, a copy of documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.
- (c) ~~the breeder~~ shall ~~be allowed~~ allow a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the Central Committee, any necessary information, ~~document~~ documents or ~~material~~ materials required for the purpose of the examination ~~under Sections 19 and 20.~~

~~(d)~~

21. Events occurring within the priority period provided for in ~~Sub-section~~ Section 20, subsection (a), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

~~22. Provisional protection is provided to the breeder as follows:~~

~~(a) it is provided to safeguard the interests of the breeder during~~

(a) During the period between the publication of the application by Central Committee and the grant of that right, the breeder shall enjoy provisional protection to safeguard the interests of the breeder.

~~(b) the~~ (b) The applicant is considered to be the holder of a breeder's right in relation to any person who, during the provisional period ~~provided in Sub-section (a)~~ has carried out acts which, once the right is granted, require the breeder's authorization as provided in Sections ~~23 to 27~~, 24, 25 and 26. The applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the publication date the breeder's right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.

## **CHAPTER VII**

### **CHAPTER (VII)**

#### **PLANT BREEDER'S RIGHT**

~~23. (a)~~ (a) Subject to the provisions of Sections ~~28~~27 and ~~29~~28, the following acts in respect of the propagating material of the protected variety shall ~~require~~not be done by any other person without out the authorization of the breeder:

~~(a) (i)~~ (i) production or reproduction ~~(multiplication)~~;

~~(a) (ii)~~ (ii) conditioning for the purpose of propagation;

~~(a) (iii)~~ (iii) offering for sale;

~~(a) (iv)~~ (iv) selling or other marketing;

~~(a) (v)~~ (v) exporting;

~~(a) (vi)~~ (vi) importing;

~~(a) (vii)~~ (vii) stocking for any of the purposes mentioned in ~~(a) (i)~~ to ~~(a) (vi)~~, above;

~~24. (b)~~ (b) The breeder may make his authorization under ~~Section 23~~ subsection (a) to others subject to ~~conditions and limitations~~ agreement between them.

~~25~~24. Subject to the provisions of Sections 27 and 28 ~~and 29~~, the acts referred to in Section 23 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

~~26~~25. Subject to provisions of Sections 27 and 28 ~~and 29~~, the acts referred to in Section 23 in respect of products made directly from harvested material of the protected variety falling within the provisions of Section ~~25~~24 through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

~~27~~26. The provisions in Sections 23, 24, and 25 ~~, 26~~ shall also apply in relation to the following varieties.

~~(a)~~ (a) Varieties, which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety, which may be obtained by the selection of a natural or induce mutants, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformed by genetic engineering. A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when-

~~A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when~~

~~(i)~~ (i) it is predominantly derived from ~~the~~ another variety (“initial variety”) or from the variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

~~(ii)~~ (ii) it is clearly distinguishable from the initial variety and

~~(iii)~~ (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

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

~~(b)~~ (b) varieties which are not clearly distinguishable in accordance with Section ~~44~~9 from the protected variety;

~~(c)~~ (c) varieties whose production requires the repeated use of the protected variety.

- ~~28.~~(27).(a) The breeder's right shall not extend to the following:
- ~~(i)~~ (i) acts done privately and for non-commercial purposes;
  - ~~(ii)~~ (ii) acts done for experimental purposes and
  - ~~(iii)~~ (iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Section ~~27~~26 apply, acts referred to in Sections ~~23 to 26~~, 24 and 25 in respect of such other varieties.
- (b) Farmers shall not be considered that they infringe the breeder's right, ~~in relation to varieties included in a list of agricultural plants in the manner prescribed by the Ministry, if they use for propagating purposes, on their own holdings, only for their home consumption, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Section 26 (a) or (b) of this Law, 27 (a) and (b) of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.~~
- (c) Varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception under subsection (b) of this Section.
- ~~(d) The reasonable limits and the measures for safeguarding of the legitimate interests of the breeder referred to in subsection (b) of this Section shall be prescribed in the Regulations.~~
- ~~29.~~(28).(a) The breeder's right shall not extend to acts concerning any ~~material~~materials of the protected variety, or of a variety covered by the provisions of Section ~~27~~26 which has been sold or otherwise marketed by the breeder or with his consent in the territory of Myanmar or any material derived from the said material, unless such acts
- ~~(a-1)~~ (i) involve further propagation of the variety ~~in question of,~~
  - ~~(a-2)~~ (ii) involve an export of material of the variety, which enables the propagation of the variety, into a foreign country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- ~~(b)~~ (b) For the purposes of subsection (a), "material" means, in relation to a variety,
- ~~(b-1)~~ (i) propagating ~~material of any kind~~materials,
  - ~~(b-2)~~ (ii) harvested ~~material, including entire plants~~materials and ~~parts of plants, and~~
  - ~~(b-3)~~ (iii) any product made directly from the harvested material.

29. ~~Any~~~~30.~~ ~~(a) No person~~

(a) shall not carry out the acts provided for in Sections ~~23 to 27~~, 24, 25 and 26 without the authorization of the plant breeder to a protected new plant variety.

~~(b) Except~~ (b) shall not restrict for reasons other than public interest except where expressly provided in this Law, the free exercise of a breeder's right ~~shall not be restricted for reasons other than of public interest.~~

~~(c) 30.~~ When any such restriction, in accordance with Section 29(b), has the effect of the Central Committee, authorizing a ~~third~~ party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

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

32. The protection period of a plant breeder's right is 25 years for trees and vines and 20 years for other new plant varieties commencing ~~from~~ from the date of the grant of the breeder's right.

## CHAPTER (VIII)

### APPEAL

~~33. (a) A person dissatisfied with an order or decision passed by the Technical Committee under this Law may file an appeal to the Central Committee in accordance with the stipulations within 60 days from the date of the receipt of such order or decision.~~

~~(b) The Central Committee may approve, cancel or amend the order of decision passed by the Technical Committee relating to the appeal under subsection (a).~~

~~34. A person dissatisfied with an order or decision passed by the Central Committee may file an appeal to the court in accordance with the stipulations within 90 days from the date of the receipt of such order or decision.~~

### CHAPTER IX

## NULLITY AND CANCELLATION OF A PLANT BREEDER'S RIGHT

~~33.~~ 33. A plant breeder's right shall be declared null and void when it is established

(a) that the conditions laid down in Sections ~~10 and 11~~ 8 or 9 were not complied with at the time of granting the breeder's right of a new plant variety;

~~(b)~~ (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Sections ~~12 and 13~~ 10 or 11 were not complied with at the time of granting the breeder's right of a new plant variety;

~~(c)~~ (c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled. -

~~36~~34. A plant breeder's right shall not be declared null and void for other reasons than those referred to in Section ~~35~~33.

~~37~~35. The Central Committee shall cancel the breeder's right for the following reasons:

(a) if it is established that the conditions laid down in Sections ~~42 and 43~~10 or 11 are no longer fulfilled.

~~(b)~~ (b) if, after being requested to do so and within the prescribed period,  
~~(b)~~ the breeder does not provide the Central Committee with the information, documents or material deemed necessary for verifying the maintenance of the variety;

~~(b)~~ ~~(c)~~ (c) if, after being requested to do so and within the prescribed period, the breeder fails to pay such fees as may be payable to maintain his right in force; ~~or~~

~~(b)~~ ~~(d)~~ (d) if, after being requested to do so and within the prescribed period, the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

~~38~~36. A plant breeder's right shall not be cancelled for other reasons than those referred to in Section ~~37~~35.

## CHAPTER (IX)

### APPEALS

37.(a) A person dissatisfied with evaluation report passed by the Technical Committee for a New Plant Variety Testing under this Law may file an appeal to the Central Committee in accordance with the stipulations within 60 days.

(b) The Central Committee may approve, cancel or amend the evaluation report passed by the Technical Committee for a New Plant Variety Testing relating to the appeal under subsection (a). The decision of Central Committee is final.

(c) A person dissatisfied with an order of decision passed by the Central Committee may file an appeal to the court in accordance with the stipulations within 90 days from the date of the receipt of such order of decision.

## CHAPTER (X)

### OFFENCES AND PENALTIES

~~Supervision over the implementation of this Law and its rules shall be performed by the Central Committee based on the findings of the Technical Committee.~~

~~40. (a) The holder of a breeder's right may request to the Central Committee to take the following actions with regard to a person who infringes or is likely to infringe his/her breeder's right~~  
~~— (a-i) to discontinue or refrain from such infringement or preserve evidence,~~  
~~— (a-ii) to destruct the propagating material, the harvested material or the processed products~~  
~~— which is a component of the act of infringement.~~

~~— (b) The legal remedies in the applicable laws for the enforcement of other intellectual property rights shall be available for the enforcement of breeders' rights.~~

44. 38. Whoever violates any provision in Sections 23 to 27, 24, 25 and 26 without authorization of the plant breeder to a new plant variety shall, on conviction, be punished with imprisonment for a term ~~from of~~ a minimum of six months to a maximum of three years or with a fine from a minimum of one million kyats to a maximum of five million kyats or with both.

## CHAPTER (XI)

### MISCELLANEOUS

~~42. The public~~

39. Applicants shall comply with the requirements specified in this Law and pay the designated fees; a plant breeder's right shall not be restricted by any other conditions.

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

41. Supervision over the implementation of this Law and its rules shall be performed by the Central Committee based on the findings of the Technical Committee.

~~43. If an exhibit involved in any offence prosecuted under this Law is not easily producible before the Court, such exhibit needs not be produced before the Court but a report or other relevant documentary evidence as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the Court and the relevant Court may dispose of the same in accordance with the applicable law.~~

44

- 42.(a) The holder of a breeder's right may request to the Central Committee to take the following actions with regard to a person who infringes his/her breeder's right  
(i) to discontinue or refrain from such infringement or preserve evidence.  
(ii) to destruct the propagating material, the harvested material or the processed products which are components of the breeder's right of infringement.
- (b) The Central Committee may apply the provisions of intellectual property rights Laws in connection with plant breeders' rights.

43. The members of the Central Committee and of the Technical Committee for a Plant Variety Testing who are not government employees are entitled to enjoy emolument determined by the Ministry.

~~45. The applicant shall pay the prescribed fees concerning the filing and examination of applications.~~

~~44.~~ 44. The Central Committee shall, with the approval of the Ministry, determine the fees to be paid by the applicant to get the right of protection to a new plant variety. ~~The complete schedule of fees will be provided in the rules.~~

45. The applicant, to get the right of protection to a new plant variety, shall pay the prescribed fees concerning the filing and examination of applications to the Central Committee.

46. ~~47.~~ In implementing the provisions ~~in~~of this Law:

- (a) ~~the~~ the Ministry may issue ~~rules~~by-laws, regulations and ~~by-laws~~rules with approval of the Union Government,
- (b) the Ministry and the Central Committee may issue notifications, orders, directives and procedures.

47. The Plant Variety Protection Law, which enacted at (2016 year by The Pyidaungsu Hluttaw Law No. 15), shall be declared void by this Law.

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

\_\_\_\_\_ Sd/ ~~Htin~~Win Myint

- \_\_\_\_\_ President

- \_\_\_\_\_ The Republic of the Union of Myanmar