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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
GINEBRA

CONSEJO

Trigésimo octavo período ordinario de sesiones
Ginebra, 21 de octubre de 2004

**EXAMEN DE LA CONFORMIDAD DEL PROYECTO DE LEY
SOBRE EL DERECHO DE OBTENTOR DE LA REPÚBLICA DE MAURICIO
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV**

Documento preparado por la Oficina de la Unión

Introducción

1. En una carta con fecha 23 de marzo de 2004, recibida el 15 de abril de 2004, la Sra. S. Hanoomanjee, Secretaria Permanente del Ministerio de Agricultura, Tecnología Alimentaria y Recursos Naturales de la República de Mauricio (en adelante denominada "Mauricio"), solicitó que se examinara la conformidad del "proyecto de Ley sobre el Derecho de Obtentor" (en adelante denominado "proyecto de Ley") con el Acta de 1991 del Convenio de la UPOV (en adelante denominada "Acta de 1991"). Dicha carta figura en el Anexo I del presente documento. En el Anexo II figura el texto en inglés del proyecto de Ley suministrado por el Gobierno de Mauricio.

2. Mauricio no ha firmado el Acta de 1991; por lo tanto, de conformidad con el Artículo 34.2) del Acta de 1991, debe depositar un instrumento de adhesión para ser Parte Contratante del Acta de 1991. En virtud del Artículo 34.3) del Acta de 1991, el instrumento de adhesión sólo puede ser depositado si el Estado del que se trate solicita previamente la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del Acta de 1991 y si la decisión del Consejo, haciendo oficio de opinión, es positiva.

Bases de la protección de las obtenciones vegetales en Mauricio

3. En Mauricio, la protección de las obtenciones vegetales se regirá por la Ley una vez que ésta sea promulgada. A continuación se analizan las disposiciones del proyecto de Ley con arreglo al orden en el que figuran las disposiciones sustantivas del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

4. En el Artículo 2 del proyecto de Ley figuran definiciones de términos pertinentes utilizados en el mismo. En particular, la definición de “variedad” está conforme con la definición que figura en el Artículo 1.vi) del Acta de 1991 y la definición de “obtentor” está en sintonía con la definición que figura en el Artículo 1.iv) del mismo Acta. Asimismo, la definición de “material de reproducción o multiplicación” que figura en el proyecto de Ley está en concordancia con la del Acta de 1991, ya que abarca prácticamente todos los tipos de material vegetal que pueden utilizarse con fines de reproducción o multiplicación.

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

5. En el proyecto de Ley se dispone la concesión de derechos sobre las obtenciones vegetales; por consiguiente, se respeta la obligación fundamental prevista en el Artículo 2 del Acta de 1991 (véase el Anexo II, Memorándum explicativo de introducción al proyecto de Ley).

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

6. En el Artículo 11 se dispone que el Ministro de Agricultura publique una lista de los géneros y especies a los que se aplicará el proyecto de Ley. Cabe señalar que, conforme al Artículo 3.2)i) del Acta de 1991, cuando Mauricio deposite su instrumento de adhesión, deberá proporcionar una lista de al menos 15 géneros y especies a los que deberá aplicar el proyecto de Ley.

7. En el Artículo 3.2)ii) del Acta de 1991 se señala además que en un plazo máximo de 10 años, Mauricio deberá aplicar el proyecto de Ley a todos los géneros y especies vegetales. Las obligaciones estipuladas en el Artículo 3.2) del Acta de 1991 son pertinentes para la aplicación del Artículo 11.3) del proyecto de Ley, en el que se prevé la posibilidad de suprimir un género o una especie de la lista de géneros y especies. Ello sólo sería posible si se mantiene un mínimo de 15 géneros y especies y si se respeta la obligación de aplicar el proyecto de Ley a todos los géneros y especies una vez transcurrido el plazo de 10 años.

Artículo 4 del Acta de 1991: Trato nacional

8. En el Artículo 2 del proyecto de Ley se define la noción de “Partes Contratantes”. En el Artículo 13, la referencia a las “personas con derecho a presentar solicitudes” comprende a nacionales de una Parte Contratante o residentes en la misma y en el Artículo 25, donde se aborda el derecho de prioridad, también están contemplados los solicitantes que hayan

presentado su solicitud en una Parte Contratante. Por lo tanto, el proyecto de Ley está conforme con las disposiciones relativas al trato nacional previstas en el Artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección: novedad, distinción, homogeneidad y estabilidad

9. En los Artículos 5 a 10 del proyecto de Ley se estipulan los requisitos necesarios para obtener protección, que están conformes con las obligaciones estipuladas en el Acta de 1991.

10. En el Artículo 10 del proyecto de Ley se prevé la protección de variedades conocidas mediante la aplicación de un régimen transitorio de novedad para las variedades de reciente creación, de conformidad con el Artículo 6.2) del Acta de 1991. Se debería hacer referencia al Artículo 6 (novedad) y no al Artículo 7.

Artículo 10 del Acta de 1991: Presentación de solicitudes

11. En los Artículos 12 a 15 y en el Artículo 24 del proyecto de Ley se aborda la presentación de solicitudes. Las disposiciones del proyecto de Ley no presentan incompatibilidades con el Artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

12. En los Artículos 25 y 26 del proyecto de Ley figuran disposiciones relativas al derecho de prioridad que están conformes con el Artículo 11 del Acta de 1991.

13. En el Artículo 26.3) del proyecto de Ley, en el que se contemplan los casos en los que una solicitud anterior haya sido rechazada o retirada en la Parte Contratante en la que se haya presentado, se recomienda incluir en el reglamento de aplicación del proyecto de Ley o en el propio proyecto de Ley, una indicación que explique que en esos casos el Registrador debería conceder al solicitante un plazo conveniente después de la fecha del rechazo o de la retirada para que éste último pueda presentar toda la información, documentos y material necesarios a los fines del examen.

Artículo 12 del Acta de 1991: Examen de la solicitud

14. En los Artículos 24.2), 32 y 33 del proyecto de Ley figuran las disposiciones fundamentales del Artículo 12 del Acta de 1991. En el Artículo 42.1)a) se estipula que incumbirá al Ministro de Agricultura elaborar la normativa necesaria en relación con la ejecución del examen de variedades.

Artículo 13 del Acta de 1991: Protección provisional

15. En el Artículo 35 del proyecto de Ley figuran disposiciones sobre protección provisional que están conformes con el Artículo 13 del Acta de 1991.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

16. En el Artículo 16 del proyecto de Ley está contemplado el contenido básico del Artículo 14 del Acta de 1991.

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

17. En el Artículo 17 del proyecto de Ley figuran disposiciones relativas a las excepciones al derecho de obtentor que están conformes con el Artículo 15 del Acta de 1991.

18. En el Artículo 17.2) del proyecto de Ley figura la excepción facultativa dispuesta en el Artículo 15.2) del Acta de 1991. En el proyecto de Ley ya se estipula que el reglamento de aplicación de esa excepción debe estar sujeto a límites razonables y que deben salvaguardarse los intereses legítimos del obtentor. Conforme a la práctica seguida por otros miembros de la UPOV, se recomienda que en el reglamento de aplicación se contemple esa excepción para determinadas especies y/o se limite el alcance de la misma conforme a criterios como el tamaño de la explotación del agricultor o el volumen de producción.

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

19. En el Artículo 18 del proyecto de Ley figuran disposiciones relativas al agotamiento del derecho de obtentor que están conformes con el Artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

20. En el Artículo 41 del proyecto de Ley figuran disposiciones relativas a las licencias obligatorias en las que se contemplan los elementos fundamentales del Artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

21. En el proyecto de Ley no parece haber disposiciones incompatibles con el Artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

22. En el Artículo 20 del proyecto de Ley figuran disposiciones relativas a la duración del derecho de obtentor que se hallan en concordancia con el Artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

23. En los Artículos 28 (Solicitud de denominación de variedad y procedimientos), 29 (Uso de la denominación de la variedad), 30 (Derechos anteriores de terceros), 31 (Cancelación de la denominación de la variedad registrada), 34.2) (Concesión y denegación del derecho de obtentor), 36.2.d) (Oposición), 39 (No conformidad o uso indebido de la denominación de

una variedad), 42.a) (Examen de la denominación de la variedad) y 42.f) (Elaboración de reglas adicionales para interpretar las disposiciones relativas a las denominaciones de variedades) del proyecto de Ley figuran disposiciones sobre denominación de variedades en los que están contemplados los elementos fundamentales del Artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

24. En el Artículo 22 del proyecto de Ley, sobre nulidad del derecho de obtentor, están contempladas las disposiciones del Artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

25. En el Artículo 23 del proyecto de Ley figuran disposiciones sobre la caducidad del derecho de obtentor que reflejan las disposiciones del Artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

26. En los Artículos 38 (Acciones judiciales), 39 (No conformidad o uso indebido de la denominación de una variedad) y 44 (Delitos) del proyecto de Ley se prevén sanciones apropiadas para hacer valer el derecho de obtentor que están conformes con la obligación dispuesta en el Artículo 30.1)i) del Acta de 1991.

27. En el Artículo 3 del proyecto de Ley se estipula que el Ministro designará una Oficina de Derecho de Obtentor que deberá encargarse de todos los asuntos relativos a la administración del derecho de obtentor, y que se nombrará un Registrador encargado de coordinar y supervisar las tareas de la Oficina. En el Artículo 34.1) del proyecto de Ley se estipula que la concesión de derechos de obtentor incumbe al Registrador. Por consiguiente, el proyecto de Ley está conforme con la obligación estipulada en el Artículo 30.1)ii) del Acta de 1991.

28. En relación con la obligación de informar debidamente al público mediante la publicación periódica de información sobre las solicitudes de derecho de obtentor y los derechos de obtentor concedidos, así como sobre las denominaciones propuestas y aprobadas, en el Artículo 34.1) del proyecto de Ley figuran disposiciones sobre la publicación del derecho de obtentor y en el Artículo 28.5), sobre la publicación de las denominaciones de variedades propuestas, registradas o canceladas.

29. La obligación de publicar las solicitudes de derecho de obtentor parecen estar contempladas en el proyecto de Ley, a saber, en las referencias que figuran en el Artículo 24.4), a la publicación en una Gaceta gubernamental del rechazo o la retirada de las solicitudes, en el Artículo 35, a la protección provisional en el período comprendido entre la publicación de la solicitud de derecho de obtentor y la concesión de ese derecho, y en el Artículo 36, a las oposiciones en relación con los elementos contenidos en la solicitud. Por lo general, los procedimientos de oposición se llevan a cabo después de la publicación de la solicitud. Con fines de aclaración, se recomienda añadir en el Artículo 24.4) que la solicitud también debe publicarse en la Gaceta gubernamental, o aclarar esta cuestión en el reglamento de aplicación. Por consiguiente, el proyecto de Ley está conforme con las obligaciones estipuladas en el Artículo 30.1)iii) del Acta de 1991.

Conclusiones generales

30. La Oficina de la Unión considera que en el proyecto de Ley está contemplado el contenido básico del Acta de 1991, y que permite a Mauricio “dar efecto” a las disposiciones de dicha Acta, de conformidad con su Artículo 30.2).

31. *Se invita al Consejo a:*

a) *tomar nota de la información que consta en el presente documento;*

b) *adoptar una decisión positiva sobre la conformidad del proyecto de Ley sobre el derecho de obtentor de la República de Mauricio con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, de acuerdo con el Artículo 34.3) de dicha Acta, que permita a la República de Mauricio depositar su instrumento de adhesión una vez que el proyecto de Ley sea promulgado y entre en vigor;*

c) *autorizar al Secretario General a informar al Gobierno de Mauricio de la decisión expuesta en el párrafo anterior.*

[Sigue el Anexo I]

ANEXO I

[Traducción de la Oficina de la Unión de una carta con fecha 23 de marzo de 2004]

Enviada por: Ministerio de Agricultura, Tecnología Alimentaria y Recursos Naturales

A: Consejo de la Unión Internacional para la Protección de las Obtenciones Vegetales

De mi consideración:

Proyecto de Ley sobre el derecho de obtentor

Por conducto de nuestro Ministerio, el Gobierno de Mauricio prevé aprobar un proyecto de Ley sobre el derecho de obtentor.

De conformidad con el Artículo 34.3) del Acta de 1991 de la UPOV, mucho le agradeceríamos examinen el proyecto de Ley y nos informen sobre la conformidad del mismo con las disposiciones del Convenio de la UPOV.

./. Adjuntamos una copia del proyecto de Ley.

Le saluda atentamente.

F. Juhoor
Secretaría Permanente

[Sigue el Anexo II]

ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

THE PLANT BREEDER'S RIGHT BILL

(No. of 2003)

Explanatory Memorandum

The object of this Bill is to -

- (1) To provide for the protection of plant breeder's right on new varieties in the Republic of Mauritius;
- (2) More specifically to provide for
 - (i) the legal framework and the mechanism to protect the rights of plant breeders,
 - (ii) the economic and the personal non-economic relations arising out of the creation, use and legal protection of plant varieties,
 - (iii) to encourage the development of new varieties of plants; and
 - (iv) to give effect to the proper implementation of governmental policies and enforcement provisions necessary therefor.

..... 2003

P.K. Jugnauth
Minister of Agriculture,
Food Technology and Natural Resources

THE PLANT BREEDER'S RIGHT BILL

(No. of 2003)

ARRANGEMENT OF CLAUSES

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A BILL

To

ENACTED by the Parliament of the Republic of Mauritius, as follows

PRELIMINARY

1. Short title

This Act may be cited as the Plant Breeder's Right Act 2003.

2. Interpretation

In this Act –

Authority of a Contracting Party means the Authority entrusted with the grant of Plant Breeder's Right;

Breeder means

- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be;

Competent Authority means the Permanent Secretary of the Ministry

Contracting Party means a State other than the Republic of Mauritius or an intergovernmental organization party to any of the Acts of the International Convention for the Protection of New Varieties of Plants (UPOV Convention);

Convention means the International Convention for the protection of new varieties of plants.

Member State means a State member of the World Trade Organization, which came into existence on 1.1.1995

“National Catalogue of Varieties” means the list of varieties recommended for production on the whole territory of Mauritius or in certain regions thereof.

Plant Breeder's Right means the right of the plant breeder provided under this Act;

Propagating material in relation to any plant variety means its propagules, namely, any plant or plants in whole or component or part thereof, including seed, vegetative part, tissue culture or cell culture, and this includes an intended seed which is capable of or suitable for regeneration into a plant;

Register means the register of plant breeder's rights in which the matters specified in subsection 3(4) are required to be recorded;

Registrar means the Registrar of the Office of Plant Breeder's Right;

Third party means someone, other than the holders of the plant breeder's right, who benefits from the grant of an exclusive license to exploit the variety;

Variety means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be –

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

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

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

ADMINISTRATION

3. Administration of Plant Breeder's Right

(1) For the purposes of this Act, the Minister shall designate and authorise in writing an Office of Plant Breeder's Right in the Ministry to be responsible for all matters concerning the administration of Plant Breeder's Right.

(2) The Minister may give such directions of a general character, not inconsistent with the Plant Breeder's Right Act, for

(a) the proper discharge of functions of the Office, and

(b) the implementation of such policies as may be determined.

(3) There shall be posted to the Office, A Registrar and other such officers as may be necessary for the proper discharge of the functions and duties of the office.

(4) The Registrar shall maintain a register in the Office, to be known as the Register of Plant Breeders' Rights, in which the following shall be entered:

(a) any grant of a breeder's right;

(b) any change in the holder of that right;

(c) any declaration of nullity or cancellation;

(d) any compulsory license; and

(e) any license contract at the request of one of the parties to such contract;

(f) any other particulars related to plant breeder's right.

4. Examination of Register

A person who has paid the prescribed fee shall be entitled, during normal business hours, to examine the Register kept in accordance with subsection 3(4), and to make copies of or extracts from the information contained therein.

THE BREEDER'S RIGHT

5. Criteria for Protection

Subject to this Section and any other formal requirements of this Act, a right to be known as a breeder's right shall be granted where the variety is:

(a) new;

(b) distinct;

- (c) uniform;
- (d) stable; and
- (e) *given a variety denomination which is acceptable for registration in accordance with section 28.*

6. Novelty

A variety shall be considered new if, at the date of filing of the application for a breeder's right, 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 before the filing date:

- (a) in the Republic of Mauritius for longer than one year before the date on which protection is applied for under this Act; and
- (b) outside the Republic of Mauritius, for longer than six years in the case of trees or vines or longer than four years in the case of varieties of other genera or species.

7. Distinctness

- (1) A variety shall be considered to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application or where relevant, at the priority date.
- (2) In particular, the filing, in any State, of an application for a breeder's right, or for entry in a catalogue of varieties admitted to trade, 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 grant of the breeder's right or the entry in the catalogue, as the case may be.

8. Uniformity

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

9. Stability

A variety shall be considered to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

10. Protection of Known Varieties

Notwithstanding Section 6, a breeder's right may also be granted for a variety that is no longer new on the date of entry into force of this Act in respect of the relevant species, subject to the following conditions:

- (a) the application shall be filed within the year following the said date; and
- (b) the variety must
 - (i) have been entered in the National Catalogue of Varieties or in a register of varieties held by a professional organization recognized by the Office, for the purposes of this Section,
 - (ii) have been the subject of a breeder's right in a Contracting Party, or be the subject of an application in a Contracting Party, provided that the application subsequently leads to the granting of the breeder's right, or
 - (iii) be the subject of proof acceptable to the Office concerning the date on which the variety ceased to be new under the provisions of Section 7.
- (2) The duration of the breeder's right granted under this Section shall be calculated from the date of the entry referred to in paragraph (1)(b)(i), above, the date of the grant of the breeder's right referred to in paragraph (1)(b)(ii), above, or the date upon which the variety ceased to be new referred to in paragraph (1)(b)(iii), above. Where relevant, the earliest of those dates shall be used.
- (3) Where a breeder's right is granted under this Section, the holder shall be under the obligation to grant licenses on reasonable terms in order to allow the continuation of any exploitation initiated in good faith by a third party before the said filing.

ENTITLEMENT TO PROTECTION

11. List of genera and species to which this Act applies

- (1) The Minister, may by order, subject to subsection (2), publish a list of those genera and species to which this Act applies and may also amend such list by adding new genera or species to it, modifying the names of the genera or species already published or by deleting such names, with effect from any prospective date specified in the Order.
- (2) In compiling the list under Subsection (1), the Minister may exclude certain genera or species.
- (3) Where a genus or species is deleted from the list of genera and species to which this Act applies with effect from a given date, the deletion shall not affect the rights of the applicants who have filed applications for the protection of varieties of that genus or species before that date.

12. Right to apply for protection

The breeder of a variety or his successor in title shall be entitled to apply for protection under this Act.

13. Persons entitled to file applications

(1) An application for the grant of a breeder's right may be filed by the breeder of a variety who is a national or resident of:

- (a) the Republic of Mauritius;
- (b) a Contracting Party; or
- (c) any State which, not being a Contracting Party, grants reciprocity of treatment to the Republic of Mauritius.

(2) For the purposes of subsection (1)(b), "national" means, where the Contracting Party is a State, a national of that State, and where the Contracting Party is an intergovernmental Organization, the nationals of the States that are members of that Organization.

(3) An agent shall be given the power to act on the breeder's behalf before the office and in legal proceedings relating to the plant breeder's right.

14. Joint applicants and joint holders

Where there are two or more applicants for the grant of a plant breeder's right or where there are two or more holders of such a right in any protected variety, in the absence of any agreement to the contrary, each applicant or holder may separately transfer his shares, or exploit the variety as the case may be, or subject to this Act, exclude others from exploiting it.

ASSIGNMENT AND TRANSFER OF THE APPLICATION OR OF THE BREEDER'S RIGHT

15. Assignment and transfer

(1) An application for the grant of a breeder's right or the breeder's right may be assigned or otherwise transferred.

(2) The assignment or transfer shall be in writing, shall be signed by the parties and shall be registered in the Register.

SCOPE AND DURATION OF THE BREEDER'S RIGHT

16. Scope of the breeder's right

(1)(a) Subject to Sections 17 and 18, the following acts in respect of the propagating material of a protected variety shall require the authorization of the holder of the breeder's right:

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;

- (iv) selling or other marketing;
 - (v) exporting;
 - (vi) importing; and
 - (vii) stocking for any of the purposes referred to in paragraphs (i) to (vi).
- (b) The holder may make his authorization subject to conditions and limitations.
- (2) Subject to Sections 17 and 18, the acts referred to in paragraphs (i) to (vii) of subsection (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material.
- (3)(a) The provisions of subsections (1) and (2) shall also apply in relation to varieties:
- (i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - (ii) which are not clearly distinguishable in accordance with Section 7 from the protected variety; and
 - (iii) 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 genotypes 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.

17. Exceptions to the breeder's right

- (1) The breeder's right shall not extend to:
 - (a) acts done privately and for non – commercial purposes;
 - (b) acts done for experimental purposes; and
 - (c) acts done for the purpose of breeding other varieties, and, except where the provisions of subsection 16(3) apply, acts referred to in subsections 16(1) and (2) in respect of such other varieties.
- (2) The Minister may, within reasonable limits and subject to safeguarding the legitimate interests of the breeder, make regulations restricting the breeder's right in relation to any variety in order to permit farmers to make personal use of the variety on their own holdings for propagating purposes.

18. Exhaustion of the breeder's right

- (1) A breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Section 16(3), which has been sold or otherwise marketed by the breeder or with his consent in the Republic of Mauritius, or any material derived from the said material, unless such acts:
 - (a) involve further propagation of the variety in question; or
 - (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

19. Maintenance of the protected variety

- (1) The holder of a breeder's right shall, throughout the period for which the right is exercisable, be under an obligation to make available, at the request of the Registrar, reasonable samples of the protected variety capable of producing plants which correspond to the characteristics defined for the variety when the right was granted.
- (2) The holder of a breeder's right shall also provide the Registrar with all such information and assistance as the Registrar may request for the purpose of ensuring that the holder of the breeder's right is fulfilling his obligations under subsection (1), including facilities for the inspection by or on behalf of the Registrar of the measures taken for the maintenance of the variety.

20. Duration of protection

- (1) Subject to subsection (2), the breeder's right in respect of varieties of trees and vines, shall expire twenty five years after the grant of the breeder's right.

(2) Protection for all other varieties of genera or species shall expire twenty years after the grant thereof.

TERMINATION, NULLITY AND CANCELLATION

21. Termination of Protection

(1) The breeder's right shall terminate before the term expires when the holder of that right renounces it by written declaration addressed to the Registrar.

(2) The date of termination shall be that specified in the declaration or, if none is specified, the date on which the declaration is received by the Registrar.

22. Nullity

(1) The Registrar shall declare a breeder's right granted null and void when it is established:

(i) that the conditions laid down in Sections 6 or 7 were not complied with at the time of the grant of the breeder's right;

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Sections 8 or 9 were not complied with at the time of the grant of the breeder's right; or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(iv) The request for the annulment of the plant breeder's right shall be addressed to the office at the prescribed fee.

23. Cancellation

(1)(a) The Registrar shall cancel the breeder's right granted by him if it is established that the conditions laid down in Sections 8 or 9 are no longer fulfilled, and

(b) furthermore, the Registrar may cancel the breeder's right, if the breeder fails to comply with the following within a reasonable period determined by the Registrar:

(i) the breeder does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety;

(ii) the breeder fails to pay such fees as may be payable to keep his right in force; or

(iii) breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in subsection 23 (1).

APPLICATIONS

24. Application

- (1) An applicant for the protection of a variety shall file an application with the Registrar in the prescribed form.
- (2) At the request of the Registrar, the applicant shall, on the date and at the place fixed by the Registrar, submit for the purpose of the examination any necessary information, document or material determined by the Registrar. The application form shall be accompanied by the technical questionnaire in the prescribed form, for the relevant genus or species, which shall be completed by the applicant to the best of his knowledge.
- (3) The Registrar shall accord, as the filing date of the application, the date of receipt of the application duly filed.
- (4) The refusal or withdrawal of an application shall be published in a government gazette.

25. Priority

- (1) The applicant may avail himself of the priority of an earlier application (hereinafter referred to as the “right of priority”) that has been duly filed for the same variety with the Authority of a Contracting Party.
- (2) Where the application filed with the Registrar is preceded by several such applications, priority may be based only on the earliest application.
- (3) The right of priority shall be expressly claimed in the application filed with the Registrar and may only be claimed within a period of twelve months from the date of filing of the earliest application, but the day of filing shall not be included in the said period.

26. Documents and material to be furnished for priority

- (1) In order to avail himself of the right of priority, the applicant shall submit to the Registrar within three months of filing the application in the Republic of Mauritius, a copy of the documents that constitute the earlier application, certified to be a true copy by the Authority with which that application was filed.
- (2) The effect of the right of priority shall be that, with respect to the conditions of protection attached to the variety, the application shall be deemed to have been filed at the date of the filing of the earlier application.
- (3) The applicant may declare that he will submit the information, document or material referred to in Section 24(2) required by the Registrar at a later date, but no later than two years after the end of the priority period unless the earlier application referred to in subsection (1) has been withdrawn or refused in the Contracting Party in which it was filed.
- (4) If any of the provisions of this Section are not complied with, the application shall be dealt with as if no priority has been claimed.

27. Fees

The Registrar perceives fees for the execution of his duties according to this Act and annual fees will be due at the beginning of each year of the period of protection.

VARIETY DENOMINATION

28. Application and procedure for variety denomination

- (1) The applicant for a breeder's right shall propose a variety denomination in accordance with this Section.
- (2) No person shall use as a variety denomination a designation which:
 - (a) does not enable the variety to be identified;
 - (b) consists solely of figures except where this is an established practice for designating varieties;
 - (c) is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder;
 - (d) is identical to a variety denomination which in the Republic of Mauritius or in another Contracting Party designates an existing variety of the same plant species or of a closely related species;
 - (e) by a reason of a prior right, the use of the variety denomination is forbidden.
- (3) Where a variety is already protected by a Contracting Party or where an application for the protection of the same variety is filed in such Contracting Party, only the variety denomination which has been proposed or registered in that other Contracting Party may be proposed and registered, and the Registrar shall not register any other designation as a denomination for the variety unless the Registrar considers the denomination unsuitable within the territory of the Republic of Mauritius.
- (4) Where the variety denomination used in the other Contracting Party is inappropriate for linguistic reasons, or for any reason specified in subsection (2), the Registrar may request the applicant to propose another variety denomination.
- (5) The Registrar shall publish in a periodical the variety denominations which have been proposed, or registered or cancelled.

29. Use of variety denomination

- (1) Any person who offers for sale or markets the protected material of a variety protected in the Republic of Mauritius shall, even after the expiration of the protection, use the registered variety denomination only in so far as prior rights do not prevent such use.

(2) When a protected variety is offered for sale or marketed, a trademark, trade name or other similar indication may be associated with the registered variety denomination provided that the denomination is easily recognizable.

(3) The holder of a breeder's right may not invoke his rights (trademark, trade name or other right) against the legitimate use of his variety denomination in the offering for sale or marketing of the variety by another person, even after the expiration of the protection of the breeder's right.

30. Prior rights of third parties

Prior rights of third parties in a designation shall not be affected by this Act.

31. Cancellation of registered variety denomination

(1) The Registrar shall cancel any registered variety denomination if the denomination should not have been registered or if, subsequent to registration, facts become known which would have justified the rejection of the denomination.

(2) Where he cancels the variety denomination, the Registrar shall request the holder of a breeder's right to submit, within the time specified by him, a proposal for a new variety denomination, and shall, if the proposal is acceptable, register it.

EXAMINATION OF THE APPLICATION

32. Examination of the application

The Registrar shall examine the variety to determine whether it fulfills the requirements of novelty, distinctness, uniformity and stability, and where those requirements are not fulfilled, the Registrar shall reject the application.

33. Examination of novelty, distinctness, etc.

(1) The Registrar for the purposes of the examination may enter into arrangements with relevant institutions or persons both in or outside the Republic of Mauritius to carry out scientific tests to determine the distinctness, uniformity or stability of the variety or may use the results of such tests that have already been carried out.

(2) The Registrar shall invite the applicant, on a date fixed by him before the beginning of each year or testing period to pay the prescribed fee, for that year or testing period and failure to do so, shall cause the application to be rejected.

34. Grant and refusal of the breeder's right

(1) Where the examination shows that the application satisfies the requirements of novelty, distinctness, uniformity and stability and that the proposed denomination of the variety can be registered, the Registrar shall grant a breeder's right and publish that decision in a periodical.

(2) Where the examination shows that the proposed denomination of the variety cannot be registered, the Registrar shall request the applicant to submit another denomination within a period fixed by him, failing which he shall reject the application.

35. Provisional protection

When a breeder's right is granted, the holder of the right shall be entitled to equitable compensation for acts specified in Section 16 done during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

36. Opposition

(1) The opposition procedure should be available to any interested persons as prescribed in the Regulations on the payment of the prescribed fee

(2) The opposition shall be based on any of the following grounds, namely that:

- (a) the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled;
- (b) the variety is not new or distinct at the filing date, or priority date if applicable;
- (c) the variety is neither uniform nor stable;
- (d) the variety denomination that the Registrar intends to register is unsuitable.

APPEALS AND ENFORCEMENT PROCEEDINGS

37. Appeals

1. Any person who feels aggrieved by any decision or action taken by the Registrar may within 30 days and upon the payment of the prescribed fee, appeal against such decision or action to the Minister.

2. The Minister shall appoint an appeal board comprising of at least three persons with expert knowledge in the field to give its recommendation.

3.(a) The Minister shall designate one of the members as chairman of the board.

(b) A person appointed under sub section (2) shall recuse himself as a member of the appeal board if he has any direct or indirect interest in the subject matter of the appeal.

The recommendation of an appeal board, together with the reasons thereof, shall be communicated to the Minister, who shall make his decision on the appeal.

38. Civil proceedings

(1) The plaintiff in proceedings for infringement shall be entitled to relief by way of:

(a) a preliminary injunction and/or civil action to prohibit the committing or continuation of committing, an infringement of the breeder's right;

(b) forfeiture, seizure or destruction of material which has been produced in contravention of the breeder's right; and

(c) damages taking into account the pecuniary and non-pecuniary loss suffered by the holder of the breeder's right.

39. Non – compliance or misuse of variety denomination

(1) Any person who willfully offers for sale or markets material of a variety protected in the Republic of Mauritius without using the registered variety denomination commits an offence and is liable to a fine.

(2) Any person who willfully makes use of the registered variety denomination of a variety protected in the Republic of Mauritius for another variety of the same plant species or closely related species commits an offence and is liable to a fine.

LICENSES

40. License contracts

(1) The applicant for or the holder of a breeder's right may grant, to any person, an exclusive or a non-exclusive license relating to all or any of the rights provided for under this Act.

(2) A license contract shall be registered at the Office on request and on payment of the prescribed fee.

41. Compulsory licenses

(1) Any interested party may apply to the Registrar for the grant of a compulsory license on the payment of the prescribed fee in respect of any breeder's right on the ground that it is necessary to safeguard the public interest in the Republic of Mauritius.

(2) Any person to whom a license is granted under this Section shall pay the holder of the breeder's right an equitable remuneration.

42. Regulations

(1) The Minister may, in addition to the following matters, make regulations for any matter required to be prescribed by this Act, or for giving effect to the purposes of this Act:

(a) the procedure of the Office in respect of the receiving and handling of applications, the conduct of the examination of varieties and of variety denominations, the handling of oppositions, and the refusal of applications of the grant of breeder's rights;

(b) the nullity and cancellation of breeder's rights, the transfer of an application, or the breeder's right, to the entitled person;

- (c) the maintenance and conservation of samples, the cooperation with germplasm banks or other institutions for the conservation of genetic material;
- (d) the establishment, administration and maintenance of the Register and the receiving and filing of any documents concerning breeder's rights;
- (e) the amounts and the collection of fees;
- (f) the making of additional rules to interpret the provisions of variety denominations;
- (g) the list of genera or species required to be published under this Act;
- (h) any other matters relating to the administration of this Act.

MISCELLANEOUS

43. Measures for regulating standards for the production, certification and marketing of seed or other propagating material of varieties

- (1) Notwithstanding the provisions of the section 42 the Minister may make Regulations and notify standards for the production, certification and marketing of seed or other propagating material of varieties within the territorial limits of the Republic of Mauritius or for their importation or exportation.
- (2) The measures provided in subsection (1) to regulate the standards for the production, certification and marketing of seed or other propagating material of varieties shall not affect the plant breeder's right granted in accordance with this Act.

44. Powers of the Minister to make regulations

- (1) The Minister may make such regulations as may be necessary for the purpose of this Act.
- (2) Any regulation and rules made under this Act may provide for
 - (a) Forms for application and for other purposes of the Act;
 - (b) Fees payable in terms of this Act;
 - (c) Institutional arrangements, entitlement application, right of holder, trade duration, transfer of ownership, licensing, lapse and organisational procedure for the implementation of the breeders' rights;
 - (d) The manner in which any notice or order shall be or may be served;
 - (e) Regulations required or permitted for matters related to section 42.
- (3) Generally any matter which the Minister may deem necessary or expedient to prescribe in order to further the objects of this Act.

45. Offence

(1) Any person who –

(a) for the purposes of this Act makes any declaration or gives or makes use of any certificate which is false in a material particular;

(b) otherwise contravenes any other provision of this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Notwithstanding subsection (1), where the offence committed is an infringement of a breeder's rights, the fine shall not exceed 25,000 rupees and a term of imprisonment not exceeding 5 years.

46. Commencement

This Act shall come into force on a date to be fixed by Proclamation.

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