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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

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Geneva, April 29, 1997

EXAMINATION OF THE CONFORMITY OF THE LAWS
OF THE KINGDOM OF MOROCCO
WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated April 24, 1997, Mr. Hassan Abouyoub, Minister for Agriculture and Agricultural Development of the Kingdom of Morocco, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention of the Law on the Protection of New Plant Varieties (hereinafter referred to as "the Law") which was adopted by the Chamber of Representatives of Morocco on December 19, 1996, and currently awaits publication in the Official Journal. Annex I to this document contains the text of the said letter, while Annex II contains a copy of the Law.
2. Morocco did not sign the 1991 Act. Under Article 34(2) of that Act, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 34(3), an instrument of that kind 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 Morocco

3. The protection of new plant varieties will be governed in Morocco, after its promulgation, by the Law. An analysis of the Law follows in the order of the substantive law provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

4. Article 2 of the Law reproduces *verbatim* the definition of “variety” and, with appropriate adjustments, the definition of “breeder” which appear in Article 1 of the 1991 Act.

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

5. Article 1 of the Law provides that new plant varieties shall be protected in accordance with the provisions of the Law and implementing regulations made under the Law, thus mirroring Article 2 of the 1991 Act.

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

6. Article 4 of the Law provides that varieties of genera and species appearing in a list established by the Office shall be protected, thus enabling the Government of Morocco, by appropriate regulations, to conform with the obligations under Article 3 of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

7. Article 11 of the Law contains provisions which satisfy the requirements of Article 4 of the 1991 Act.

Articles 5, 6, 7, 8 and 9 of the 1991 Act: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

8. Articles 3, 5, 6, 7, 8 and 9 reproduce virtually *verbatim*, and thus conform with, the provisions of Articles 5 to 9 of the 1991 Act. Article 76 of the Law contains transitional provisions concerning varieties of recent creation which satisfy Article 6(2) of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

9. The Law contains no provisions which conflict with the provisions of Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

10. Articles 12 and 13 of the Law provide for a right of priority in terms which fully satisfy the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

11. Article 5 and Article 50 of the Law make provisions for the examination of candidate varieties in terms which satisfy Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

12. Article 63 of the Law makes provision for provisional protection in relation to events taking place after the relevant person has received a copy of the application for protection.

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

13. Article 16 of the Law contains provisions which reproduce in its entirety the substance of Article 14 of the 1991 Act. Article 16 extends the breeder's right to "transformed products" as envisaged (as an option) by Article 14(3) of the 1991 Act.

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

14. Article 17 of the Law contains exceptions to the breeder's right which satisfy Article 15(1) of the 1991 Act. The last indent contains an exception in favor of farmers who save seed of a protected variety. The exception does not extend to fruit trees, ornamental and flower plants.

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

15. Article 18 of the Law contains provisions concerning the exhaustion of the breeder's right which conforms with Article 16 of the 1991 Act.

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

16. Articles 21 to 29 of the Law contain provisions concerning the grant of compulsory licenses and *ex officio* licenses (*licences d'office*) which satisfy the provisions of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

17. The Law contains no provisions which conflict with Article 18 of the 1991 Act.

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

18. Article 19 of the Law establishes a minimum duration of protection of 25 years for trees and vines (*espèces arboricoles*) and 20 years for agricultural crops (*espèces de grande culture*). The Office is responsible for fixing the duration of protection and can ensure that the duration of protection for other species satisfies the minima of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

19. Articles 14 and 15 of the Law contain provisions which satisfy Article 20 of the 1991 Act.

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

20. Article 34 of the Law provides for the plant variety certificate to be declared null and void in terms which satisfy Article 21 of the 1991 Act.

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

21. Article 30 of the Law provides for the cancellation of the plant variety certificate in terms which satisfy Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

22. The Law makes comprehensive provisions for the implementation of the 1991 Act in Morocco. Thus:

(a) Chapter X of the Law provides for appropriate remedies for the effective enforcement of the rights under a plant variety certificate (Article 30(1)(i) of the 1991 Act);

(b) Article 2(e) provides for the identification by implementing regulations of the competent authority granting protection (Article 30(1)(ii) of the 1991 Act);

(c) Articles 31 (cancellation), 43 and 45 (applications), 48 (denominations), 56 (grants) and 59 (publication of Plant Variety Protection Bulletin) contain comprehensive provisions for informing the public of matters concerning plant variety certificates (Article 30(1)(iii) of the 1991 Act).

General Conclusion

23. The Law complies fully with the 1991 Act.

24. The Office of the Union suggests that the Council may wish

(a) to advise that the Law conforms with the 1991 Act;

(b) to request the Secretary-General to advise the Government of the Kingdom of Morocco of its decision.

25. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.

[Two Annexes follow]

ANNEX I

LETTER, DATED APRIL 24, 1997, FROM MR. HASSAN ABOUYOUB,
MINISTER FOR AGRICULTURE AND AGRICULTURAL
DEVELOPMENT OF THE KINGDOM OF MOROCCO,
TO THE SECRETARY-GENERAL

On December 19, 1996, the Chamber of Representatives of the Kingdom of Morocco adopted the draft Law on the Protection of New Plant Varieties. The Law will shortly be published in the Official Journal. We are currently in the process of finalizing the implementing regulations for this law in consultation with the various parties concerned within the administration and the private sector.

The Government of the Kingdom of Morocco envisages to adhere to the International Union for the Protection of New Varieties of Plants.

To this end, I have the honor of requesting, pursuant to Article 34(3) of the Convention, the advice of the Council of UPOV on the conformity of the Moroccan Law on the Protection of New Plant Varieties with the provisions of the 1991 Act.

I am sending you herewith law No. 9/94 in its Arabic and French versions.

[Annex II follows]

ANNEX II

LAW

ON THE PROTECTION OF NEW PLANT VARIETIES

CHAPTER I

GENERAL PROVISIONS

Article 1

New plant varieties (varieties) shall be protected under the provisions of this Law and of the texts implementing this Law.

Article 2

For the purposes of this Law:

(a) “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.

(b) “propagating material for the production of plants” means

– reproductive material such as seed and fruit;

– vegetative propagating material such as plants or parts of plants, cuttings, tubers, bulbs, rhizomes.

(c) “breeder” means

– the person who has 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, except where otherwise agreed by contract;

– the successor in title of the first or second aforementioned person, as the case may be.

(d) “breeder’s right” means the right of the breeder provided for in this Law.

(e) “Competent Office” means the governmental services determined by regulation for the application of this Law and its implementing regulations.

CHAPTER II CONDITIONS OF PROTECTION

Article 3

The grant of the breeder’s right shall not be subject to any conditions other than those laid down in Article 5 of this Law, provided that the variety is designated by a denomination in accordance with the provisions of Article 14 below, that the applicant complies with the formalities provided for by this Law and its implementing regulation and that he pays the fees referred to in Article 60 below.

Article 4

Only those varieties shall be protected that belong to the genera and species included in the list drawn up by the Office which shall state for each genus or species those elements covered by the breeder’s right.

Article 5

A breeder’s right shall be granted if following the prior examination referred to in Article 50 below, the variety is recognized to be new, distinct, uniform and stable.

Article 6

The variety shall be deemed to be new if, at the date of filing of the application for a breeder’s right, propagating or harvested material or a transformed product of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purposes of exploitation of the variety for more than one year in Morocco or for more than four years or, in the case of trees and vines, for more than six years abroad.

Article 7

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, any other variety shall be deemed a matter of common knowledge if there exists for that variety in any other country an application for protection, provided that such application leads to the granting of a breeder's right, or an entry in an official variety register, as of the date of the application or of the entry, as the case may be. A variety may also be deemed a matter of common knowledge by reference to various factors such as cultivation or marketing already in progress, inclusion in a reference collection, or precise description in a publication.

Article 8

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

Article 9

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.

Article 10

Any plant variety may be granted a title of protection known as a "plant variety certificate."

The right to protection for a variety shall belong to the first to file an application, unless proved otherwise.

Article 11

A breeder's right may be applied for by:

- Moroccan natural and legal persons;
- foreign natural and legal persons having their place of residence or their registered offices in Morocco;
- nationals of States whose legislation affords to Moroccan nationals protection that is at least equivalent to that provided by this Law and natural and legal persons having their place of residence or registered offices on the territory of such States.

Article 12

Any breeder who has duly filed an application for the protection of a variety with a State that affords to Moroccan nationals protection at least equivalent to that provided by this Law (the “first application”) shall, for the purpose of filing an application for the grant of a plant breeder’s right for the same variety with the Competent Office (the “subsequent application”), 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 letter.

Article 13

In order to benefit from the right of priority referred to in Article 12 above, the breeder shall, in the subsequent application, claim the priority of the first application. The Competent Office may require the breeder to furnish within a period of three months as from the filing date of the subsequent application a copy of the documents that constitute the first application, certified to be a true copy by the authority with which that application was filed, together with samples or any other evidence that the variety which is the subject matter of both applications is the same.

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, a period laid down by the Competent Office as from the rejection or withdrawal, in which to furnish to the Competent Office any information, document or material required by this Law for the purpose of the examination referred to in Article 50 below.

Events occurring within the period referred to in Article 12 above, such as the filing of another application or the publication or use of the variety that is the subject matter 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

A variety shall be designated by a denomination which will be its generic designation. Such denomination shall not:

- (a) be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder, or be liable to cause confusion with any other denomination that has already been filed or registered for an existing variety of the same botanical species or of a similar species;
- (b) be contrary to public policy, morality or international conventions;
- (c) consist solely of figures except where this is an established practice for designating varieties of the species concerned.

If the same variety has already been filed or registered in another State, the denomination that has been used must be adopted unless it is not suitable for reasons of a linguistic nature, of public policy or of morality, or unless the denomination does not satisfy the requirements of the first paragraph above. Where such is the case, the breeder shall be required to propose another denomination in accordance with Article 41 below.

Article 15

Any person who offers for sale or markets propagating material of a protected variety on the territory of Morocco shall be required to use the denomination of that variety, even after the end of the term of protection, subject to third-party rights.

Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of a variety denomination is forbidden to a person who, under the provisions of the first paragraph above, is obliged to use the denomination, the Competent Office shall require the breeder to propose another denomination for the variety.

When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

CHAPTER III
SCOPE OF PROTECTION

Article 16

The breeder's right shall cover:

- (a) the protected variety,
- (b) any variety that is not clearly distinguishable in accordance with Article 7 above from the protected variety,
- (c) any variety that is essentially derived from the protected variety, where the protected variety is not itself an essentially-derived variety and
- (d) any variety whose production requires the repeated use of the protected variety.

Subject to the provisions of Articles 17 and 18 below, the following acts in respect of the propagating material of the protected variety and of the varieties referred to in the first paragraph above shall require the authorization of the breeder:

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;

- importing;
- stocking for any of the purposes mentioned above.

Subject to the provisions of Articles 17 and 18 below, if the breeder has not been in a position to exercise his right with respect to the propagating material, he may exercise his right concerning the acts referred to in the second paragraph above with respect to the harvested material or the transformed produce.

For the purposes of item (c) above, a variety is “essentially derived from another variety (initial variety)” if

(a) the variety 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,

(b) the variety is clearly distinguishable from the initial variety and,

(c) except for the differences which result from the act of derivation, the variety 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.

Article 17

The breeder’s right shall not extend to:

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes;
- acts done for the purpose of breeding other varieties, and also acts referred to in the second and third paragraphs of Article 16 above in respect of such other varieties on condition that:
 - * the protected variety is not used repeatedly in order to produce the new variety;
 - * the new variety is not essentially-derived from the protected variety where the latter variety is not itself an essentially-derived variety;
 - * the new variety is clearly distinguishable from the protected variety;
- and to acts done by farmers for propagating purposes on their own holdings by using the product of the harvest which they have obtained by cultivating the protected variety, with the exception of fruit trees and ornamental and flower plants.

Article 18

The breeder's right shall not extend to acts concerning material of the protected variety or a variety essentially derived from the protected variety which has been sold or marketed by the breeder or with his consent, 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.

For the purposes of the first paragraph above, "material" means in relation to a variety:

- (a) propagating material of any kind,
- (b) harvested material, including entire plants and parts of plants, and
- (c) any product made directly from the harvested material.

Article 19

The term of protection shall be determined by the Office for each species. It may not be less than 20 years for agricultural crops and not less than 25 years for trees and vines.

The term of protection shall begin with the issue of the certificate.

CHAPTER IV TRANSFER AND LOSS OF RIGHTS

Article 20

The rights deriving from an application for a certificate or from a certificate may be transferred in whole or in part.

They may be the subject, in whole or in part, of the grant of an exclusive or non-exclusive exploitation license.

The rights afforded by an application for a certificate or a certificate may be invoked with respect to a licensee who fails to comply with the limits set out in the license in accordance with the preceding paragraph.

Subject to the case referred to in Article 61 below, transfer of the rights referred to in the first paragraph shall not affect rights acquired by third parties prior to the date of the transfer.

The acts comprising a transfer or a license as referred to in the first two paragraphs shall be set out in writing, on pain of nullity.

Article 21

Any public or private law person may, on expiry of three years after the issue of a certificate or of four years after the filing date of an application, obtain a compulsory license under that certificate, subject to the conditions set out in Articles 22 to 24 below, if at the time of the request, and save for legitimate reasons, the holder of the certificate or his successor in title:

(a) has not begun to exploit the subject matter of the certificate on the territory of Morocco nor has made effective and serious preparation to exploit it or

(b) has not marketed the product which is the subject matter of the certificate in a quantity sufficient to satisfy the needs of the domestic market or

(c) if exploitation or marketing of the variety in Morocco has been abandoned for more than three years.

Article 22

The application for a compulsory license shall be presented to the competent court. It shall be accompanied by proof that the applicant was unable to obtain a license from the holder of the certificate and that he is in a position to exploit the variety in a serious and effective manner.

A compulsory license may only be non-exclusive. It shall be granted under specific conditions, particularly as to its duration, its scope and the amount of the royalties thereunder.

Such conditions may be modified by a decision of the competent court, at the request of the holder of the certificate or of the licensee.

Article 23

Any transfer of the rights under a compulsory license shall be subject, on pain of nullity, to authorization from the competent court.

Article 24

If the holder of a compulsory license does not comply with the conditions on which the license was granted, the holder of the certificate and, where appropriate, the other licensees may request the competent court to withdraw that license.

Article 25

A variety essential to human or animal life or which involves public health may be exploited *ex officio* by any person who can give the necessary technical and professional guarantees.

Ex officio exploitation shall be decided by an administrative order.

Article 26

As from the day of publication of the administrative act which decides the *ex officio* exploitation of a plant variety certificate, any person who has the necessary technical and professional qualifications may request the grant of a license known as an “*ex officio* license.”

Such license may only be non-exclusive. It shall be applied for and granted subject to the conditions laid down by regulation.

An *ex officio* license shall be granted under specific conditions, particularly as to its duration and its scope.

The royalties under an *ex officio* license shall be agreed by the parties or, failing agreement between them, their amount shall be laid down by the competent court.

An *ex officio* license shall take effect as of the date of notification to the parties of the act granting the license.

Article 27

If the holder of an *ex officio* license fails to comply with the required conditions, forfeiture may be declared in accordance with the conditions laid down by regulation.

Article 28

The State may at any time obtain *ex officio* for the needs of defense a license to exploit a plant variety that is the subject matter of an application for a certificate or of a plant variety certificate, whether exploitation is to be carried out by the State itself or on its behalf.

The *ex officio* license shall be granted by means of an administrative order under the conditions laid down by regulation.

The administrative order shall lay down the conditions under the license. The royalties under the *ex officio* license shall be agreed by the parties or, failing agreement between them, their amount shall be laid down by the administrative court of Rabat.

The license shall take effect as of the date of the application for an *ex officio* license.

Article 29

The rights deriving from an *ex officio* license may be neither assigned nor transferred.

Article 30

The rights of the owner of a plant variety certificate shall be cancelled:

(1) if it is established that the protected variety no longer fulfills the conditions set out in Articles 8 and 9,

(2) if he is unable to furnish to the Competent Office the information, documents or plant material used for the maintenance of his variety,

(3) if he fails to propose, in the event of cancellation of the denomination of the variety after grant of the title, another denomination,

(4) if he does not pay the fees for services rendered, where appropriate, for maintaining his right.

Cancellation shall be ordered in accordance with the conditions established by regulation.

If cancellation is ordered on the grounds of item 4 above, the holder of the certificate may, within six months following the expiry of the prescribed period, lodge an appeal for reinstatement of his rights if he can give legitimate reasons for his failure to pay the fees for services rendered. However, such appeal shall not prejudice any rights acquired by third parties.

A breeder whose rights are liable to be cancelled under items 2 or 3 above shall be summoned to remedy the situation by means of a notice served on him by the Competent Office. If such summons has remained without effect on expiry of a period of two months as from receipt of the notice, the breeder's rights shall be cancelled.

Article 31

The cancellation of a breeder's right shall be notified to the holder of the certificate. It shall be entered in the National Register of Plant Variety Certificates and published in the Plant Variety Protection Bulletin.

Article 32

Seizure of a certificate shall be effected by means of an extrajudicial instrument served on the owner of the certificate, on the Competent Office and on any persons holding rights in the certificate; as a result of seizure, no subsequent changes to the rights deriving from the certificate may be invoked against the creditor effecting the seizure.

On pain of nullity of the seizure, the creditor effecting the seizure shall be required, within the prescribed period of time, to petition the competent court for validation of the seizure and for the purposes of offering the certificate for sale.

Article 33

The holder of a certificate may at any time surrender in whole or in part the rights deriving from the certificate.

Surrender shall be effected by a written statement addressed to the Competent Office. It shall take effect on the day of its publication in the Plant Variety Protection Bulletin referred to in Article 59 below.

However, surrender may be withdrawn prior to publication in the Bulletin referred to in the preceding paragraph.

Where real property rights, under a pledge or license, have been entered in the National Register of Plant Variety Certificates, surrender shall only be admissible if accompanied by the consent of the holders of such rights.

Article 34

At the request of any person who can prove a legitimate interest, the competent court may be requested to declare a plant variety certificate null and void

- if it is established that the variety was not new and distinct at the time the breeder's right was granted or
- if it is established that the information and documents concerning uniformity and stability furnished by the breeder were not effectively satisfied at the time the breeder's right was granted or
- if it is established that the breeder's right was granted to a person not entitled thereto, unless it is transferred to the person entitled thereto.

CHAPTER V

JOINT OWNERSHIP OF CERTIFICATES

Article 35

Subject to the provisions of Article 38 below, joint ownership of an application for a certificate or of a certificate shall be governed by the following provisions:

- (a) Each joint owner may exploit the new plant variety for his own benefit, subject to equitable compensation for the other joint owners who do not personally exploit the variety or

who have not granted licenses. Failing amicable agreement, such compensation shall be laid down by the competent court.

(b) Each joint owner may take action for infringement for his own exclusive benefit. The other joint owners shall be notified of the action for infringement. Judgment shall be deferred until such notification has been proved.

(c) Each joint owner may grant to a third party a non-exclusive license for his own benefit subject to equitable compensation for the other joint owners who do not personally exploit the new variety or who have not granted a license. Failing amicable agreement, such compensation shall be laid down by the competent court.

However, the draft licensing agreement shall be notified to the other joint owners, accompanied by an offer for transfer of the share at a specified price.

Within three months of such notification, any joint owner may oppose the granting of a license on condition that he acquires the share of the joint owner wishing to grant the license.

Failing agreement within the time limit laid down in the preceding paragraph, the price shall be set by the competent court. The parties shall have one month from notification of the court decision to forego the granting of a license or the purchase of the joint ownership share, without prejudice to any damages that may be due. Costs shall be borne by the renouncing party.

(d) An exclusive license may only be granted with the agreement of all the joint owners or with the authorization of the court.

(e) Each joint owner may, at any time, assign his share. The joint owners shall have the right of preemption during a period of three months as from notification of the intended assignment. Failing agreement on the price, such price shall be set by the competent court. The parties shall have a period of one month as from notification of the court's decision to forego the sale or the purchase of the joint ownership share, without prejudice to any damages which may be due; the costs shall be borne by the renouncing party.

Article 36

The provisions of Articles 960 to 981 of the DOC shall not apply to joint ownership of an application for a certificate or of a certificate.

Article 37

The joint owner of an application for a certificate or of a certificate may notify the other joint owners that he relinquishes his share in their favor. Once the relinquishment has been entered in the National Register of Plant Variety Certificates or, in the case of an unpublished application for a certificate, as from its notification to the Competent Office, such joint owner shall be relieved of all obligations towards the other joint owners. The latter shall divide the

relinquished share between them in proportion to their rights in the joint property, except where otherwise agreed.

Article 38

The provisions of Articles 35 to 37 above shall apply in the absence of any agreement to the contrary.

The joint owners may derogate therefrom at any time by means of a joint ownership agreement.

CHAPTER VI FILING OF APPLICATIONS FOR PLANT VARIETY CERTIFICATES

Article 39

Applications for plant variety certificates shall be filed with the Competent Office in the form and subject to the conditions laid down by regulation.

Natural and legal persons not having a place of residence or a registered office in Morocco shall be required to appoint a representative having a place of residence or a registered office in Morocco.

Except as otherwise stipulated, the power of attorney of the representative appointed in accordance with the preceding paragraph shall extend to all acts that relate to exercise of the breeders' right and to receipt of all notifications referred to in this Law, with the exception of withdrawal of the application for a plant variety certificate or renunciation in whole or in part of the rights deriving from such certificate.

Article 40

The benefit of the filing date of the application shall be acquired if all elements required by regulation in accordance with the first paragraph of Article 39 above have been furnished on filing and if the fees for services rendered established in accordance with Article 60 of this Law have been paid.

If the filing does not contain the above-mentioned elements, the application shall be declared inadmissible and returned to the applicant. Any fee that has been paid will be refunded to the applicant.

Any material errors are to be remedied within two months following notification made to the applicant, failing which the application shall be rejected and returned to the applicant.

Article 41

A provisional reference may be given at the time of filing of the application in place of a denomination in order to designate the variety which is the subject matter of the application. In such case, the denomination shall be proposed, on pain of inadmissibility of the application, within two months of the notification addressed to the holder of the application by the Competent Office.

Article 42

A copy of the application for a plant variety certificate shall be returned to the applicant, on filing, bearing an attestation of the day and time of filing of the application and including a registration number.

Article 43

The application shall be entered in the National Register of Applications for Plant Variety Certificates referred to in Article 58 below in the order of filing and under the number that has been allocated to the applicant.

This number shall be shown on all notifications addressed to the applicant up to issue of a plant variety certificate, if appropriate.

Article 44

Up to issue of a plant variety certificate, the applicant may request correction of any material errors ascertained in the filed elements.

The request shall be submitted in writing and shall contain the wording of the modifications proposed by the applicant. It shall be entered in the National Register of Applications for Plant Variety Certificates and shall only be admissible if accompanied by evidence of payment of the required fee for services rendered.

CHAPTER VII

PROSECUTION OF APPLICATIONS FOR
PLANT VARIETY CERTIFICATES

Article 45

Each duly filed application for a plant variety certificate shall be published in the Plant Variety Protection Bulletin referred to in Article 59 below.

The particular purpose of such publication shall be to inform all persons having an interest therein of the application for a plant variety certificate.

As from the day of publication referred to in the preceding paragraphs, all persons may inspect the application as entered in the National Register of Applications for Plant Variety Certificates.

Article 46

Within a period of three months as from the date of publication referred to in the preceding Article, any person having an interest therein may submit observations in writing to the Competent Office.

Such observations shall be reasoned and may only concern the fact that the variety applied for is not eligible for protection in accordance with the provisions of Articles 5 and 14 of this Law.

Article 47

Any opposition concerning the breeder's claim to the variety for which a plant variety certificate is sought shall be submitted directly to the competent courts.

It shall be entered in the National Register of Applications for Plant Variety Certificates.

Article 48

Where the variety denomination proposed by the breeder or his successor in title was not included in the initial application or where the breeder proposes, at the request of the Office, a new denomination, such denomination shall be published in the Bulletin referred to in Article 59 below.

Article 49

Any observations submitted shall be notified by the Competent Office to the holder of the application.

The holder shall have a period of one month as from the day on which he confirms receipt of the notification to submit his arguments or his defense.

Article 50

Once the application has been duly registered, the Competent Office shall prosecute the application for a plant variety certificate and, where appropriate, examine the observations relating thereto.

During prosecution, a prior examination of the variety shall be effected to ascertain whether the variety is new, distinct, uniform and stable in accordance with Article 5 of this Law.

The Competent Office shall determine the list of domestic or foreign technical bodies authorized to carry out the prior examination of the varieties for which a plant variety certificate is sought.

Article 51

Prosecution shall be suspended at the written request of any person who furnishes proof that he or she has instituted before a competent court proceedings to claim ownership of the application for the plant variety certificate. However, the tests ordered by the Office may be carried out.

Prosecution shall be resumed once the court decision on the proceedings referred to in the first paragraph above becomes final. It may also be resumed at any time with the written consent of the person who has instituted the proceedings claiming ownership. Such consent shall be irrevocable. During that period, the holder of the application may not withdraw the application without the written consent of the person who has instituted the proceedings to claim ownership. Further, such person shall be required to participate in the prosecution of the application in the same way as the holder of the application.

Article 52

When the various measures of the prosecution have been completed, a summary report of the results of the prosecution shall be notified to the holder of the application. The applicant shall have two months to submit his observations. He may, during that period, inspect the complete examination file at the relevant service of the Competent Office.

Any person who has submitted observations in accordance with the provisions of this Law shall be informed of the conclusions of the report which concern his intervention. At his request, the Competent Office may authorize him to inspect the file concerning that intervention. He may submit further observations within the same period of time as referred to above.

CHAPTER VIII

ISSUE OF PLANT VARIETY CERTIFICATES

Article 53

On expiry of the time limit referred to in the preceding Article 52, the Competent Office shall take a decision on the application. It may decide either the issue of a plant variety certificate or the rejection of the application or an additional examination in accordance with the conditions and time limits that it shall determine.

Its decision shall be reasoned. It shall be notified to the applicant and, where appropriate, to persons having made observations.

Article 54

The plant variety certificate shall be issued by the Competent Office in accordance with the conditions set out by regulation. It shall be drawn up in the name of the holder of the application for a plant variety certificate. If the holder of the application is not the breeder, the name of the latter shall be included in the plant variety certificate.

The plant variety certificate shall take effect as of the date of the application.

Article 55

The certificate shall be entered in the National Register of Plant Variety Certificates.

Article 56

The issue of a plant variety certificate shall be published in the Plant Variety Protection Bulletin within a period of three months as from the date of notification of issue made to the holder of the plant variety certificate.

Article 57

As from the date of publication referred to in Article 56 above, any person may inspect the plant variety certificate as entered in the National Register of Plant Variety Certificates.

The Competent Office shall keep the elements of the certificate application files relating to titles of protection, in the original or as a reproduction, until a period of five years has lapsed after the end of protection.

The National Registers of Applications for Plant Variety Certificates and of Plant Variety Certificates shall be kept indefinitely.

CHAPTER IX MISCELLANEOUS

Article 58

The Competent Office shall keep a National Register of Applications for Plant Variety Certificates and a National Register of Plant Variety Certificates.

Applications for plant variety certificates shall be entered in chronological order in the National Register of Applications for Plant Variety Certificates.

Additional particulars or information relating to each application for a certificate, of which the list shall be laid down by regulation, shall also be entered in that Register.

Plant variety certificates shall be entered in the National Register of Plant Variety Certificates in their order of issue.

The list of additional particulars or acts to be entered in that Register shall be laid down by regulation.

The courts shall address to the Competent Office a full and gratuitous copy, for entry of the additional notices subsequent to a court decision, of those decisions that concern the existence, scope and exercise of rights deriving from the protection afforded by this Law.

Article 59

The Office shall publish a "Plant Variety Protection Bulletin."

The frequency and content of the Bulletin shall be laid down by regulation. Acts concerning grant of a certificate, transfer of ownership, grant of a right of exploitation or a pledge, in relation to a plant variety certificate, cancellation of a certificate, surrender in whole or in part of the rights under a certificate may only be invoked against other persons if they have been duly published in the Plant Variety Protection Bulletin.

Article 60

An order issued in accordance with the provisions of the first paragraph of Article 17 of the Basic Finance Law promulgated by Dahir No. 1-72-260 of 9 Sha'ban 1392 (September 18, 1972) shall lay down the fees for services rendered by the State in application of this Law and its implementing texts.

CHAPTER X

LEGAL PROCEEDINGS

Article 61

If a plant variety certificate has been sought either for a plant variety appropriated from the person who has bred or discovered and developed the variety, or his successors in title, or in violation of a statutory or contractual obligation, the injured person may claim ownership of the application for the certificate or of the plant variety certificate.

Proceedings shall be statute-barred three years after the publication of the issue of the certificate.

However, in the event of bad faith at the time of grant or of acquisition of the certificate, the time limit shall be of three years after the expiry of such certificate.

As from the day on which a person has furnished proof of having instituted proceedings, the owner of the application for a certificate or of a certificate may not withdraw such application or renounce such certificate in whole or in part except with the written consent of the person who has instituted proceedings.

Article 62

Any violation of the rights of the owner of a plant variety certificate as set out in Article 16 of this Law shall constitute an infringement implying the civil liability of the person committing the violation.

The holder of a compulsory or *ex officio* license as referred to in Articles 21, 26 or 28 of this Law and, unless otherwise agreed, the holder of an exclusive right of exploitation may institute the liability proceedings referred to in the first paragraph above if, after notification, the owner of the certificate has not instituted such proceedings.

The holder of a certificate shall be entitled to take part in proceedings instituted by a licensee under the preceding paragraph.

Any holder of a license shall be entitled to take part in proceedings instituted by the holder of the certificate in order to obtain damages for any prejudice he has personally suffered.

Article 63

Acts committed prior to publication of the issue of the certificate shall not be held to violate the rights deriving from a certificate. However, acts committed after a true copy of the application for a certificate has been notified to a person presumed liable may be ascertained and prosecuted.

Article 64

The holder of an application for a plant variety certificate or of a certificate shall be entitled, with a court authorization, to proceed with a detailed description, with or without seizure, of any plants or parts of plants or of any elements of reproduction or vegetative propagation alleged to have been obtained in violation of his rights. This right shall also be available to the assignee of an exclusive right of exploitation or the holder of an *ex officio* license, subject to the conditions set out in the second paragraph of Article 62 above.

Where the claimant fails to petition the court within a period of 15 days as from the day on which the seizure or the description takes place, the description or seizure shall be automatically null and void, without prejudice to any damages which may be claimed.

Article 65

Detailed description, with or without seizure of the plants, part of plants or elements of reproduction or vegetative propagation of the variety that is alleged to be counterfeited, under Article 64 above, shall be ordered by the presiding judge of the court within whose jurisdiction the operations are to be carried out.

The order shall be given on a simple request and on presentation of either the plant variety certificate or, in the case referred to in Article 63 of this Law, of an authentic copy of the application for a plant variety certificate.

If the request is presented by the assignee of an exclusive right of exploitation or by the holder of a compulsory or an *ex officio* license as referred to in Articles 21, 26 or 28 of this Law, the petitioner shall be required to prove failure to act on the part of the holder of the plant variety certificate after having been notified and invited to institute proceedings.

Article 66

If seizure is ordered, the court may require the petitioner to furnish a guarantee to be deposited before the seizure is effected. On pain of nullity and of damages awarded against the official of the registry or the bailiff, the latter shall be required, prior to carrying out the seizure, to give to the holders of plants, parts of plants or elements of reproduction or vegetative propagation of the variety concerned a copy of the order and, where appropriate, of the act recording the deposit of a guarantee. Those same holders shall be given a copy of the seizure report.

Article 67

At the request of the injured party, and where such measure proves necessary to enforce the prohibition on continued infringement, the court may order confiscation to the benefit of the injured party of any plants or parts of plants or elements of reproduction or vegetative propagation obtained in violation of the rights of the owner of the plant variety certificate and, where appropriate, of the instruments specifically intended for use in the reproductive cycle.

The value of the confiscated articles shall be taken into account when calculating the indemnity to be awarded to the beneficiary of the sentence.

Article 68

The civil and criminal proceedings under this Chapter shall be statute-barred after three years counted from the acts concerned.

The institution of civil proceedings shall suspend the limitation of criminal proceedings.

Article 69

Where a variety that is the subject matter of an application for a certificate or a plant variety certificate is exploited for the needs of defense by the State or its contractors, subcontractors and subsidiary suppliers, without a license having been granted to them, the court hearing the case may not order either cessation or interruption of exploitation nor confiscation as provided for in Article 67 above.

If an expert opinion or a description, with or without seizure, is ordered by the presiding judge of the court hearing the case, no expert opinion or description or seizure shall be carried out and no investigation in the enterprise shall be undertaken if the contract for research or reproduction or propagation comprises a defense security classification.

The same shall apply where research, reproduction or propagation are carried out in a military establishment.

The presiding judge of the court hearing the case may, if so requested by the entitled person, order an expert opinion which may be carried out only by persons approved by the governmental authority responsible for defense and in the presence of its representatives.

Such exploitation shall automatically incur the liability under this Article for the persons concerned.

Article 70

The presiding judge of a court hearing infringement proceedings, acting in summary jurisdiction, may provisionally prohibit, subject to a daily fine, the continued performance of the acts alleged to be infringing or may subject continuation of the acts to the provision of guarantees intended to cover the indemnification of the holder of the plant variety certificate or the holder of an exclusive right of exploitation.

A request for prohibition or constitution of guarantees shall be admitted only if the substantive proceedings appear warranted and are instituted within a short period calculated as of the day on which the holder of the certificate or the holder of an exclusive right of exploitation obtained knowledge of the facts on which the proceedings are based. The court may subject prohibition to the provision by the plaintiff of guarantees intended to cover possible indemnity for the prejudice suffered by the defendant if the infringement proceedings subsequently prove unwarranted.

Article 71

The production and business secrets of the parties concerned shall be safeguarded.

The other party shall not be given knowledge of any evidence liable to disclose such secrets except where compatible with their safeguard.

Article 72

Civil disputes arising between the parties from the application of this Law shall be heard by the first instance courts located at the seat of the appeal court district.

The competent first instance courts and the districts in which such jurisdictions exercise the tasks allocated to them shall be laid down by regulation.

Article 73

Notwithstanding, where appropriate, the penalties laid down by special laws, particularly that concerning the repression of fraud, any person who knowingly violates the rights of the holder of a plant variety certificate, as defined in Article 16 of this Law, shall be liable to a fine of between 3,000 and 30,000 Moroccan dirhams.

The court may also order destruction of the product and/or propagating material in dispute.

In the event of a repeated offense, imprisonment of between two months and one year may also be ordered. An offense shall be deemed to be repeated within the meaning of this Article if the offender has been finally convicted of the same offense within the preceding five years.

Article 74

Public proceedings to apply the penalties laid down in Article 73 above may only be instituted by the public prosecutor on a complaint by the injured party.

The court hearing the case may not take a decision until the civil court has confirmed the existence of the offense in a final decision. Nullity of the plant variety certificate or matters of the ownership of such certificate may only be pleaded by the defendant before the civil court.

Article 75

Any person who improperly claims to be the holder of a certificate or of an application for a plant variety certificate shall be liable to a fine of between 3,000 and 30,000 Moroccan dirhams.

In the event of a repeated offense, the fine may be doubled. An offense shall be deemed to be repeated within the meaning of this Article if the offender has been finally convicted of the same offense within the preceding five years.

CHAPTER XI
TRANSITIONAL PROVISIONS

Article 76

By derogation from the provisions of Article 6 above, an application for protection may also be submitted, during a transitional period of one year as from the entry into force of this Law, in respect of varieties that have been offered for sale, marketed or distributed in Morocco or abroad prior to the entry into force of this Law. If protection is granted, its duration shall be reduced by the number of full years that have elapsed between the time at which the variety was offered for sale, marketed or distributed for the first time and the time at which the application was submitted.

The same rule shall apply *mutatis mutandis* to varieties of species newly entered in the list of species to be protected after entry into force of this Law.

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