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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Third Extraordinary Session

Geneva, November 16, 1976

APPLICATION OF ACCESSION TO THE CONVENTION BY THE REPUBLIC OF SOUTH AFRICA

document prepared by the Office of the Union

1. In a letter dated October 12, 1976, the Federal Political Department of the Swiss Confederation informed the Secretary-General of UPOV that the Embassy of the Republic of South Africa had, by a Note dated October 6, 1976, submitted an application for accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, and to the Additional Act of November 10, 1972, in accordance with Article 32(2) of the Convention. The letter appears in Annex I of this document.
2. Enclosed with the letter were a copy of the Note from the Embassy of the Republic of South Africa, which appears in Annex II to this document, a list of the genera and species to which the Republic of South Africa undertakes to apply the provisions of the Convention and a copy of the Plant Breeders' Rights Act, 1976. The list of genera and species, which the Office has completed as far as possible with the common names in English, French and German, appears in Annex III of this document. The text of the Act was distributed to the delegates of member States at the fourteenth session of the Consultative Committee, on October 14, 1976, during which the text was studied in preparation for the third extraordinary session of the Council. The text of the Act is not reproduced in this document.
3. Pursuant to Article 32(2) of the Convention the Government of the Swiss Confederation notified this application for accession to member States on October 20, 1976. The notification appears in Annex IV to this document.
4. In order to facilitate the discussions of the third extraordinary session of the Council, the Office of the Union has studied the provisions of the Plant Breeders' Rights Act, 1976, of the Republic of South Africa to ascertain whether they meet the conditions for accession to the UPOV Convention. The study appears in Annex V of this document.

[Five Annexes follow]

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ANNEX I

LETTER, DATED OCTOBER 12, 1976, FROM THE FEDERAL POLITICAL DEPARTMENT OF THE SWISS CONFEDERATION TO THE SECRETARY-GENERAL OF UPOV

Subject: Application for accession to the International Convention for the Protection of New Varieties of Plants by the Republic of South Africa.

...

Following our telephone conversation today with Mr. Mast, we have the honor to transmit to you, together with its annexes, a copy of the above-mentioned application, dated October 6, 1976, which was addressed to the Political Department. These documents reached us on October 6, 1976.

We intend to send copies of the Note and of its annexes to the States party to the Convention, pursuant to Article 32(2).

We should be grateful if you would let us know whether this notification calls for any remarks on your part.

...

[Annex II follows]

ANNEX II

NOTE, DATED OCTOBER 6, 1976, FROM THE EMBASSY OF THE REPUBLIC OF SOUTH AFRICA
TO THE FEDERAL POLITICAL DEPARTMENT OF THE SWISS CONFEDERATION

The Embassy of the Republic of South Africa presents its compliments to the Federal Political Department and, pursuant to Article 32(2) of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, and to the Additional Act of November 10, 1972, has the honor to submit the application of the Republic of South Africa for accession to the said Convention.

Pursuant to Article II(4) of the Additional Act, the Republic of South Africa wishes to be placed in Class V and undertakes to comply with all the requirements of Article 30(1) of the International Convention.

With regard to the provisions of Article 30(3) of the Convention, the Federal Political Department will find enclosed, for the attention of the authorities concerned, seven copies of the South African Plant Breeders' Rights Act, 1976.

Pursuant to Article 33(1) of the Convention, concerning the list of genera or species, the Embassy informs the Department that the Republic of South Africa undertakes to apply the provisions of the Convention in accordance with the conditions laid down in Article 4. To that effect, the Department will find enclosed the list in Annex I*. A copy of that Annex has been forwarded to the Government of the French Republic.

Furthermore, the Embassy informs the Federal Political Department that, by virtue of Article 34(1), the Convention will apply to the whole of the territory of the Republic of South Africa.

In the case of a favorable decision on this application for accession, the Government of the Republic of South Africa will deposit its official instrument of accession and will appoint, in conformity with Article 16(1), a representative to the Council and an alternate.

The Embassy of the Republic of South Africa takes this opportunity to renew to the Federal Political Department the assurances of its highest consideration.

[Annex III follows]

* In the present document, this is Annex III.

C(Extr.)/III/2
ANNEX III/ANNEXE III/ANLAGE III

List of genera and species in respect of which the Republic of South Africa undertakes to apply the provisions of the Convention.
Liste des genres et espèces auxquels la République d'Afrique du Sud s'engage à appliquer les dispositions de la Convention.
Liste der Gattungen und Arten, für die die Republik Südafrika sich zur Anwendung der Vorschriften des Übereinkommens verpflichtet.

	<u>ENGLISH</u>	<u>FRENCH</u>	<u>GERMAN</u>
<u>Actinidia chinensis</u> Planch.	<u>Kiwifruit</u>	Actinidia, Groseille de Chine	Strahlengriffel
<u>Allium cepa</u> L.	<u>Onion</u>	Oignon	Zwiebel
<u>Ananas comosus</u> (L.) Merr.	<u>Pineapple</u>	Ananas	Ananas
<u>Arachis hypogaea</u> L.	<u>Groundnut, Pea-nut</u>	Arachide	Erdnuss
<u>Avena sativa</u> L.	<u>Oats, Oat</u>	Avoine	Hafer
<u>Avena byzantina</u> C. Koch	Algerian Oat	Avoine (d'Algérie)	Mittelmeerhafer
<u>Beta vulgaris</u> L. var. <u>esculenta</u> L.	<u>Garden Beet, Red Beet, Beetroot, Leaf Beet</u>	Betterave rouge, Betterave potagère	Rote Rübe
<u>Brassica oleracea</u> L. var. <u>capitata</u> L.	<u>Cabbage, Head Cabbage</u>	Chou pommé	Weiss-, Rotkohl
<u>Capsicum annum</u> L.	<u>Sweet Peppers, Pepper, Capsicum, Chili</u>	Poivron, Piment	Paprika
<u>Carica papaja</u> L.	<u>Pawpaw</u>	Papayer, Arbre à melon	Papaya
<u>Carya illinoensis</u> (Wagenh.) C. Koch	<u>Pecan</u>	Pacancier	Pecannuss
<u>Cenchrus ciliaris</u> L.	<u>Blue Buffalo Grass</u>		Büffelgras
<u>Chrysanthemum</u> species	<u>Chrysanthemum</u>	Chrysanthème	Chrysantheme
<u>Citrus</u> species	<u>Citrus</u>	Agrumes	Zitrus
<u>Coffea arabica</u> L.	<u>Coffee</u>	Café	Kaffee
<u>Cucumis melo</u> L.	<u>Melon, Cantaloupe</u>	Melon	Melone
<u>Cucumis sativus</u> L.	<u>Cucumber, Gherkin</u>	Concombre, Cornichon	Gurke
<u>Dactylis glomerata</u> L.	<u>Cocksfoot</u>	Dactyle	Knaulgras
<u>Dianthus caryophyllus</u> L.	<u>Carnation</u>	Oeillet	Nelke
<u>Euphorbia pulcherrima</u> Willd. ex Klotzsch	<u>Poinsettia</u>	Poinsettia	Poinsettie

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<u>Freesia Klatt</u>	<u>Freesia</u>	Freesia	Freesie
<u>Gladiolus L.</u>	<u>Gladiolus</u>	Glaïeul	Gladiole
<u>Helianthus annuus L.</u>	Common <u>Sunflower</u>	Tournesol, Soleil	Sonnenblume
<u>Hordeum vulgare L.</u>	<u>Barley</u>	Orge	Gerste
<u>Litchi chinensis Sonn.</u>	<u>Litchi</u>	Litchi	
<u>Lolium multiflorum Lam.</u>	<u>Italian Ryegrass</u> , Westerwold Ryegrass	Ray-grass d'Italie	Welches Weidelgras, Italienisches Raygras
<u>Lupinus albus L.</u>	White Lupin	Lupin blanc	Weisslupine
<u>Lupinus angustifolius L.</u>	Blue Lupin	Lupin bleu	Blaue Lupine
<u>Lupinus luteus L.</u>	Yellow Lupin	Lupin jaune	Gelbe Lupine
<u>Lycopersicon lycopersicum (L.) Karsten ex Farwell</u>	<u>Tomato</u>	Tomate	Tomate
<u>Macadamia ternifolia F. Muell.</u>	<u>Macadamia</u>		
<u>Malus species (excluding ornamental varieties, including rootstocks)</u>	<u>Apple (excluding ornamental varieties, including root- stocks)</u>	Pommier (sauf variétés ornementales, y compris porte-greffes)	Apfel (ausser Ziersor- ten, einschliesslich Unterlagen)
<u>Mangifera indica L.</u>	<u>Mango</u>	Manguier	
<u>Medicago sativa L.</u>	<u>Lucerne, Alfalfa</u>	Lucerne (cultivée)	Blaue Luzerne
<u>Musa cavendishii Lamb.</u>	<u>Banana</u>	Bananier	Banane
<u>Narcissus L.</u>	<u>Narcissus</u> , Daffodils	Narcisse, Jonquille	Narzisse
<u>Passiflora edulis Sims</u>	<u>Granadilla</u>	Barbadine	Passionsfrucht
<u>Persea americana Mill.</u>	<u>Avocado</u>	Avocat	Avocado
<u>Phaseolus coccineus L.</u>	<u>Kidney Bean</u> , Runner Bean	Haricot d'Espagne	Prunkbohne
<u>Phaseolus vulgaris L.</u>	French Bean	Haricot	Gartenbohne
<u>Pisum arvense (L.) A. et G.</u>	Field Pea	Pois fourrager	Ackererbse
<u>Pisum sativum L.</u>	Garden Pea	Pois, Petit pois	Gemüseerbse, Trocken- speiseerbse

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<u>Pisum sativum</u> L. sensu lato	Pea, Field Pea, Garden Pea	Pois, Petit pois, Pois fourrager	Gemüseerbse, Trocken-speiseerbse, Futtererbse
<u>Prunus armeniaca</u> L.	<u>Apricot</u>	Abricotier	Aprikose
<u>Prunus avium</u> L.	<u>Sweet Cherry</u>	Cerisier (cerises douces: guignes, bigarreaux)	Süsskirsche
<u>Prunus cerasus</u> L.	<u>Sour Cherry</u>	Cerisier (cerises acides: griottes, amarelles)	Sauerkirsche
<u>Prunus domestica</u> L.	<u>Plum</u> (european)	Prunier (européen)	Pflaume
<u>Prunus persica</u> (L.) Batsch	<u>Peach</u>	Pêcher	Pfirsich
<u>Prunus salicina</u> Lindl.	<u>Japanese Plum</u>	Prunier du Japon, Prunier japonais	Pflaume
<u>Pyrus communis</u> L.	<u>Pear</u>	Poirier	Birne
<u>Rosa</u> L.	<u>Rose</u>	Rosier	Rose
<u>Rosa hort.</u>	<u>Rose</u>	Rosier	Rose
<u>Solanum tuberosum</u> L.	<u>Potato</u>	Pomme de terre	Kartoffel
<u>Sorghum</u> species	<u>Sorghum</u>	Sorgho	Hirse
<u>Thea sinensis</u> L.	<u>Tea</u>	Théier	Tee
<u>Trifolium hybridum</u> L.	<u>Alsike Clover</u>	Trèfle hybride	Schwedenklee
<u>Trifolium pratense</u> L.	Red Clover	Trèfle violet	Rotklee
<u>Trifolium repens</u> L.	White Clover	Trèfle blanc	Weissklee
<u>Trifolium resupinatum</u> L.	Persian Clover	Trèfle de Perse	Persischer Klee
<u>Triticale</u>	<u>Triticale</u>	Triticale	Triticale
<u>Triticum aestivum</u> L. spp. <u>vulgare</u> (Vill., Host) Mac Kay	Wheat, Soft Wheat, Bread Wheat	Blé tendre, Froment	Weichweizen
<u>Triticum durum</u> Desf.	Durum Wheat, Macaroni Wheat Hard Wheat	Blé dur	Durumweizen (Hartweizen)
<u>Vitis</u> species (including rootstocks)	<u>Grape</u> , Vine (including rootstocks)	Vigne (y compris porte-greffes)	Ertragsrebe, Unterlagsrebe
<u>Zea mays</u> L.	<u>Grain</u> , Sweet and Popcorn, Maize	Maïs grain, Maïs sucré, Popcorn	Maïs

[Annex IV follows/l'annexe IV suit/Anlage IV folgt]

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LETTER, DATED OCTOBER 20, 1976, FROM THE FEDERAL POLITICAL DEPARTMENT OF THE SWISS CONFEDERATION TO THE SECRETARY-GENERAL OF UPOV

...

With reference to the correspondence on the subject of South Africa's application for accession to the International Convention for the Protection of New Varieties of Plants, concluded at Paris on December 2, 1961, we have the honor to transmit to you herewith the notification that we are sending today to the Governments of member States of the Union for the Protection of New Varieties of Plants.

The annexes mentioned in the above notification were sent to you with our letter of October 12, 1976.

...

* * *

NOTIFICATION, DATED OCTOBER 20, 1976, FROM THE FEDERAL POLITICAL DEPARTMENT OF THE SWISS CONFEDERATION TO THE GOVERNMENTS OF THE MEMBER STATES OF THE UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

APPLICATION FOR ACCESSION BY THE REPUBLIC OF SOUTH AFRICA

Pursuant to Article 32(2) of the Paris Convention for the Protection of New Varieties of Plants of December 2, 1961, the Federal Political Department has the honor to notify the member States of the Union that, in a Note from its Embassy in Berne dated October 6, 1976, and received on the same date, the Republic of South Africa addressed to the Swiss Government an application for accession to the said Convention.

A copy of the Note in question, and of its annexes, is attached to this notification.

[Annex V follows]

ANNEX V

0045

THE PLANT BREEDERS' RIGHTS ACT, 1976, OF THE REPUBLIC OF SOUTH AFRICA

I. GENERAL

1. The UPOV Convention (hereinafter referred to as "the Convention") is open to accession by non-signatory States in accordance with paragraphs (3) and (4) of Article 32, which provides inter alia that applications for accession are considered by the Council having particular regard to the provisions of Article 30. Article 30 provides in substance as follows:

(i) Member States must undertake to adopt all measures necessary for the application of the Convention, it being understood that, on depositing their instruments of accession, they must be in a position, under their own domestic laws, to give effect to the provisions of the Convention (paragraph (1)).

(ii) In particular, member States must undertake to:

(a) ensure to nationals of the other member States appropriate legal remedies for the effective defense of their rights under the Convention (paragraph (1)(a));

(b) establish a special authority for the protection of new plant varieties (paragraph (1)(b));

(c) ensure that the public is informed of matters concerning the protection of new plant varieties, including as a minimum the periodical publication of the list of titles of protection issued (paragraph (1)(c)).

2. The study by the Office of the Union of the legislation of the Republic of South Africa (hereinafter referred to as "South Africa") on the protection of new plant varieties was based on the following:

(i) the Plant Breeders' Rights Act, 1976 (hereinafter referred to as "the Act");

(ii) the list of genera and species in respect of which South Africa undertakes to apply the provisions of the Convention in accordance with the requirements of Article 4 thereof (Annex III of this document) and which was attached to the application for accession in conformity with Article 33(1);

(iii) the explanations given by the Delegation of South Africa at the fourteenth session of the Consultative Committee on October 14, 1976. It is recalled in this connection that the Consultative Committee took the view that the regulations under Section 44 of the Act would contain only technical and other details which need not be examined in the course of the procedure under Article 32(3) of the Convention.

3. According to Article 32(3), the application for accession is accepted if a majority of four-fifths of the members present vote in favor of the application, the quorum being three-quarters of the member States represented. The third extraordinary session of the Council having been convened by its President according to Paragraph IV of the Rules of Procedure of the Council,* the decision taken at that session will not be formally accepted until it is re-examined at a further session convened under the conditions laid down in Paragraph III of the said Rules--i.e., convened at least two months in advance--unless the decision is taken unanimously by the member States. Under Paragraph II of the said Rules, an abstention is not considered a vote. According to general practice, only votes actually cast shall be taken into account in determining whether unanimity is obtained.**

* Rules and Regulations of UPOV, document UPOV/INF/4, Part II.

** As to this question, see Rule 36(1) of the WIPO General Rules of Procedure, publication 399 (FE) Rev. 1.

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4. If the application for accession is accepted, the instrument of accession can be deposited and the following information has to be given by the acceding State (information which has already been given by South Africa):

(i) An indication, under Article 26(4) of the Convention (amended version contained in Article II of the Additional Act), at the time of joining the Union, of the contribution class in which the State wishes to be placed. In its Note, South Africa has already indicated that it wished to be placed in Class V provided for in Article II(2) of the Additional Act, which is the equivalent of the third class of the Convention in its present wording (= 1 contribution unit).

(ii) A declaration, under Article 34(1) of the Convention, at the time of acceding thereto, on whether the Convention applies to all or part of its territories or to one or more or to all the States or territories for which it is responsible. In its Note, South Africa has indicated that the Convention will be applied to the whole of its territory.

II. REQUIREMENTS OF THE CONVENTION AND CORRESPONDING PROVISIONS OF THE ACT

Article 3 (National Treatment) and Article 30(1)(a) (Legal Remedies) of the Convention

5. Article 3 provides that in any member State

(i) nationals and residents of the other member States are entitled to the benefit of protection, subject possibly to the limitation of Article 4(4);

(ii) such persons must enjoy the same treatment as the nationals of that State.

Under Section 6, paragraph (3), of the Act, nationals and residents of all other "convention countries" are entitled to file applications for the protection of plant varieties in South Africa. During the fourteenth session of the Consultative Committee, on October 14, 1976, the Representatives of South Africa explained that it was intended to issue a proclamation according to which all UPOV member States would be convention countries.

6. No discrimination of nationals or residents of other UPOV member States can be detected in any of the other provisions of the Act. In particular, it is provided that nationals of other States who are entitled to protection shall have access to the same legal remedies for the effective defense of their rights as are available to citizens of South Africa. In addition, these legal remedies appear to be appropriate. The Act thus seems to comply with Articles 3 and 30(1)(a) of the Convention.

Article 4 of the Convention (Genera and Species Eligible for Protection)

7. The list of genera and species to which South Africa undertakes to apply the Convention (see Annex III) comprises some 60 categories of plants of which the following are identical to genera and species appearing in the Annex of the Convention: wheat, barley, oats, maize, potato, peas, beans, lucerne (*Medicago sativa* L.), red clover, ryegrass (*Lolium multiflorum* Lam.), apple, rose and carnation. South Africa has not made use of the facilities provided under paragraphs (4) and (5) of Article 4. In view of the foregoing, the legislation of South Africa seems to comply with Article 4 of the Convention.

Article 5 of the Convention (Scope of Protection)

8. The scope of protection is defined in Section 23 of the Act and is fully compatible with Article 5 of the Convention. It should be noted that the exclusive right provided for in Section 23(1)(b) to use the new variety in developing a hybrid or a different variety is subject to Section 23(3)(c), according to which such use by another person is free if that person has procured propagating material of the new variety in a manner which does not infringe the rights of the holder of the right in that variety (not applicable in case of repeated use for commercial production). Furthermore, the Minister of Agriculture may prescribe a period of sole rights, that is, a period during which no compulsory license can be imposed. A similar provision exists also in the Plant Varieties and Seeds Act 1964 of the United Kingdom (Section 7(2)). The granting of such period is more beneficial to breeders than the minimum protection under Article 5(1) and can thus be provided for in accordance with Article 5(4) of the Convention.

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Article 6 of the Convention (Conditions Required for Protection)

9. In conformity with the introductory sentence of Article 6(1) of the Convention, the protection is granted under Section 6(1) of the Act to the breeder or to his successor in title, who may be a natural or a legal person. In the case of employees' creations, the right belongs to the employer if the duties of the employee involve breeding activities with respect to the genus or species to which the new variety belongs. The Convention being silent on this point, the question of employees' creations can be solved by each State at its own discretion.

10. The conditions which a variety has to fulfill in order to be protectable are laid down in Section 2 of the Act. As regards paragraph (2)(b) of that Section, which provides that the variety must not be generally known at the time of the application for the plant breeder's right--"generally known" being defined in Section 2(4)--it should be noted that this provision is limited by Section 43, according to which the fact of being generally known does not exclude the protection of the variety if such knowledge arises from the cultivation of the variety with a view to its technical evaluation or from an act on the part of third persons. This practice is in conformity with that adopted in some of the present member States of UPOV.

11. Administrative requirements are provided for in the Act under Section 6(2) (applicants who have no residence or registered office in South Africa must appoint an agent), Section 7 (form of the application and fee) and Section 9 (description of the variety). It was stated by the Representatives of South Africa during the fourteenth session of the Consultative Committee that Section 9 would be applied in a way that would be very similar to the practice of the present member States and that the applicant would be expected to give all the information he was able to give.

12. Section 11 of the Act provides for the grounds of rejection of the application; they are the following:

(i) the application does not comply with the provisions of the Act; in particular, it contains a material misrepresentation, it affects the rights of a holder of a plant breeder's right or of a person enjoying provisional protection, an acceptable denomination has not been proposed or the description of the variety is insufficient or different from the description given in a preceding application in another State;

(ii) the variety which is the subject of the application does not comply with the provisions of the Act; in particular, it is not new or it belongs to a genus or species which is not eligible for protection;

(iii) the applicant is not entitled to make the application;

(iv) the propagation of the variety requires the repeated use of another variety which is protected and which the applicant is not entitled to use, for example under a license or a compulsory license.

13. With regard to the last-mentioned ground of rejection, it should be noted that, in the French Decree of 1971 concerning New Plant Variety Certificates and the Issue and Renewal Thereof, the applicant is required to submit with his application the written authorization of the owner of the plant variety certificate relating to the variety which must be repeatedly used for the commercial production of the variety submitted by the applicant. Other member States do not consider questions of this kind in the framework of the granting procedure. Both approaches --and therefore also the South African approach--seem to be admissible under Articles 5(4) and 6(2) of the Convention.

Article 7 of the Convention (Examination of the Variety)

14. Under Section 19(2) of the Act, the Registrar of Plant Breeders' Rights must undertake or must have undertaken such tests and trials as he may deem necessary. Section 19(4) allows him to use examination reports of other convention countries or of States with which South Africa has concluded a bilateral agreement concerning plant breeders' rights, and Section 19(6) allows him to have examination reports established by such States. Thus the Act complies with Article 7 of the Convention.

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Article 8 of the Convention (Period of Protection)

15. The periods of protection will be determined for each genus or species and will be fixed within the limits prescribed in Section 21 of the Act, which comply with the provisions of Article 8 of the Convention.

Article 9 of the Convention (Restrictions in the Exercise of Rights Protected)

16. Sections 26 and 27 provide for the possibility of granting a compulsory license under terms which are in keeping with Article 9 of the Convention. Under Section 31, the right can be taken over by the State, the holder receiving a compensation as required under Article 9 of the Convention. The Representatives of South Africa at the fourteenth session of the Consultative Committee drew attention to the fact that the rule similar to that of Section 31 which is contained in the Plant Breeders' Rights Act, 1964 (replaced by that of 1976 under consideration here), had never needed to be used.

Article 10 of the Convention (Nullity and Forfeiture of the Rights Protected)

17. Section 24 of the Act requires the holder of a right to ensure that during the whole period of protection he is in a position to furnish the Registrar on request with propagating material of the variety or with information. Inability or unwillingness to do so may entail the termination of the plant breeder's right pursuant to Section 33(2)(d) and (e), which corresponds to Article 10(3)(a) of the Convention. Furthermore, the other grounds for annulment or forfeiture of the right do not conflict with the UPOV Convention.

Article 11 of the Convention (Protection in Different States)

18. The Act makes no provision with respect to the State in which the first application has to be filed. As to the relation between applications for the same variety in several States, an application in South Africa can be rejected if the description of the variety in that application differs from the description given in the application in another country. This rule contained in Section 11(1)(i) of the Act can be regarded as requiring the fulfillment of a formality (ensuring corresponding descriptions in all member States) so that it neither violates Article 6(2) of the Convention nor is in conflict with Article 11(3) of the Convention.

Article 12 of the Convention (Right of Priority)

19. Section 8 of the Act sets out the rules for the priority to be given where several applications are filed for the same variety, for the dating of the application and for the claiming of the priority of an earlier application filed in another State. With regard to the last-mentioned provision, it should be noted that according to Section 8(2) of the Act priority can only be claimed by an applicant who is not resident in South Africa or, in the case of a legal person, which does not have a registered office in that country. In view of the geographic situation of South Africa, this restriction will have no practical significance since it can be assumed that South African breeders will deposit their first filings in that country. Also, it restricts only the rights of persons falling in that respect under the sole jurisdiction of South Africa. It should nevertheless be recommended that the South African authorities eliminate this restriction in the course of the next revision of the Act.

Article 13 (Denomination of the Variety)

20. The provisions of the Convention relating to the denomination of the variety are contained in Sections 10, 32, 35, and 41 of the Act. Section 10 contains all the provisions required of Article 13, paragraphs 1 to 8 of the Convention. In actual fact, the Act does not expressly require that the denomination should not consist solely of figures, but the requirement that the denomination be suitable to identify the variety and comply with such further conditions as the Registrar may determine can be considered sufficient, especially since several of the present member States do not provide for the rules which the denomination must comply with in their laws, but in regulations supplementing their laws. Attention is drawn to a rule which goes further than the Convention, namely, the requirement in Section 10(3)(c) that the denomination be different from any denomination which designates any existing variety of the same or a related genus or species; Article 13(2) of the Convention limits this requirement to denominations used in member States.

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21. Section 35 of the Act provides that the indication of the denomination has to appear on labels or containers if propagating material of a protected variety is sold. Section 41 allows the combined use of the variety denomination and of a trademark, in conformity with Article 13(9) of the Convention.

22. Section 32 provides that the approved denomination may be modified in certain circumstances at the request of the holder of the right. This point was already discussed at the fourteenth session of the Consultative Committee to the satisfaction of the member States. Attention is drawn to the fact that several of the present member States also provide for such modifications (see, for instance, Article 11(4) of the Danish Act and Section 18(9) of the Plant Breeders' Rights Regulations of the United Kingdom).

Article 14 of the Convention (Protection Independent of Measures Regulating Production, Certification and Marketing)

23. Plant breeders' rights in South Africa are completely independent of the measures under the Plant Improvement Act, 1976, which was also submitted to the Office of the Union by the Representatives of South Africa.

Article 30(1) (b) of the Convention (Special Authority)

24. Since a plant breeders' rights system is already operating--under the Plant Breeders' Rights Act, 1964--the special authority referred to in Article 30(1) (b) of the Convention is already set up. As regards the examination facilities, the Representatives of South Africa stated in the fourteenth session of the Consultative Committee that

(i) South Africa already had examination facilities for certain genera and species;

(ii) South Africa would enter into negotiations with member States with a view to concluding bilateral agreements for cooperation in examination with respect to other genera and species;

(iii) South Africa would set up examination facilities especially for certain tropical genera and species as soon as the first applications relating to these genera and species were filed.

Article 30(1) (c) of the Convention (Information of Public)

25. The public will be informed by keeping a register of plant breeders' rights, which is described in Section 4 of the Act and which will be open for inspection by the public, and by publishing matters pertaining to plant breeders' rights in the Government Gazette of the Republic of South Africa. The Act lists in details the matters to be made available to the public. There is no doubt that the requirements of Article 30(1) (c) have thus been complied with.

III. CONCLUSION

26. In the view of the Office of the Union the Plant Breeders' Rights Act, 1976, of the Republic of South Africa is such that it should allow the application of that country for membership in UPOV to be accepted.

[End of Annex and of document]