

Der Rat**C/51/20****Einundfünfzigste ordentliche Tagung
Genf, 26. Oktober 2017****Original:** spanisch
Datum: 26. September 2017

**PRÜFUNG DER VEREINBARKEIT DES GESETZENTWURFS ÜBER DEN SCHUTZ VON
PFLANZENZÜCHTUNGEN VON GUATEMALA MIT DER AKTE VON 1991
DES UPOV ÜBEREINKOMMENS***Vom Verbandsbüro erstelltes Dokument**Haftungsausschluss: dieses Dokument gibt nicht die Grundsätze oder eine Anleitung der UPOV wieder*

1. Mit Schreiben vom 8. September 2017 an den Generalsekretär der UPOV ersuchte Herr Byron Omar Acevedo Cordón, Vizeminister für Landwirtschaft von Guatemala, um die Prüfung der Vereinbarkeit des Gesetzentwurfs über den Schutz von Pflanzenzüchtungen von Guatemala (nachstehend der „Gesetzentwurf“) mit der Akte von 1991 des UPOV-Übereinkommens (nachstehend „die Akte von 1991“). Die Übersetzung des Briefs ist in Anlage I dieses Dokuments wiedergegeben. Anlage II enthält eine vom Verbandsbüro erstellte Übersetzung ins Englische. Der Brief und der Gesetzentwurf in der Originalsprache sind in der spanischen Fassung dieses Dokuments zu finden.

HINTERGRUND

2. Artikel 34 Absatz 3 der Akte von 1991 sieht vor: „Jeder Staat, der dem Verband nicht angehört, sowie jede zwischenstaatliche Organisation ersuchen vor Hinterlegung ihrer Beitrittsurkunde den Rat um Stellungnahme, ob ihre Gesetzentwürfe mit diesem Übereinkommen vereinbar sind. Ist der Beschluß über die Stellungnahme positiv, so kann die Beitrittsurkunde hinterlegt werden.“

3. Die Regierung von Guatemala leitete das Verfahren für einen Beitritt zur UPOV mit einem Brief vom 20. September 2006 ein, in dem die Regierung von Guatemala um die Stellungnahme des Rates zur Vereinbarkeit des Gesetzentwurfs von 2006 über den Schutz von Pflanzenzüchtungen mit der Akte von 1991 ersuchte. Auf seiner vierzigsten ordentlichen Tagung vom 19. Oktober 2006 prüfte der Rat den Gesetzentwurf von 2006 und entschied (siehe Dokument C/40/19 „Bericht“ Absatz 10):

- „a) die Informationen in Dokument C/40/15, wie vom Ausschuß 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.“

4. Das Verbandsbüro wurde am 26. März 2009 unterrichtet, daß der Gesetzentwurf, 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 (Gesetzentwurf von 2009) von der Regierung ausgearbeitet werde.

5. Auf Ersuchen der Regierung Guatemalas vom 5. Mai 2009 gab das Verbandsbüro Bemerkungen zu einem neuen Gesetzentwurf ab und teilte den zuständigen Behörden mit, daß der neue Gesetzentwurf oder das angenommene Gesetz dem Rat zur Prüfung auf dessen Vereinbarkeit mit der Akte von 1991 vorgelegt werden müsse.

6. Mit Schreiben vom 10. September 2009 ersuchte die Regierung von Guatemala um Prüfung des Gesetzentwurfs Nr. 4013 über den Schutz neuer Pflanzenzüchtungen von 2009. Auf seiner dreiundvierzigsten ordentlichen Tagung vom 22. Oktober 2009 prüfte der Rat den Gesetzentwurf von 2009 und entschied (siehe Dokument C/43/17 „Bericht“ Absatz 11):

„a) die Analyse in Dokument C/43/15 sowie die Mitteilung der Delegation Guatemalas, sie beabsichtige, den zweiten Satz in Artikel 43 Absatz 4 des Gesetzentwurfs, „[d]iese Verpflichtung gilt auch für Sorten, die nach Artikel 15 dieses Gesetzes vom Züchterrecht erfaßt werden“ zu streichen, zur Kenntnis zu nehmen;

b) vorbehaltlich der Vornahme der in Dokument C/43/15 ausgewiesenen Änderungen betreffend die Berichtigung der Querverweise im Gesetzentwurf und der Streichung des Satzes „[d]iese Verpflichtung gilt auch für Sorten, die nach Artikel 15 dieses Gesetzes vom Züchterrecht erfaßt werden“ in Artikel 43 Absatz 4 des Gesetzentwurfs, eine positive Entscheidung über die Vereinbarkeit des Gesetzentwurfs Nr. 4013 Guatemalas über den Schutz von Pflanzenzüchtungen von 2009 mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen; nach Vornahme der in Dokument C/43/15 empfohlenen Änderungen betreffend die Berichtigung der Querverweise und nach der Streichung des Satzes „[d]iese Verpflichtung gilt auch für Sorten, die nach Artikel 15 dieses Gesetzes vom Züchterrecht erfaßt werden“ in Artikel 43 Absatz 4 des Gesetzentwurfs 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.“

7. Am 15. Juli 2014 erhielt das Verbandsbüro von Herrn Jorge Eduardo Salazar, Direktor, Ministerium für Landwirtschaft, Viehzucht und Nahrungsmittelversorgung, eine Abschrift des Gesetzes Guatemalas über den Schutz von Pflanzenzüchtungen vom 24. Juni 2014, das am 26. September 2014 in Kraft treten sollte. Am 5. September 2014 teilte Herr Salazar dem Verbandsbüro mit, daß der Kongreß das Gesetz am 4. September 2014 zurückgezogen hatte.

8. Am 28. April 2017 ersuchte Herr Acevedo um Unterstützung des Verbandsbüros beim Verfahren für den Beitritt Guatemalas zum UPOV-Übereinkommen und um Abgabe von Bemerkungen zum Gesetzentwurf von 2017 über den Schutz von Pflanzenzüchtungen.

9. Am 31. Juli 2017 gab das Verbandsbüro Anmerkungen zu dem Gesetzentwurf von 2017 ab und nahm am 4. August 2017 an einer Sitzung in Guatemala teil, um maßgebliche Bestimmungen des UPOV-Übereinkommens auszuführen. Am 29. August 2017 erhielt das Verbandsbüro einen aktualisierten Gesetzentwurf, der die vom Verbandsbüro eingebrachten Anmerkungen und die auf der Sitzung in Guatemala gezogenen Schlußfolgerungen enthielt.

GRUNDLAGE FÜR DEN SCHUTZ NEUER PFLANZENSORTEN IN GUATEMALA

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

Artikel 1 der Akte von 1991: Begriffsbestimmungen

11. Artikel 3 des Gesetzentwurfs enthält Begriffsbestimmungen von Sorte und Züchter, die jeweils den Begriffsbestimmungen in Artikel 1 Buchstabe iv und vi der Akte von 1991 entsprechen.

Artikel 2 der Akte von 1991: Grundlegende Verpflichtung der Vertragsparteien

12. Artikel 1 des Gesetzentwurfs enthält Bestimmungen, die den grundlegenden Verpflichtungen von Artikel 2 der Akte von 1991 entsprechen.

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

13. Artikel 4 des Gesetzentwurfs sieht vor: „Dieses Gesetz gilt am Datum seines Inkrafttretens für alle Gattungen und Arten“ entsprechend den Bestimmungen von Artikel 3 Absatz 2 Buchstabe ii der Akte von 1991.

Artikel 4 der Akte von 1991: Inländerbehandlung

14. Artikel 5 des Gesetzentwurfs enthält Bestimmungen über die Inländerbehandlung, die den Bestimmungen in Artikel 4 der Akte von 1991 entsprechen.

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

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

16. Artikel 8 Absatz 2 und 3 enthält Bestimmungen bezüglich der freigestellten Ausnahme nach Artikel 6 Absatz 2 „vor kurzem gezüchtete Sorten“ der Akte von 1991 wie folgt:

„2) Ist dieses Gesetz gemäß Artikel 4 auf eine Pflanzengattung- oder -art anwendbar, auf die es zuvor nicht anwendbar war, so werden die Sorten, die dieser Pflanzengattung oder -art angehören, so angesehen, daß sie die in Absatz 1 dieses Artikels festgelegte Neuheitsvoraussetzung erfüllen, selbst wenn der Verkauf oder die Abgabe an Dritte, die in diesem Absatz beschrieben sind, im Hoheitsgebiet von Guatemala innerhalb von vier Jahren vor dem Tag der Einreichung oder, im Fall von Bäumen und Rebe, innerhalb von sechs Jahren vor diesem Datum stattgefunden hat.

3) Die Bestimmungen in Absatz 2 dieses Artikels gelten nur für Anträge auf Erteilung eines Züchterrechts, die innerhalb einer Frist von maximal einem Jahr, ab dem die Bestimmungen dieses Gesetzes für die betreffenden Gattungen oder Arten gelten, eingereicht werden.“

Artikel 10 der Akte von 1991: Einreichung von Anträgen

17. Artikel 33 des Gesetzentwurfs enthält Bestimmungen zur Einreichung von Anträgen. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die im Widerspruch zu Artikel 10 der Akte von 1991 stehen.

Artikel 11 der Akte von 1991: Priorität

18. Artikel 34 des Gesetzentwurfs enthält Bestimmungen zum Prioritätsrecht, die den Bestimmungen in Artikel 11 der Akte von 1991 entsprechen.

Artikel 12 der Akte von 1991: Prüfung des Antrags

19. Artikel 35 bis 38 des Gesetzentwurfs enthalten Bestimmungen über die Prüfung des Antrags, die den Bestimmungen von Artikel 12 der Akte von 1991 entsprechen.

Artikel 13 der Akte von 1991: Vorläufiger Schutz

20. Artikel 19 Absatz 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

21. Artikel 15 des Gesetzentwurfs enthält Bestimmungen über den Inhalt des Züchterrechts, die den Bestimmungen in Artikel 14 der Akte von 1991 entsprechen.

22. Artikel 15 Absatz 3 enthält Bestimmungen bezüglich der freigestellten Ausnahme nach Artikel 14 Absatz 3 „Handlungen in bezug auf bestimmte Erzeugnisse“ der Akte von 1991 wie folgt:

„3) Gemäß den Artikeln 16 und 17 bedürfen die unter Buchstaben a Ziffern i bis vii des Absatzes 1 erwähnten Handlungen in bezug auf Erzeugnisse, die durch ungenehmigte Benutzung von Erntegut, das unter die Bestimmungen des Absatzes 2 fällt, der Zustimmung des Züchters, es sei denn, daß der Züchter angemessene Gelegenheit hatte, sein Recht mit Bezug auf das genannte Erntegut auszuüben.“

Artikel 15 der Akte von 1991: Ausnahmen vom Züchterrecht

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

24. Artikel 16 Absatz 2 des Gesetzentwurfs enthält Bestimmungen über die freigestellte Ausnahme nach Artikel 15 Absatz 2 der Akte von 1991 wie folgt:

„2) Das Züchterrecht wird nicht als verletzt betrachtet, wenn Landwirte in angemessenem Rahmen und unter Wahrung der berechtigten Interessen des Züchters das Erntegut, das sie aus dem Anbau der geschützten Sorte oder einer in Artikel 15 Absatz 4 Buchstabe a Ziffer i oder ii erwähnten Sorte, wie in den Bestimmungen des Gesetzes vorgeschrieben, im eigenen Betrieb gewonnen haben, im eigenen Betrieb zum Zwecke der Vermehrung verwenden.

„3) Die Bestimmungen von Absatz 2 dieses Artikels gelten nicht für geschützte Sorten von Obst-, Zier- und forstlichen Baumarten.

Artikel 16 der Akte von 1991: Erschöpfung des Züchterrechts

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

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

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

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

27. Artikel 18 des Gesetzentwurfs enthält Bestimmungen über die Regelung des Handels, die den Bestimmungen in Artikel 18 der Akte von 1991 entsprechen. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die im Widerspruch zu Artikel 18 der Akte von 1991 stehen.

Artikel 19 der Akte von 1991: Dauer des Züchterrechts

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

Artikel 20 der Akte von 1991: Sortenbezeichnung

29. Artikel 43 bis 46 des Gesetzentwurfs enthält Bestimmungen über Sortenbezeichnungen, die den Bestimmungen in Artikel 20 der Akte von 1991 entsprechen.

Artikel 21 der Akte von 1991: Nichtigkeit des Züchterrechts

30. Artikel 24 des Gesetzentwurfs enthält Bestimmungen über die Nichtigkeit des Züchterrechts, die den Bestimmungen in Artikel 21 der Akte von 1991 entsprechen.

Artikel 22 der Akte von 1991: Aufhebung des Züchterrechts

31. Artikel 25 des Gesetzentwurfs enthält Bestimmungen über die Aufhebung des Züchterrechts, die den Bestimmungen in Artikel 22 der Akte von 1991 entsprechen.

Artikel 30 der Akte von 1991: Anwendung des Übereinkommens

32. Hinsichtlich der Verpflichtung, „geeignete Rechtsmittel vorzusehen, die eine wirksame Wahrung der Züchterrechte ermöglichen“ (Artikel 30 Absatz 1 Buchstabe i der Akte von 1991), enthalten die Artikel 48 und 49 des Gesetzentwurfs Bestimmungen zu den verfügbaren Maßnahmen zur Wahrung der Züchterrechte.

33. Bezüglich der Verpflichtung nach Artikel 30 Absatz 1 Buchstabe ii der Akte von 1991 heißt es in Artikel 27 des Gesetzentwurfs folgendermaßen:

„Alle in diesem Gesetz für den Schutz der Rechte an neuen Pflanzensorten vorgesehenen Funktionen werden vom Vizeministerium für landwirtschaftliche Gesundheit und Regulierung (VISAR) des Ministeriums für Landwirtschaft, Viehzucht und Ernährung (MAGA) ausgeübt.“

34. Artikel 26, 31 und 39 des Gesetzentwurfs entsprechen der Verpflichtung zur Veröffentlichung von Mitteilungen über Anträge auf und Erteilung von Züchterrechten sowie über die vorgeschlagenen und genehmigten Sortenbezeichnungen gemäß Artikel 30 Absatz 1 Buchstabe iii der Akte von 1991.

Allgemeine Schlußfolgerung

35. Nach Ansicht des Verbandsbüros enthält der Gesetzentwurf die wesentlichen Rechtsvorschriften der Akte von 1991. Auf dieser Grundlage, und sobald der Gesetzentwurf ohne zusätzliche Änderungen in Kraft getreten ist, wird Guatemala in der Lage sein, den Bestimmungen der Akte von 1991 „Wirkung zu verleihen“, wie in deren Artikel 30 Absatz 2 vorgeschrieben.

36. *Der Rat wird ersucht,*

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

b) eine positive Entscheidung über die Vereinbarkeit des „Gesetzentwurfs über den Schutz von Pflanzenzüchtungen („Gesetzentwurf“) mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen, was Guatemala, sobald der Gesetzentwurf ohne Änderungen angenommen und das Gesetz in Kraft getreten ist, in die Lage versetzt, seine Urkunde über den Beitritt zur Akte von 1991 zu hinterlegen; und

c) den Generalsekretär zu ermächtigen, die Regierung von Guatemala von obiger Entscheidung zu unterrichten.

[Anlagen folgen]

ANLAGE I

Regierung der Republik Guatemala
Ministerium für Landwirtschaft, Viehzucht und Ernährung
Vizeministerium für landwirtschaftliche Gesundheit und Regulierung

Guatemala, 8. September 2017
Amt VISAR Nr. 579-2017/BM/ssg

Herr
Francis Gurry
Generalsekretär
Internationaler Verband zum Schutz von Pflanzenzüchtungen (UPOV)
34, chemin des Colombettes
CH-1211 Genf 20

Sehr geehrter Herr Generalsekretär,

ich freue mich, Ihnen mitteilen zu dürfen, daß sich der Entwurf eines Gesetzes zum Schutz von Pflanzenzüchtungen¹ in Ausfertigung befindet und dem Kongress der Nation zu seiner Verkündung überstellt werden wird.

Guatemala beabsichtigt, dem Internationalen Übereinkommen zum Schutz von Pflanzenzüchtungen beizutreten (UPOV-Übereinkommen vom 2. Dezember 1961, revidiert in Genf am 10. November 1972, am 23. Oktober 1978 und am 19. März 1991 (UPOV-Übereinkommen)). Deshalb ersucht die Regierung von Guatemala gemäß Artikel 34 Absatz 3 des UPOV-Übereinkommens den Rat der UPOV um Abgabe seiner Stellungnahme zur Vereinbarkeit des Gesetzentwurfs über den Schutz von Pflanzenzüchtungen mit den Bestimmungen des UPOV-Übereinkommens.

Hochachtungsvoll

[Unterschrift]

Byron Omar Acevedo Cordón
Vizeminister für landwirtschaftliche
Gesundheit und Regulierung

Anlage: Abschrift des Entwurfs eines Gesetzes zum Schutz von Pflanzenzüchtungen.

¹ Es wird daran erinnert, daß die Regierungen dem Rat ihre verabschiedeten Gesetze oder andernfalls die endgültige amtliche Fassung ihrer Gesetzentwürfe in der Form vorlegen können, wie sie in ihren Parlamenten eingebracht wurden. Endgültige amtliche Fassungen von Gesetzentwürfen können die Grundlage für eine positive Entscheidung des Rates über den Beitritt zum UPOV-Übereinkommen bilden, sofern während der parlamentarischen Beratungen keine wesentlichen Änderungen an den Gesetzentwürfen vorgenommen werden.

[Anlage II folgt]

DRAFT LAW OF GUATEMALA ON THE PROTECTION OF NEW VARIETIES OF PLANTS

Article 1 Object and 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

This law shall apply to natural, legal, autonomous and semi-autonomous persons seeking to protect improved plant varieties.

Protection shall not be granted to wild plants that are part of Guatemalan biodiversity and that have not been bred by persons, whose access will be governed by the relevant current legislation.

Article 3 Definitions

For the purposes of this Law, the following definitions shall apply:

Successor-in-title: A person who, by succession or assignment, acquires the rights of another person.

Discovered and developed: process that includes the observation of a natural variation of a plant species, its identification, isolation, selection, propagation, characterization and evaluation. The above definition shall not encompass mere discovery.

MAGA: Ministry of Agriculture, Livestock and Food

VISAR: Vice-Ministry of Agricultural Health and Regulations of the Ministry of Agriculture, Livestock and Food.

Regulation: Set of general legal rules issued by the Government and subject to this law.

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

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.

Protected variety: a variety that is entered into the Registry of Protected Varieties.

Contracting Party: a State or an intergovernmental organization party to the UPOV Convention.

Member of UPOV: a State party to the UPOV Convention of 1961/Act of 1972 or Act of 1978, or a Contracting Party of the Act of 1991.

**Article 4
Genera and Species to Be Protected**

This law shall apply to all plant genera and species on the date of its entry into force.

**Article 5
National Treatment**

- (1) Without prejudice to the rights specified in this Law, nationals of a Contracting Party, as well as natural persons resident in the territory of that Contracting Party and legal entities having their registered offices in such territory, shall insofar as the grant and protection of breeder's rights are concerned, enjoy within the territory of Guatemala the same treatment that this Law accords to Guatemalan nationals, provided that such nationals, natural or legal persons comply with the conditions and formalities imposed on Guatemalan nationals.
- (2) "Nationals" means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

**Article 6
Agent or Legal Representative**

To be a party to a procedure in accordance with this Law and assert the rights deriving therefrom, the agent or legal representative of the breeder shall be resident in Guatemala.

**CHAPTER I
CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT
Article 7
Conditions of Grant**

- (1) The breeder's right shall be granted where the variety is:
 - (a) new;
 - (b) distinct;
 - (c) uniform; and
 - (d) stable.
- (2) Where the applicant complies with the formalities provided for by this Law before the authority with which the application has been filed and where the variety has been designated by a denomination in accordance with the provisions of Article 43 of this Law and the applicant has paid 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

For a plant variety to be deemed to be new, it shall fulfill the following criteria.

- (1) A variety shall be deemed to be new if, at the date of filing of the application, 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
 - (i) in the territory of Guatemala earlier than one year before the filing date; and
 - (ii) in a territory other than that of Guatemala earlier than four years or, in the case of trees or vines, earlier than six years.
- (2) Where, in accordance with article 4, this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to that plant genus or species shall be deemed to satisfy the condition of novelty defined in paragraph (1) of this Article even where the sale or disposal to third parties described in that paragraph had taken place in the territory of Guatemala within four years before the filing date or, in the case of trees and vines, within six years before that date.
- (3) The provision in paragraph (2) of this Article shall apply only to applications for breeder's rights submitted within a maximum period of one year as from the application of the provisions of the Law to the genera or species concerned.

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.

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

Article 10 Uniformity

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 11 Stability

A 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.

**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 in the appropriate court for the assignment to him of the application or, if already granted, of the breeder's right.

**CHAPTER III
BREEDER'S RIGHTS**

**Article 15
Scope of the Breeder's Right**

(1) (a) Subject to Articles 16 and 17, the following acts in respect of the propagating material of the protected variety shall require the authorization of the holder:

- (i) production or reproduction (multiplication);
- (ii) preparation or conditioning for the purposes of propagation;
- (iii) offering for sale;
- (iv) selling or other marketing;
- (v) exporting;
- (vi) importing; or,
- (vii) stocking for any of the purposes mentioned in (i) to (vi) above.

(b) The breeder may make his authorization subject to conditions and limitations.

(2). Subject to Articles 16 and 17, the acts referred to in paragraph 1(a)(i) to (vii) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

- (3). Subject to Articles 16 and 17, the acts referred to in paragraph 1(a)(i) to (vii) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2), through the unauthorized use of such harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.
- (4). (a) The provisions of the above paragraphs shall apply in relation to
- (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.
- (b) For the purposes of subparagraph (a)(i), 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.
- (c) 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 Article 15(4) apply, acts referred to in Article 15(1) to (3) in respect of such other varieties.
- (2) The breeder's right shall not be deemed to be infringed if, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, farmers 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 a variety covered by Article 15(4)(a)(i) or (ii), as stipulated in the regulations of the Law.
- (3) The provisions of paragraph 2 of this Article shall not apply to protected varieties of fruit, ornamental or forest species.

Article 17
Exhaustion of the Breeder's Right

- (1) 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 Article 15(4) of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of Guatemala, or any material derived from the said material, unless such acts:
 - (i) involve further propagation of the material of a protected variety;
 - (ii) involve an export of material of the protected variety, which enables the propagation of the variety, in a country that 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.
- (2) For the purposes of this Article, "material" means, in relation to a variety:
 - (i) propagating material of any kind;
 - (ii) harvested material, including entire plants and parts of plants; and,
 - (iii) any product made directly from the harvested material.

Article 18
Measures Regulating Commerce

The breeder's right is 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. In any case, such measures shall not affect the application of the provisions of this Law.

Article 19
Duration of the Breeder's Right

- (1) The breeder's right shall be granted for a period of twenty-five (25) years for trees and vines and for twenty (20) years for other plants. In all cases, the duration shall be computed as from the date of grant of protection until the year of expiration.
- (2) Provisional protection shall be established to safeguard the interests of the breeder for the period between the publication of the application for a breeder's right and the granting of the right.
- (3) The applicant shall be deemed to be the holder of the breeder's right in respect of any person who, in the interval provided for in paragraph (2), has carried out acts which, after the granting of the right, require the breeder's authorization in accordance with the provisions of Article 15. The applicant shall have the same rights to enter into licensing agreements and to take legal action as if on the publication date the breeder's right had been granted to the applicant, in respect of the variety in question. If the right is not granted, it shall be deemed that the rights conferred under this paragraph have never been granted.

**CHAPTER IV
THE BREEDER'S RIGHT AS PROPERTY**

**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 to one or more successors-in-title, or assignees, which must be recorded in a public deed. Any act conveying or amending the breeder's right shall not affect the rights acquired by others prior to the date of such act.

An act conveying or amending a breeder's right shall be enforceable on others as soon as it has been registered with VISAR.

Nonetheless, 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.

**CHAPTER V
LICENSES FOR USE
Article 21
Contractual Licenses**

The applicant or holder 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.

To have effect in respect of third parties, 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.

**Article 22
Compulsory Licenses**

MAGA may, for reasons of public interest and provided that the interested party is heard, *ex officio*, upon application by the authority or an interested party, 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, solely in the public interest.

Upon granting a compulsory license, MAGA 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 underpinning 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 MAGA.

VISAR 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 solely in the public interest and MAGA may cancel the compulsory license if the circumstances which warranted its granting 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, MAGA shall gather the information it deems necessary to verify those facts.

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

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

CHAPTER VI
EXPIRATION OF THE BREEDER'S RIGHT
Article 23
Premature Expiration

The breeder's right shall expire before the time limit stipulated in Article 19 of this Law if renunciation submitted by the owner is registered by means of a sworn declaration addressed to MAGA.

Article 24
Nullity of the Breeder's Right

- (1) The breeder's right shall be declared null and void when it is established:
 - (i) that at the time of the granting of the breeder's right, the conditions laid down in Articles 8 and 9 were not effectively met;
 - (ii) that, where the grant of the breeder's right has been essentially based on the information and documents furnished by the breeder, the conditions laid down in Articles 10 and 11 were not effectively met at the time the breeder's right was granted; or
 - (iii) that the breeder's right was granted to a person not entitled to it, unless it had been assigned to the person who is so entitled, in accordance with the provisions laid down in Article 14 of this Law.
- (2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

Article 25
Cancellation of the Breeder's Right

- (1) Reasons for cancellation.
 - (a) The breeder's right may be cancelled if it is proven that the conditions set forth in Articles 10 and 11 are no longer fulfilled.
 - (b) Furthermore, the breeder's right shall be cancelled if, within a period stipulated in the Law and after having been requested to do so:
 - a. the breeder does not provide VISAR 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; or

c. the breeder does not propose another suitable denomination in accordance with Article 43 of this Law within the prescribed time limit, where the denomination of the variety is cancelled.

(2) No breeder's right may be cancelled for reasons other than those referred to in paragraph (1) above.

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.

MAGA shall publish such expirations in *Diario de Centroamérica* and electronically on its website.

TITLE III
ORGANIZATION AND PROCEDURE

CHAPTER I
ORGANIZATION, POWERS AND GENERAL RULES OF PROCEDURE

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 Vice-Ministry of Agricultural Health and Regulations (VISAR) of the Ministry of Agriculture, Livestock and Food (MAGA).

Article 28
Right of Defense

Any decisions taken by VISAR that are prejudicial to the interests of a party in the proceedings shall be communicated to the party, together with the corresponding grounds.

The party may submit observations in writing within 30 days following the date of receipt of the communication.

Article 29
Appeal

Decisions taken by VISAR may be appealed in accordance with the provisions laid down in the Law of Judicial Review.

Article 30
Registration
Conservation of Files

VISAR shall maintain a register of applications and a register of breeder's rights.

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

Interested parties may:

- (i) consult the documents filed in relation to the application;
- (ii) verify the documents relating to a breeder's right that has already been granted; and
- (iii) visit cultivation trials and examine other necessary trials carried out as part of the registration procedure and those submitted as part of cooperation in the technical examination of a variety in accordance with Articles 37 or 50 of this law.

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 the measures laid down in previous paragraphs.

VISAR shall store the files, originals or reproductions as from the date of withdrawal or rejection of the application, or, as the case may be, the date on which the breeder's right lapsed, establishing a computer registration.

Article 31 Official Publication

VISAR 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 licenses and compulsory licenses;
- (k) official announcements.

Article 32 Fees

Administrative acts performed by VISAR with a view to the implementation of this Law shall give rise to the charging of a fee, which shall be set by regulation to cover all of the expenses deriving from the provision of the following services:

- (a) processing of applications for titles 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 for the maintenance of breeder's rights;
- (f) administration of the registry with regard to 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) where VISAR has agreed that the technical examination shall be carried out by a natural or legal person recognized by MAGA for the delivery of the service, the fee due for the performance of the technical examination of the varieties referred to in paragraph (b), the applicant shall pay the corresponding fee to the institution performing the examination, including a percentage of the fee to VISAR to be determined by regulation.

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

The general fund for the payment of the services provided and the financial resources generated shall be deposited in a special VISAR account and may not be used for any purpose other than the object and purpose of this Law.

CHAPTER II APPLICATION Article 33

Form and Substance of the Application

A person seeking protection for a plant variety shall file an application with VISAR and pay the corresponding fee. VISAR shall prepare a form to this end.

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

Article 34 Right of Priority

- (1) A breeder who has properly filed an application for protection of a variety in any of the Contracting Parties ("first application") shall enjoy a priority right for a period of 12 months to file an application for the grant of a breeder's right for the same plant variety in Guatemala ("subsequent application"). This priority period shall commence as from the filing date of the first application. The filing day shall not be included in the priority period.
- (2) To avail himself of the priority right, the breeder must claim the priority of the first application in the application filed in Guatemala; The applicant shall have a period of three months as from the date of filing of the application in Guatemala to provide a copy of the documents constituting the first application, certified to be a true copy by the authority before which the first application was filed, together with the samples or any other evidence that the variety that is the subject of the two applications is the same.
- (3) 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 a period of up to six months as from the time of rejection or withdrawal, within which to furnish VISAR with any information, documents or material required for the purpose of the examination provided for in Article 38 of this Law.

- (4) Any acts that occur within the time limit prescribed in paragraph (1) above, such as the existence of an application or the use of the variety that was the subject of the first application shall not constitute grounds for the rejection of the subsequent application. Moreover, such acts shall not create rights in respect of third parties.

CHAPTER III PROCESSING OF THE APPLICATION

Article 35 Examination of the Form of the Application

VISAR shall examine the application with regard to form, in accordance with the information specified in Article 33 of this Law.

If the application is incomplete or fails to meet the requirements, VISAR may request the applicant to correct it within a period of three months as 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 Plant Varieties. The date of filing shall be deemed to be the date on which VISAR has received the elements of the form mentioned in Article 33 of this Law.

Article 36 Substantive Examination of the Application

VISAR shall examine the substance of the application in order to verify, on the basis of the information and documents presented in the application and material provided, that the variety fulfills the conditions for grant established in Article 7 to 11 and that the applicant is entitled in accordance with Articles 3, 12 and 13 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

VISAR shall examine the candidate varieties to be protected with respect to their distinctness, uniformity and stability, having regard to any of the following options:

- (a) through crop trials or other type of evidence conducted by VISAR, to which purpose it may rely on the collaboration of other national research institutions and/or organizations;
- (b) through the reports of examinations conducted by other competent official agencies or by specialized bodies, within the framework of international cooperation. Such bodies must be completely independent of the person applying for the breeder's right;
- (c) on the basis of the trial information (DUS) filed by the breeder, in accordance with the requirements to this end set forth by VISAR, which shall be empowered to inspect trials and verify the results; and
- (d) through *in situ* inspections, approval of DUS examinations conducted by official agencies, documentary review or a combination of the above.

VISAR shall be empowered to enter into agreements with national agencies and the competent authorities of other countries with a view to meeting the requirements for the technical examination of the candidate varieties to be protected.

Article 38
Information, Documents and Material Required for the Examination

The breeder shall provide all of the necessary information, documents or material which VISAR requires for the technical examination.

Failing the provision of 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 the least, the information stipulated in the regulation of this Law.

Once the application has been published, any person may submit to VISAR, within two months of the date of publication, observations relating to the grant of the breeder's right.

Such observations shall be made in writing and shall be supported by grounds. The evidentiary documents 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 to 11 or that the applicant is not entitled to protection under the provisions of Article 3, 12 and 13 of this Law.

Article 40
Observations

Observations shall be notified 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; the deadline may be extended on the basis of a reasoned request from the applicant.

The analysis of the observations shall take place as follows:

- (1) The observations submitted shall be analyzed:
 - (a) independently of the normal procedure for analyzing applications, where a lack of novelty of the variety or a lack of title by the applicant is invoked; or
 - (b) in conjunction with the technical examination of the variety, when a lack of distinctiveness, uniformity or stability is invoked.
- (2) VISAR may decide to amend the arrangements for the technical examination of the variety with a view to providing more robust technical grounds for the observations.

The author of the observations may be requested to submit additional supporting information and documents, 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

VISAR 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 of this Law and that the applicant has satisfied the requirements of this Law and paid the requisite fees.

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

Article 42
Rejection of an Application for a Breeder's Right

VISAR shall reject an application if it does not meet the conditions laid down in Article 7 of this Law or the other requirements stipulated herein; such rejection shall be noted in the Register of Plant Varieties for corresponding applications.

CHAPTER IV
VARIETY DENOMINATION

Article 43
Subject Matter of the Denomination and Signs Likely to Constitute a Denomination

- (1) The denomination shall serve as the generic designation of the variety.
- (2) 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 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.
- (3) 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 before VISAR, unless there are grounds for rejection under Article 44 of this Law, in which case VISAR shall require the breeder to propose another denomination for the variety.
- (4) Any propagating material of a protected variety offered for sale, sold or marketed in any other form in Guatemala 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, in accordance with the provisions of paragraph (5) governing such use.
- (5) 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 VISAR shall require the breeder to propose another denomination for the variety.
- (6) Where 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, similar to the denomination of the registered variety. If such indication is associated in this manner, the denomination shall be 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 43 of this Law; or
- (b) are contrary to public order or morality.

Registration shall also be refused for 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 accordance with Article 43(4), in particular an element registered as a mark for products tied to the variety.

Article 45 Registration Procedure

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. In such case, the applicant shall submit the proposal for a denomination in accordance with the regulations of this Law.

The proposal for a denomination shall be published in the Official Gazette, unless VISAR establishes that there are grounds for rejection under Article 44 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 of 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 within the prescribed time limit.

If the changes to the proposal are inconsistent with Article 44 of this Law, VISAR may advise the applicant that he must propose a denomination that is consistent. 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 stipulated in Article 44 of this Law;
- (b) if a third party submits a court decision prohibiting the use of the denomination in relation to the variety.

The holder may lodge an appeal for the cancellation of his denomination to be set aside.

**CHAPTER V
DURATION OF THE BREEDER'S RIGHT**

**Article 47
Fees**

The holder shall pay an annual fee to maintain the validity of his right.

The fee shall be paid during the first 90 days of every year following the grant of the right. The proceeds shall be deposited in the VISAR special account and may not be used for any purpose other than the object and purpose of this Law.

**TITLE IV
ENFORCEMENT OF THE BREEDER'S RIGHT**

**Article 48
Legal Remedies**

The holder of the breeder's right may report natural or legal persons who:

- (a) without being authorized to do so, perform acts which require the authorization of the holder under Article 15 of this Law;
- (b) use a designation in violation of Article 43 of this Law; or,
- (c) fail to use a variety denomination in violation of Article 43 of this Law.

Any compensation awarded shall be applicable as in any proceedings for infringement of another property right.

Subject to the stipulations of this Law, the provisions governing the enforcement of rights conferred with regard to a patent shall be applicable *mutatis mutandis* to the enforcement of rights under a breeder's right.

A person who performs an act requiring the authorization of the holder in accordance with Article 15 of this Law or in any manner infringes the rights conferred on the breeder under this Law shall be liable 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
Penalties**

The following shall constitute a crime of infringement of the breeder's right which, without prejudice to the corresponding civil liabilities, shall be punishable by a fine of 50,000 to 100,000 quetzals:

- (a) a person who 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) a person who trades in material of a protected variety, with the knowledge that such material has been obtained in infringement of the rights of the holder of the breeder's right; or

- (c) a person who contracts to transport propagating material of a protected variety to a territory outside the scope of this Law without special authorization from the holder of the right.

Subject to the stipulations of this Law, the provisions governing the enforcement of rights conferred with regard to a patent shall be applicable *mutatis mutandis* to the enforcement of rights under a breeder's right.

A person who performs an act requiring the authorization of the holder in accordance with Article 15 of this Law or in any manner infringes the rights conferred on the breeder under this Law shall be liable for damages. Such damages shall be calculated by the competent authority in accordance with the provisions of Article 48 of this Law.

Upon request by the rightholder, the court may, through ancillary proceedings, order the suspension of the reported acts, or any other applicable measure provided for by ordinary law. The judge may order immediate precautionary measures if the holder supports his request with evidence of the infringement or imminent infringement, provided he offers sufficient security.

TITLE V FINAL AND TRANSITIONAL PROVISIONS

Article 50 Cooperation With Regard to the Examination

VISAR shall be empowered to enter into administrative cooperation agreements with national agencies the competent authorities of other countries for technical examinations and for the verification of the maintenance of the varieties to be protected.

Article 51 Regulations

At the request of MAGA, the Executive Authority shall issue the regulations within a period of no more than one hundred and twenty (120) days following the entry into force of this Law.

Article 52

Provisions that do not comply with the provisions of this Law shall be abrogated.

Patents for plant varieties granted under the provisions 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 53 Validity

This Law shall enter into force ninety (90) days after its publication in the Official Gazette.

[Ende der Anlage II und des Dokuments]