



C/43/15

ORIGINAL: englisch

DATUM: 25. September 2009

INTERNATIONALER VERBAND ZUM SCHUTZ VON PFLANZENZÜCHTUNGEN
GENF

DER RAT

Dreiundvierzigste ordentliche Tagung
Genf, 22. Oktober 2009

**PRÜFUNG DER VEREINBARKEIT DES GESETZENTWURFS NR. 4013 DER
REPUBLIK GUATEMALA ÜBER DEN SCHUTZ VON PFLANZENZÜCHTUNGEN
MIT DER AKTE VON 1991 DES UPOV-ÜBEREINKOMMENS**

Vom Verbandsbüro erstelltes Dokument

Einleitung

1. Mit Schreiben vom 10. September 2009 ersuchte Frau Lars Pira, Stellvertretende Ministerin für auswärtige Angelegenheiten der Regierung der Republik Guatemala (nachstehend „Guatemala“), um Prüfung der Vereinbarkeit des „Gesetzentwurfs Nr. 4013 über den Schutz von Pflanzenzüchtungen“ (nachstehend der „Gesetzentwurf“) mit der Akte von 1991 des UPOV-Übereinkommens (nachstehend die „Akte von 1991“). Das Verbandsbüro fertigte Übersetzungen des Schreibens und des Gesetzentwurfs ins Englische an, die in den Anlagen I und II dieses Dokuments wiedergegeben sind. Das Schreiben und der von der Regierung Guatemalas eingereichte Gesetzentwurf in Spanisch sind in den Anlagen I und II der spanischen Fassung des Dokuments C/43/15 wiedergegeben.

2. Artikel 34 Absatz 3 des Übereinkommens sieht vor: „Jeder Staat, der dem Verband nicht angehört, sowie jede zwischenstaatliche Organisation ersuchen vor Hinterlegung ihrer Beitrittsurkunde den Rat um Stellungnahme, ob ihre Rechtsvorschriften mit diesem Übereinkommen vereinbar sind. Ist der Beschluß über die Stellungnahme positiv, so kann die Beitrittsurkunde hinterlegt werden.“

3. Die Regierung Guatemalas hatte das Verfahren für den Beitritt zur UPOV bereits mit Schreiben vom 20. September 2006 eingeleitet, in dem Herr Bernardo López Figueroa, Minister für Landwirtschaft, Viehzucht und Ernährung der Regierung Guatemalas, um Prüfung der Vereinbarkeit des Gesetzentwurfs über den Schutz von Pflanzenzüchtungen von 2006 mit der Akte von 1991 des UPOV-Übereinkommens ersucht hatte.

4. Der Rat entschied auf seiner vierzigsten ordentlichen Tagung vom 19. Oktober 2006,

„a) die Informationen in Dokument C/40/15, wie vom Rat geändert, zur Kenntnis zu nehmen;

b) vorbehaltlich der Aufnahme der Formulierung „in angemessenem Rahmen und unter Wahrung der berechtigten Interessen des Züchters“ in Artikel 16 Absatz 2 des Gesetzentwurfs nach dem Begriff „verwendet“ eine positive Entscheidung über die Vereinbarkeit des Gesetzentwurfs über den Schutz von Pflanzenzüchtungen mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen gemäß Artikel 34 Absatz 3 dieser Akte zu treffen, was die Republik Guatemala in die Lage versetzt, nach Verabschiedung und Inkraftsetzung des Gesetzentwurfs ihre Beitrittsurkunde zu hinterlegen, und

c) den Generalsekretär zu ermächtigen, die Regierung Guatemalas von dieser Entscheidung zu unterrichten.“

5. Das Verbandsbüro wurde am 26. März 2009 unterrichtet, daß der Gesetzentwurf über den Schutz von Pflanzenzüchtungen von 2006, der die Grundlage für die positive Entscheidung des Rates von 2006 über den Beitritt zum UPOV-Übereinkommen bildete, nicht mehr relevant sei und daß zur Zeit ein anderer Gesetzentwurf von der Regierung ausgearbeitet werde.

6. Auf Ersuchen der Regierung Guatemalas vom 5. Mai 2009 gab das Verbandsbüro Bemerkungen zu einer neuen Fassung des Gesetzentwurfs ab und teilte den zuständigen Behörden mit, daß die neue Fassung des Gesetzentwurfs oder das angenommene Gesetz dem Rat zur Prüfung auf dessen Vereinbarkeit mit der Akte von 1991 des UPOV-Übereinkommens vorgelegt werden müsse. Aus diesem Grund und gemäß Artikel 34 Absatz 3 der Akte von 1991 hatte die Regierung Guatemalas ein neues Gesuch (vergleiche Absatz 1 dieses Dokuments) an den Rat um Stellungnahme zur Vereinbarkeit des Gesetzentwurfs Nr. 4013 von 2009 (vergleiche Anlage II dieses Dokuments) mit der Akte von 1991 gerichtet.

Rechtsgrundlage für den Schutz von Pflanzenzüchtungen in Guatemala

7. Der Schutz neuer Pflanzensorten wird in Guatemala von dem Gesetzentwurf nach dessen Verabschiedung geregelt. Eine Analyse des Gesetzentwurfs folgt in der Reihenfolge der wesentlichen Rechtsvorschriften der Akte von 1991.

Artikel 1 der Akte von 1991: Begriffsbestimmungen

8. Artikel 3 des Gesetzentwurfs enthält Begriffsbestimmungen, die den einschlägigen Begriffsbestimmungen in Artikel 1 der Akte von 1991 entsprechen.

Artikel 2 der Akte von 1991: Grundlegende Verpflichtung der Vertragsparteien

9. Artikel 1 des Gesetzentwurfs sieht vor: „Zweck dieses Gesetzes ist es, die Rechte von Züchtern neuer Pflanzensorten, die durch einen Sortenschutztitel geschützt sind, anzuerkennen und zu schützen“; dies entspricht der in Artikel 2 der Akte von 1991 vorgesehenen grundlegenden Verpflichtung.

Artikel 3 der Akte von 1991: Gattungen und Arten, die geschützt werden müssen

10. Artikel 4 des Gesetzentwurfs sieht folgendes vor:

„Artikel 4.- Gattungen und Arten, die geschützt werden müssen

Dieses Gesetz wird anfänglich auf mindestens 15 Pflanzengattungen oder -arten angewandt, die in den entsprechenden Verordnungen aufgeführt sind. Es wird sodann spätestens zehn Jahre nach dem Inkrafttreten des Gesetzes auf alle Pflanzengattungen und -arten angewandt.“

11. Die Bestimmungen des Artikels 4 des Gesetzentwurfs entsprechen den Verpflichtungen in Artikel 3 Absatz 2 der Akte von 1991.

Artikel 4 der Akte von 1991: Inländerbehandlung

12. Artikel 5 des Gesetzentwurfs sieht folgendes vor:

„Artikel 5.- Staatsangehörigkeit, Wohnsitz und Geschäftssitz

In den Genuß der von diesem Gesetz festgelegten Rechte gelangen:

- a) Angehörige der Republik Guatemala, d.h. gebürtige und eingebürgerte Guatemalteken, sowie alle Personen, die ihren Wohn- oder Geschäftssitz im Land haben;
- b) ist Guatemala Partei eines internationalen Abkommens über die Erteilung des Schutzes für Pflanzensorten, so gewährt es Inländern und Personen, die ihren Wohn- oder Geschäftssitz in Parteien haben, die Mitglieder des Abkommens sind, gleiche Rechte wie in diesem Gesetz festgelegt.“

13. Die Bestimmungen in Artikel 5 b) des Gesetzentwurfs entsprechen den Anforderungen des Artikels 4 der Akte von 1991.

Artikel 5 bis 9 der Akte von 1991: Schutzvoraussetzungen; Neuheit; Unterscheidbarkeit; Homogenität; Beständigkeit

14. Die Artikel 7 bis 11 des Gesetzentwurfs enthalten Bestimmungen über die Schutzvoraussetzungen, die den Bestimmungen der Artikel 5 bis 9 der Akte von 1991 entsprechen.

15. Artikel 51 des Gesetzentwurfs führt eine Übergangsregelung für die Neuheit der „vor kurzem gezüchtete Sorten“ aufgrund des Artikels 6 Absatz 2 der Akte von 1991 ein. Artikel 51 des Gesetzentwurfs sieht folgendes vor:

„Artikel 51.- Schutz bekannter Sorten

Unbeschadet der Bestimmungen des Artikels 7 dieses Gesetzes kann ein Züchterrecht auch für eine Sorte, die am Tag des Inkrafttretens dieses Gesetzes in bezug auf die in Betracht gezogene Art nicht mehr neu ist, unter folgenden Bedingungen erteilt werden:

- a. Der Antrag wird innerhalb des auf den obenerwähnten Tag folgenden Jahres eingereicht, und
- b. Die Sorte muß:
 - i. in das Register der zum Handel zugelassenen Sorten oder in ein von einem Berufsverband geführtes und von Area für Zwecke dieses Artikels anerkanntes Sortenregister eingetragen worden sein;
 - ii. Gegenstand eines Züchterrechts in einer Vertragspartei oder eines Antrags auf Erteilung eines Züchterrechts in einer Vertragspartei gewesen sein, sofern der Antrag danach zur Erteilung des Züchterrechts führt, oder
 - iii. Gegenstand eines für Area annehmbaren Nachweises in bezug auf den Tag gewesen sein, an dem die Sorte gemäß Artikel 7 dieses Gesetzes nicht mehr neu war.
- c. Wurde ein Züchterrecht gemäß diesem Artikel erteilt, sollte der Inhaber Lizenzen zu angemessenen Bedingungen erteilen, um die Weiterführung einer von einer anderen Partei vor der obenerwähnten Einreichung des Antrags in gutem Glauben begonnenen Verwertung zu ermöglichen.

Die Dauer des gemäß diesem Artikel erteilten Züchterrechts wird vom Tag der unter b) i) erwähnten Eintragung, dem Tag der unter b)ii) erwähnten Erteilung des Züchterrechts oder dem unter b)iii) erwähnten Tag, an dem die Sorte nicht mehr neu war, berechnet. Gegebenenfalls wird das früheste dieser Daten gewählt.“

16. Es wird empfohlen, den Querverweis in Artikel 51 Absatz 1 des Gesetzentwurfs von „Artikel 7“ in „Artikel 8“ zu ändern.

Artikel 10 der Akte von 1991: Einreichung von Anträgen

17. Die Artikel 33 und 35 des Gesetzentwurfs enthalten Bestimmungen über die Einreichung von Anträgen. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die in Widerspruch zu Artikel 10 der Akte von 1991 stehen.

18. Es wird empfohlen, den Querverweis in Artikel 35 Absatz 1 des Gesetzentwurfs von „Artikel 34“ in „Artikel 33“ zu ändern.

Artikel 11 der Akte von 1991: Priorität

19. Artikel 34 des Gesetzentwurfs enthält Bestimmungen über das Prioritätsrecht, die den Bestimmungen des Artikels 11 der Akte von 1991 entsprechen.

20. Es wird empfohlen, den Querverweis in Artikel 34 Absatz 4 des Gesetzentwurfs von „Artikel 36.4“ in „Artikel 35.3“ zu ändern.

Artikel 12 der Akte von 1991: Prüfung des Antrags

21. Die Artikel 36 bis 38 und 50 des Gesetzentwurfs enthalten Bestimmungen über die Prüfung des Antrags, die den Bestimmungen des Artikels 12 der Akte von 1991 entsprechen.

Artikel 13 der Akte von 1991: Vorläufiger Schutz

22. Artikel 19 Absätze 2 und 3 des Gesetzentwurfs enthält Bestimmungen über den vorläufigen Schutz, die den Bestimmungen des Artikels 13 der Akte von 1991 entsprechen.

Artikel 14 der Akte von 1991: Inhalt des Züchterrechts

23. Artikel 15 des Gesetzentwurfs enthält Bestimmungen über den Inhalt des Züchterrechts, die den Bestimmungen des Artikels 14 der Akte von 1991 entsprechen. Artikel 15 Absatz 2 2) des Gesetzentwurfs enthält Bestimmungen, die den freigestellten Bestimmungen bezüglich der „Handlungen in bezug auf bestimmte Erzeugnisse“ in Artikel 14 Absatz 3 der Akte von 1991 entsprechen.

Artikel 15 der Akte von 1991: Ausnahmen vom Züchterrecht

24. Artikel 16 Absatz 1 des Gesetzentwurfs enthält Bestimmungen über die Ausnahmen vom Züchterrecht, die den Bestimmungen des Artikels 15 Absatz 1 der Akte von 1991 entsprechen.

25. Artikel 16 Absätze 2 und 3 des Gesetzentwurfs enthält folgende Bestimmungen über die freigestellte Ausnahme gemäß Artikel 15 Absatz 2 der Akte von 1991:

„Artikel 16
Ausnahmen vom Züchterrecht

[...]

Das Züchterrecht wird nicht als verletzt angesehen, wenn Landwirte in angemessenem Rahmen und vorbehaltlich der Wahrung der berechtigten Interessen des Züchters das Erntegut, das sie aus dem Anbau der geschützten Sorte oder einer im wesentlichen abgeleiteten oder nicht deutlich unterscheidbaren Sorte im eigenen Betrieb gewonnen haben, im eigenen Betrieb zum Zwecke der Vermehrung verwenden.

Die Bestimmungen in Absatz 2 dieses Artikels gelten nicht für die Verwendung von Vermehrungsmaterial, einschließlich ganzer Pflanzen oder Pflanzenteile, von Obst-, Zier- und forstlichen Arten.“

Artikel 16 der Akte von 1991: Erschöpfung des Züchterrechts

26. Artikel 17 des Gesetzentwurfs enthält Bestimmungen über die Erschöpfung des Züchterrechts, die den Bestimmungen des Artikels 16 der Akte von 1991 entsprechen.

Artikel 17 der Akte von 1991: Beschränkungen in der Ausübung des Züchterrechts

27. Artikel 22 des Gesetzentwurfs enthält Bestimmungen über die Beschränkungen in der Ausübung des Züchterrechts, die den Bestimmungen des Artikels 17 der Akte von 1991 entsprechen.

Artikel 18 der Akte von 1991: Maßnahmen zur Regelung des Handels

28. Artikel 18 des Gesetzentwurfs sieht vor:

„Artikel 18
Maßnahmen zur Regelung des Handels

Das Züchterrecht ist unabhängig von den Maßnahmen, die der Staat zur Regelung der Erzeugung, der Zertifizierung und des Vertriebs von Material von Sorten oder der Einfuhr oder Ausfuhr solchen Materials trifft.“

29. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die in Widerspruch zu Artikel 18 der Akte von 1991 stehen.

Artikel 19 der Akte von 1991: Dauer des Züchterrechts

30. Artikel 19 Absatz 1 des Gesetzentwurfs enthält Bestimmungen über die Dauer des Züchterrechts, die den Bestimmungen des Artikels 19 der Akte von 1991 entsprechen.

Artikel 20 der Akte von 1991: Sortenbezeichnung

31. Die Artikel 43 bis 46 des Gesetzentwurfs enthalten Bestimmungen über Sortenbezeichnungen, die den Bestimmungen des Artikels 20 der Akte von 1991 entsprechen.

32. Es wird empfohlen, die Querverweise in Artikel 44 Absatz 1 a) des Gesetzentwurfs von „Artikel 44“ in „Artikel 43“ sowie in Artikel 45 Absatz 3 und in Artikel 46 Absatz 1 a) des Gesetzentwurfs von „Artikel 45“ in „Artikel 44“ zu ändern.

Artikel 21 der Akte von 1991: Nichtigkeit des Züchterrechts

33. Artikel 24 des Gesetzentwurfs sieht Bestimmungen über die Nichtigkeit des Züchterrechts vor, die den Bestimmungen des Artikels 21 der Akte von 1991 entsprechen.

Artikel 22 der Akte von 1991: Aufhebung des Züchterrechts

34. Artikel 25 des Gesetzentwurfs sieht Bestimmungen über die Aufhebung des Züchterrechts vor, die den Bestimmungen des Artikels 22 der Akte von 1991 entsprechen.

35. Es wird empfohlen, den Querverweis in Artikel 25 Absatz 2 c) des Gesetzentwurfs von „Artikel 47“ in „Artikel 44“ zu ändern.

Artikel 30 der Akte von 1991: Anwendung des Übereinkommens

36. Hinsichtlich der Verpflichtung, „geeignete Rechtsmittel vorzusehen, die eine wirksame Wahrung der Züchterrechte ermöglichen“ (Artikel 30 Absatz 1 Nummer i der Akte von 1991) sehen die Artikel 48 und 49 des Gesetzentwurfs folgendes vor:

„Artikel 48.- Rechtsmittel

Wer

- a. ohne Genehmigung Handlungen vornimmt, die der Zustimmung des Inhabers gemäß Artikel 15 dieses Gesetzes bedürfen;
- b. eine Bezeichnung in Verletzung des Artikels 44 dieses Gesetzes verwendet, und
- c. es unterläßt, eine Bezeichnung in Verletzung des Artikels 44 dieses Gesetzes zu verwenden,

kann vom Inhaber oder vom Inhaber einer ausschließlichen Lizenz angezeigt werden; Entschädigungen sind wie bei entsprechenden Untersuchungen, die infolge einer Verletzung eines anderen Eigentumsrechts durchgeführt werden, anwendbar.

Vorbehaltlich des Inhalts dieses Gesetzes sind die auf die Ausübung der aufgrund eines Patents übertragenen Rechte entsprechend auf die Ausübung der aufgrund eines Züchterrechts übertragenen Rechte anwendbar.

Wer Handlungen vornimmt, die der Zustimmung des Inhabers gemäß Artikel 15 dieses Gesetzes bedürfen, oder die dem Züchter von diesem Gesetz übertragenen Rechte in irgendeiner Weise verletzt, ist verpflichtet, Schadensersatz zu zahlen. Bei der Berechnung dieser Schäden kann die zuständige Behörde folgende Elemente berücksichtigen:

- a. den Wert des vom Beklagten infolge der rechtswidrigen Handlungen erzielten Nutzens;
- b. den vom Züchter infolge der rechtswidrigen Handlungen erlittenen Gewinnausfall, oder
- c. den Preis, den der Rechtsverletzer dem Züchter für eine Vertragslizenz zu den Bedingungen für die rechtmäßige Nutzung der neuen Sorte gezahlt hätte.

Artikel 49.- Strafmaßnahmen

Wer

- a. Material einer geschützten oder von Artikel 15 dieses Gesetzes erfaßten Sorte ohne Zustimmung des Inhabers der Sorte erzeugt;
- b. mit Material einer geschützten Sorte im Wissen handelt, daß dieses Material in Verletzung der Rechte des Inhabers des Züchterrechts erzeugt wurde;
- c. sich beauftragen läßt, ohne Zustimmung des Rechtsinhabers Vermehrungsmaterial einer geschützten Sorte in ein Hoheitsgebiet außerhalb des Geltungsbereichs dieses Gesetzes zu befördern;

wird so angesehen, daß er das Züchterrecht verletzt hat, unbeschadet der entsprechenden zivilrechtlichen Haftung, was mit einer Freiheitsstrafe von einem bis vier Jahren und einer Geldstrafe von eintausend bis zehntausend Quetzales strafbar ist.

Vorbehaltlich der Bestimmungen dieses Gesetzes, sind die auf die Ausübung der aufgrund eines Patents übertragenen Rechte entsprechend auf die Ausübung der aufgrund eines Züchterrechts übertragenen Rechte anwendbar.

Wer Handlungen vornimmt, die der Zustimmung des Inhabers gemäß Artikel 15 dieses Gesetzes bedürfen, oder die dem Züchter von diesem Gesetz übertragenen Rechte in irgendeiner Weise verletzt, ist verpflichtet, Schadensersatz zu zahlen. Bei der Berechnung dieser Schäden kann die zuständige Behörde die Bestimmungen des Artikels 48 dieses Gesetzes berücksichtigen.

Auf Ersuchen des Inhabers kann der Richter in einem Nebenverfahren nebst anderen nach Allgemeinen Recht anwendbaren Maßnahmen die Aussetzung der angezeigten Handlungen beschließen. Der Richter kann dringliche Vorbeugungsmaßnahmen anordnen, wenn der Inhaber sein Ersuchen mit dem Nachweis der Verletzung oder der drohenden Verletzung rechtfertigt, sofern er ausreichende Sicherheit bietet.“

37. Es wird empfohlen, die Querverweise in Artikel 48 Absatz 1 b) und c) des Gesetzentwurfs von „Artikel 44“ in „Artikel 43“ zu ändern.

38. In bezug auf die Verpflichtung nach Artikel 30 Absatz 1 Nummer ii der Akte von 1991 sieht Artikel 41 des Gesetzentwurfs folgendes vor:

„Artikel 41
Erteilung des Züchterrechts

Area [*Área Fitozoogenética*] erteilt das Züchterrecht, wenn aufgrund der technischen Prüfung der Sorte festgestellt wird, daß die Sorte die in Artikel 7 festgelegten Bedingungen erfüllt und der Antragsteller den übrigen Anforderungen dieses Gesetzes nachgekommen ist.“

39. Artikel 31 des Gesetzentwurfs entspricht der Verpflichtung zur Veröffentlichung von Mitteilungen über die Anträge auf Erteilung und die Erteilung des Züchterrechts und die vorgeschlagenen und genehmigten Sortenbezeichnungen nach Artikel 30 Absatz 1 Nummer iii der Akte von 1991.

Allgemeine Schlußfolgerung

40. Nach Ansicht des Verbandsbüros enthält der Gesetzentwurf die wesentlichen Bestimmungen der Akte von 1991. Auf dieser Grundlage wird Guatemala nach Vornahme der in diesem Dokument empfohlenen Änderungen betreffend die Berichtigung der Querverweise im Gesetzentwurf und nach der Annahme des Gesetzentwurfs und dem Inkrafttreten des Gesetzes in der Lage sein, den Bestimmungen der Akte von 1991 „Wirkung zu verleihen“, wie in deren Artikel 30 Absatz 2 vorgeschrieben.

41. *Der Rat wird ersucht,*

a) *die Analyse in diesem Dokument zur Kenntnis zu nehmen;*

b) *vorbehaltlich der Vornahme der in diesem Dokument ausgewiesenen Änderungen betreffend die Berichtigung der Querverweise im Gesetzentwurf eine positive Entscheidung über die Vereinbarkeit des Gesetzentwurfs Nr. 4013 Guatemalas über den Schutz von Pflanzenzüchtungen mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen; nach Vornahme der in diesem Dokument empfohlenen Änderungen betreffend die Berichtigung der Querverweise im Gesetzentwurf und nach der Annahme des Gesetzentwurfs und dem Inkrafttreten des Gesetzes kann Guatemala seine Urkunde über den Beitritt zur Akte von 1991 hinterlegen, und*

c) *den Generalsekretär zu ermächtigen, die Regierung Guatemalas von dieser Entscheidung zu unterrichten.*

[Anlagen folgen]

ANLAGE I

Schreiben der Stellvertretende Ministerin für auswärtige Angelegenheiten Guatemalas
vom 10. September 2009 an den Generalsekretär der UPOV

*Ministerium für auswärtige Angelegenheiten
Guatemala*

Guatemala-Stadt, den 10. September 2009

Ministerium für auswärtige Angelegenheiten
Guatemala CA

Guatemala, den 10. September 2009

Sehr geehrter Herr Generalsekretär,

ich beehre mich, Ihnen meine Grüße zu entbieten und auf das Verfahren für den Beitritt der Republik Guatemala zum Internationalen Übereinkommen zum Schutz von Pflanzenzüchtungen vom 2. Dezember 1961, revidiert in Genf am 10. November 1972, am 23. Oktober 1978 und am 19. März 1991 Bezug zu nehmen.

Insbesondere bin ich erfreut, Ihnen mitzuteilen, daß die Kommission für Wirtschaft und Außenhandel im Kongreß der Republik Guatemala am 11. Juni 2009 ein positives Gutachten über die Gesetzesinitiative Nr. 4013 über den Schutz von Pflanzenzüchtungen abgab, die zur Beratung und Annahme durch das Plenum des Kongresses der Republik Guatemala anhängig ist.

Vor der Einleitung des obenerwähnten Gesetzgebungsverfahrens ersucht Sie die Regierung der Republik Guatemala aufgrund des Artikels 34 Absatz 3 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen, die Gesetzesinitiative Nr. 4013 über den Schutz von Pflanzenzüchtungen an den Rat des Internationalen Verbandes zum Schutz von Pflanzenzüchtungen (UPOV) zu übermitteln, damit er seine Stellungnahme zur Vereinbarkeit dieser Initiative mit den Bestimmungen des UPOV-Übereinkommens abgibt.

Mit vorzüglicher Hochachtung

(gezeichnet) Lars Pira
Stellvertretende Ministerin für
auswärtige Angelegenheiten

Herrn
Francis Gurry
Generalsekretär
Internationaler Verband zum
Schutz von Pflanzenzüchtungen (UPOV)
34, ch. des Colombettes
CH-2011 Genf 20

Anlage: Abschrift des Gesetzentwurfs Nr. 4013 über den Schutz von Pflanzenzüchtungen

[Anlage II folgt]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

**DRAFT LAW No. 4013 ON THE PROTECTION OF
NEW VARIETIES OF PLANTS OF 2009**

Article 1.- Purpose. The purpose of this Law shall be to recognize and protect the rights of breeders of new plant varieties, protected by a plant protection title.

Article 2.- Scope of Application. This Law shall be enforceable throughout the territory of the Republic of Guatemala.

Article 3.- Definitions. For the purposes of this Law, the following shall mean:

Area: Plant and Animal Breeding Area (hereinafter Area) of the Unit of Norms and Regulations of the Ministry of Agriculture, Livestock and Food.

MAGA: Ministry of Agriculture, Livestock and Food,

Breeder: A natural person or a legal entity who has bred, discovered and developed a variety; the person who is the employer of the aforementioned person or who has commissioned the latter's work, unless otherwise agreed, or the successor in title of the first or second aforementioned person, as the case may be.

Right of priority: The right of the person applying for the breeder's right to file an application for the grant of the breeder's right for the same plant variety who can claim priority based on a prior application for registration, submitted in due form in a State or intergovernmental organization that is a party to a treaty or convention by which Guatemala is bound, for a period of no more than 12 months from the date of filing of the first application.

Regulations: Regulations issued by the Executive Enabling Authority for the Protection of New Plant Varieties.

Variety: 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:

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and,
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

Article 4.- Genera and Species to be Protected. This Law shall initially be applied to at least 15 plant genera or species listed in the respective regulations. It shall subsequently be applied to all plant genera and species at the latest ten years after the entry into force of this Law.

Article 5.- Nationality, Place of Residence and Registered Office. The following shall benefit from the rights laid down by this Law:

- (a) Nationals of the Republic of Guatemala, that is, natural and naturalized Guatemalans, and all persons having their place of residence or business in the country;
- (b) When Guatemala is a party to an international agreement relating to the granting of protection for plant varieties, it shall offer the nationals and persons having

their place of residence or business in parties who are members of the agreement
the same rights laid down in this Law.

Article 6.- Agent or Legal Representative. To be a party to a procedure in conformity with this Law and assert rights deriving therefrom, the agent or legal representative shall be resident in Guatemala.

Article 7.- Conditions of Protection. The breeder's right shall be granted where the variety is:

- (a) new;
- (b) distinct;
- (c) uniform;
- (d) stable, and
- (e) the applicant complies with the formalities established by this Law before the authority with whom the application has been filed; the variety shall be designated by a denomination in accordance with Article 44 of this Law; and the applicant shall pay the required fees. The grant of breeder's right shall not be subject to any further or different conditions from those mentioned above.

Article 8.- Novelty. A variety shall be deemed to be new if, at the date of filing of the application or at the priority date, 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,

- a. in the territory of Guatemala earlier than one year before the date of filing; and,
- b. in a territory other than that of Guatemala earlier than four years or, in the case of trees or vines, earlier than six years.

Novelty shall not be lost as a result of any sale or disposal to others:

1. that is the result of an abuse to the detriment of the breeder or his beneficiary or successor in title;
2. that forms part of an agreement for the transfer of the rights in the variety;
3. that forms part of an agreement under which another person has increased propagating material of the variety concerned, on behalf of the breeder or his beneficiary or successor in title, provided that the property in the propagated material reverts to the breeder or his beneficiary or successor in title and provided that the propagated material is not used for the production of another variety;
4. that forms part of an agreement under which another person undertakes field tests or laboratory trials, or small-scale processing trials, with a view to evaluating the variety;
5. that forms part of the fulfilment of a statutory or administrative obligation, in particular concerning biological security or the entry of varieties in an official catalogue of varieties accepted for trade;
6. that involves harvested material which constitutes a surplus product of the creation of the variety or of the activities referred to in (c) to (e) of this Article, provided that the said material is sold or disposed of anonymously, without any variety identification, for purposes of consumption.

Article 9.- Distinctness.

A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the application, or the applicable date of any priority claim.

The filing in any country of an application for the grant of a right for another variety or for the entry of the variety in an official register of cultivars shall make the said variety a matter of common knowledge as from that date insofar as the act concerned leads to the grant of a right or the entry of the other variety in the official register of cultivars, as the case may be.

Knowledge of the existence of the said other variety may be established by various references, such as commercial exploitation of the variety which is already under way, entry of the variety in a register of varieties maintained by a recognized professional association, or the presence of the variety in a reference collection.

Article 10.- Uniformity. A variety shall be deemed to be uniform if it is sufficiently uniform in its essential characteristics, due account being taken of the variations that may be expected from the manner of its reproduction or propagation.

Article 11.- Stability. A variety shall be deemed to be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of propagation or reproduction.

Article 12.- Principles. The breeder shall be entitled to apply for a breeder's right; where two or more persons have bred, or discovered and developed, a variety jointly, entitlement to protection shall be vested in them jointly, unless the joint breeders agree otherwise.

If they file the application as joint breeders, they shall be entitled to equal shares of protection. The breeder's right shall be transferable by any title whatsoever.

Article 13.- Presumption of Title. An applicant shall be deemed to be the holder of the right to protection. If the application is filed by a beneficiary or successor in title, it shall be accompanied by the act under which the right to breed the plant variety was acquired.

Article 14.- Judicial Assignment of an Application for a Breeder's Right. Where an application for a breeder's right has been filed by a person not entitled to protection, the entitled person may bring an action for the assignment to him of the application or, if already granted, of the breeder's right.

Such action shall be barred after five years following publication in the Official Gazette of the grant of the breeder's right. An action brought against a defendant who has acted in bad faith shall not be subject to any limitation.

When the action succeeds, any rights granted by the defendant to persons on the basis of the application or, where relevant, the breeder's right, shall become null and void. However, the holder of any exploitation right acquired in good faith who has taken genuine and effective measures with a view to exercising his rights before the date of notification of the action or, failing such notification, of the final decision, may perform or continue to perform the acts of exploitation resulting from the measures taken, subject to payment of equitable remuneration to the entitled person.

Article 15. Scope of the Breeder's Right. The following acts in respect of the propagating material of the protected variety shall require the authorization of the holder, subject to provisions covering exceptions to the right and its exhaustion:

- a. production or reproduction;
- b. conditioning for the purposes of propagation;
- c. offering for sale;
- d. selling or other marketing;
- e. exporting;
- f. importing; or,
- g. stocking for any of the purposes mentioned in (a) to (f) above.

The breeder may make any authorization granted subject to conditions and limitations.

Subject to the provisions relating to exceptions to and the exhaustion of the breeder's right, the acts referred to in the previous paragraph shall require the authorization of the breeder:

1. in respect of harvested material, including whole plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material; and,
2. in respect of products made directly from harvested material of the protected variety falling within the provisions of subparagraph (1) above through the unauthorized use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

The provisions of paragraphs 1 and 2 shall apply to the following:

- I. varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- II. varieties which are not clearly distinguishable from the protected variety in accordance with Article 9 of this Law; and,
- III. varieties whose production requires the repeated use of the protected variety.

For the purposes of subparagraph (i) above, a variety shall be deemed to be essentially derived from another variety ("the initial variety"), when:

- 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.

Essentially derived varieties may be obtained for example 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 16.- Exceptions to the Breeder's Right.

1. The breeder's right shall not extend to:

- (a) acts performed privately and for non-commercial purposes;
- (b) acts performed for experimental purposes; and,
- (c) acts performed for the purpose of breeding other varieties, and, except where the provisions of paragraph 3 of Article 15 apply, acts referred to in paragraphs 1 and 2 of Article 15 in respect of such other varieties.

The breeder's right shall not be deemed to be infringed if farmers, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or one which is essentially derived or not clearly distinguishable.

The provisions of paragraph 2 of this Article shall not apply to the use of reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental or forest species.

Article 17.- Exhaustion of the Breeder's Right. The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of paragraph 3 of Article 15, which has been sold or otherwise marketed by the breeder or with his consent in the territory of Guatemala, unless such acts:

- (a) involve further propagation of the material of a protected variety;
- (b) involve an export of material of the protected variety, which enables the propagation of the variety, in a country that does not protect the 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 this Article, "material" means, in relation to a variety:

- 1. propagating material of any kind;
- 2. harvested material, including whole plants and parts of plants; and,
- 3. any product made directly from the harvested material.

Article 18.- Measures Regulating Commerce. The breeder's right shall be independent of any measure taken by the State to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material.

Article 19.- Duration of the Breeder's Right. The breeder's right shall be valid for twenty-five (25) years for trees and vines and for twenty (20) years for other plants. In all cases, the duration shall be computed from the date of grant of protection to the year of expiration.

The applicant shall enjoy all of the rights provided for by this Law, starting from the date of filing of the application solely on a provisional basis while the application is being processed.

To ensure enforceability against others, applicants shall record, in all of their proceedings with others, that the use of their rights enjoys provisional protection during the period running from the filing of the application and the granting of the right.

Article 20.- Assignment of Property. As the breeder's right is a subject which concerns intellectual property, the general legal norms of legislation governing the subject shall apply, unless otherwise stipulated in this Law.

Such rights may be subject to assignment by one or more beneficiaries or successors in title. To be valid, such assignment must be in writing. Any act conveying or amending the breeder's right shall not affect the rights acquired by others prior to the date of this act.

An act conveying or amending a breeder's right shall be enforceable on others as soon as it has been registered with the Ministry of Agriculture, Livestock and Food.

Notwithstanding, prior to its entry, an act shall be enforceable on others who have acquired the rights since the date of this act but who were aware of the existence of this act when they acquired such rights.

Article 21.- Contractual Licenses. Licenses for use shall be granted in accordance with the provisions of the respective regulations, as follows:

- (a) the applicant or owner may grant to others an exclusive or non-exclusive license for use which covers all or part of the holder's rights provided by this Law;
- (b) the license is granted by means of a written contract.

The exclusive license or the non-exclusive licenses shall be entered in the Register of Applications or the Register of Rights, as the case may be, and shall be published in the Official Gazette.

Licenses may only be enforceable if the rights to the breeder's right have been acquired in good faith and if this was entered on the date of acquisition.

Article 22.- Compulsory Licenses. Further to a request by the authority or an interested party, Area may, for reasons of public interest and provided that the interested party is heard, order at any time that the plant variety be used or applied industrially or commercially by a government institution or by one or more public or private legal entities that have been appointed to this end; or that the said plant variety, notwithstanding the proceedings under way for the granting of the breeder's right, may remain open for the granting of one or more compulsory licenses, in which case the competent national authority may grant such a license to any person who applies for it, subject to the conditions that have been stipulated for that purpose.

The compulsory license shall confer on the applicant a non-exclusive right to perform all or part of the acts covered by Article 15 of this Law, with a view to supplying the domestic market.

Upon granting a compulsory license, Area shall set the conditions for such granting, that is, the scope of the license, including its duration and the acts for which it is granted, which shall be limited to the purposes behind its granting, the amount corresponding to equitable remuneration and the form of payment to the holder as well as the necessary conditions for ensuring that the license serves its purpose, and shall pay the corresponding fee to Area.

Area may require the holder to make available to the beneficiary of the compulsory license the quantity of propagating material needed for the reasonable use of the compulsory license, provided that the payment indicated in the fee is made.

The compulsory license shall be granted primarily for purposes of supplying the domestic market and Area may cancel the compulsory license if the circumstances which warranted its grant no longer prevail and it is unlikely that they will recur, while taking the necessary steps to protect the legitimate interests of the licensees. For this purpose, in addition to the evidence provided by the breeder, Area shall gather the information it deems necessary to check those facts.

Area shall revoke the compulsory license if the beneficiary violates the conditions under which it was granted.

Before granting a compulsory license, Area may hear the professional national organizations from the sector of activity in question. It shall issue a ministerial agreement declaring that the act is in the public interest.

Article 23.- Premature Expiration. The breeder's right shall expire before the deadline provided in Article 19 of this Law if renunciation submitted by the owner is registered by means of a written declaration addressed to Area.

Article 24.- Nullity of the Breeder's Right. The breeder's right shall be declared null and void when it is established:

- (a) that the variety was not new or distinct on the date of filing of the application or, as the case may be, the date of priority;
- (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the variety was not uniform or stable on the above-mentioned date; or,
- (c) the breeder's right has been granted to a person not entitled to it, in accordance with the provisions laid down in Article 14 of this Law.

If it is declared null and void, the breeder's right shall be deemed not to have been granted.

Article 25.- Cancellation of the Breeder's Right. The breeder's right shall be cancelled if it is established that the variety is no longer uniform or stable.

Furthermore, the breeder's right shall be cancelled if, within a period of two (2) months and after having been requested to do so:

- (a) the breeder does not provide Area with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (b) the breeder has not paid such fees as may be due to maintain the validity of his right;
- (c) the breeder does not propose, where the denomination of the variety is cancelled, another suitable denomination in accordance with Article 47 of this Law, within the time limit granted.

The cancellation shall be valid from the date on which it is entered in the register of rights for plant varieties granted.

Entries concerning breeder's rights shall be verified.

MAGA shall be responsible for publication.

Article 26.- Publication of the Lapse of the Breeder's Right. Entries concerning the premature expiration, nullity and cancellation of a breeder's right, as covered by Articles 23, 24 and 25 of this Law, as well as the corresponding grounds, shall be made in the Register of New Plant Varieties.

Such expirations shall be published electronically by MAGA.

Article 27.- Authority Responsible for the Protection of New Plant Varieties. All of the functions provided for in this Law for the protection of the rights of new plant varieties shall be performed by the Plant and Animal Breeding Area of the Unit of Norms and Regulations of the Ministry of Agriculture, Livestock and Food.

Article 28.- Right of Defense. Any decisions taken by Area which are prejudicial to the interests of a party to the proceedings shall be communicated to the said parties, together with the corresponding grounds.

Said party shall have an opportunity to submit observations in writing, in the 30 days following the date of receipt of the communication.

Article 29.- Appeal. Decisions taken by Area may be appealed in accordance with the provisions laid down in the Law of Judicial Review.

Article 30.- Registers. Conservation of Files. Area shall maintain a register of applications and a register of rights.

Applications for breeder's rights shall be published once they have been granted.

Interested parties may:

- (a) consult the documents relating to the application;
- (b) consult the documents relating to a breeder's right that has already been granted; and,
- (c) visit field trials and examine the necessary additional trials conducted pursuant to Article 37 or Article 50.

In the case of varieties whose production requires repeated use of other varieties (components), the applicant may, upon filing the application, request that the documents and trials relating to the components be exempted from advertising media.

Area shall conserve the files, originals or reproductions for a period of five years starting from the date on which the application was withdrawn or rejected, or, as the case may be, the date on which the breeder's right lapsed.

Article 31.- Official publication. Area shall publish the following information twice a year on MAGA's Website:

- a. applications for the grant of breeder's rights;
- b. applications for denominations of varieties;
- c. registration of new denominations of protected varieties;
- d. withdrawal of applications for the grant of breeder's rights;
- e. rejection of applications for the grant of breeder's rights;
- f. grants of breeder's rights;
- g. changes relating to persons (applicants, owners and agents);
- h. lapses of breeder's rights;

- i. assignment of property;
- j. contractual licences and compulsory licences;
- k. official announcements.

Article 32.- Fees. Administrative acts performed by Area with a view to the application of this Law shall give rise to the charging of a fee, which shall be set on a regulatory basis so as to cover all of the expenses deriving from the delivery of the following services:

- (a) processing of applications for title to new plant varieties;
- (b) technical examination of varieties;
- (c) grants of title to new plant varieties;
- (d) publication of decrees in the Official Gazette;
- (e) annual payment of breeder's rights;
- (f) change of denomination, assignment of property, licenses for use, dispatching of copies, certificates and duplicates of documents;
- (g) reinstatement of titles that have already been cancelled;
- (h) fee for compulsory licensing;
- (i) when Area has agreed that the technical examination shall be carried out by a natural person or legal entity recognized by MAGA for the delivery of the service and sets the fee to be paid for the execution of the technical examination of the varieties referred to in (b), the applicant shall pay the corresponding fee to the Institution, which shall perform the examination while retaining a percentage for Area to be determined statutorily.

This fee shall be paid by natural persons or legal entities who apply for and receive from Area one of the services defined by this Law.

Sums collected as payment for services rendered and the financial resources generated shall be deposited on a special Area account.

Article 33.- Forms and substance of the application. A person seeking protection for a plant variety shall file an application with Area and pay the corresponding fee.

The application shall include as a minimum the following information in order to be accepted:

- (a) name and address of the breeder and, as the case may be, of his agent and his residence card number;
- (b) name, certified copy of the residence card or equivalent thereof, and the address of the person who has bred or discovered and developed the variety, if it is not the applicant;
- (c) identification of the botanical taxon (botanical name and common name);
- (d) proposed denomination for the variety, or a provisional designation;
- (e) in the event that priority is claimed, the date and the authority with which the application for priority was filed;
- (f) technical description of the variety;
- (g) receipt for payment of the application fee; and,
- (h) signature of the application with a paralegal.

The detailed form and content of the application, and the documents to be attached, shall be specified in the Regulations under this Law.

Article 34.- Priority. The applicant may avail himself of a right of priority based upon an earlier application that has been duly filed for the same variety, by himself or by his predecessor in title, with the authority of a Contracting Party or State, in accordance with the provisions of this Law.

Where the application filed with Area is preceded by several such applications, priority may be based only on the earliest application.

The right of priority shall be expressly claimed in the application filed with Area. It may only be claimed within a period of 12 months from the date of filing of the earliest application. The day of filing shall not be included in the said period.

In order to avail himself of the right of priority, the applicant shall submit to Area, within three months of the filing date referred to in Article 36.4, a copy of the first application, certified to be a true copy by the authority of the Contracting Party with which that application was filed.

Area may request that a translation of the first application be produced within three months from the date of receipt of the request, in the event that it is not in Spanish, in accordance with the provisions of Article 37 of the Law on the Judicial Authority relating to documents from abroad.

The applicant shall be entitled to a period of up to two years from the date of expiry of the priority period, or, if the first application is rejected or withdrawn, of an appropriate period from the time of rejection or withdrawal, within which to furnish Area with the information, documents or material requested for the purpose of the examination.

The effect of priority shall be that, with regard to the conditions of protection attaching to the variety, the application shall be deemed to have been filed at the date of filing of the first application.

Article 35.- Examination of the form of the application. Area shall examine the application with regard to form, in accordance with the information specified in Article 34 of this Law.

If the application is incomplete or fails to meet the requirements, Area may request the applicant to correct it within a period of three months from the date of receipt of the notification. Any application which has not been corrected within that period shall be deemed to have been abandoned.

A complete application which meets the requirements shall be assigned a date of filing, which shall be entered in the Register of Applications. The date of filing shall be deemed to be the date on which Area has received the information mentioned in Article 33 of this Law.

Article 36.- Examination of the substance of the application. Area shall examine the substance of the application in order to verify, on the basis of the information, documents and material provided in the application, that the variety fulfils the conditions for grant established in Article 7 and that the applicant is entitled as per Article 12, both of this Law.

If the examination reveals an obstacle to the grant of the breeder's right, the application shall be rejected.

Article 37.- Technical examination of the variety. The variety shall form the subject matter of a technical examination designed to:

- a. verify that the variety belongs to the announced botanical taxon;
- b. determine that the variety is new, distinct, uniform and stable; and,

- c. once it has been established that the variety meets the above-mentioned conditions, establish the official description of the variety.

The technical examination shall be performed under the following conditions:

- I. the technical examination shall be conducted under Area's supervision.
- II. when growing trials have been or are being performed along with other necessary trials by the authority of the other Contracting Party, the results may be obtained by Area and the examination may be based on the said results.
- III. When the examination is not based on the results obtained as a complement to (b), the examination shall be based on growing trials and the other necessary trials performed by Area or another institution commissioned to that end.

Area shall determine the practical arrangements for the examination.

The official description mentioned in (c) may be supplemented or changed at a later date depending on developments with regard to agrobotanical knowledge, without, however, changing the subject matter of protection.

Article 38.- Information, documents and material required for the examination. The breeder shall provide all of the necessary information, documents or material which Area requires for the technical examination, at the latest within a period of four months as from the date of notification to the breeder.

Failing such information, the application shall be rejected.

Article 39.- Publication of the application. The application shall give rise to a decree in the Official Gazette which shall contain at least the elements mentioned as described in Article 33 of this Law.

Once the application has been published, any person may submit to Area, within two months following the date of publication, observations relating to the grant of the breeder's right. Such observations shall be made in writing and shall be justified. The documents which serve as proof shall be attached thereto.

Observations may only be submitted with a view to asserting that the variety does not meet one of the conditions established in Article 7 or that the applicant is not entitled to protection under the provisions of Article 12, both of this Law.

Article 40.- Observations. Observations shall be notified within three months to the applicant, who shall have three months, computed from the date of the corresponding notification, to comment on the observations and state whether he intends to maintain, modify or withdraw his application; such deadline shall be extended on the basis of a reasoned request from the applicant.

The breeder may or may not respond to the observations within the period of three months and may submit changes to his application.

The analysis of the observations shall take place as follows:

- a. The observations submitted shall be analyzed:
 - i. independently of the normal procedure for analyzing applications, when a lack of novelty of the variety or a lack of title by the applicant is invoked;or

- ii. in conjunction with the technical examination of the variety, when a lack of distinctiveness, uniformity or stability is invoked.
- b. Area may decide to change the arrangements for the technical examination of the variety with a view to responding to the observations as well as possible.

The author of the observations may be asked to submit additional information and documents in support of his observations, as well as the necessary plant material for the technical examination, by means of the procedure set out in Article 38 of this Law.

Article 41.- Grant of the Breeder's Right. Area shall grant the breeder's right when, as a result of the technical examination of the variety, it is established that the variety meets the conditions laid down in Article 7 and the applicant has satisfied the other requirements of this Law.

The grant of the breeder's right shall be entered in the Register of Applications.

The breeder's right shall also be entered in the Register of Rights and shall be published in the Official Gazette. The description of the variety may be included in the Register as a reference to Area's technical files.

Article 42.- Rejection of an Application for a Breeder's Right. The Office shall reject an application if it is established that it does not meet the conditions laid down in Article 7 of this Law or the other requirements stipulated in this Law; such rejection shall be entered in the corresponding Register of Applications.

Article 43.- Subject Matter of the Denomination and Signs likely to Constitute a Denomination.

The denomination shall serve as the generic designation of the variety.

The following elements may serve as denominations: any words, combinations of words, combinations of words and figures, and combinations of letters and figures which may or may not have a pre-existing meaning, provided that the said signs serve to identify the variety. The denomination may not consist entirely of figures unless this is an established practice to designate varieties. It shall not be likely to mislead or lead to confusion as to the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from any denomination which designates, in the territory of any of the UPOV Member States, an existing variety of the same plant species or a related species.

When a denomination has already been used for the variety in another Contracting Party, or has been proposed or registered in another Contracting Party, such denomination may only be used for the purposes of the proceedings with Area, unless this has provided grounds for rejection under Article 45 of this Law, in which case Area shall oblige the breeder to propose another denomination for the variety.

Any propagating material of a protected variety offered for sale, sold or marketed in any other form shall use the denomination of this variety, including after the date of expiration of the breeder's right for the variety, provided that no prior rights bar its use. This obligation shall also apply to varieties covered by the breeder's right under Article 15 of this Law.

The obligation to use a denomination shall not end with the breeder's right with which it originated.

The prior rights of others shall be reserved if, under a prior right, the use of the denomination of the variety is prohibited for a person who is obliged to use it, in accordance with the provisions of paragraph 4, in which case Area shall require the breeder to propose another denomination for the variety.

When a variety is offered for sale or marketed in another form, the use of a factory or trade mark, trade name or similar indication shall be allowed, provided that the denomination is easily recognizable.

Article 44.- Grounds for Rejection. An application for registration as a denomination for varieties shall be rejected for designations which:

- a. do not comply with the provisions of Article 44 of this Law;
- b. are not suitable for the identification of the variety, particularly due to a lack of distinctive character or because of linguistic unsuitability;
- c. are contrary to public order or morality,
- d. consist exclusively of signs or indications, which may serve, in the sector of the varieties and seeds, to designate the species, quality, quantity, destination, value, geographic origin or season of production.

Registration shall also be refused as a denomination of varieties for designations which contain an element which hinders or is likely to hinder the free use of the denomination in relation to the variety, in particular an element registered as a mark for products tied to the variety.

Article 45.- Registration Procedure. The denomination proposed for the variety for which protection is sought shall be submitted at the same time as the application, together with the sample.

Subject to the payment of a fee and the indication of a provisional designation in the application, the applicant may defer the procedure for registration of the denomination. If that is the case, the applicant shall submit the proposal for a denomination within thirty (30) days as from the date of receipt of the invitation addressed to him by Area. If the proposal is not submitted within this deadline, the application shall be abandoned.

The proposal for a denomination shall be published in the Official Gazette, unless Area establishes that there are grounds for rejection under Article 45 of this Law. The proposal shall also be notified to the authorities of the Contracting Parties.

Any interested party may submit, within a period of three months following publication, an observation concerning the registration of denomination, based on any of the grounds for refusal laid down in Article 44 of this Law. The authorities of other Contracting Parties may also submit observations.

The observations shall be notified to the applicant, who shall have three months to answer them. The applicant may, on the basis of the objections and observations, submit changes to the proposal.

If the changes to the proposal are not in conformity with Article 44 of this Law, Area may warn the applicant that he must propose a denomination that is in conformity. If the applicant fails to comply, the application shall be rejected.

The denomination shall be registered at the same time as the grant of the breeder's right.

Article 46.- Cancellation of a Denomination and Registration of a New Denomination. A competent court may order the cancellation of the registered denomination:

- a. if it is established that the denomination was registered despite grounds for rejection as per Article 45 of this Law;
- b. if a party submits a court decision prohibiting the use of the denomination in relation to the variety.

The holder may lodge an appeal for the setting aside of the cancellation of his denomination.

Article 47.- Annual Fee. The holder shall pay an annual fee to maintain the validity of his right.

The fee shall be paid during the first 15 days of the month of January of every year following the grant of the right. The sum collected shall be deposited on a special Area account.

Article 48.- Legal Remedies. Any person who:

- a. without being authorized to do so, performs acts which require the authorization of the holder under Article 15 of this Law;
- b. uses a designation in violation of Article 44 of this Law; and,
- c. fails to use a variety denomination in violation of Article 44 of this Law:

May be denounced by the holder or by the holder of an exclusive license, and any compensation shall be applicable as with any corresponding investigations performed due to a violation of another property right.

Subject to the content of this Law, the provisions applicable to the exercise of the rights conferred by virtue of a patent shall be applicable *mutatis mutandis* to the exercise of the rights by virtue of a breeder's right.

A party who performs any act requiring the authorization of the holder under Article 15 of this Law or who in any way infringes the rights conferred by this Law upon the breeder shall be obliged to pay compensation for damages. When calculating such damages, the competent authority may take any of the following elements into consideration:

- a. the value of the utility obtained by the defendant as a result of the unlawful acts;
- b. the lost profit incurred by the breeder as a consequence of the unlawful acts; or
- c. the price which the infringer would have paid the breeder for a contractual license under the conditions for legitimate use of the new plant variety.

Article 49.- Criminal Sanctions. Anyone who:

- a. produces material of a variety that is protected or covered by Article 15 of this Law, without the authorization of the holder of the variety;
- b. trades in material of a protected variety, with the knowledge that such material has been obtained in violation of the rights of the holder of the breeder's right;
- c. contracts to transport propagating material of a protected variety to a territory outside the scope of application of this Law, without special authorization from the holder of the right;

Shall be deemed to have committed a violation of the breeder's right which, without prejudice to the corresponding civil liability, shall be punishable by one to four years' imprisonment and a fine ranging from one thousand to ten thousand quetzales.

Subject to the provisions of this Law, the provisions applicable to the exercise of the rights conferred by a patent shall be applied *mutatis mutandis* to the exercise of the rights by virtue of a breeder's right.

A party who performs any act requiring the authorization of the holder in conformity with Article 15 of this Law or who in any way infringes the rights conferred by this Law upon the breeder, shall be obliged to pay compensation for damages. When calculating such damages, the competent authority may take the provisions of Article 48 of this Law into consideration.

At the holder's request, the judge may, through ancillary proceedings, grant the suspension of the acts denounced, in addition to taking any other applicable measure provided for by common law. The judge may order immediate precautionary measures if the holder justifies his request with evidence of the infringement or imminent infringement, provided that he offers sufficient security.

Article 50.- Cooperation with regard to the Examination. Area shall be empowered to conclude administrative cooperation agreements for the technical examination of the varieties and for the verification of the maintenance of the varieties with the authorities of the Contracting Parties or with their supervisory authorities.

Article 51.- Protection of Known Varieties. Without prejudice to the provisions of Article 7 of this Law, a breeder's right may also be granted for a variety even though it is no longer new at the date of entry into force of this Law with regard to the species considered, under the following conditions:

- a. The application shall be submitted within the year following the above-mentioned date; and,
- b. The variety must:
 - i. have been entered in the Register of Commercial Varieties for commercialization or in a register of varieties maintained by a professional association and accepted by Area for the purposes of this Article;
 - ii. have been the subject of a breeder's right in a Contracting Party, or have been the subject of an application for a breeder's right in a Contracting Party, provided that the application leads subsequently to the grant of the breeder's right; or,
 - iii. have been the subject of evidence acceptable to Area, relating to the date on which the variety ceased to be new in compliance with the provisions of Article 7 of this Law;
- c. When a breeder's right has been granted under this Article, the holder should grant licenses, on reasonable terms, to allow the continuation of any exploitation began in good faith by another party prior to the above-mentioned filing of the application.

The duration of the breeder's right granted under this Article shall be computed from the date of registration mentioned in (b)(i), the date of grant of the breeder's right mentioned in (b)(ii) or the date mentioned in (b)(iii) above, on which the variety ceased to be new. As relevant, the earliest of these dates shall be chosen.

Article 52. Regulations. The Executive Authority, at the request of the Ministry of Agriculture, Livestock and Food, shall issue the Regulations within a period of no more than ninety (90) days following the entry into force of this Law.

Article 53.- Final Provisions. The provisions and references relating to plant varieties in the Law on Industrial Property, Decree No. 57-2000 of the Congress of the Republic are hereby repealed, in particular Articles 97 and 98 and the second sentence of Article 93.

Patents for plant varieties granted under the Articles of the Law on Industrial Property that are repealed shall remain valid until their expiration.

Applications for patents for plant varieties which are being processed when this Law enters into force shall be converted into applications for the grant of breeder's rights.

Such conversion shall be requested in writing within a period of twelve (12) months following the date of entry into force of this Law.

Article 54.- Entry into Force. This Law shall enter into force thirty (30) days after its publication in the Official Gazette.

TO BE FORWARDED TO THE EXECUTIVE AUTHORITY FOR RATIFICATION, ENACTMENT AND PUBLICATION.

ISSUED IN THE PALACE OF THE LEGISLATIVE AUTHORITY IN GUATEMALA CITY ON THE ____ DAY OF THE MONTH OF _____ THE YEAR TWO THOUSAND AND NINE.

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