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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

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Geneva, April 3, 1998

**EXAMINATION OF THE CONFORMITY OF A BILL OF THE REPUBLIC OF
NICARAGUA WITH THE 1978 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. By letter dated February 17, 1998 (which was received by the Office of the Union on March 9, 1998, see Annex I), Mr. Jorge Alberto Montealegre, Vice-Minister for Economy and Development of the Republic of Nicaragua, requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), on the conformity of a Bill on the Protection of New Plant Varieties (hereinafter referred to as "the Bill") with the 1978 Act. The Bill is reproduced in Annex II to this document.
2. Nicaragua did not sign the 1978 Act. Under Article 32(1)(b) of that Act it must accordingly deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited by Nicaragua if it has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive.

* This document contains a translation of the Annexes.

Legal Basis for the Protection of New Varieties in Nicaragua

3. The protection of new plant varieties will be governed in Nicaragua by the law which will be enacted by the Parliament on the basis of the Bill, and by its implementing regulations. An analysis of the Bill follows in the order of the substantive law provisions of the 1978 Act.

Article 1(1) of the 1978 Act: Purpose of the Convention

4. Article 1(1) of the 1978 Act provides that “the purpose of this Convention is to recognize and to ensure to the breeder of a new plant variety or to his successor in title ... a right.” Article 1 of the Bill states that “the purpose of this Law is to establish the legal provisions for the legal protection of the rights of the breeders of plant varieties.” The purpose of the Bill thus accords with the purpose of the Convention.

Article 2 of the 1978 Act: Forms of Protection

5. The Bill provides for the granting of a breeder’s right through the issue of a breeder’s certificate and the entry of the variety concerned in the National Register of Protected Plant Varieties, i.e., of a “special title of protection” for the purposes of Article 2 of the 1978 Act.

6. According to Article 6 of the Bill, the breeder’s right is to be considered, for all intents and purposes, as an industrial property right subsidiarily governed by the provisions of the law on inventions, except where otherwise provided in the (future) Law. This provision has precedents in existing member States and enables the Law to be restricted to the special provisions required by the protection of new plant varieties.

7. The legislation of Nicaragua will thus accord in all respects with Article 2 of the 1978 Act.

Article 3 of the 1978 Act: National Treatment; Reciprocity

8. Articles 4 and 5 of the Bill define the beneficiaries of the law. Article 5.1 provides for national treatment in terms of Article 3(1) and (2) of the 1978 Act. No special formalities are foreseen in relation to foreign applicants.

9. The legislation of Nicaragua will thus accord in all respects with Article 3 of the 1978 Act.

Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

10. Article 10 of the Bill states that the Law applies to all botanical genera and specie. The legislation of Nicaragua will thus comply with Article 4 of the 1978 Act.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

11. Article 9 of the Bill follows the pattern of Article 14(1)(a) of the 1991 Act (with additions based upon the third sentence of Article 5(1) and the second sentence of Article 5(3) of the 1978 Act) in that it provides that the authorization of the breeder will be required for the following acts done in respect of the reproductive or vegetative propagating material of the protected variety:

- (a) production or reproduction,
- (b) conditioning for the purpose of propagation,
- (c) offering for sale, selling or other marketing,
- (d) exportation,
- (e) importation,
- (f) repeated use of the new variety for the commercial production of another variety,
- (g) use of ornamental varieties, or parts of plants of such varieties normally marketed for purposes other than propagation, with a view to the production or reproduction of such varieties.

12. Article 10(1) of the Bill extends the right to essentially derived varieties and varieties which are not clearly distinguishable from the protected variety.

13. Article 10(3) of the Bill introduces a “farmer’s privilege.” The provision is in fact repeated in Article 11.2.

14. Article 11.1 of the Bill sets out the “breeder’s exemption” in terms conforming to the first sentence of Article 5(3) of the 1978 Act (the second sentence thereof being covered by Article 9.6 of the Bill).

15. To sum up, the Bill creates a scope of protection which conforms entirely with Article 5 of the 1978 Act. It should be noted that, to conform with Articles 14 to 17 of the 1991 Act, Nicaragua would only have to extend the list of acts to stocking, to extend the material scope to the harvested material (on the condition set out in Article 14(2) of the 1991 Act) and to make some minor adjustments.

Article 6 of the 1978 Act: Conditions Required for Protection

16. The Bill sets out the conditions of novelty, distinctness, homogeneity and stability, and the requirement for a denomination, in Articles 15 to 19, in terms which conform to Article 6 of the 1978 Act.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

17. Articles 38 to 41 and 43 of the Bill provide for an examination of the application and of the variety in terms which will enable Nicaragua to satisfy the requirements set out in Article 7(1) and (2) of the 1978 Act.

18. Under the 1978 Act, provisional protection is optional. The Bill makes no provision on this subject.

Article 8 of the 1978 Act: Period of Protection

19. Article 21 of the Bill specifies that the period of protection shall be 20 years in the case of vines, forest trees, fruit trees and ornamental trees, including their rootstocks, and 18 years in the case of other species, calculated from the date of grant. These periods conform with Article 8 of the 1978 Act.

Article 9 of the 1978 Act: Restrictions in the Exercise of Rights Protected

20. Article 22 of the Bill contains provisions on the granting of compulsory licenses for reasons of public interest in terms which conform with Article 9 of the 1978 Act. Articles 58 *et seq.* contain further – detailed – provisions on compulsory licenses which also conform with Article 9 of the 1978 Act (there is, however, a lack of internal consistency).

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

21. Article 69 of the Bill sets out a general principle for declarations of nullity that does not conform with Article 10(1) of the 1978 Act. It should be deleted on that account, and also because it is not consistent with Article 70 of the Bill, which repeats the substance of Article 21 of the 1991 Act. In accordance with previous decisions taken by the Council, reasons for nullity based upon the 1991 Act are to be deemed as compatible with Article 10(1) of the 1978 Act.

22. Article 72 of the Bill lists reasons for cancellation of the breeder's right that have been drawn both from Article 10(2) and (3) of the 1978 Act and Article 22 of the 1991 Act. In accordance with the previously mentioned decision, the Bill is deemed to be compatible with Article 10(2) and (3) of the 1978 Act.

23. In conclusion, the Bill will substantially conform to Article 10 of the 1978 Act upon elimination of Article 69.

Article 11 of the 1978 Act: Free Choice of the Member State in Which the First Application is Filed; Applications in Other Member States; Independence of Protection in Different Member States

24. There are no provisions in the Bill which would prevent a breeder from choosing the member State of the Union in which he wishes to file his first application, or from applying for protection in other member States until a breeder's right is issued in Nicaragua. There are no provisions that would make protection in Nicaragua dependent upon the protection granted (or not granted) in another country. The Bill accordingly conforms with Article 11 of the 1978 Act.

Article 12 of the 1978 Act: Right of Priority

25. Priority is defined in Article 3 of the Bill. It is referred to in various provisions, in particular in connection with the requirements of novelty. Article 37 of the Bill provides for priority in accordance with Article 12 of the 1978 Act, except that it limits the possibility of a deferred examination set out in paragraph (3) of the said Article to two years, instead of four, in accordance with Article 11(3) of the 1991 Act.

26. In accordance with previous decisions taken by the Council, the Bill is deemed to be compatible with Article 12 of the 1978 Act. It should be noted, however, that the Bill contains elements that are drawn from patent law and are not relevant in the context of plant variety protection.

Article 13 of the 1978 Act: Variety Denomination

27. Detailed provisions relating to variety denominations are to be found in Chapter II, Section I of the Bill (Articles 46 *et seq.*). Those provisions conform with Article 13 of the 1978 Act.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

28. The first sentence of Article 23 of the Bill reproduces the substance of the first sentence of Article 14 of the 1978 Act, using the terminology of Article 18 of the 1991 Act, and thus states that protection is independent of marketing regulations. The second sentence of Article 25 of the Bill ensures that the breeder's right nevertheless remains subject to competition law. This is compatible with Article 14 of the 1978 Act

29. Article 30 of the Bill specifies that registrations with the National Seed Committee are valid for the purposes of the relevant laws and do not afford breeders' rights.

Article 30 of the 1978 Act: Implementation of the Convention on the Domestic Level

Legal Remedies

30. Chapter IV of the Bill (Articles 75 *et seq.*) provides for civil law and penal law remedies which will enable an effective defense of the rights granted to the breeder, as provided in Article 30(1)(a) of the 1978 Act.

Authority

31. The protection system will be administered by the Industrial Property Registry of the Ministry of Economy and Development (MEDE), which will be responsible for the administrative aspects of the system; it will be assisted by a Plant Variety Classification Committee which will be responsible, in particular, for the examination of the varieties.

32. The requirement set out in Article 30(1)(b) of the 1978 Act is thus met.

Publication

33. Article 25 of the Bill provides for access to the information entered in the Register of New Plant Varieties. Article 28 of the Bill contemplates the publication, in the Official Gazette of the Industrial Property Registry, the Official Journal and/or other publications of the information that is usually communicated to the public in member States. The minimum requirement set out in Article 30(1)(c) of the 1978 Act will thus be met once the protection system is operational.

General Conclusion

34. In the opinion of the Office of the Union, the Bill of Nicaragua conforms with the 1978 Act in its main features (subject to the elimination of Article 69).

35. On the basis of the foregoing, and of precedents, the Office of the Union would suggest that the Council may wish:

(a) to advise the Government of Nicaragua that the Bill, when supplemented by implementing regulations and after elimination of Article 69, provides the basis for a law conforming with the 1978 Act;

(b) to request the Office of the Union to offer its assistance to the Government of Nicaragua in respect of the amendments and improvements to be made to the Bill and the drafting of the implementing regulations;

(c) to further advise the Government of Nicaragua that

i) after the enactment into law of the Bill incorporating the amendments suggested by the Office of the Union, but without other substantial changes, and the making of necessary regulations, and

ii) after consultation of the Office of the Union as to whether the amendments and Regulations are adequate,

it may deposit an instrument of accession to the 1978 Act by April 24, 1999, at the latest.

36. The Council may also wish to note that the Bill incorporates essential features of the 1991 Act and would conform to the latter if the following main changes were effected:

(a) an extension of the material basis of the breeder's right to harvested material under the condition set out in Article 14(2) of the 1991 Act;

(b) the introduction of provisional protection;

(c) an extension of the duration of protection.

It may wish to request the Office of the Union to advise the Government of Nicaragua on the rationale of the provisions referred to above and the benefits that may be derived from them.

37. The Council is invited to take note of the information given above and to take decisions on the basis of the proposal set out in the preceding two paragraphs.

[Two Annexes follow]

ANNEX I

LETTER, DATED FEBRUARY 17, 1998, FROM MR. JORGE ALBERTO MONTEALEGRE, VICE-MINISTER, MINISTRY OF ECONOMY AND DEVELOPMENT OF THE REPUBLIC OF NICARAGUA, TO THE SECRETARY-GENERAL

Dear Secretary-General,

I have the honor to refer to Article 32 of the UPOV Convention, the relevant passages of which provide that “any State which is not a member of the Union (.....) shall, (.....) ask the Council to advise it in respect of the conformity of its laws with the provisions of this [the 1978 UPOV] Act.”

Further to the above, I have the honor to request you to prevail upon the UPOV Council to give us its comments and other opinions on our draft law for the protection of new plant varieties, enclosed herewith to that end.

I thank you for attending to this matter, and take the opportunity to address to you the assurances of my highest consideration.

[Annex II follows]

ANNEX II

DRAFT LAW FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
OF THE REPUBLIC OF NICARAGUA

February 1998, Managua

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DRAFT LAW FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

TITLE I GENERAL PROVISIONS

Article 1 Purpose of the Law

The purpose of this Law is to establish the legal provisions for the legal protection of the rights of breeders of new varieties of plants.

Article 2 Administration of the Law

The Ministry of Economic Affairs and Development (MEDE), acting through the Industrial Property Registry (RPI), shall be the department of the executive responsible for the application of this Law.

Article 3 Concepts Used

For the purposes of this Law, paragraph “relevant characteristics” means the phenotypical and genotypical expressions peculiar to the plant variety that enable it to be identified.

“Plant variety” means a plant grouping within a single botanical taxon of the lowest known rank that includes a group of plants with similar characteristics that are considered stable and homogeneous, which grouping, irrespective of whether or not 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 and changed.

“Propagating material” means any material for the reproduction of plants, whether by sexual or asexual propagation, that may be used for the production or multiplication of a plant variety, including seed for sowing and any whole plant or part thereof, from which it is possible to bring about the reproduction of whole plants or seed thereof.

“Reference specimen” means the smallest entity used by the breeder to maintain his variety, from which the representative sample is taken for registration of the variety.

“Reproductive or vegetative propagating material” means seed, fruits, plants or parts thereof that are used for the reproduction of plants, including also whole plants.

“Breeder” means the person, whether natural person or legal entity, who has created or discovered a new plant variety either by natural means or by genetic engineering.

“Recognized priority” means precedence for the grant of breeders’ rights based on the filing abroad of an application that relates entirely or partly to the same subject matter in respect of which a subsequent application is filed in the Republic of Nicaragua.

“Protected variety” means a variety entered in the “Register of Protected Varieties” (RVP) at the Industrial Property Registry (RPI) of the Ministry of Economic Affairs and Development (MEDE), and in which breeders’ rights subsist;

“Register” means the “National Register of Protected Plant Varieties” kept at the Industrial Property Registry (RPI) of the Ministry of Economic Affairs and Development (MEDE);

“Committee” means the Plant Variety Examination Committee (CCVV), a national body created under this Law;

“Breeder’s certificate,” or simply “certificate,” means the document issued by the RPI that recognizes and protects the breeder’s rights in a plant variety;

“International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, October 23, 1978, and March 19, 1991” means the International Convention open to accession by States, the objective of which is the protection of plant varieties by means of industrial property rights, and which is the legal basis of the International Union for the Protection of New Varieties of Plants (UPOV)’

“International Union for the Protection of New Varieties of Plants (UPOV)” means the intergovernmental organization with headquarters in Geneva, Switzerland, based on the International Convention for the Protection of New Varieties of Plants, the signatory countries of which constitute its membership.

Article 4 National Treatment

The provisions of this Law are a matter of public policy and are to be observed throughout the Republic; its beneficiaries shall be nationals of the Republic of Nicaragua and all natural persons or legal entities having their domicile, residence or headquarters therein.

Article 5 Reciprocity

The following shall also be beneficiaries of this Law by virtue of reciprocity:

(i) nationals of the Member States of the International Union for the Protection of New Varieties of Plants (UPOV), and also all persons having their domicile, residence or headquarters on the territory of any such State;

(ii) nationals of any State which, while not a member of UPOV, accords effective protection to nationals of the Republic of Nicaragua when, in the judgment of the executive, it is established for the purposes of this subparagraph that the protection accorded by that other State is effective and deserving of reciprocation.

TITLE II PROTECTION OF NEW VARIETIES OF PLANTS

CHAPTER I BREEDERS' RIGHTS

Article 6 Nature of Breeders' Rights

For all purposes, breeders' rights shall be considered industrial property rights, and the legal provisions in force governing the law of inventions shall apply to them subsidiarily, unless otherwise provided in this Law.

Article 7 Rights

This Law grants the breeders of plant varieties the right to be recognized as the breeder of a plant variety. That right shall be inalienable and imprescriptible.

Article 8 Characteristics of the Rights

Breeders' rights shall be marketable, transferable and inheritable. The heir or successor in title may make use of the rights, derive benefit from them and dispose of them throughout the term of their validity, in the same way and subject to the same conditions as his predecessor.

The holder of the rights may grant third parties exploitation licenses for the use of protected varieties.

Article 9
Content of Breeders' Rights

The authorization of the breeder to whom breeders' rights have been granted shall be required for the following acts performed on reproductive or vegetative propagating material of the protected variety:

- (i) production or reproduction;
- (ii) preparation for the purposes of reproduction or multiplication;
- (iii) offering for sale, sale or any other form of marketing;
- (iv) exportation;
- (v) importation;
- (vi) repeated use of the new variety or the commercial production of another variety.

The breeder's authorization shall likewise be required for the use of ornamental varieties, or parts thereof, that are usually marketed for purposes other than multiplication, for the purposes of the production or reproduction of the said varieties.

The breeder may make the authorization that he has given under the foregoing paragraphs subject to certain conditions and limitations defined by himself.

Article 10
Scope of Breeders' Rights

(1) Breeders' rights extend to all botanical genera and species, and shall generally be applied to the whole plant, including all types of flower, fruit or seed and any other part of the plant that may be used as reproductive or vegetative propagating material.

The provisions of Article 9 shall likewise apply to:

(a) varieties essentially derived from the protected variety where the latter is not itself an essentially derived variety;

(b) plant varieties that are not clearly distinguishable from the protected variety.

(2) For the purposes of the provisions of this Article, a variety shall be considered essentially derived from another variety if:

(a) it is mainly derived from the initial variety, or from a variety itself derived from the initial variety, and retains the expressions of the initial characteristics resulting from the genotype or combination of genotypes of the initial variety;

(b) it is clearly distinguishable from the initial variety;

(c) it conforms, subject to the differences resulting from the derivation, to the initial variety in the expression of the initial characteristics resulting from the genotype or combination of genotypes of the initial variety.

(3) It shall not be considered a violation of breeders' rights if a farmer makes use, for the purposes of reproductive or vegetative propagation on his own farm, of the harvest

resulting from material properly acquired earlier. In no event, however, may such material be legally marketed, sold or transferred as seed or propagating material.

Article 11 Limitations

The authorization of the breeder shall not be necessary for use of the plant variety where:

(i) it is a source or ingredient for research on the genetic improvement of other plant varieties;

(ii) it is intended for multiplication of the propagating material provided that it is ultimately destined to be used exclusively for the user's own purposes as grain for consumption or seed for sowing on his own farm;

(iii) it is intended for human or animal consumption for the exclusive benefit of the harvester.

Article 12 Renunciation of Breeders' Rights

The breeder may renounce the rights conferred on him by this Law; renunciation shall be evidenced in writing, and shall be entered in the register to be valid. It shall be irrevocable, and the use and exploitation of the plant variety and its propagating material shall pass into the public domain.

Article 13 Judicial Award of Breeders' Rights

Where a person not entitled to protection has filed an application for breeders' rights, the holder of the stronger right or his successor in title may file a request for award to him of the application or, where already granted, of the breeders' rights.

The request for the award shall be statute-barred after five years following the date of the publication of the grant of breeders' rights. Such an action against a defendant who has acted in bad faith shall not be subject to any statute-barring.

If the request is successful, any third party rights granted under the breeders' rights during the time that has passed shall lapse.

Nevertheless, the holders of exploitation rights acquired in good faith who have taken genuine and effective measures to take advantage of those rights prior to the date of notification of the request, or failing that of the decision, may carry out or continue to carry out the acts of exploitation resulting from the steps that they have taken, subject to paying equitable remuneration to the owner of rights.

Article 14
Principles

The right to apply for breeders' rights shall belong to the breeder or to his successor in title. Where two or more persons have created or discovered a variety jointly, the right to protection shall belong to them jointly. Unless otherwise provided between the joint breeders, the shares of the joint breeders shall be equal.

Where the breeder is an employee, the right to apply for breeders' rights shall be governed by the employment contract under which the variety was created or discovered, in accordance with the law applicable to the said contract.

CHAPTER II
CONDITIONS FOR THE PROTECTION OF BREEDERS' RIGHTS

Article 15
Conditions of Protection

Breeders' rights shall be granted for a plant variety when it combines the following characteristics:

- (i) novelty;
- (ii) distinctness;
- (iii) homogeneity;
- (iv) stability;
- (v) a denomination that conforms to the provisions of Article 45 *et seq.*

The grant of breeders' rights may only be dependent on the above conditions, and they shall be granted subject to the breeder having complied with the formalities provided for in this Title and having paid the prescribed fees.

Article 16
Novelty

A variety shall be considered new if, on the basis of the filing date of the application, or on the priority date where applicable, the reproductive or vegetative propagating material, or a harvested product of the variety, has not been offered for sale or marketed in the country by the breeder or his successor in title or representative, or with the consent of the breeder or his successor in title or representative:

- (i) on the territory of the Republic for more than a year prior to the filing of the application;
- (ii) on the territory of any other State for more than four years or, (in the case of perennials, vines and forest, fruit and ornamental trees), including their rootstocks, for more than six years prior to the filing date of the application.

In the two cases mentioned above, no account shall be taken of any disposals that may have taken place without the consent of the owner of the plant variety for which protection is sought.

The Executive shall specify those cases in which sale or delivery to third parties does not cause the variety to lose its novelty.

Article 17
Distinction

A plant variety shall be considered distinct if it is technically and clearly distinguishable by one or more relevant characteristics from any other variety whose existence is a matter of common knowledge on the filing date of the application. The said characteristics must be readily recognized by a person technically skilled in the field, and must be described accurately on the filing of the application.

The filing in any country of an application for breeders' rights or entry in a catalogue of varieties given marketing approval shall be regarded as making the variety applied for well-known as from the application date if the application leads to the grant of breeders' rights or to entry in the catalogue, as the case may be.

Common knowledge of the existence of another variety may be established by reference to various factors, including exploitation of the variety already in progress, entry of the variety in a register of varieties kept by a recognized professional association, or the presence of the variety in a reference collection.

Article 18
Homogeneity

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

Article 19
Stability

A plant variety shall be considered 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 III
ESTABLISHMENT, TERM, LIMITATION

Article 20
Establishment of Rights

Breeders' rights shall be established through registration at the Industrial Property Registry (RPI) of the Ministry of Economic Affairs and Development (MEDE) within the time limits and on the conditions laid down in this Law.

Article 21
Term

The rights granted to the breeder shall have the following terms, calculated from the date of the grant of the title of protection:

(a) 20 years for perennial species (forest, fruit and ornamental trees and vines), including rootstocks in all cases;

(b) 18 years for all species not included in the foregoing subparagraph.

Breeders' rights shall remain in force only for as long as the fees payable for the registration and maintenance of rights are paid by the time limits specified in this Title.

Once the terms of protection of a plant variety have expired, its use and exploitation shall pass into the public domain.

Article 22
Limitation of the Exercise of Protected Rights

The free exercise of the exclusive rights granted to the breeder of plant varieties may only be limited in the public interest. In such cases use may be made of the grant of compulsory licenses for the exploitation of registered varieties.

When a compulsory license is granted, the competent authority shall set the equitable remuneration that the licensee holding the compulsory license has to pay to the breeder of the plant variety.

Article 23
Economic Regulation

Breeders' rights shall be independent of any measures adopted by the Republic of Nicaragua to regulate, on its territory, the production, control and marketing of the material of varieties or the importation and exportation of that material. Breeders' rights shall be considered equivalent to the rights deriving from industrial property and they shall ultimately be subject to the provisions applicable in that field with respect to competition legislation.

GRANT PROCEDURE

CHAPTER I REGISTRATION AND APPLICATION

SECTION I NATIONAL REGISTER OF PLANT VARIETIES

Article 24 Register of New Plant Varieties

The Register of New Plant Varieties shall be kept at the Industrial Property Registry (RPI) of the Ministry of Economic Affairs and Development (MEDE).

To that end, the RPI shall keep a “National Register of New Plant Varieties” in which applications and granted rights shall be registered. The RPI shall make a distinction between the registration of applications and that of rights granted. The registers shall be public.

The RPI shall retain the contents of their files, in the form of originals or reproductions, for a period of five years following the date of withdrawal or rejection of the application, or the date of the lapse of breeders’ rights, as the case may be.

Article 25 Access to Information

The RPI shall itself guarantee access to any information contained in register entries, and any person having a legitimate interest may:

- (i) consult the documents relating to the application;
- (ii) consult the documents relating to breeders’ rights already granted.

In addition, the RPI may authorize institutions engaged in work for the CCVV to receive and impart information to any person who has a legitimate interest in visiting growing trials and inspecting any other trials that may be necessary for the purposes of the technical examination.

In the case of varieties whose production calls for repeated use of other varieties (components), the applicant may, on filing his application, ask for the documents and trials relating to the components be exempted from publicity measures.

Article 26 Contents of the Register

The following at least shall be entered in the National Register of Plant Varieties:

- (i) applications for the issue of breeders’ titles;

- (ii) the record of filing;
- (iii) the breeder's title, which shall specify:
 - (a) the plant variety protected;
 - (b) the species to which it belongs;
 - (c) its common and scientific names, and any approved change to the latter;
 - (d) the name and address of the owner or owners of the plant variety and their successors in title, and also the name, address and legal status of their legal representative;
 - (e) the term of validity and other particulars of the breeder's title issued;
- (iv) renunciation of the rights conferred by this Law;
- (v) any transfers and liens affecting the rights conferred by this Law;
- (vi) the issue of compulsory licenses as provided for in this Law;
- (vi) the end of the validity of the record of filing or breeder's title, whether due to lapse or expiry of the period concerned, and also the precautionary institution of proceedings for invalidation and revocation of a breeder's title, including the final decision;
- (viii) the appropriate statement where plant varieties have passed into the public domain.

Article 27 Recording in the Register

In order to be binding on third parties, both breeders' titles and transfers of rights must be recorded in the Register.

Article 28 Publication

The RPI shall order publication in the official journal "*La Gaceta*" and/or in such media as it considers suitable, or both, of entries made in the Register, applications for breeders' titles and any information on the subject matter of this Law that may be considered of interest; the cost of such publication shall be borne by the breeder.

The RPI shall regularly publish plant variety registrations applied for and granted under the following headings:

- (i) application for the grant of breeders' rights';
- (ii) requests for approval of variety denominations;
- (iii) registration of new denominations for protected varieties;

- (iv) withdrawal of applications for the grant of breeders' rights;
- (v) rejection of applications for the grant of breeders' rights;
- (vi) breeders' rights granted;
- (vii) changes concerning persons (applicants, owners and agents);
- (viii) lapse of breeders' rights;
- (ix) licenses;
- (x) official announcements.

The cost of the above publications shall be fully borne by the persons concerned.

Article 29

Fees

The administrative acts performed by the RPI shall give rise to the charging of servicing fees. For the purposes of this Title, the amounts and the fees provided for in Title VI of this Law shall be applicable.

Article 30

Registration with the National Seeds Council

Registrations effected with the National Seeds Council of Nicaragua shall be valid for the purposes laid down in Nicaraguan legislation, but shall not confer breeders' rights or be claimable on the territory of other Member States of UPOV. Producers who wish to hold breeders' rights in their new varieties of plants shall abide by the registration provisions laid down in this Law.

SECTION II APPLICATION

Article 31

Status of the Applicant

- (1) The breeder may be a natural person or a legal entity.
- (2) Where the applicant is not the breeder, he shall submit a duly authenticated power of attorney to represent the said breeder.
- (3) Where a plant variety has been bred and developed jointly by two or more natural persons or legal entities, they shall specify in the application the share accruing to each one of them, and shall designate a joint representative. Where the joint representative is not expressly designated, the first named in the application shall be considered such.

Article 32

Form and Content of the Application

The application shall be filed with the Industrial Property Registry (RPI), and shall include the following as a minimum, on pain of rejection:

- (a) the name and address of the applicant, and of his agent if any;
- (b) the name and address of the breeder where he is not the applicant;
- (c) the identification of the botanic taxon (Latin or common name);
- (d) the proposed denomination for the variety, or a provisional designation;
- (e) whether the priority of an earlier application is claimed, in which case the UPOV Member State that received the application in question and also the filing date shall be mentioned;
- (f) a technical description of the variety;
- (g) proof of payment of the application fee;
- (h) place for the receipt of notifications;
- (i) signature of the applicant;
- (j) such other particulars as the Regulations may specify.

Article 33 Proposed Denomination

The application for a breeder's title shall propose a denomination for the variety in accordance with Article 46, which, if it is to be approved, must be different from any other denomination existing within the country or abroad, meet the other requirements laid down in the Regulations under this Law and not be identical or confusingly similar to a previously protected denomination. The application shall specify the parentage and origin of the plant variety.

Where the proposed denomination does not meet the foregoing requirements, the RPI shall, on a ruling by the Plant Variety Examination Committee (CCVV), notify the applicant of its rejection and call upon him to propose another within a non-renewable period of 30 days.

Article 34 Reception and Processing of the Application

The RPI shall receive and process applications for the issue of breeders' titles, and to that end it shall, on its own initiative or at the request of the Plant Variety Examination Committee (CCVV), require the delivery of the plant variety or its propagating material in quantities that it considers appropriate, and where applicable such additional documents and information as it considers necessary to determine whether legal and regulatory provisions have been met.

Article 35
Revocation of the Application

Applications shall become void where the applicant fails to comply with directions given him by a time limit of three months calculated from the date of notification of the said directions.

Article 36
Filing Date

A filing date shall be assigned to every application filed with the RPI that is complete and in order. The date on which the RPI receives the information elements provided for in this Title shall be considered the filing date.

Article 37
Priority

The applicant may avail himself of the priority of an earlier application that either he or his predecessor in title has legally filed with the authority of a Member State of UPOV in respect of the same variety.

Where the application filed with the RPI has been preceded by two or more applications, priority may only be based on the earliest application.

Priority shall be expressly claimed in the application filed with the RPI. It may only be claimed within a period of 12 months counted from the filing date of the first application. The actual date of filing shall not be included in the court.

In order to claim the priority of an application originally filed outside the country, it is necessary that the application filed with the RPI should not claim the grant of rights additional to those deriving from the application filed abroad.

In order to secure the benefit of the right of priority, the applicant shall submit to the RPI, within a period of three months counted from the filing date, as provided in this Title, copies of the documents constituting the first application, certified true to the original by the authority that received the application and accompanied by material of the protected variety in accordance with Article 34.

The RPI may request the filing, within a period of three months counted from the date of receipt of the communication, of a translation of the first application or of any documents constituting key parts of the first application.

The effect of the priority shall be that the application is considered filed on the filing date of the first application with respect to the conditions of protection relating to the variety. The applicant may request deferment of the examination of the variety for a maximum of two years counted from the expiry date of the priority period. Nevertheless, if the first application is rejected or withdrawn, examination of the plant variety may begin before the date specified by the applicant, who in that case shall be allowed an appropriate period in which to provide the information and material relevant to the examination of the variety.

Article 38
Examination of the Application as to Form

The application shall comply with established requirements with respect to substance and form.

Where the application is incomplete or not in order, the RPI shall invite the applicant to correct it within a period of 30 calendar days counted from the date of receipt of the notification. Any application that has not been corrected in the time allowed shall be considered non-existent.

Article 39
Technical Examination of the Variety

The variety shall be subjected to technical examination, the purpose of which shall be:

- (i) to determine that the variety belongs to the botanical taxon specified;
- (ii) to determine whether the variety is distinct, homogenous and stable;
- (iii) once it has been established that the variety meets the above conditions, to establish the official description of the variety.

In principle, the examination shall be conducted by or under the supervision of the Plant Variety Examination Committee (CCVV). The Committee shall determine the practical examination procedures.

The cost of the technical examination shall be paid direct by the applicant to the institution that conducts it. Its cost shall be determined by the materials used and the use of services. The cost of the examination must be reasonable.

The official description referred to in subparagraph (iii) above may be subsequently completed or amended according to the development of agricultural and botanical knowledge without the subject matter of protection being altered thereby.

Article 40
Information, Documents and Material Necessary for Examination

The applicant shall supply all the necessary information, documents or material for the purposes of the technical examination.

Unless an imperative reason is given by the applicant, the absence of such information shall cause the application to be rejected.

Article 41
Cooperation in Examination

The RPI shall have the right to enter into administrative agreements with any of the competent authorities of countries members of UPOV with a view to cooperation in the examination of varieties and in the overseeing of plant variety maintenance.

Article 42
Publication of the Application

Applications shall be published by the RPI in the official journal “*La Gaceta*” and/or in such media as it considers suitable, including at least the items mentioned in the subparagraphs of Article 28. The cost of publication shall be borne by the breeder.

Article 43
Substantive Examination of the Application

The application shall be examined with respect to its substance in order to establish, on the basis of the information submitted in the application, that the variety complies with the prescribed requirements and that the applicant is qualified according to the provisions laid down in this Title.

If the examination reveals an obstacle to the grant of breeders’ rights, the application shall be rejected.

The substantive examination shall be ordered by the RPI, but it must be carried out by the bodies authorized and previously designated for the purpose.

Article 44
Opposition to the Grant of Breeders’ Rights

Once the application has been published, any person may file opposition to the grant of breeders’ rights.

The opposition may only allege that the variety is not new, distinct, uniform or stable, or that the applicant is not entitled to protection.

This subject shall be duly regulated, and the provisions laid down in the Patent Law on opposition to patents shall be subsidiarily applicable to it.

Article 45
Grant of Breeders’ Rights, Rejection of the Application

The RPI shall grant breeders’ rights where, as a result of the technical examination, the variety is found to comply with the conditions laid down in Articles 15 to 19 of Chapter II of Title II of this Law, and that the applicant has complied with the other requirements of this Title. The RPI shall reject the application if the finding is to the contrary.

The grant of breeders' rights or rejection of the application shall be entered in the Register of Protected Varieties and published in the official journal "*La Gaceta*."

Breeders' rights shall likewise be entered in the said Register. The description of the variety may be included in the Register by reference to the technical files.

When the breeder's title has been issued, the denomination shall remain firmly established, even where validity expires and the plant variety passes into the public domain.

Any person using or exploiting the plant variety for any purpose shall be obliged to use and respect the approved denomination.

The approved denomination must be readily recognizable and distinguishable when used together with a trademark, trade name or other designation.

CHAPTER II DENOMINATION AND MAINTENANCE OF PLANT VARIETIES

SECTION I DENOMINATION

Article 46 Denomination

The denomination is intended to be the generic designation of the variety. Designations may be any words, combinations of words and figures and combinations of letters and figures that may or may not have a prior meaning, on condition that the signs in question serve to identify the variety. It may not consist solely of figures, except where this is an established practice for designating varieties. It must be different from any denomination that designates a preexisting variety of the same botanical species or of a similar species in any of the Member States of UPOV.

For as long as the variety is exploited, it shall be prohibited to make use on the territory of the Republic of Nicaragua of a designation identical to the denomination of the said variety, or so similar to it as to be liable to cause confusion, in relation to another variety of the same or a similar species. This prohibition shall subsist even after exploitation of the variety has ceased where the denomination has acquired a particular significance in relation to the variety.

Any person who offers for sale, sells or in any other way markets reproductive or vegetative propagating material of a protected variety must use the denomination of that variety. Where a variety is offered for sale or otherwise marketed, it shall be permissible to use a trademark, trade name or similar designation in conjunction with the registered denomination of the variety, provided that the said denomination is readily recognizable.

The obligation to use a denomination shall not end with the lapse of the rights of the breeder with whom it originated.

Article 47
Grounds for Rejection

Without prejudice to the provisions of the UPOV Convention and other rules established by UPOV, designations shall be denied registration as denominations for varieties where:

- (i) they do not conform to the provisions of the foregoing Article;
- (ii) they are not suitable for the identification of the variety, notably for want of distinguishing power or linguistic suitability;
- (iii) they are contrary to public policy and morality;
- (iv) they consist solely of signs or information that can serve, in the varieties and seeds sector, to designate species, quality, quantity, intended purpose, value, geographical source or time of production;
- (v) they are liable to mislead or cause confusion as to the characteristics, value or geographical source of the variety, or the links that the variety has to certain persons, especially the breeder and the applicant;
- (vi) they are identical, or so similar as to cause a risk of confusion. to a denomination that designates, on the territory of the Republic of Nicaragua, a preexisting variety of the same or a similar species, except where the preexisting variety has ceased to be exploited and its denomination has not acquired any particular significance.

Registration shall be denied to such designations in response to opposition filed by the owner of the rights in the subject matter concerned.

Article 48
Registration Procedures

The proposed denomination of the variety for which protection is sought shall be filed at the same time as the application.

On payment of a special fee and the mention of a provisional designation in the application, the applicant may defer the procedure for the registration of the denomination for a period of 30 days following the date of receipt of the application. Where no denomination proposal is filed within the period set, the application shall be rejected.

The proposed denomination shall be published in the official journal "*La Gaceta*" unless the competent authority finds or has knowledge of a ground for rejection under the provisions of this Title.

Article 49
Third-Party Comments

Any person having an interest may file an objection to the registration of the denomination, alleging any of the grounds for rejection provided for in this Title.

Objections and comments shall be communicated to the applicant, who may respond to them.

The applicant may submit a new proposal on the basis of the objections and comments.

In order to determine the acceptability of a denomination, the RPI shall submit the proposal for consideration to the Plant Variety Examination Committee (CCVV), which shall be the authority competent to rule on whether or not a denomination may be registered.

The denomination shall be registered at the same time as the breeders' rights are granted.

Article 50

Cancellation of a Denomination and Registration of a new Denomination

The RPI shall cancel a registered denomination:

- (i) if it is found to have been registered in spite of the existence of a ground for rejection;
- (ii) where the owner so requests, invoking the existence of a legitimate interest;
- (iii) where a third party submits a court decision prohibiting the use of the denomination in connection with the variety;

The owner shall be informed of the proposed cancellation and invited to submit a proposal for a new denomination. The said proposal shall be subject to the examination and publication procedures provided for in this Title. The new denomination shall be registered and published if it is approved; the former denomination shall be cancelled at the same time.

SECTION II MAINTENANCE OF THE VARIETY

Article 51

Maintenance of the Variety

The owner shall maintain the protected variety, or where appropriate its hereditary components, for as long as the breeders' rights remain in force.

At the request of the RPI, the owner shall submit to it or to any authority that it may designate, within the period set, such information, documents or material as may be considered necessary for the maintenance of the variety to be verified.

CHAPTER III TRANSFER OF RIGHTS

Article 52
Right of Transfer

The rights conferred by the breeder's title, with the exception of the right referred to in the second paragraph of Article 7 of this Law, may be pledged and transferred either wholly or in part by virtue of any legal instrument executed before a notary public.

Article 53
Processing

In the event of the transfer of the rights referred to in this Law, the transferee or licensee or the successor in title to those rights shall be obliged to submit to the RPI:

- (i) his name, nationality and address;
- (ii) a copy of the document evidencing the transfer of the rights and including all the obligations and rights deriving from the transfer;
- (iii) a document in which he undertakes to maintain the relevant characteristics of the plant variety or of its propagating material in the event of the marketing and exploitation thereof.

Article 54
Obligations

In the event of total transfer, the transferee, licensee or successor in title shall assume all the obligations and rights deriving from the breeder's title, with the exception of the right referred to in Article 7 of this Law.

Article 55
Registration

The recording in the Register of transfers of rights shall be admissible when the requirements mentioned in the provisions of this Law are complied with.

Article 56
Protection of Rights

The transferee, licensee or successor in title may institute legal actions for the protection of the breeders' rights as if he were the owner thereof, unless otherwise agreed.

Article 57
Other Responsibilities

The person who receives labelled material, whether of a plant variety or of its propagating material, clearly shows and specifies the restrictions on its use shall be responsible for any use or exploitation that differs from that specified on the label.

CHAPTER IV COMPULSORY LICENSING

Article 58 Compulsory Licenses

The RPI may in the public interest, and especially for reasons of national emergency, public health or national security, or to remedy any anti-competitive practice, grant compulsory licenses after having heard the interested party where:

(i) it is understood that a state of national emergency exists in which the exploitation of a plant variety is considered essential to meet the basic needs of a sector of the population, and where there is a deficiency in supply or a shortage of stock;

(ii) the breeder applying for or holding title to a plant variety is engaging in practices not consistent with the exercise of his industrial property rights and is therefore clearly jeopardizing free competition, and where it is necessary to prevent those practices, which constitute an abuse by him of his dominant market position;

(iii) three years have elapsed since the grant of title of protection of the plant variety was granted without the title having been exploited commercially during that time, and if the breeder has not submitted good reasons for his failure to do so, the variety being considered in the public interest and therefore qualifying for the grant of compulsory licenses.

Article 59 Application for a Compulsory License

(1) The person who applies for a compulsory license shall submit proof that he has previously sought a contractual license from the owner of the plant variety and has not succeeded in obtaining one on reasonable market conditions and for a reasonable term.

(2) It shall not be necessary to provide such proof of having applied for a contractual license (a) in the case of national emergencies and (b) in cases of extreme urgency. It shall likewise be unnecessary to meet this requirement where the purpose of the compulsory license is to remedy an anti-competitive practice.

(3) In all the exceptional cases provided for in the foregoing paragraphs, the owner of the plant variety shall be informed without delay of the grant of the license.

(4) The application for a compulsory license shall specify the grounds on which the license is sought.

(5) The owner of the plant variety shall be notified of the application, and shall be an interested party in the proceedings.

Article 60
Conditions Governing Compulsory Licenses

- (1) The compulsory license shall be granted in order to supply the domestic market.
- (2) The owner of the plant variety affected by a compulsory license shall receive adequate remuneration according to the circumstances of the case and the economic value of the license. In the absence of agreement, the competent judicial authority shall set the amount and the manner of payment of the remuneration.
- (3) No compulsory license may be granted with exclusive character, nor may it be assigned or sublicensed.
- (4) On the expiry of the period for which the compulsory license was granted, the owner of the plant variety shall fully recover his rights.

Article 61
Grant of Compulsory Licenses

The decision granting a compulsory license shall specify:

- (a) the scope of the license, including its term and the acts for which it is granted, which shall be limited to the purposes for which it was requested;
- (b) the amount and mode of payment of the remuneration payable to the owner;
- (c) the conditions necessary for the license to achieve its purpose.

Article 62
Revocation and Amendment of the Compulsory License

- (1) A compulsory license may be totally or partly revoked by the competent judicial authority, at the request of any interested party, if the licensee fails to discharge the obligations incumbent on him while if the circumstances that gave rise to the grant of the license have ceased to exist and are unlikely to recur. In the latter case, the said authority may take the necessary steps for the adequate protection of the legitimate interests of the licensee affected by the revocation.
- (2) A compulsory license may be amended by the RPI, at the request of the party concerned, where new facts or circumstances so dictate, especially where the owner of the plant variety has granted contractual licenses on conditions more favorable than those accorded to the beneficiary of the compulsory license.

SOLE CHAPTER

Article 63
Composition

The Committee shall be composed of five titular members and five alternates, who shall be designated by:

- (i) the Seeds Directorate of the Ministry of Agriculture and Animal Husbandry;
- (ii) the Nicaraguan Institute of Agricultural and Livestock Technology (INTA);
- (iii) the National Agricultural University (UNA);
- (iv) a representative of the MEDE;
- (v) a representative of the RPI, who shall act as secretary for records and agreements.

The responsibility of a titular or alternate member of the Committee shall be strictly personal, and may not be exercised through representatives.

Article 64
Functions

The functions of the Plant Variety Examination Committee (CCVV) shall be the following:

- (i) to rule on the acceptability of applications for breeders' titles and their entry in the Register;
- (ii) to lay down the procedures for the conduct and evaluation of technical trials in the field or in the laboratory;
- (iii) to give its opinion on the formulation of relevant provisions on the characterization and evaluation of plant varieties for the purposes of description;
- (iv) such other functions as may be specified in the Regulations under this Law.

Article 65
Meetings

The Committee shall meet at least four times a year or where it has two or more matters to consider, and may sit for as many times as it is convened by the RPI. Its decisions shall be taken by a majority vote of two-thirds of the members present.

Article 66
Technical Support Groups

To assist it in its functions, the Committee may set up technical support groups composed of experts on each genus or species. The producers of each genus or species may appoint an expert to represent them on such support groups, as provided in the relevant Regulations.

TITLE V INVALIDITY, LAPSE AND ACTIONS

CHAPTER I GENERAL PRINCIPLES

Article 67 General Provisions

The procedures laid down in this Law in relation to the causes of invalidity, lapse and sanctions shall be conducted and settled in accordance with this Law.

Article 68 Notification

In administrative proceedings for invalidation, lapse and the imposition of sanctions, the opposite or potential injured party shall be notified so that, within a period of 30 working days following the notification, he may make in writing whatever statement may serve his interests.

CHAPTER II INVALIDITY

Article 69 Invalidity

Where it is established that the requirements laid down in Chapter II of Title II of this Law, with the exception of the condition concerning the adoption of an appropriate denomination, were not met at the time of the grant of the breeder's title, the RPI shall declare the said title null and void.

Article 70 Other Causes of Invalidity

The RPI shall declare the title of the breeder of a plant variety null and void if it is found that:

(i) the variety was not new or distinct on the filing date of the application or the priority date, as the case may be;

(ii) the grant of breeders' rights was essentially based on information and documents supplied by the applicant, and that the variety in fact was not uniform or stable on the said date;

(iii) breeders' rights were granted to a person not entitled to them, and that the actual owner of the rights failed to file a request for judicial award of the rights under Article 13 of Title II, or elected not to file such a request.

Unless otherwise provided in this Title, breeders' rights declared null and void shall be regarded as never having been granted.

Article 71
The Party Requesting Invalidation

Any person providing evidence of an interest shall be entitled to file a request for invalidation.

CHAPTER III
LAPSE

Article 72
Lapse

Breeders' rights and the registration thereof shall lapse where:

- (i) their validity ends on expiry of the term provided for in this Law;
- (ii) the owner renounces them in a declaration filed in writing with the RPI;
- (iii) the fees payable have not been paid for two years;

(iv) the breeder is unable to provide the competent authority with reproductive or vegetative propagating material of the plant variety that would permit the variety to be grown with its relevant characteristics, as defined at the time of the grant of protection, and where six months have elapsed following the date on which the breeder was called upon to do so;

(v) the breeder fails, within a specified period and after having been called upon to do so, to submit the documents or information required for the variety to be examined, or does not allow inspection of the measures taken for the preservation of the variety;

(vi) it is established that the plant variety has ceased to meet the requirements specified in Articles 18 and 19 of this Law;

(vii) the RPI plans to cancel the denomination of the variety and the owner fails to propose another denomination within the time allowed, as provided in Article 46.

Article 73
The Party Requesting Lapse

The RPI, acting on its own initiative, or any person providing evidence of an interest shall be entitled to file a request for lapse.

Article 74
Passage into the Public Domain

Where a title of protection of a plant variety has been declared lapsed, the rights under it shall pass into the public domain.

CHAPTER IV
ACTIONS FOR INFRINGEMENT OF RIGHTS

SECTION I
PRINCIPAL ACTIONS

Article 75
Fraud in Connection with Variety Denominations

Any person who knowingly uses a designation or fails to use a variety denomination in violation of the provisions of this Title shall be punished with a fine of 1,000 to 10,000 Central American pesos.

Article 76
Civil Remedies

Any person who, without being authorized to do so, engages in acts that require authorization by the owner of the plant variety, makes use of a designation or fails to use a variety denomination in violation of the provisions of this Title may be reported by the breeder or by a licensee, and the civil procedure provisions laid down for rights deriving from industrial property, as established in the Patent Law, shall be applicable to him.

Subject to the provisions of this Law, the provisions applicable to the exercise of the rights conferred by virtue of the industrial property provisions of the Republic of Nicaragua shall be applicable, *mutatis mutandis*, to the exercise of rights under a breeder's title.

Article 77
Criminal Sanctions

Any act that involves the improper use of breeders' rights and any knowingly committed infringement shall constitute punishable offenses for the purposes of this Law. In that connection the provisions, procedures and sanctions laid down for patents in the relevant industrial property law of the Republic of Nicaragua shall be applicable.

SECTION II PREVENTIVE ACTIONS

Article 78 Institution of Preventive Actions

(1) Any person initiating or intending to initiate an action for infringement of rights protected by this Law may apply to the competent judicial authority for the ordering of immediate preventive measures to prevent the commission of the offense, avoid its consequences, secure or preserve proof or ensure the effectiveness of the action or indemnification for damages and prejudice in accordance with the relevant legislation.

(2) The preventive actions may be applied for before the infringement action is brought or as or after it is brought.

(3) The following preventive measures among others may be ordered:

(a) immediate cessation of the acts constituting the infringement;

(b) withdrawal from circulation, or prohibition of the placing in circulation, of the plant varieties or propagating material by which the rights protected by this Law are infringed;

(c) withdrawal from circulation of objects, cartons, containers, packaging, paperwork and advertising and similar material by which any of the rights protected by this Law are infringed;

(d) seizure or confiscation of the products of the infringement and of the main materials and means having served for the commission thereof;

(e) suspension of the importation or exploitation of the goods, materials or means referred to in the foregoing subparagraphs;

(f) provision of a bond or other guarantee considered sufficient by the competent judicial authority;

(g) the handing up of documents or movable goods.

Article 79 Guarantees and Conditions in the Case of Preventive Actions

(1) A preventive action shall only be ordered where the person applying for it proves his entitlement to act and the existence of the right infringed. The court shall require the

person applying for it first to provide sufficient guarantees in accordance with the Civil Procedure Code.

(2) Any person applying for preventive measures in relation to specific merchandise shall provide the necessary information and a precise description identifying the merchandise to which the measure is to relate.

Article 80
Actions “*Inaudita altera parte*”

Where preventive action has been instituted without the intervention of the other party, that party shall be informed by the third day. The party concerned may appeal to the court against the action instituted. The court may revoke, modify or confirm the preventive action.

Article 81
Duration of Preventive Action

Any preventive action shall become void as of right if the action on the main infringement is not initiated within 15 working days following the date on which the preventive action was instituted; this may be decreed at the request of a party or *ex officio* by the court hearing the case, which shall order payment of costs, damages and prejudice by the party requesting the measure.

TITLE VI
FEES AND OTHER PAYMENTS

Article 82
Fees

(1) The breeder shall pay the following amounts to the RPI for the subject matter specified:

- (a) breeder’s application;
- (b) request concerning an amendment, change, correction, transfer or license;
- (c) annual fees for entitlement to protection;
- (d) issue of duplicate title;
- (e) information services.

(2) The amount calculated in Central American pesos shall be paid in national legal tender, the applicable exchange rate being that set by the Central Bank of Nicaragua on the date of the transaction.

(3) The amount payable for substantive examination shall be that fixed by common consent between the breeder and the institution designated by the Plant Variety Examination Committee (CCVV) of the Republic of Nicaragua.

Article 83
Information Services

The RPI shall offer such information and documentation services as may be required of it under this Law, subject to payment of the prescribed fee.

Article 84
Procedure for Payment of Fees

(1) For a plant variety protection title to remain in force, the annual fees have to be paid by periods of five years.

(2) The first payment shall be made on the filing of the application, and the subsequent payments every five years, counted from the filing date of the application.

(3) Payment may be made at any time prior to the expiry of the five-year period concerned.

(4) Payment may be made within a six-month period of grace following the expiry date of the five-year period concerned.

(5) Failure to pay any of the fees referred to in this Article without the said payment having been actually made shall result as of right in the lapse of the breeders' rights, which shall therefore lapse as of right.

TITLE VII
TRANSITIONAL AND ADMINISTRATIVE PROVISIONS

CHAPTER I
TRANSITIONAL PROVISIONS

Article 85
Transitional Derogation from the Novelty Condition

(1) Varieties shall not be regarded as having lost their novelty where they have remained on the Register of Commercial Varieties of Nicaragua, that of another country in which the possibility of obtaining protection for plant varieties does not exist, for a period not exceeding five years prior to the entry into force of this Law.

(2) It shall likewise be considered that varieties entered in the Register of Protected Varieties of another country have not lost their novelty. For those varieties, subject to their complying with the requirements of this Law, the RPI may grant a protection title for the period between the date of grant in the country of origin and the date of lapse of the protection of the species on the territory of Nicaragua. Where protection exists in two or more countries, the earliest date shall be taken into account for these purposes.

For a variety to benefit from the derogation from the novelty condition under paragraphs (1) and (2) above, a title of protection for the variety must be applied for within a year following the official opening of the Register of Protected Plant Varieties pursuant to Article 24 of this Law.

CHAPTER II ADMINISTRATIVE PROVISIONS

Article 86 Purpose of Titles

The titles heading the articles of this Law shall be exclusively for information, and shall have no effect on the interpretation of the provisions of this Law.

Article 87 Regulations

As from the date of entry into force of this Law, Regulations under it shall be issued pursuant to the provisions of Article 150 of the Constitution of the Republic of Nicaragua.

Article 88 Entry into Force

This Law shall enter into force on its publication in the official journal “*La Gaceta.*”

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