



C/40/14

ORIGINAL: English

DATE: October 3, 2006

**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**COUNCIL****Fortieth Ordinary Session  
Geneva, October 19, 2006****EXAMINATION OF THE CONFORMITY OF THE  
DRAFT LAW ON PROTECTION OF BREEDER'S RIGHTS FOR VARIETIES  
OF PLANTS OF THE DOMINICAN REPUBLIC  
WITH THE 1991 ACT OF THE UPOV CONVENTION***Document prepared by the Office of the Union*Introduction

1. By Note dated August 30, 2006, the Permanent Mission of the Dominican Republic to the United Nations Office and other International Organizations in Geneva requested the examination of the "Draft Law on Protection of Breeder's Rights for Varieties of Plants" (hereinafter referred to as the "Draft Law") for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). Translations provided by the Office of the Union in English of the Note and the Draft Law are reproduced in Annexes I and II of this document. The Note and the Draft Law in Spanish, as provided by the Government of the Dominican Republic, are reproduced in Annexes I and II of the Spanish version of document C/40/14.

2. The Dominican Republic did not sign the 1991 Act. In conformity with Article 34(2) of the 1991 Act, it therefore has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act and if the decision of the Council embodying the advice is positive.

### Basis for the Protection of New Plant Varieties in the Dominican Republic

3. In the Dominican Republic, the protection of new plant varieties will be governed by the Draft Law once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

#### Article 1 of 1991 Act: Definitions

4. Article 3 of the Draft Law contains definitions of relevant terms used in the Draft Law. In particular, the definition of “variety” conforms with the definition in Article 1(vi) of the 1991 Act. Also the definition of “breeder” conforms with the definition in Article 1(iv) of the 1991 Act.

#### Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

5. Article 4 of the Draft Law provides that the “*Secretaría de Estado de Agricultura*” (Ministry of Agriculture) “shall grant breeders’ rights and protect them in compliance with this Law” and the UPOV Convention; this fulfills the basic obligation provided by Article 2 of the 1991 Act.

#### Article 3 of the 1991 Act: Genera and Species to be Protected

6. Article 5 of the Draft Law provides that “all plant genera and species shall be subject to protection through this Law”. This conforms with Article 3(2)(ii) of the 1991 Act. It should be noted that, in accordance with Article 36(1)(ii) of the 1991 Act, when depositing its instrument of accession, the Dominican Republic must notify in a declaration that the Law applies to all plant genera and species.

#### Article 4 of the 1991 Act: National Treatment

7. Article 6 of the Draft Law contains provisions concerning national treatment and the principle of reciprocity in conformity with the requirements of Article 4 of the 1991 Act.

#### Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

8. Articles 7 to 11 of the Draft Law contain the conditions of protection in conformity with the provisions of Articles 5 to 9 of the 1991 Act.

9. Paragraph I of Article 8 of the Draft Law provides for a transitional novelty regime for varieties of recent creation in line with Article 6(2) of the 1991 Act.

10. It should be noted that, in line with Article 7 of the 1991 Act, 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 the variety a matter of common

knowledge. It is recommended to insert the term “in any country” after “national register of varieties” in the Draft Law or implementing regulations to facilitate the interpretation of the notion of common knowledge.

#### Article 10 of the 1991 Act: Filing of Applications

11. Article 12 of the Draft Law deals with the filing of applications. The Draft Law does not contain provisions which conflict with Article 10 of the 1991 Act.

#### Article 11 of the 1991 Act: Right of Priority

12. Article 13 of the Draft Law contains provisions concerning the right of priority in conformity with Article 11 of the 1991 Act.

#### Article 12 of the 1991 Act: Examination of the Application

13. Article 14 of the Draft Law contains the essential provisions of Article 12 of the 1991 Act.

#### Article 13 of the 1991 Act: Provisional Protection

14. Article 15 of the Draft Law contains provisions on provisional protection that conform with Article 13 of the 1991 Act.

#### Article 14 of the 1991 Act: Scope of the Breeder's Right

15. Articles 16 and 17 of the Draft Law incorporate the scope of the breeder's right in line with Article 14 of the 1991 Act. Paragraph II of Article 16 of the Draft Law also provides for the optional provision of Article 14(3) of the 1991 Act concerning “acts in respect of certain products”.

#### Article 15 of the 1991 Act: Exceptions to the Breeder's Right

16. Article 18 of the Draft Law contains provisions concerning the exceptions to the breeder's right which conform with Article 15 of the 1991 Act.

17. The “Unique Paragraph” of Article 18 of the Draft Law provides for the optional exception under Article 15(2) of the 1991 Act within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder. In addition, varieties of fruit, ornamental and forest species are excluded from this exception.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

18. Article 19 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which conform with Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restriction on the Exercise of the Breeder's Right

19. Articles 20 to 22 of the Draft Law contain provisions concerning the restriction on the exercise of the breeder's right for reasons of public interest which conform with Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

20. Article 23 of the Draft Law contains the principles of Article 18 of the 1991 Act. Furthermore, the Draft Law does not seem to contain any provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

21. Article 24 of the Draft Law contains provisions concerning the duration of the breeder's right in line with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

22. Articles 25 to 32 of the Draft Law contain provisions on variety denominations in line with Article 20 of the 1991 Act. It should be noted that the reference in Article 26(b) of the Draft Law to "*Estado miembro de UPOV*" (UPOV member State) should be understood as member of UPOV.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

23. Article 33 of the Draft Law contains provisions on nullity of the breeder's right in line with Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

24. Article 34 of the Draft Law contains provisions on the cancellation of the breeder's right in line with Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

25. Articles 47 to 50 of the Draft Law refer to the relevant civil and criminal actions and remedies to enforce the breeder's right. Those actions include provisional and border measures as well as specific provisions for non-compliance or misuse of variety

denominations. The Draft Law complies with the obligation under Article 30(1)(i) of the 1991 Act.

26. Articles 3, 35 and 44 of the Draft Law provide that “*la Oficina de Registro de Variedades y de Protección de los Derechos de Obtentor de la Secretaría de Estado de Agricultura*” (the Office for Registration of varieties and Protection of Breeder’s Rights of the Ministry of Agriculture) is the authority responsible for the implementation and administration of the Law including the granting of breeders’ rights. Thus, the Draft Law conforms with the obligation under Article 30(1)(ii) of the 1991 Act.

27. As regards the obligation to ensure that the public is informed through a regular publication of information concerning applications for and grants of breeders’ rights and proposed and approved denominations, Articles 51 to 53 of the Draft Law contain provisions concerning the Official Gazette and publication requirements in line with the obligations under Article 30(1)(iii) of the 1991 Act.

### General Conclusion

28. In the opinion of the Office of the Union, the Draft Law incorporates the substance of the 1991 Act and once adopted without substantive changes, it would enable the Dominican Republic “to give effect” to the provisions of the 1991 Act, as required by its Article 30(2).

29. *The Council is invited to:*

*(a) take note of the information given above;*

*(b) take a positive decision on the conformity of the Draft Law on Protection of Breeder’s Rights for Varieties of Plants of the Dominican Republic with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Dominican Republic to deposit its instrument of accession once the Draft Law is enacted and in force; and*

*(c) authorize the Secretary-General to inform the Government of the Dominican Republic of that decision.*

[Annexes follow]

ANNEX I

From: Permanent Mission of the Dominican Republic to the United Nations Office and other International Organizations, Geneva, Switzerland

To: The International Union for the Protection of New Varieties of Plants (UPOV), Geneva

Ref. No.: MPRD/06-262

Geneva, August 30, 2006

The Permanent Mission of the Dominican Republic to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretary-General of the International Union for the Protection of New Varieties of Plants (UPOV), Dr. Kamil Idris, and has the honor to inform him that the Draft Law on Protection of Breeder's Rights for Varieties of Plants of the Dominican Republic has been submitted to the National Congress for approval.

The Dominican Republic intends to accede to the International Convention for the Protection of New Varieties of Plants (UPOV Convention, dated March 19, 1991). Pursuant to Article 34.3 of the UPOV Convention, the Government of the Dominican Republic therefore requests the UPOV Council to advise it in respect of the conformity of the Draft Law on Protection of Breeder's Rights for Varieties of Plants of the Dominican Republic, attached to this note, with the provisions of the UPOV Convention.

The Permanent Mission of the Dominican Republic to the United Nations Office and other International Organizations avails itself of this opportunity to reiterate to Dr. Kamil Idris the assurances of its highest consideration.

[Annex II follows]

ANNEX II / ANNEXE II / ANLAGE II

[Original: Spanish / Original : espagnol / Original: spanisch]

**Law No. \_\_\_\_\_  
on Protection of Breeder's Rights for Varieties of Plants**

**THE NATIONAL CONGRESS  
on behalf of the Republic**

**CONSIDERING:** that Article 8(14) of the Constitution of the Dominican Republic recognizes as the State's main purpose the protection of "the exclusive ownership, for the period and in the form determined by the Law, of inventions and discoveries, and also of scientific, artistic and literary productions".

**CONSIDERING:** that the recognition and protection of the rights of breeders of new varieties of plants stimulates investment in the generation, adaptation and transfer of agricultural technology and, consequently, the increase in the production, productivity and quality of agricultural products.

**CONSIDERING:** that technological advances promote the breeding of new varieties of plants and require a form of legislation in keeping with internationally accepted principles.

**CONSIDERING:** that in accordance with the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), the country undertook to regulate, by means of a special law, new varieties of plants, in accordance with Article 2.2(c) of Law 20-00 on Industrial Property.

**Whereas:** the bilateral and multilateral international agreements, signed and ratified by the country in relation to protection of the rights of breeders of new varieties of plants.

**Whereas:** the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

**Whereas:** Law No. 20-00 on Industrial Property of May 8, 2000;

**Whereas:** Law No. 231-71 on Seeds of November 22, 1971;

**Whereas:** Regulation 271-78 under the Law on Seeds, of October 3, 1978

**HAS ENACTED THE FOLLOWING LAW ON PROTECTION OF BREEDER'S  
RIGHTS FOR NEW VARIETIES OF PLANTS<sup>1</sup>**

**TITLE I  
PURPOSE AND SCOPE OF APPLICATION OF THE LAW**

**CHAPTER I  
PURPOSE, SCOPE OF APPLICATION AND DEFINITIONS OF THE LAW**

**Article 1. Purpose.** This Law shall establish the rules governing the grant and protection of the rights of breeders of new varieties of plants.

**Article 2. Administration of the Law.** The Ministry of Agriculture (SEA) shall be responsible for implementing this Law, for which purpose the Office for Registration of Varieties and Protection of Breeder's Rights shall be set up.

**Article 3. Definitions.** The following meanings shall be used for the purposes of implementing this Law:

**Variety.** Any plant grouping of a single botanical taxon of the lowest known rank which, irrespective of whether it fully satisfies the requirements for the grant of a breeder's right, may 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.

**Protected variety:** A variety for which the breeder's right has been granted in accordance with the Law and established Regulations.

**Breeder:** A "breeder" shall be the:

- person who bred, or discovered and developed, a variety,
- person who is the employer of the aforementioned person or who has commissioned the latter's work,
- successor in title of the first or second person.

---

<sup>1</sup> **Preliminary Draft Law for the Protection of New Varieties of Plants, Dominican Republic (final version harmonized with the International Convention for the Protection of New Varieties of Plants).**



**Successor in title:** Any natural person or legal entity who acquires the rights of another person by means of transfer or inheritance.

**Breeder's right:** The prevailing right, in accordance with the 1961 International Convention for the Protection of New Varieties of Plants, as revised on March 19, 1991.

**Genus:** Category of classification of living beings, in specific terms, a group of species closely related in structure and evolution origin. In the classification of living beings, the genus is situated below the family or subfamily and above the species.

**Species:** Basic concept in the classification of living organisms. In simple terms, a species is a group of organisms characterized in that they have a similar shape, size, behavior and habitat, and because these common features remain constant over time.

**Botanical taxon:** Latin name of the genus or subspecies to which a variety belongs, and its common name.

**Material:** In relation to a variety, the plant propagating material, in whatever form, or the harvested material, including entire plants and parts of plants, and any product manufactured directly from the harvested material.

**Natural mutation:** The variation produced in the genome, without human intervention.

**Backcrossing:** A method used by breeders through which an individual is crossed with one of its parents or with the genetically equivalent organism. The progeny of this crossing is known as the generation or progeny of backcrossing.

**Somaclonal variation:** The expression of the variability of plant cells which occur in natural form, or the result of the variations observed between the plants regenerated from the cultivation of tissues and cells *in vitro*. This constitutes one of the alternatives in the genetic improvement programs, since during this period genetic modifications of nuclear and/or cytoplasmic origin are generated, usually irreversible, and are transmitted to the progeny through meiotic processes.

**Farmer:** Natural person or legal entity which is the owner of an agricultural holding and administers it under its own supervision and on its own account.

**Agricultural holding:** Any holding or part thereof which the farmer actually uses to cultivate plants, both under his ownership and if he administers it under his supervision and on his own account, in particular in the case of rental or partnership (share-cropping).

**Nationals:** Nationals shall be those born in the territory of the Dominican Republic or who, by means of the national laws, have acquired Dominican citizenship.

**Developed:** When the variety is ready for reproduction.

**Regulations:** The regulations devised to regulate the implementation of this Law.

**Applicant:** The natural person or legal entity that files an application for the grant of a breeder's right.

**Territory:** The territory of the Dominican Republic or, where appropriate, the territory of another State or intergovernmental organization.

**Office for Registration of Varieties and Protection of Breeder's Rights:** The national authority which, as an institutional part of the SEA, is responsible for administering this Law.

**Title:** The certification granting the breeder's right for a new plant variety to an applicant.

**UPOV:** International Union for the Protection of New Varieties of Plants.

## **CHAPTER II GENERAL OBLIGATIONS**

**Article 4. Basic obligation.** The SEA shall grant breeder's rights and shall protect them in compliance with this Law and the International Convention for the Protection of New Varieties of Plants.

**Article 5. Genera and species to be protected.** Under the terms of the Convention for the Protection of New Varieties of Plants, all plant genera and species shall be subject to protection through this Law.

**Article 6. National treatment.** The following persons may benefit from the grant and protection of breeder's rights:

- (a) Dominican nationals;
- (b) those which have their domicile, an establishment or a business in the country;
- (c) the nationals of countries in which natural persons or legal entities of Dominican nationality are granted equivalent titles for due protection of their rights.
- (d) the nationals of a member of UPOV, as well as the natural persons and legal entities which have their domicile, headquarters or establishment in a UPOV member.

**Single paragraph.** Any person who does not have a domicile, headquarters or establishment in the country may only be party to proceedings instituted in accordance with this Law and avail himself of the rights obtained on the basis thereof, provided that he has a legal representative who has his domicile or registered office in the country. The legal representative shall receive a power of attorney in order to represent the party who hires him in relation to all matters concerning protection of the breeds of new varieties of plants.

**TITLE II  
BREEDER'S RIGHT**

**CHAPTER I  
CONDITIONS FOR THE GRANT  
OF THE BREEDER'S RIGHT**

**Article 7. Conditions of protection.** The breeder's right shall be granted where the variety to be registered meets the following conditions: it is a new, distinct, uniform and stable variety.

**Single paragraph.** The grant of the breeder's right may not depend on conditions additional to or different from those mentioned in this Article, provided that the variety is designated by a denomination established in accordance with Articles 25 and 26 of this Law, and that the applicant has satisfied the formalities provided for by this Law and has paid the fees prescribed in the Regulations.

**Article 8. Criteria of novelty.** The variety shall be deemed new if, at the date of filing of the application for a breeder's right, plant 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 national territory, provided that the application has been filed earlier than one year before that date, and
- (ii) in another territory, earlier than four years or, in the case of trees and vines, earlier than six years before that date.

**Paragraph 1.**

(1) Without prejudice to the provisions of Article 8, a breeder's right may also be granted for a variety which is not longer new on the date of entry into force of this Law with respect to the species under consideration, subject to the following conditions:

- (a) the application shall be filed within the year following the above-mentioned date; and
- (b) the variety shall:
  - (i) have been entered in the National Register of Varieties suitable for marketing or in a register of varieties kept by a professional association and suitable for the purposes of this paragraph by the Office for Registration of Varieties and Protection of Breeder's Rights;
  - (ii) have been the subject of a breeder's right in a member of UPOV, or be the subject of an application for a breeder's right in a member of UPOV, provided that the application subsequently leads to the grant of the breeder's right, or

(iii) be the subject of tests acceptable to the Office for Registration of Varieties and Protection of Breeder's Rights, relating to the date on which the variety ceased to be new, pursuant to Article 8.

(2) The duration of the breeder's right granted under this paragraph shall be calculated from the date of registration mentioned in (1)(b)(i), the date of grant of the breeder's right mentioned in (1)(b)(ii), or the date mentioned in (1)(b)(iii) above, on which the variety ceased to be new. Where relevant, the earliest of these dates shall be retained.

(3) Where a breeder's right has been granted under this paragraph, the owner shall grant licenses, on reasonable conditions, to allow the continuation of any use undertaken in good faith by a third person prior to the application filing mentioned.

**Article 9. Distinctness.** The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in the National Register of Varieties 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 to the entering of the said other variety in the official register of varieties, as the case may be.

**Article 10. Uniformity.** The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its seed or vegetative propagation, it is sufficiently uniform in its relevant characteristics.

**Article 11. Stability.** The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

## **CHAPTER II APPLICATION FOR GRANT OF THE BREEDER'S RIGHT**

**Article 12. Filing of applications.** The breeder shall apply for the grant of a breeder's right to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA, in the form and subject to the terms established by the Regulations.

**Article 13. Right of priority.** Any breeder who has duly filed an application for the protection of a variety in one of the members of UPOV ("first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety, or a subsequent application, with the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

**Paragraph I.** In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA, with which the subsequent application has been filed, may require the applicant to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

**Paragraph II.** The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA, any necessary information, document or material required by the laws of the country for the examination provided for in Article 14.

**Paragraph III.** Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

**Article 14. Examination of the application.** Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 7 to 11 of this Law. In the course of the examination, the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA may, in its role of national authority, grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

**Article 15. Provisional protection.** During the period between the publication of the application for the grant of a breeder's right and the grant of that right, the holder of a breeder's right shall be entitled to fair remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 16.

### **CHAPTER III THE RIGHTS OF THE BREEDER**

**Article 16. Scope of the breeder's right.** Subject to the provisions of Articles 18 and 19, the following shall be required:

- (a) The breeder's authorization for the following acts carried out in respect of the propagating material of the protected variety:
  - (i) production or reproduction (multiplication);

- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;
- (iv) selling or any other form of marketing;
- (v) exporting;
- (vi) importing;
- (vii) stocking for any of the purposes mentioned in (i) to (vi).

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

**Paragraph I.** With respect to the acts relating to harvested material and subject to Articles 18 and 19, the acts referred to in items (i) to (vii) of paragraph (a) in respect of harvested material, including entire plants and parts of plants, obtained by 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.

**Paragraph II.** With respect to acts relating to certain products and subject to Articles 18 and 19, the acts referred to in items (i) to (vii) of paragraph (a) 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 the said 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.

**Article 17. Derived and other varieties.** The provisions of Article 16 shall also apply to varieties:

- (i) 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 Article 9 from the protected variety, and
- (iii) whose production requires the repeated use of the protected variety.

**Paragraph 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.

**Paragraph II.** 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 18. Exceptions to the breeder's right.** The breeder's right shall not extend to acts done:

- (i) privately and for non-commercial purposes,
- (ii) for experimental purposes, and
- (iii) for the purposes of creating new varieties as well as those done with such varieties, unless the provisions of Article 17 apply to the acts referred to in Article 16 and its subsequent paragraphs.

**Single paragraph.** The breeder's right shall not be harmed by any person who reserves and sows on his own holding, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeders, the harvested material which he has obtained by growing, on his own holding, a protected variety or a variety covered by Article 17. Varieties of fruit, ornamental and forest species shall be excluded from this provision where commercial ends are pursued.

**Article 19. Exhaustion of the breeder's right.** The breeder's right shall not extend to acts concerning the material of his variety, or of a variety covered by **Article 17**, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Dominican Republic, or any material derived from the said material, unless such acts involve:

- (a) further propagation of the variety in question;
- (b) 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.

**Single paragraph.** For the purposes of this Article, "material" means, in relation to a variety:

- (i) plant propagating material of any kind,
- (ii) harvested material, including entire plants and parts of plants,
- (iii) any product made directly from the harvested material.

**Article 20. Restrictions on the exercise of the breeder's right.** The Office for Registration of Varieties and Protection of Breeders' Rights of the SEA may not, in its role of national authority, restrict the free exercise of a breeder's right for reasons other than of public interest, which shall be declared by means of an Executive Authority Decree.

**Article 21. Reasons of public interest.** Reasons of public interest shall be deemed to exist where:

- (a) the start of, increase in or widespread use of the protected variety, or the improvement of the conditions in which such use is carried out, are of prime importance for public health, national defense or the environment;
- (b) the lack of use or insufficient quality or quantity involves serious harm to the country's economic or technological development;
- (c) the country's supply needs so require.

**Single paragraph.** In any case, the SEA shall notify the breeder in advance, by bailiff's notice, granting him a reasonable period to correct the situation affecting the public interest. If the breeder does not obey the summons, the SEA shall forward the request for intervention to the Executive Authority, with all the information demonstrating the cause of public interest and the breeder's restrictions. The procedure applicable to compulsory licenses for reasons of public interest shall be specified by means of regulation.

**Article 22. Equitable remuneration.** Where the effect of such a restriction is to allow a third person to perform any of the acts for which the breeder's authorization is required, the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall, in its role of national authority, adopt all the measures necessary for the breeder to receive equitable remuneration.

**Article 23. Economic regulation.** The breeder's right shall be independent of the measures adopted by the country to regulate the production, supervision and marketing of the material of the varieties, or the import and export of that material in the country.

**Article 24. Duration of the breeder's right.** The breeder's right shall be granted for a period of 20 years from the date on which it is granted. For trees and vines, the said period shall be 25 years from that date.

#### **CHAPTER IV VARIETY DENOMINATION**

**Article 25. Variety denomination.** Varieties shall be designated using denominations and the denominations shall be used as follows:

- (a) The variety shall be designated by a denomination which will be its generic designation.
- (b) The Office for Registration of Varieties and Protection of Breeders' Rights of the SEA shall, in its role of national authority, ensure that, subject to the provisions of Article 28, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.



**Article 26. Characteristics of the denomination.** The denomination shall enable the variety to be identified, provided that it satisfies the following conditions:

- (a) It may not consist solely of figures except where this is an established practice for designating varieties,
- (b) It shall not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it shall be different from every denomination which designates, in the territory of the Dominican Republic, or in any other territory of a UPOV Member State, an existing variety of the same plant species or of a closely-related species.

**Article 27. Registration of the denomination.** The denomination of the variety shall be submitted by the breeder to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA. If it is found that the denomination does not satisfy the requirements of Article 26, the Office shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the Office at the same time as the breeder's right is granted.

**Article 28. Prior rights of third persons.** Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of Article 31, is obliged to use it, the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall require the breeder to submit another denomination for the variety.

**Article 29. Applications using the same denomination.** Given that under the UPOV Convention a variety may only be the subject of applications for the grant of a breeder's right using the same denomination, the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall register the denomination so submitted, unless it considers the denomination unsuitable in the country. In the latter case, it shall require the breeder to submit another denomination.

**Article 30. Information.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall ensure that the authorities of the other members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the Office.

**Article 31. Obligation to use the denomination.** Any natural person or legal entity, which offers for sale or markets plant propagating material of a variety protected in the country, shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with Article 28, prior rights prevent such use.

**Article 32. Indications used in association with denominations.** When a variety is offered for sale or marketed, it shall be permitted to associate a factory or trade mark, trade name or a similar

indication with a registered variety denomination. If such an indication is so associated, the denomination shall nevertheless be easily recognizable.

## **CHAPTER V NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT**

**Article 33. Nullity of the breeder's right.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall declare a breeder's right granted by it null and void when it is established that:

- (a) the conditions laid down in Articles 8 and 9 were not actually complied with at the time of the grant of the breeder's right,
- (b) where the grant of the breeder's right was essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 10 and 11 were not actually complied with at the time of the grant of the breeder's right, or
- (c) the breeder's right was granted to a person who is not entitled to it, unless it has been transferred to the person who is so entitled.

**Single paragraph:** No breeder's right may be declared null and void for reasons other than those referred to in (a), (b) and (c) of this Article.

**Article 34. Cancellation of the breeder's right.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA may cancel a breeder's right granted by it if:

- (a) it is established that the conditions laid down in Articles 10 and 11 are no longer fulfilled.
- (b) within a prescribed period and after being requested to do so:
  - (i) the breeder does not provide the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA 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) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

**Single paragraph.** No breeder's right may be cancelled for reasons other than those referred to in this Article.

### TITLE III

## ORGANIZATION AND PROCEDURE

### CHAPTER I

## ORGANIZATION, POWERS AND GENERAL OPERATING STANDARDS

**Article 35. Competence of the national authority.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall be fully responsible for the administration of this Law and implementation of the Regulations thereunder, for which purpose it shall have the requisite institutional structure with the corresponding budget.

**Article 36. Setting-up of the Technical Committee for the Classification of Varieties.** The technical decisions of the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall, in relation to the grant of breeder's rights, be taken on the basis of the recommendations of the Technical Committee for the Classification of Varieties, the membership of which shall be as follows:

- (a) the Deputy Secretary for Agricultural Research, Extension and Training, who will serve as the Chairman of the Committee,
- (b) the Director of the Dominican Agricultural and Forestry Research Agency (IDIAF), member,
- (c) the Director of the Department of Seeds, member,
- (d) the Director of the Department of Plant Health, member,
- (e) a Representative of the Faculties or Schools of Agronomy of the Universities, member.

**Article 37. Functions of the Technical Committee for the Classification of Varieties.** The functions of the Committee shall be to:

- (a) examine applications for protection of new varieties of plants, forwarded by the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA, in accordance with this Law and the Regulations thereunder,
- (b) recommend to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA the approval or rejection, in accordance with this Law and the Regulations thereunder, of the applications to obtain registration of new varieties of plants,
- (c) recommend to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA the dispatch, prior study and evaluation of the application and other elements relevant to the Title of Breeder of New Varieties of Plants, and shall send the titles for registration and transmission, in accordance with the Regulations under this Law,

- (d) advise the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA on the settlement of administrative disputes provided for by this Law, which are under its absolute jurisdiction; for which reason, it shall meet with the parties to the dispute and shall always propose to them, within the framework of the Law, conciliatory solutions that seek to avoid the differences which arise being taken to other higher-level bodies provided for in this Law.

**Article 38. Right to be heard by the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA.** The decisions of the Office shall be notified to the interested parties. In the case of non-compliance, the affected person shall present his observations within thirty (30) days of the said notification.

**Single paragraph.** If one or more parties to a dispute are not in agreement with the Office's decisions, they may appeal its decisions before the National Seeds Commission, which shall make a final ruling.

**Article 39. National Register of Varieties.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall keep a National Register of Varieties which shall be administered in accordance with the Regulations under this Law.

**Article 40. Receipt of the application.** Applications for the grant of breeder's rights shall be received by the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA, in accordance with the Regulations under this Law, and shall be forwarded to the Technical Committee for the Classification of Varieties.

**Article 41. Fees.** The interested parties shall pay the fees for the Administrative Acts relating to breeder's rights applications, in accordance with the Regulations under this Law.

**Article 42. Technical examination of the variety.** The Technical Committee for the Classification of Varieties shall conduct a technical examination of the variety, the aim of which shall be to:

- (a) verify that the variety belongs to the botanical taxon announced;
- (b) determine that the variety is new, distinct, uniform and stable; and,
- (c) determine whether the proposed denomination complies with the requirements of this Law.

**Article 43. Examination of challenges.** Challenges shall be communicated immediately to the applicant for the plant breeder's right, who shall have a period established by the Regulations to respond to the challenges and specify whether he intends to maintain his application, amend it or withdraw it. The period may be extended on the basis of a reasoned request by the applicant.

**Article 44. Grant of the breeder's right and rejection of the application.** The Technical Committee for the Classification of Varieties shall recommend to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA the grant of the breeder's right and hence the entry of such grant in the National Register of Varieties, where the results of the technical

examination of the variety confirm that the variety complies with the requirements of Articles 8 to 11, the variety has been designated by a denomination in accordance with the provisions of Articles 25 to 32, and the applicant has satisfied the other requirements of this Law. The Committee shall recommend to the Office that the application be rejected, if the opposite is proven.

**Paragraph I.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall issue the corresponding certification, based on the recommendations of the Technical Committee for the Classification of Varieties.

## CHAPTER II

### VALIDITY OF THE BREEDER'S RIGHT

**Article 45. Annual fee.** The holder shall pay an annual fee to maintain his right in force during the whole period of protection, and the said fee shall be determined in the Regulations under this Law. The fee shall be paid during the period from January 1 to 31 of each year.

**Article 46. Maintenance of the variety.** The breeder shall maintain the protected variety or, where appropriate, its hereditary components for as long as the breeder's right is valid. The breeder shall furnish to the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA, within the fixed period, the information, documents or material deemed necessary for verifying the maintenance of the variety.

## CHAPTER III

### INFRINGEMENT OF THE BREEDER'S RIGHT

**Article 47. Actions.** Any natural person or legal entity which, without the requisite authorization, performs acts requiring the authorization of the breeder under **Article 16**, or uses a designation in violation of **Article 26**, or omits to use a variety denomination and thus infringes **Article 31**, may be denounced by the breeder or by the holder of an exclusive license, or by any natural person or legal entity. Compensation for the damage caused to the breeder shall be paid under the common law.

**Paragraph I.** The available actions shall include rapid provisional measures and border measures which allow the effective enforcement of breeder's rights.

**Paragraph II.** The disputes resulting from the infringement of the breeder's right shall be judged by the corresponding criminal Court of First Instance, without prejudice to any compensation to which they may give rise.

**Article 48. Criminal sanctions.** Any persons who infringe, to the prejudice of its owner, a breeder's right duly registered with the Office for Registration of Varieties and Protection of

Breeder's Rights of the SEA shall commit offenses punishable by a prison sentence of three months to three years and fines of five (5) to twenty (20) minimum private sector salaries, in accordance with the Regulations under this Law. Where the infringing party alters or steals the breeder's genetic material, or where the illegal reproduction of a plant variety that has been registered has occurred, the same sanction shall be applied.

**Paragraph I.** In the case of illegal reproduction of the variety, in addition to the fine and prison sentence, the propagating materials obtained, and the materials and equipment used in the process of propagating the variety illegally, shall be confiscated.

**Paragraph II.** All persons who recommit the offence of infringing the rights provided for in this Law shall have the fines doubled and the maximum sentence provided for in this Article applied to them.

**Article 49. Sanctions.** Any persons applying for the breeder's right using false documents shall be guilty of the offence of fraud and shall be sanctioned with the penalties established in Article 405 of the Penal Code of the Dominican Republic.

**Paragraph I.** The public servants and employees who, through negligence or for any other reason, prevent the due fulfillment of this Law and the Regulations thereunder, or infringe their provisions, shall be sanctioned by means of disciplinary measures; and, where the case merits it in terms of its seriousness, suspended from duty and their dismissal recommended.

**Paragraph II.** In case of complicity, the public servant or employee and the applicant shall be sanctioned by means of a prison sentence of one month to one year and fines of one to five minimum private sector salaries.

**Paragraph III.** In the case of legal entities, institutions or firms, the sanctions consisting of a fine and a prison sentence shall be imposed on the relevant administrators, managers or legal representatives, without prejudice to any compensation that shall be paid by the legal entities which they represent for the damage caused to other legal entities or natural persons.

**Article 50. Fraud connected with the denominations of varieties.** Any person who knowingly uses a designation in violation of Article 26, or omits to use a variety denomination in violation of Article 31, shall be punished with a fine of one to five minimum private sector salaries and a prison sentence of one month to one year.

**Single paragraph.** In the case of a second offence, the fines shall be doubled and the maximum prison sentence applied.

## CHAPTER IV

### PUBLICATIONS

**Article 51. Gazette.** The Office for Registration of Varieties and Protection of Breeder's Rights of the SEA shall publish, at least once a year, or whenever necessary, a Gazette with the following sections:

- (a) Official announcements;
- (b) Grant of protection for breeder's rights;
- (c) Lapse of breeder's rights;
- (d) List of charges and fees in force for the acts and procedures relating to the rights of protection for the intellectual property of new varieties of plants;
- (e) Amendments relating to persons (applicants, holders and legal representatives);
- (f) Rejection of applications for grant of breeder's rights;
- (g) Registration of variety denominations;
- (h) Withdrawal of applications for grant of breeder's rights;
- (i) Applications for grant of breeder's rights;
- (j) Applications for variety denominations.

**Article 52. Publication of the application.** The application shall be the subject of an announcement in the Gazette, which shall contain at least the information relating to the applicant and the new plant variety to be protected.

**Article 53. Publication of the lapse of the breeder's right.** The lapse of the breeder's right and its cause shall be entered in the National Register of Varieties and shall be published in the national authority's Gazette.

## TITLE VI

### FINAL PROVISIONS AND TRANSITIONAL CLAUSES FINAL PROVISIONS

**Article 54. Validity of earlier registrations.** The registrations of new varieties of plants obtained in accordance with Law 231 of November 22, 1971 and Regulation 271 of October 3, 1978 shall be considered valid. The validity of the registrations of earlier new varieties of plants, as well as applications being processed on the date of entry into force of this Law shall be governed by this Law.

**Article 55. Publication of earlier registrations.** In order to make them public and binding on other parties, the applications being processed and the new varieties of plants that have been registered pursuant to other legal provisions in force and prior to the entry into force of this Law, shall be published *in extenso* in the first Gazette.

**Article 56. Preparation of the Regulations.** In order to enforce this Law, the implementing Regulations shall be submitted to the Executive Authority at the latest within 120 days.

**Article 57.** This Law shall repeal any legal provision on the same subject, issued earlier, that is contrary to it.

[End of Annex II and of document]