

In the Name of Allah, the Most Merciful and Compassionate
Draft Law on Protection of New Varieties of Plants (Afghanistan)

Chapter One
General Provisions

Article 1. Basis

This Law is enacted under Articles --- of the Constitution of the Islamic Republic of Afghanistan.

Article 2. Objective

The objectives of this law are as follows:

1. Regulation of the acquisition and maintenance of rights in new varieties of plants.
2. Establishment of institutions and regulation and procedures necessary to the implementation of rights in new varieties of plants.
3. Regulation of the rights and duties related to new varieties of plants.
4. Supporting the agricultural and research and development sectors of the local economy.

Article 3. Terms

Terms in this Law shall have the following meanings:

The term “Register” shall mean the Register of New Varieties of Plants.

The term “Registrar” shall mean the Registrar of New Varieties of Plants.

The term “Minister” shall mean the Minister of Agriculture, Irrigation and Livestock.

The term “Ministry” shall mean the Ministry of Agriculture, Irrigation and Livestock.

The term “Variety” shall mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be:

1. defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
2. distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

3. considered as a unit with regard to its suitability for being propagated unchanged.

The term “Breeder” shall mean the person who bred, or discovered and developed, a new plant variety.

The term “Breeder’s Right” shall mean the right of the breeder provided for in this Law.

Chapter Two Protection

Article 4. The Register of New Varieties of Plants

1. A Register shall be established at the Ministry, under the supervision of the Registrar, and shall be called the Register of New Varieties of Plants. In the Register shall be maintained records of information related to protected plant varieties as set forth in the Regulations promulgated pursuant to this Law.
2. The public shall have the right to view the Register and associated documents at no charge and under such conditions shall be stipulated in the Regulations.
3. The Registrar shall, on application and payment of the prescribed fee, provide any person with a copy, or a certified copy, of any particulars on the Register.
4. Data and documents retrieved from the Register and certified by the Registrar shall be initially presumed valid unless proven otherwise.

Article 5. Protectable Subject Matter

A plant variety may be registered, and breeder’s rights granted, if the following conditions are met:

1. If the variety is new, in the sense that, at the date of filing the application for a breeder’s right, or the priority date under Article 9 of this Law, as the case may be, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:
 - 1) in the territory of Afghanistan earlier than one year before the date of filing of the application; and
 - 2) in a territory other than that of Afghanistan earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.
2. If it is distinct, in the sense that it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of filing of the application. In particular, the filing of an application for the granting of a breeder’s right or for the entry 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 entry of the said other variety in the official Register of varieties.

3. If it is uniform, in the sense that it is sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation.

4. If it is stable, in the sense that its relevant characteristics remain unchanged after repeated propagation, or, in case of a particular cycle of propagation, at the end of each cycle.

Article 6. Owner of Rights

1. The right to register a variety shall belong to the breeder or his legal successor.

2. If a variety is the result of the joint efforts of more than one breeder, the right to register the variety shall belong to those persons participating in its breeding, unless agreed otherwise.

3. If a variety is developed independently by more than one person, the right to register the variety shall belong to the first breeder to file an application for registration.

4. If a variety is developed pursuant to an employment contract which requires the employee to carry out such development, the right to register the variety shall belong to the employer, unless otherwise stipulated by written contract.

Chapter Three Applications for Registration

Article 7. Application for Registration of a Variety

1. An application for registration of a variety shall be filed with the Registrar, on the form designated for this purpose, stating the botanical taxon of the variety, the suggested denomination, and any other data specified in the Regulations.

2. The application shall concern only one variety.

3. If the application is filed by an applicant who is not a citizen or resident of Afghanistan, the applicant shall be obliged to appoint a legal representative in Afghanistan.

Article 8. Filing Date; Inspection; Incomplete Application

1. The date on which the Registrar receives the application shall be considered the date of filing, provided that the Registrar, upon inspecting the application, deems it to fulfill all formal

requirements of this Law, and to include all required data as well as a sample of the subject variety.

2. Where the Registrar finds that the application has not fulfilled the formal requirements stated in paragraph (1) of this Article, he shall invite the applicant to fulfill such requirements, or to make the necessary amendments within thirty days of notification, and shall deem the date of fulfilling such requirements to be the date of filing of the application. If the applicant does not fulfill such requirements in the prescribed period, the Registrar shall issue a decision deeming the applicant to have abandoned the application.

Article 9. Priority Based on Foreign Filing

1. An applicant who has duly filed an application for the protection of a variety in a country with which Afghanistan has concluded an applicable treaty shall, for the purpose of filing an application for registration of the same variety in Afghanistan, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of the filing of the foreign application.

2. In order to exercise this right of priority, the applicant must claim the priority based on the foreign application in the application filed in Afghanistan. The applicant shall also, within three months from the filing date of the application in Afghanistan, submit to the Registrar a certified copy of the documents which constitute the foreign application, along with samples or other evidence that both applications concern the same variety.

3. The applicant shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to provide the Registrar with any necessary information, document or material required for the purpose of examination under Article 10 of this Law.

Article 10. Examination of the Application

1. Promptly upon verification of compliance with the formal requirements of this Law, the Registrar shall refer the application to the Ministry, which shall conduct, or cause to be conducted, a technical examination of the variety in order to verify compliance with the conditions under Article 5 of this Law. In the course of the examination, the competent testing entity may grow the variety or carry out other necessary tests; cause the growing of the variety or the carrying out of other necessary tests; or take into account the results of growing tests or other trials which have already been carried out by a competent testing entity either inside or outside Afghanistan.

2. The Ministry may require the applicant to provide, within the period determined in the Regulations, information, documents, and materials necessary to carry out the technical examination provided for in paragraph (1) of this Article,. If such information, documents or

materials are not furnished within the period set by the Regulations, the Registrar may issue a decision deeming the applicant to have abandoned the application.

3. Costs of tests carried out in the course of examination of the application shall be borne by the applicant.

Article 11. Preliminary Acceptance; Publication; Opposition; Registration

1. If the application is deemed by the Ministry to fulfill the Law's registration requirements, the Minister shall direct the Registrar to announce its acceptance, and shall grant the application a preliminary approval, which shall be published in the Official Gazette after payment of the prescribed fees. The announcement shall include the plant variety and its denomination.

2. Third parties may oppose an acceptance under this Article within 120 days from the date of its publication.

3. If no opposition is submitted against the acceptance of the application for registration, or if the oppositions are duly rejected, the Registrar shall issue a decision of registration, and shall issue a certificate thereof upon collection of the prescribed fees from the applicant.

Article 12. Provisional Protection

The applicant shall be entitled to provisional protection between the period of the publication of the application in the Official Gazette and the date of the registration of the variety. The applicant may use the variety within such period, and may take measures against any infringement thereof.

Chapter Four Rights & Exceptions; Variety Denominations

Article 13. Breeder's Rights

Subject to the provisions of Articles 14 and 15 of this Law:

1. 1) After registration of a protected variety, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:
 - (i) production or reproduction;
 - (ii) conditioning for the purpose of propagation;
 - (iii) offering for sale;
 - (iv) selling or other marketing activities;
 - (v) exporting;
 - (vi) importing; and
 - (vii) stocking for any of the purposes mentioned in this paragraph.

- 2) The breeder may make his authorization subject to conditions and limitations.
2. Subject to Articles 14 and 15, the acts referred to in paragraph (1)(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 a 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.
3. The provisions of paragraphs (1) and (2) of this Article shall also apply on the following varieties:
 - 1) Varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety. A variety shall be deemed to be essentially derived from another variety if the following conditions are met:
 - (i) 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;
 - (ii) it is clearly distinguishable from the initial variety; and
 - (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
 - 2) Varieties which are not clearly distinguishable from the protected variety in accordance with the requirements of distinctness under Article 5(2) of this Law.
 - 3) Varieties whose production requires the repeated use of the protected variety.
4. 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 14. Exceptions to Breeder's Rights

Notwithstanding Article 13 of this Law, the breeder's right shall not extend to the following:

1. acts done privately and for non-commercial purposes;
2. acts done for experimental purposes;
3. acts done for the purpose of breeding other varieties, and, except where the provisions of Article 13(3) and (4) apply, acts referred to in Article 13(1) and (2) in respect of such other varieties; or
4. use by farmers, for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting on their own holdings any protected variety or a variety covered by Article 13(3)(1) and (2) of this Law. However, this exception shall be subject to reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, considering such factors as shall be set out in the Regulations.

Article 15. Exhaustion of the Breeder's Right

1. The breeder's right does not extend to acts related to any material of the protected variety, or of any variety stated in Article 13(3) of this Law, which the breeder has sold or marketed in Afghanistan, either directly or with his consent, or any material derived from such material, unless such acts involve the following:

- 1) further propagation of the variety in question; or
- 2) exportation of the material of the variety which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption purposes.

2. For purposes of paragraph (1) of this Article, "material" means propagating material of any kind; harvested material, including entire plants or parts of plants; or any product made directly from harvested material.

Article 16. Compulsory Licensing

1. The Minister may, without the consent of the breeder, grant a third party a license to exploit the variety for reasons of public interest. In such case, the breeder shall receive equitable remuneration, taking into account the economic value of the license.

2. The Minister may, either by his own initiative or upon the breeder's request, cancel the compulsory license referred to in paragraph (1) of this Article if the licensee violates any of the conditions thereof, or if the reasons for granting it are no longer applicable. Such cancellation shall not affect the related rights of others having interest in the license.

3. The procedures and conditions for compulsory licensing shall be set forth in the Regulations.

Article 17. Term of Protection

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

Article 18. Variety Denomination

1. Each variety shall be designated by a denomination, which shall be its generic designation. Subject to paragraph 4 of this Article, no rights in the designation registered as the denomination of the variety shall impede the free use of that denomination in connection with the variety, even after the expiration of the breeder's right.

2. The denomination must enable the variety to be identified. 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. It must be different from every denomination which designates, in the territory of Afghanistan and any country with which it has concluded an applicable treaty, an existing variety of the same or a closely-related plant species.
3. The denomination of the variety shall be submitted by the breeder to the Registrar. If it is found that the denomination does not satisfy the requirements of paragraph (2) of this Article, the Registrar shall refuse to register it and shall require the breeder to propose another denomination within the period prescribed under the Regulations. The denomination shall be registered by the Registrar at the same time as the breeder's right is granted.
4. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7) of this Article, is obliged to use it, the Registrar shall require the breeder to submit another denomination for the variety.
5. A variety must be submitted to the appropriate authorities in all countries referenced in paragraph (2) of this Article under the same denomination. The Registrar shall register the denomination so submitted, unless it considers the denomination unsuitable. In that case, it shall require the breeder to submit another denomination.
6. The Registrar shall ensure that the appropriate authorities in all countries referenced in paragraph (2) of this Article are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.
7. Any person who offers for sale or markets propagating material of a variety protected within the territory of Afghanistan 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 paragraph (4) of this Article, prior rights prevent such use.
8. When a variety is offered for sale or marketed, a trademark, trade name or other similar indication may be associated with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 19. Nullification of the Breeder's Right

The breeder's right may be nullified only in the following cases:

1. If it is established that the variety was not new or distinct at the time of the grant of the breeder's right;

2. If it is established that the variety was not uniform or stable at the time of the grant of the breeder's right, where the registration was essentially based upon information and documents furnished by the breeder; or
3. If it is established that the breeder's right was granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

Article 20. Cancellation of the Breeder's Right

The breeder's right may be cancelled only in following cases:

1. If it is established that the requirements of stability and uniformity of the variety are no longer fulfilled;
2. If the breeder does not provide the Registrar with the information, documents or materials deemed necessary for verifying the maintenance of the variety;
3. If the breeder fails to pay the prescribed maintenance fees; or
4. If the breeder does not propose, where the denomination of the variety is cancelled after the registration, a suitable denomination for the protected variety.

Chapter Five Penalties

Article 21. Injunctive Remedies

1. The judicial authorities shall have the authority to order a party to cease actions in violation of any right set out in Chapter Four of this Law, including the introduction into the channels of commerce in Afghanistan of imported materials or products that involve a violation of this Law.
2. The judicial authorities shall have the authority to order that materials or products that they have found to violate this Law be, without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to avoid any harm caused to third parties.
3. The judicial authorities shall also have the authority to order that implements whose predominant use has been to create materials or products violating this Law be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering requests for relief under this paragraph, the need for proportionality between the seriousness of the violation and the remedies ordered, as well as the interests of third parties, shall be taken into account.

Article 22. Damages

1. The judicial authorities shall have the authority to order a violator of this Law to pay any injured party damages adequate to compensate for the injury sustained because of the violation.
2. The judicial authorities shall also have the authority to order the violator to compensate the injured party for his expenses, which may include appropriate attorney's fees

Article 23. Indemnification

1. The judicial authorities may order a party at whose request enforcement measures were taken, and who has abused enforcement procedures, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.
2. In such a case, the judicial authorities shall also have the authority to order the applicant to pay the defendant's expenses, which may include appropriate attorney's fees.

Chapter Six Miscellaneous Rules

Article 24. Applicability and Non-Discrimination

1. Without prejudice to the rights specified in this Law, nationals of countries with which Afghanistan has concluded an applicable treaty, as well as natural persons resident and legal entities having their registered offices within the territory of such countries shall, with regard to the grant and protection of breeders' rights, enjoy within the territory of Afghanistan the same treatment as is accorded by this Law to the nationals of Afghanistan. Such nationals, natural persons or legal entities of such countries shall comply with the conditions and formalities imposed on the nationals of Afghanistan.
2. For purposes of this Article, "nationals" shall be understood to include nationals of any countries which are members of an intergovernmental organization which is a party to any treaty referenced in paragraph (1) of this Article.

Article 25. Enactment of Regulations

The Minister shall cause to be issued and published in the Official Gazette those Regulations necessary for the implementation of the provisions of this Law, including:

1. Fees to be collected in connection with administrative actions specified under this Law, and their required distribution.
2. Procedures related to registrations, oppositions, and related matters effected in accordance with the provisions of this Law.

3. Matters concerning variety denominations.
4. Matters concerning examination of applications for the grant of breeders' rights.
5. Provisions in relation to any time periods not provided for in the Law.
6. Statements, notifications and decisions that should be published in the Official Gazette pursuant to the provisions of this Law.
7. Forms regarding submitted applications, and information and documents pertaining thereto.
8. Requirements on the maintenance of, and public access to, the Register.
9. Procedures and standards for issuing or revoking compulsory licenses.
10. Appeals.
11. Such other matters as may be required for the implementation of this Law.

Article 26. Date of Enforcement

1. This Law shall be promulgated upon signature of the President and shall be published in the Official Gazette.
2. This Law shall be applied on the date of its coming into force to all plant genera and species.