

**Dahir No. 1-96-255 of 12 ramadan 1417 (January 21, 1997)**  
**on the Enactment of Law No. 9-94**  
**on the Protection of Plant Varieties**

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PRAISE BE TO GOD ALONE!

*(Great Seal of His Majesty Hassan II)*

Let it hereby be known — may God elevate and strengthen the content!

That our Cherifian Majesty;

Having regard to the Constitution, in particular Article 26,

HAS DECIDED AS FOLLOWS:

Law No. 9–94 on the Protection of Plant Varieties, adopted by the Chamber of Representatives on 8 chaabane 1417 (December 19, 1996), is hereby enacted and shall be published in the *Official Gazette* further to this Dahir.

*Done at Rabat on 12 ramadan 1417 (January 21, 1997).*

For countersignature:

*The Prime Minister,*

*Abdellatif Filali.*

**Law No. 9-94**  
**on the Protection of Plant Varieties**

**Chapter I**  
**General provisions**

1. New plant varieties (varieties) shall be protected in accordance with the provisions of this Law and its enabling texts.
2. The following definitions shall apply under this Law:

(a) “variety” means 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:

— defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

— distinguished from any other plant grouping by the expression of at least one of the said characteristics and

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

(b) “propagating material for the production of plants”:

— propagating material such as seeds and fruit;

— plant propagating material such as plants or parts of plants, cuttings, tubers, bulbs, rhizomes.

(c) “breeder” means:

— the person who bred, or discovered and developed, a variety;

— the person who is the employer of the aforementioned person or who has commissioned that person’s work, unless the contract provides otherwise;

— the successor in title or rightful claimant of the first or second aforementioned person, as the case may be.

(d) “breeder’s right” means the right of the breeder provided for in this Law.

(e) “competent authority” means the government services defined by regulation for the application of this Law and its enabling texts.

## **Chapter II**

### **Conditions of protection**

**3.** The grant of the breeder’s right may not depend on conditions other than those laid down in Article 5 of this Law, provided that the variety is designated by a denomination in accordance with the provisions of Article 14 below; that the breeder complies with the formalities provided for in this Law and its enabling texts; and that he has paid the required fees referred to in Article 60 below.

**4.** It shall only be possible to protect varieties belonging to genera and species contained in a list fixed by the competent authority, which specifies for each genus or species the elements to which the breeder’s right relates.

**5.** The breeder’s right shall be granted where, following the prior examination provided for in Article 50 below, the variety is recognized as new, distinct, uniform and stable.

**6.** The variety shall be deemed to be new if, at the date of filing of the application for a breeder’s right, plant propagating material, harvested material or a processed product of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purpose of working the variety for more than one year in Morocco, or for more than four years, or, in the case of trees and vines, for more than six years abroad.

**7.** 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 date of the filing of the application.

In particular, the filing of an application for protection in any other country for any other variety shall be deemed to render that other variety a matter of common knowledge from the date of the application or registration, provided that the application leads to the grant of a breeder's right or to the entering of said other variety in an official register of varieties, as the case may be. Such common knowledge may further be established by various references such as cultivation or commercialization already underway, the presence in a reference collection, or a precise description in a publication.

**8.** 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.

**9.** 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.

**10.** Any plant variety may give rise to the granting of a protection title known as a "plant breed certificate".

The right to protection of a variety shall belong to the first applicant, unless proved otherwise.

**11.** The breeder's right may be requested by:

- Moroccan natural persons or legal entities;
- foreign natural persons or legal entities with their domicile or company head office in Morocco;
- nationals of States and natural persons or legal entities with their domicile or company head office in the territory of the said States, where those States' legislation grants Moroccans protection at least equivalent to that provided for in this Law.

**12.** Any breeder who has duly filed an application for the protection of a variety in a State which grants Moroccans protection at least equivalent to that conferred by this Law ("first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority ("subsequent application"), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in that period.

**13.** In order to benefit from the right of priority provided for in Article 12 above, the breeder shall, in the subsequent application, claim the priority of the first application. The competent authority may require the breeder to provide, within a period of three months as from the date of filing of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or any other evidence that the variety which is the subject matter of both applications is the same.

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 set by the competent authority after such rejection or withdrawal, in which to furnish any necessary information, document or material provided for by this Law, with a view to the examination provided for in Article 50 below.

Events which occur during the time period provided for in Article 12 above, 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. Nor shall such events give rise to any third-party right.

**14.** The variety is also required to be designated by a denomination, which will be its generic designation. This denomination must not:

(a) be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder, or to be confused with another denomination which has already been filed or registered for a pre-existing variety of the same botanical species or a similar species;

(b) be contrary to public order, morality or international treaties;

(c) consist solely of figures, except where this is an established practice for designating the varieties of the species concerned.

Where the same variety has already been filed or registered in another State, the denomination used must be reproduced, unless it is unsuitable for reasons of a linguistic nature, public order or morality, or where the denomination does not satisfy the requirements of the first paragraph above. If this is the case, the breeder must propose another denomination in the conditions provided for in Article 41 below.

**15.** A person who offers for sale or markets propagating material for a protected variety in Moroccan territory must use the denomination of this variety, even after the end of the term of protection, subject to the rights of third parties.

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 prohibited for a person who, in accordance with the provisions of the first paragraph above, is obliged to use it, the competent authority shall require the breeder to submit another denomination for the variety.

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

### **Chapter III** **Scope of protection**

**16.** The breeder's right shall cover:

(a) the protected variety;

(b) any variety which is not clearly distinguishable from the protected variety, in accordance with Article 7 above;

(c) any variety which is essentially derived from the protected variety where the protected variety is not in itself an essentially derived variety; and

(d) any variety whose production requires the repeated use of the protected variety.

Subject to the provisions of Articles 17 and 18 below, the following acts in respect of the propagating material of the protected variety and the varieties referred to in the first paragraph above shall require the authorization of the breeder:

— production or reproduction;

— conditioning for the purpose of production or reproduction;

- offering for sale;
- selling or any other form of marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned above.

Subject to the provisions of Articles 17 and 18 below, where the breeder has not been able to exercise his right in respect of the propagating material, he may exercise his right relating to the acts referred to in the second paragraph above in respect of the harvested material or the processed product.

Under subsection (c) above, a variety essentially derived from another variety (initial variety) shall be defined as follows:

- a variety 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;

- a variety which is clearly distinguishable from the initial variety; and

- except for the differences stemming from derivation, a variety which is consistent with the initial variety in the expression of the essential characteristics which result from the genotype or the combination of genotypes of the initial variety.

**17.** The breeder's right shall not extend to:

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes;
- acts done for the purpose of breeding new varieties as well as the acts provided for in the second and third paragraphs of Article 16 above, done with such varieties, provided that:

- \* the protected variety is not used repeatedly with a view to producing the new variety;
- \* the new variety is not essentially derived from the protected variety where the protected variety is not itself an essentially derived variety;
- \* the new variety is clearly distinguishable from the protected variety.

- acts done by farmers for the purpose of breeding other varieties, on their own holding, by using the harvested material which they have obtained by growing the protected variety, except for arboricultural, ornamental and floral plants.

**18.** The breeder's right shall not extend to acts concerning any material of his variety or a variety essentially derived from his variety, which has been sold or marketed by the breeder or with his consent, unless such acts:

(a) involve further propagation of the variety in question, or

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

For the purposes of the first paragraph above, "material" means, in relation to a variety:

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

**19.** For each species, the term of protection shall be fixed by the competent authority. It may not be less than 20 years for major crop species and 25 years for arboricultural species and vines.

The term of protection shall start with the grant of the certificate.

#### **Chapter IV** **Transfer and loss of rights**

**20.** The rights deriving from an application for a certificate or from a certificate may be transferred either in full or in part.

They may give rise, either in full or in part, to the grant of an exclusive or non-exclusive license to work.

The rights granted by an application for a certificate or by the certificate may be asserted against a licensee who infringes one of the limits of his license imposed under the previous paragraph.

Subject to the case provided for in Article 61 below, transfer of the rights referred to in the first paragraph shall not infringe the rights acquired by third parties prior to the date of transfer.

Acts comprising a transfer or a license, as referred to in the first two paragraphs, shall be recorded in writing, on pain of invalidation.

**21.** Any public or private legal person may, upon the expiry of a period of three years after the grant of a certificate or four years as from the date of the filing of his application, be granted a compulsory license for this certificate, in the conditions provided for in Articles 22 to 24 below, provided that, at the time of the application for such license and failing legitimate reasons, neither the owner of the certificate nor his successor in title:

(a) has begun to work or has made real and effective preparations for working the breed which is the subject of the certificate in the territory of Morocco, or

(b) has marketed the product that is the subject matter of the certificate in a quantity sufficient to satisfy the needs of the domestic market or

(c) has worked or marketed the variety in Morocco over the past three years.

**22.** A request for a compulsory license shall be made to the competent court. It must be accompanied by proof that the applicant has been unable to obtain a license for use from the owner of the certificate and that he is capable of really and effectively working the plant variety.

A compulsory license may only be non-exclusive. It shall be granted on specific conditions, in particular in respect of its term, scope and the amount of royalties to which it gives rise.

These conditions may be amended by decision of the competent court, at the request of the owner of the certificate or the licensee.

**23.** Any assignment of the rights deriving from a compulsory license shall require the authorization of the competent court, on pain of invalidation.

**24.** If the beneficiary of a compulsory license does not meet the conditions on which the license has been granted, the owner of the certificate and, where applicable, the other licensees, may petition the competent court for the withdrawal of the license.

**25.** A variety which is indispensable to human or animal life or of interest for public health, may be worked *ex officio* by anyone furnishing the requisite technical and professional guarantees.

*Ex officio* working shall be decreed by an administrative act.

**26.** On the day of publication of the administrative act decreeing the *ex officio* working of a plant breed certificate, anyone supplying the requisite technical and professional guarantees may request the grant of a so-called “*ex officio* license”.

Such license may only be non-exclusive. It shall be requested and granted on the conditions fixed by regulation.

The *ex officio* license shall be granted on specific conditions, in particular in respect of its term and scope.

The royalties to which it gives rise shall be left to the discretion of the parties. Failing an agreement between them, the amount thereof shall be fixed by the competent court.

It shall take effect on the date of notice of the act granting it to the parties.

**27.** If the beneficiary of an *ex officio* license does not meet the required conditions, forfeiture may be pronounced on the conditions fixed by regulation.

**28.** The State may at any time obtain *ex officio*, in order to meet its defense requirements, a license to work a plant variety that is the subject of an application for a certificate or of a plant breed certificate, whether the working is to be done by the State itself or on its behalf.

The *ex officio* license shall be granted by an administrative act, the conditions of which shall be fixed by regulation.

This administrative act shall fix the conditions of the license.

The royalties to which the *ex officio* license gives rise shall be left to the discretion of the parties. Failing an agreement between them, the amount thereof shall be fixed by the Administrative Tribunal of Rabat.

The license shall come into effect at the date of the application for the *ex officio* license.

**29.** The rights deriving from an *ex officio* license may not be assigned or transferred.

**30.** Any owner of a plant breed certificate shall be stripped of his right, as the case may be:

1° if it has been established that the protected variety no longer meets the conditions fixed in Articles 8 and 9;

2° if he is not in a position to supply the competent authority with the information, documents or plant material used for the maintenance of his variety;

3° if he does not propose another denomination, where the denomination for the variety has been delisted after the grant of the right;

4° if he has not paid the prescribed fees for services rendered, where applicable, for the maintenance of his right.

Forfeiture shall be pronounced on the conditions fixed by regulation.

Where it is pronounced under 4° above, the beneficiary of the certificate may, in the six months following the end of the time period provided for, submit an appeal for the reinstatement of his rights if he provides a legitimate reason for non-payment of the fees for services rendered. However, such appeal may not infringe any rights acquired, where applicable, by third parties.

A breeder liable to forfeit his rights under 2° or 3° above, shall be warned to put a stop to this situation by means of notice given to him by the competent authority. If, upon the expiry of a two-month period as from receipt of the notice, this formal notice has not been acted upon, the breeder shall forfeit his breeder's right.

**31.** Forfeiture of a breeder's right shall be notified to the owner of the certificate. It shall be entered in the national register of plant breed certificates and published in the journal for the protection of plant varieties.

**32.** The seizure of a certificate shall be effected by an extrajudicial act notified to the owner of the certificate, to the competent authority, and to the persons holding rights in the certificate; no subsequent amendment of the rights deriving from the certificate shall be binding on an attaching creditor.

On pain of invalidation of the seizure, the attaching creditor must, within the time period set, bring legal proceedings before the competent court to confirm the validity of the seizure and for the purpose of placing the certificate on sale.

**33.** The owner of a certificate may at any time waive, either in full or in part, the rights deriving from said certificate.

Waiver shall be effected by means of a written declaration addressed to the competent authority. It shall come into force as from the day of its publication in the journal for the protection of plant varieties provided for in Article 59 below.

However, it shall be possible to withdraw from the waiver prior to its publication in the journal referred to in the previous paragraph.

Where encumbrances or licenses have been entered in the National Register of Plant Breed Certificates, the withdrawal declaration shall be entertained only if it is accompanied by the consent of the owners of the rights concerned.

**34.** At the request of any person with a legitimate interest, the competent court may be asked to pronounce the invalidation of a plant breed certificate:

— if it has been established that the variety was not new and distinct when the breeder's right was granted; or

— if it has been established that the information and documents relating to uniformity and stability provided by the breeder were not effectively met when the breeder's right was granted; or

— if it has been established that the breeder's right has been granted to a person who was not entitled to it, unless it is transferred to the person who is so entitled.



## **Chapter V**

### **Joint ownership of certificates**

**35.** Subject to the provisions of Article 38 below, joint ownership of an application for a certificate or a certificate shall be governed by the following provisions:

(a) each of the joint owners may work the plant variety for his benefit, provided that he compensates fairly the other joint owners who are not personally working the plant variety or who have not granted licenses for use. Failing amicable agreement, such compensation shall be fixed by the competent court;

(b) each of the joint owners may bring infringement proceedings for his sole benefit. The proceedings must be notified to the other joint owners. No decision shall be handed down on the proceedings until proof of such notice has been provided;

(c) each of the joint owners may grant a non-exclusive license for use to a third party for his benefit, provided that he fairly compensates the other joint owners who are not personally working the plant variety or who have not granted a license for use; failing amicable agreement, this compensation shall be fixed by the competent court.

However, the intent to grant must be notified to the other joint owners, accompanied by an offer to assign the share at a given price.

Within a period of three months following such notice, any of the joint owners may oppose the grant of the license, provided that he acquires the share of the person seeking to grant the license.

Failing an agreement within the time period set in the previous paragraph, the price shall be fixed by the competent court. The parties shall have one month starting from the notice of the court decision to withdraw from the grant of the license or the purchase of the joint owner's share, without prejudice to the award of any damages which might be due. Costs shall be borne by the withdrawing party.

(d) an exclusive license for use may only be granted with the agreement of all of the joint owners or by leave of the court;

(e) each joint owner may assign his share at any time. Joint owners shall have a right of preemption during a period of three months starting from the notice of intent to assign. Failing an agreement on the price, it shall be fixed by the competent court. The parties shall have one month starting from the notice of the court decision to withdraw from the sale or purchase of the joint owner's share, without prejudice to the award of any damages which might be due; costs shall be borne by the withdrawing party.

**36.** The provisions of Articles 960 to 981 of the Dahir of 9 ramadan 1331 (August 12, 1913) forming the Code of Obligations and Contracts shall not apply to joint ownership of an application for a certificate or a certificate.

**37.** A joint owner of an application for a certificate or a certificate may notify the other joint owner that he is waiving his share for their benefit. As from the entering of such waiver in the National Register of Plant Breed Certificates or, in the case of an application for a certificate that has not yet been published, as from its notification to the competent authority, said joint owner shall be discharged from all obligations in respect of the other joint owners. The other joint owners shall divide up the waived share in proportion to their rights in the joint ownership, unless stipulated otherwise.

**38.** The provisions of Articles 35 to 37 above shall apply in the absence of any provisions to the contrary.

The joint owners may derogate therefrom at any time by means of joint ownership regulations.

## **Chapter VI**

### **Filing of applications for plant breed certificates**

**39.** Applications for plant breed certificates must be filed with the competent authority in the forms and conditions fixed by regulation.

Natural persons or legal entities with no domicile or company head office in Morocco must appoint an agent with its domicile or company head office in Morocco.

Unless stipulated otherwise, the powers of the agent designated in the conditions provided for in the previous paragraph shall extend to all acts relating to the exercise of the breeder's right and to the receipt of all the notices provided for in this Law, except the withdrawal of the application for a plant breed certificate or the waiver, in full or in part, of the rights deriving from the said certificate.

**40.** The benefit of the date of filing of the application shall be acquired if, at the time of such filing, all of the documents provided for by regulation under the first paragraph of Article 39 above have been produced and if the fees for services rendered laid down in Article 60 of this Law have been paid.

Where the filing does not include the foregoing documents, the application shall not be entertained and shall be sent back to the applicant, who shall be reimbursed for any fees paid.

Any material errors must be corrected within the two months following notification to the applicant, failing which the application shall be rejected and sent back to the applicant.

**41.** A provisional reference may be given in the stead of a denomination to designate the variety which is the subject of the application, at the time of filing thereof. In this case, the denomination must be proposed, on pain of inadmissibility of the application, within two months following notification sent to the owner of the application by the competent authority.

**42.** A copy of the application for the plant breed certificate shall be given to the applicant, at the time of filing, bearing a stamp attesting to the day and time of filing of the application and including a registration number.

**43.** The application shall be entered in the National Register of Applications for Plant Breed Certificates provided for in Article 58 below, in the order of filing, under the number assigned to the applicant.

This number must appear on all notices addressed to the applicant until the grant of the plant breed certificate, where applicable.

**44.** Until the grant of the plant breed certificate, the applicant may seek the correction of material errors detected in the documents filed.

The request must be submitted in writing and contain the text of the amendments proposed by the applicant. It shall be entered in the National Register of Applications for Plant Breed Certificates and shall only be entertained if it is accompanied by proof of payment of the fees due for services rendered.

## **Chapter VII**

### **Examination of applications for plant breed certificates**

**45.** Any application for a plant breed certificate which has been duly filed shall give rise to publication in the journal for the protection of plant varieties provided for in Article 59 below.

Such publication shall be intended in particular to bring the application for the plant breed certificate to the attention of any person with an interest.

As from the day of publication provided for in the previous paragraphs, any person may acquaint himself with the application, as entered in the National Register of Applications for Plant Breed Certificates.

**46.** Within a period of three months as from the date of publication provided for in the previous Article, any person with an interest may submit written observations to the competent authority.

Such observations must be substantiated and may only relate to the fact that the variety filed for is not eligible for protection under the provisions of Articles 5 and 14 of this Law.

**47.** Challenges relating to the validity of the breeder's right in the variety for which a plant breed certificate has been applied for shall be brought directly before the competent courts.

They shall give rise to an entry in the National Register of Applications for Plant Breed Certificates.

**48.** Where the denomination for the variety proposed by the breeder or his successor in title did not appear in the initial application or where the breeder proposes, at the request of the competent authority, a new denomination, such denomination shall be published in the journal provided for in Article 59 below.

**49.** The observations submitted shall be notified by the competent authority to the owner of the application.

The owner shall have one month starting from the day on which he acknowledged receipt of such notice, to present his arguments or defense.

**50.** Once the application has been duly filed, the competent authority shall examine the application for a plant breed certificate and, where applicable, to examine the related observations.

During the examination, a prior examination shall be made of the variety with a view to ensuring that said variety is new, distinct, uniform and stable for the purposes of Article 5 of this Law.

The competent authority shall draw up the list of national or foreign technical bodies authorized to conduct the prior examination of the varieties which are the subject of an application for a plant breed certificate.

**51.** The examination shall be suspended at the written request of any person who provides proof that he has brought an action before the competent court claiming ownership of the application for the plant breed certificate. However, tests decided by the authority may be carried out.

The examination shall resume once the court decision further to the action referred to in the first paragraph above has become final. It may also resume at any time subject to the

written consent of the person who has brought the action for ownership. Such consent shall then be irrevocable. During this period, the owner of the application may not withdraw the application without the written consent of the person who has brought the action for ownership. Moreover, that person shall be called to participate in the examination on the same basis as the owner of the application.

**52.** Where the various examination measures have been carried out, a brief report summing up the results of the examination shall be notified to the owner of the application. The owner shall have two months to submit his observations. During this period, he may acquaint himself with the entire examination file in the hands of the department in question of the competent authority.

Any person who has submitted observations on the conditions prescribed in this Law shall be informed of the conclusions of the report concerning his intervention. At his request, the competent authority may authorize him to acquaint himself with the file relating to such intervention. He may submit new observations within the same time period as indicated above.

## **Chapter VIII**

### **Grant of plant breed certificates**

**53.** Upon the expiry of the time period provided for in Article 52 above, the competent authority shall rule on the application. It may decide to issue the plant breed certificate, to reject the application, or to request further examination on the conditions and time periods to be fixed by it.

Its decision shall be substantiated. It shall be notified to the applicant and, where applicable, to the authors of the observations.

**54.** The plant breed certificate shall be issued by the competent authority on the conditions fixed by regulation. It shall be made out to the owner of the application for the plant breed certificate. Where the owner of the application is not the breeder, the breeder's name must be mentioned on the plant breed certificate.

The plant breed certificate shall take effect on the date on which it was applied for.

**55.** The certificate shall be recorded in the National Register of Plant Breed Certificates.

**56.** The grant of the plant breed certificate shall be published in the journal for the protection of plant varieties, within three months following the date of notification of grant made to the owner of the plant breed certificate.

**57.** As from the date of publication provided for in Article 56 above, any person may acquaint himself with the plant breed certificate, as entered in the National Register of Plant Breed Certificates.

The competent authority shall keep originals or copies of the documents from applications for a certificate relating to protection titles, until the expiry of a period of five years starting from the end of protection.

The national registers of applications for plant breed certificates and plant breed certificates shall be kept indefinitely.

## **Chapter IX**

### **Miscellaneous provisions**

**58.** The competent authority shall keep a National Register of Applications for Plant Breed Certificates and a national register of plant breed certificates.

The related applications shall be recorded in the National Register of Applications for Plant Breed Certificates in chronological order.

The said register shall also contain supplementary indications or information relating to each application for a certificate, the list of which shall be fixed by regulation.

Plant breed certificates shall be entered in the National Register of Plant Breed Certificates in the order in which they are issued.

The list of supplementary indications or acts to be entered in the said Register shall be fixed by regulation.

For entries concerning supplementary references further to a court decision, the court shall send the competent authority a complete set of decisions free of charge relating to the existence, scope and exercise of the rights deriving from the protection provided for under this Law.

**59.** The authority shall publish a “journal for the protection of plant varieties”.

The frequency and content of the journal shall be fixed by regulation.

Acts concerning the grant of the certificate, the transfer of ownership, the grant of the license for use or an encumbrance, relating to a plant breed certificate, forfeiture of such certificate, or waiver in full or in part of the rights deriving from said certificate shall only be binding on third parties if they have been duly published in the journal for the protection of plant varieties.

**60.** A decree, enacted in accordance with the provisions of the first paragraph of Article 17 of the Organic Law on Finance enacted by means of Dahir No. 1-72-260 of 9 chaabane 1392 (September 18, 1972), shall fix the fees for the services rendered by the State for the application of this Law and its enabling texts.

## **Chapter X**

### **Legal proceedings**

**61.** If a plant breed certificate has been applied for, either for a plant variety unlawfully taken from the person who has bred or discovered and developed a plant variety or from his successors in title, or in violation of a legal or treaty obligation, the aggrieved party may apply to the competent court to claim ownership of the application for the plant breed certificate or granted certificate.

The action claiming ownership shall be statute-barred after three years following publication of the notice of grant of the certificate.

However, where bad faith at the time of the grant or acquisition of the certificate is proved, the statute-barring period shall be three years following the expiry of the said certificate.

As from the day on which a person has provided proof that he has brought an action claiming ownership, the owner of the application for the certificate or the certificate may not withdraw said application or withdraw from said certificate, in full or in part, without the written consent of the person who has brought said action.

**62.** Any infringement of the rights of the owner of a plant breed certificate, as defined by Article 16 of this Law, shall constitute counterfeiting incurring the civil liability of the infringer.

The owner of a compulsory or *ex officio* license referred to in Articles 21, 26 or 28 of this Law, and, unless stipulated otherwise, the beneficiary of an exclusive right of use may take the legal action relating to liability provided for in the first paragraph above if, after having been served formal notice, the owner of the certificate fails to take such action.

The owner of the certificate shall be entitled to participate in the action for liability brought by the licensee in accordance with the previous paragraph.

Any holder of a license shall be entitled to intervene in the proceedings brought by the owner of the certificate for the purpose of receiving compensation for the harm which he has personally undergone.

**63.** Events prior to the publication of the grant of the certificate shall not be considered to have infringed the rights deriving from the certificate. However, once the presumed infringer has received notification, by means of a certified true copy, of the application for the certificates, events subsequent thereto may be evidenced and prosecuted.

**64.** The owner of an application for a plant breed certificate or a certificate may have made, with the authorization of the court, a detailed description, with or without seizure, of all plants or parts of plants and all propagating or plant propagating elements allegedly obtained through disregard for his rights. This possibility shall be open to the holder of an exclusive license for use or to the beneficiary of a compulsory or *ex officio* license under the conditions fixed in the second paragraph of Article 62 above.

Where the applicant fails to bring proceedings before the court within 15 days following the day on which the seizure or the description occurred, the description or seizure shall be null as of right, without prejudice to any damages which might be claimed, where applicable.

**65.** The detailed description, with or without the seizure of the plants, parts of plants, or all propagating or plant propagating elements for the allegedly infringing variety, provided for by Article 64 above, shall be ordered by the president of the competent court under whose jurisdiction the operations must be conducted.

The order shall be granted upon request and subject to the production of either the plant breed certificate or, in the case provided for in Article 63 of this Law, a certified true copy of the application for the plant breed certificate.

Where the request is submitted by the holder of an exclusive right of use or by the beneficiary of a compulsory or *ex officio* license referred to in Articles 21, 26 or 28 of this Law, the applicant must prove that the owner of the plant breed certificate failed to take action after having been served formal notice to do so.

**66.** Where seizure is ordered, the judge may impose on the requestor a security which the requestor shall be obliged to pay before the undertaking of the seizure. The notarial officer shall, before conducting the seizure, on pain of invalidation of the measure and the award of damages against him, hand a copy of the writ to the holders of the plants, parts of plants or propagating or plant propagating elements of the variety considered, and, where applicable, of the document evidencing the provision of security. A copy of the record of the seizure shall likewise be handed to them.

**67.** The court may, at the request of the aggrieved party and provided that the measure is necessary to ensure the prohibition on continuing the infringement, find in favor of the party with a view to transferring to him ownership, the seizure of plants or parts of plants, and

propagating or plant propagating elements obtained in violation of the rights of the owner of a plant breed certificate and, where applicable, that of instruments specifically intended for the propagation cycle.

Due consideration shall be given to the value of the articles seized when calculating the compensation allocated to the beneficiary of the sentencing.

**68.** The civil and criminal proceedings provided for by this Chapter shall be statute-barred three years after the events which gave rise thereto.

The introduction of civil proceedings shall suspend the prescription of criminal proceedings.

**69.** Where a variety that is the subject of an application for a certificate or a plant breed certificate is worked for the purpose of national defense by the State or its suppliers, subcontractors and holders of subcontracted orders, without the grant of a license for use, the court seized may not order either the cessation or interruption of working, or the seizure provided for in Article 67 above.

Where an expert examination or a description, with or without seizure, is ordered by the president of the court hearing the proceedings, the expert examination, description or seizure must be postponed along with any research in the company if the contract for study or propagation entails a defense or security classification.

The same shall apply if the studies or propagation are carried out in an army establishment.

The president of the court hearing the proceedings may, if so requested by the successor in title, order an expert examination which may only be carried out by the persons authorized by the government authority responsible for national defense and before its representatives.

With this type of working, the authors shall incur as of right the responsibility defined in this Article.

**70.** Where infringement proceedings are brought before the court, the president thereof, ruling according to summary proceedings, may prohibit, provisionally and subject to a coercive fine, the continuation of the alleged infringing acts, or make such continuation subject to the provision of guarantees to ensure compensation of the owner of the plant breed certificate or the beneficiary of an exclusive right of use.

The request for prohibition or for the provision of guarantees shall be entertained only where the action appears to be well founded, and where it has been brought a short time after the day on which the owner of the certificate or the beneficiary of an exclusive license for use became aware of the circumstances on which it is based. The court may make the prohibition subject to the provision by the plaintiff of guarantees to compensate the defendant for any harm suffered where the infringement action is subsequently judged to be unfounded.

**71.** The production or business secrets of the interested parties shall be safeguarded.

The opposing party shall only be given knowledge of evidence capable of revealing such secrets insofar as this is compatible with the safeguarding of such secrets.

**72.** In civil cases, disputes between the parties in respect of the application of this Law shall fall within the jurisdiction of the courts of first instance located in the county seat of the circuit of the appeal courts.

The competent courts of first instance and the jurisdiction in which these courts exercise the powers so entrusted to them shall be fixed by regulation.

**73.** Without prejudice, where applicable, to the application of the penalties provided for by special legislation, in particular legislation relating to the punishment of fraud, any deliberate infringement of the rights of the owner of a plant breed certificate, as defined in Article 16 of this Law, shall be punishable by a fine of 3,000 to 30,000 dirhams.

The court may further order the destruction of the infringing product and/or propagating material.

In case of recidivism, a prison sentence of two months to one year may further be handed down. For the purposes of this Article, recidivism shall be deemed to occur where, during the past five years, a sentence handed down against the accused for an identical infringement has become irrevocable.

**74.** Public action for the application of the penalties provided for in Article 73 above may only be brought by the Public Prosecutor's Office, further to a complaint by the aggrieved party.

The court hearing the proceedings may only rule once the civil court has ascertained the extent of the damage by means of a decision which has become final. Any exceptions pointed out by the defendant for the invalidation of the plant breed certificate or questions relating to the ownership of the said certificate may only be raised before the civil court.

**75.** Anyone who unlawfully claims to be the owner of a plant breed certificate or an application for a plant breed certificate shall be punished by a fine of 3,000 to 30,000 dirhams.

In case of recidivism, the fine may be doubled. For the purposes of this Article, recidivism shall be deemed to occur where, during the past five years, a sentence handed down against the accused for an identical infringement has become irrevocable.

## **Chapter XI**

### **Transitional provisions**

**76.** By way of derogation to the provisions of Article 6 above, varieties which have been offered for sale, marketed or circulated in Morocco or abroad prior to the entry into force of this Law may also give rise to a request for protection, during a transitional period of one year starting with the entry into force of this Law. Where protection is granted, its terms shall be reduced by the number of full years which have elapsed between the time when the variety was placed on sale, marketed or circulated for the first time and the time when the request was made.

The same rule shall apply by analogy to varieties and species recently entered on the list of species to be protected following the entry into force of this Law.

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