



C(Extr.)/16/5

ORIGINAL: Spanish

DATE: March 22, 1999

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Sixteenth Extraordinary Session
Geneva, March 26, 1999

**EXAMINATION OF THE CONFORMITY OF A BILL OF COSTA RICA WITH
THE 1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. By letter dated March 18, 1999, addressed to the Secretary-General, Dr. Esteban R. Brenes, the Minister of Agriculture and Livestock of Costa Rica, requested the advice of the Council of UPOV, pursuant to Article 34(3) of the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention"), on the conformity of the Bill on the Protection of New Plant Varieties (hereinafter referred to as "the Bill"). The letter is reproduced in Annex I to this document. The Bill is reproduced in Annex II to this document.

2. Costa Rica did not sign the Convention. Under Article 34(2) of the Convention, it must accordingly deposit an instrument of accession in order to become a member State of UPOV on the basis of the Convention. 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 Convention and if the decision of the Council embodying the advice is positive.

Legal Basis for the Protection of New Varieties in Costa Rica

3. The protection of new plant varieties will be governed in Costa Rica by the law which will be enacted by the Legislative Assembly on the basis of the Bill, and by its implementing regulations. The analysis of the legislation of Costa Rica, which follows, is in the order of the substantive provisions of the Convention.

Article 1 of the Convention: Definitions

4. Article 3 of the Bill has a list of definitions which satisfy the provisions of Article 1 of the Convention.

Article 2 of the Convention: Basic Obligation of the Contracting Parties

5. Article 2 of the Convention requires a State acceding to the Convention to grant and protect breeder's rights. Article 1 of the Bill states that "the purpose of this Law is the recognition and protection of the rights of the breeder of a new plant variety, that is covered by a plant variety protection title, and his successors in title, in the terms in which those rights are defined in the following articles." The purpose of the Bill thus satisfies the obligation established in Article 2 of the Convention.

Article 3 of the Convention: Genera and Species to be Protected

6. Article 2 of the Bill provides that "the scope of this Bill shall encompass all botanical genera and species. Vascular plants, fungi and algae are included in this concept." The legislation of Costa Rica thus conforms with Article 3 of the Convention.

Article 4 of the Convention: National Treatment

7. Article 4 of the Bill provides that the rights conferred by the Law may be acquired by nationals of Costa Rica, nationals of Contracting Parties of the UPOV Convention, any persons having their place of residence or an establishment in the territory of a Contracting Party of the UPOV Convention and nationals of any State which grants effective plant variety protection to the nationals of Costa Rica. The legislation of Costa Rica thus conforms with Article 4 of the Convention.

Articles 5 to 9 of the Convention: Conditions for the Grant of the Breeder's Right

8. Article 6(1) of the Bill almost repeats the text of Article 5 of the Convention. Article 6(2) of the Bill clarifies that the grant of a breeder's right shall not be made subject to any further or different conditions provided that the applicant complies with the formalities established by this Law and pays the required fees.

9. Based on the text of the UPOV Model Law, the conditions of novelty, distinctness, uniformity and stability are set out in Articles 6 to 9 of the Bill in terms which satisfy the Convention.

10. Article 53 of the Bill provides for protection of varieties which are no longer new in accordance with the faculty set out in Article 6(2) of the Convention..

11. The Bill conforms with Articles 5 to 9 of the Convention.

Article 10 of the Convention: Filing of Applications

12. 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 certificate is issued in Costa Rica.

13. The Bill accordingly conforms with Article 10 of the Convention.

Article 11 of the Convention: Right of Priority

14. Article 34 of the Bill provides for a right of priority in terms which satisfy Article 11 of the Convention.

Article 12 of Convention: Examination of the Application

15. Chapter III of Part III of the Bill regulates the examination of the application and provides for an examination as to formal requirements (Article 35), an examination of the application as to substance (Article 36) and a technical examination of the variety (Article 37).

16. The Bill thus conforms with Article 12 of the Convention.

Article 13 of the Convention: Provisional Protection

17. Article 18(2) of the Bill states that the applicant enjoys all rights provided for in the Law as from the filing of the application. The Bill conforms with Article 13 of the Convention.

Article 14 of the Convention: Scope of the Breeder's Right

18. Article 14(1) of the Bill defines the scope of protection in relation to propagating material of the protected variety in terms which reproduce the substance of Article 14(1) of the Convention.

19. Under Article 14(2) of the Bill, the authorization of the owner is also required for the performance of the listed acts in relation to harvested material and products made directly from harvested material of the protected variety, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material. This conforms with Article 14(2) and (3) of the Convention.

20. Article 14(4) of the Bill extends the right of the breeder to essentially derived varieties, varieties which are not clearly distinguishable from the protected variety and varieties whose production calls for repeated use of the protected variety, as required by Article 14(5) of the Convention.

21. The Bill accordingly conforms with Article 14 of the Convention.

Article 15 of the Convention: Exceptions to the Breeder's Right

22. Article 15(1) of the Bill reproduces Article 15(1) of the Convention almost verbatim.
23. Article 15(2) of the Bill provides for a "farmer's privilege" that will apply to the species stated in the implementing regulation, as permitted by Article 15(2) of the Convention.
24. The Bill is thus in conformity with Article 15 of the Convention.

Article 16 of the Convention: Exhaustion of the Breeder's Right

25. Article 16 of the Bill sets out the principle of exhaustion of the right in line with Article 16 of the Convention.

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

26. Article 21 of the Bill contains provisions on the granting of compulsory licenses in circumstances affecting public interest. The legislation of Costa Rica conforms with the requirements of Article 17 of the Convention.

Article 18 of the Convention: Measures Regulating Commerce

27. Article 17 of the Bill affirms the independence of the breeder's right from any measures taken by the State to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material, in terms which satisfy the provisions of Article 18 of the Convention.

Article 19 of the Convention: Duration of the Breeder's Right

28. Article 18 of the Bill specifies that the period of protection shall be 25 years in the case of trees and vines and 20 years in the case of other crops. Those periods conform with Article 19 of the Convention.

Article 20 of the Convention: Variety Denomination

29. Chapter IV of Part III of the Bill contains provisions with respect to the denominations which satisfy Article 20 of the Convention.

Article 21 of the Convention: Nullity of the Breeder's Right

30. Article 33 of the Bill requires competent national authorities to declare a breeder's certificate null and void if any of the three conditions for nullity specified in Article 21(1) of the Convention obtains.
31. The Bill is thus in conformity with Article 21 of the Convention.

Article 22 of the Convention: Cancellation of the Breeder's Right

32. Under Article 24 of the Bill, first paragraph, the Office shall cancel a breeder's right when it is established that the holder has failed to meet his obligation to maintain the protected variety and that the variety is no longer uniform or stable. Furthermore, the second

paragraph provides that the Office shall cancel a breeder's right when the holder does not meet a request made by the Office for the purpose of verifying the maintenance of the variety, or when the Office proposes to cancel the existing denomination of the variety and the breeder does not propose a suitable denomination within the prescribed period.

33. Article 22 of the Bill contains provisions on the premature termination of the breeder's right where the holder surrenders it or where an annual fee has become due and has not been paid.

34. The Bill accordingly conforms with Article 22 of the Convention.

Article 30 of the Convention: Implementation of the Convention

35. Article 30(1)(i) of the Convention requires adhering States to provide for appropriate legal remedies for the effective enforcement of breeders' rights. Articles 50 and 51 of the Bill make provisions in this sense. Under Article 27 of the Bill any proposed decision of the Office adversely affecting a party to proceedings before it, must be communicated to that party who must be given an opportunity to submit comments. According to Article 28 of the Bill an appeal lies from any ruling made by the Office.

36. Article 30(1)(ii) of the Convention requires adhering States to "maintain an authority entrusted with the task of granting breeders' rights..." The National Seeds Office, created by Law No. 6289 of December 4, 1978, has been appointed under Article 26 of the Bill as the competent national authority.

37. Article 30(1)(iii) of the Convention requires adhering States to publish information concerning applications and grants of breeders' rights and proposed and approved denominations. Article 30 of the Bill provides for the publication of such information in the Official Bulletin. Article 25 stipulates that the premature termination, nullity and cancellation of a breeder's right will also be published.

38. The Bill, thus, makes adequate provisions for the implementation of the Convention in Costa Rica.

General Conclusion

39. In the opinion of the Office of the Union, the proposed legislation of Costa Rica conforms with the provisions of the Convention.

40. On the basis of the foregoing, the Office of the Union suggests that the Council may wish:

(a) to take a positive decision on the conformity of the Bill of Costa Rica with the provisions of the Convention;

(b) to further advise the Government of Costa Rica that after the enactment into law of the Bill with no substantial alterations and after the adoption of suitable regulations, it may deposit an instrument of accession to the Convention;

(c) to request the Office of the Union to inform the Government of Costa Rica of its decision.

41. *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 paragraph.*

[Two Annexes follow]

C(Extr.)/16/5

ANNEX I

Cut and paste version of letter from Ministerio de Agricultura y Ganaderia, Costa Rica, dated 18 de marzo de 1999, signed by Dr. Esteban R. Brenes, Ministro

C(Extr.)/16/5

ANNEX II

REPUBLIC OF COSTA RICA

NATIONAL SEEDS OFFICE

(DRAFT)

LAW FOR THE PROTECTION OF NEW PLANT VARIETIES

SAN JOSE, JANUARY 1999

LAW FOR THE PROTECTION OF NEW PLANT VARIETIES

PART I OBJECT AND SCOPE OF THE LAW

Article 1. Purpose

The purpose of this Law is the recognition and protection of the rights of the breeder, or his successor in title, of a new plant variety, that is covered by a plant variety protection title, in the terms in which those rights are defined in the following Articles.

Article 2. Scope

The scope of this Law shall encompass all plant genera and species; vascular plants, fungi and algae being included in that concept.

Article 3. Definitions

1. “Convention” means the International Convention for the Protection of New Varieties of Plants;
2. “Board of Directors”, means the governing board of the National Seeds Office;
3. “Notice” means a communication by the Office to a party to proceedings before the Office;
4. “Breeder” means the person who has bred, or discovered and developed, a variety;
5. “Office” means the National Seeds Office created by Law No. 6289;
6. “Contracting Party” means a State or intergovernmental organization party to the Convention;
7. “Regulations” means the implementing regulations for the protection of new plant varieties;
8. “Applicant” means the person who has filed an application for the grant of a breeder’s right;
9. “Holder” means the holder of a breeder’s right;
10. “Union” means the International Union for the Protection of New Varieties of Plants;
11. “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:

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics,
 - (c) considered a unit with regard to its suitability for being propagated unchanged;
- and

12. “Protected variety” means the variety that is the subject of a breeder’s right; it shall be defined by the description established pursuant to Article 37.1(c) and by the official sample referred to in Article 49.2(a) and identified by the denomination referred to in Article 6.1(e) and Article 44;

Article 4. Nationality, Place of Residence or Registered Office

1. The rights conferred by this Law may be acquired by:
 - (a) nationals of Costa Rica and persons having their place of residence, registered office or legally constituted establishment in the country,
 - (b) nationals of Contracting Parties and persons having their place or residence or an establishment in the territory of a Contracting Party of the Convention,
 - (c) nationals of any State which, without being a Contracting Party, grants effective plant variety protection to the nationals of Costa Rica, and persons having their place or residence or an establishment in that State.
2. For the purposes of paragraph 1(b), “nationals” means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States that are members of that organization.
3. For the purposes of paragraph 1(c), the Office shall determine whether the plant variety protection offered by a State is effective.

Article 5. Legal Representation

Persons having neither residence nor registered office nor legal establishment in Costa Rica may be parties to proceedings instituted pursuant to this Law and assert rights deriving therefrom only if they have a procedural representative (or legal representative) who is resident or has an office in Costa Rica. The representative shall be given the power to act on his principal’s behalf before the Office and in legal proceedings relating to the protection of new varieties of plants.

PART II
SUBSTANTIVE LAW

CHAPTER I
CONDITONS FOR THE GRANT OF A BREEDER'S RIGHT

Article 6. Conditions of Protection

1. The breeder's right shall be granted where the variety is:
 - (a) new,
 - (b) distinct,
 - (c) uniform,
 - (d) stable and
 - (e) the subject of a denomination established pursuant to the provisions of Article 44.

2. The grant of a breeder's right shall not be made subject to any further or different conditions provided that the applicant complies with the formalities established by this Law and pays the required fees.

Article 7. Novelty

1. The variety is new if, on the date of filing of the application or, where relevant, on the priority date, propagating material or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor in title, for purposes of exploitation of the variety:
 - (a) in the territory of Costa Rica for longer than one year,
 - (b) in a territory other than that of Costa Rica for longer than four years or, in the case of trees and other perennial species, for longer than six years.

2. Novelty shall not be lost as a result of any sale or disposal to others:
 - (a) that is the result of an abuse to the detriment of the breeder or his successor in title,
 - (b) that forms part of an agreement for the transfer of the rights in the variety,
 - (c) that forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder or his successor in title, provided that the ownership of multiplied material reverts to the breeder or his successor in title, and provided that the multiplied material is not used for the production of another variety,
 - (d) that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale research trials, with a view to evaluating the variety,
 - (e) that forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade,

- (f) that involves harvested material being a by-product or a surplus product of the creation of the variety or of the activities referred to in items (c) to (e) of this article, provided that the said material is sold or disposed of without variety identification for purposes of consumption.

Article 8. Distinctness

1. The variety is distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application or, where relevant, on the priority date.
2. The filing, in any country, of an application for a breeder's right or for entry in a catalogue of varieties admitted to trade shall be deemed to make the variety that is the subject of the application a matter of common knowledge from the date of the application, provided that the application leads to the grant of the breeder's right or the entry in the catalogue, as the case may be.
3. Common knowledge may also be established by reference to various factors such as: exploitation of the variety already in progress, entry of the variety in the register of varieties kept by a recognized professional association, or inclusion of the variety in a reference collection.

Article 9. Uniformity

The variety is 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 10. Stability

The variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

CHAPTER II PERSONS ENTITLED

Article 11. Principles

1. Entitlement to the breeder's right shall vest in the breeder or his successor in title.
2. Where two or more persons have bred, or discovered and developed, a variety jointly, entitlement to protection shall vest in them jointly. Subject to any agreement to the contrary between the joint breeders, their shares shall be equal.

3. Where the breeder is an employee, entitlement to the breeder's right shall be determined by the employment relationship in the context of which the variety was bred, or discovered and developed.

Article 12. Presumption of Title

1. The applicant shall be considered entitled to protection, in the absence of proof to the contrary.
2. However the above, where the application is made by a successor in title, shall be accompanied by sufficient proof of the successor's title.

Article 13. Judicial Assignment of the Application for a Breeder's Right or of the Breeder's Right

1. Where an application for a breeder's right has been filed by a person not entitled to protection, the entitled person may bring an action for the assignment to him of the application or, if already granted, of the breeder's right.
2. Such action shall be barred after five years from publication of the grant of the breeder's right. An action brought against a defendant who has acted in bad faith shall not be subject to any limitation.
3. (a) Where the action succeeds, any rights granted by the defendant to third parties on the basis of the application, or where relevant the breeder's right, shall become null and void.
(b) However, the holder of any exploitation rights acquired in good faith who has taken genuine and effective measures with a view to availing himself of those rights before the date of the notification of the action or, failing such notification, of the final decision may perform or continue to perform the acts of exploitation resulting from the measures taken, subject to payment of fair remuneration to the entitled person.

CHAPTER III RIGHTS OF THE HOLDER

Article 14. Scope of the Breeder's Right

1. Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authority of the holder:
 - (a) production or reproduction (increase);
 - (b) conditioning or processing for the purpose of propagation;
 - (c) offering for sale;
 - (d) selling or other marketing;
 - (e) exporting;
 - (f) importing;
 - (g) stocking for any of the purposes mentioned in items (a) to (f).

2. Subject to Articles 15 and 16, the acts referred to in the items of the above paragraph in respect of harvested material, including entire plants, parts of plants and products manufactured directly from the harvested material of the protected variety, shall require the authority of the holder, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material.
3. The holder may make any authorization granted pursuant to paragraphs 1 and 2 subject to conditions and limitations.
4. (a) The provisions of paragraphs 1 to 3 above shall apply to:
 - (i) varieties that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
 - (ii) varieties that are not clearly distinguishable in accordance with Article 7 from the protected variety and
 - (iii) varieties whose production requires repeated use of the protected variety.
- (b) For the purposes of subparagraph (a)(i) above, a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when:
 - (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
 - (ii) it is clearly distinguishable from the initial variety and
 - (iii) except for the differences that result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (c) Essentially derived varieties may be obtained, for example, by the selection of a natural or induced mutant, or of somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 15. Exceptions to the Breeder’s Rights

1. The breeder’s right shall not extend to:
 - (a) acts done privately and for non-commercial purposes,
 - (b) acts done for experimental purposes or
 - (c) acts carried out for the purpose of breeding other varieties, and, except where the provisions of Article 14.4 apply, acts referred to in Article 4.1 and 2 in respect of such other varieties.
2. Within reasonable limits and subject to the safeguarding of the legitimate interests of breeders, breeder’s right shall be restricted in relation to plant species, genera and varieties specified by regulation in order to permit farmers to use, with a view to production on their own holdings for consumption, the product of the harvest that they have obtained by planting,

on their own holdings, a variety of any such plant genus or species that is the subject of a breeder's right or is covered by Article 14.4(a)(i) or (ii).

Article 16. Exhaustion of the Breeder's Right

1. The breeder's right shall not extend to acts concerning any material of the protected variety, or any material derived from it, or of a variety covered by the provisions of Article 14.4, that has been sold or otherwise marketed by the holder or with his consent on the territory of Costa Rica, unless such acts:

- (a) involve further propagation of the variety in question,
- (b) involve an export of material of the variety that allows the variety to be propagated into a country that 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.

2. For the purposes of paragraph (1), "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 17. Measures Regulating Commerce

The breeder's right shall be independent of any measure taken by the State to regulate the production, certification and marketing of material of varieties, including the import or export thereof.

Article 18. Duration of the Breeder's Right; Provisional Protection

1. The breeder's right shall have a term of 25 years for trees and grapevine and 20 years in the case of other crops. In all cases the term shall extend from the date of grant to the 31st of December of the year in which the grant expires.

2. The applicant shall enjoy all rights provided for in this Law as from the filing of the application.

3. Any applicant shall be under the obligation to state, in connection with all his dealings with third parties, that in the exercise of his rights he enjoys provisional protection.

CHAPTER IV THE BREEDER'S RIGHT AS AN ITEM OF PROPERTY

Article 19. Transfer of Ownership

1. The right to apply for the grant of a breeder's right, the rights under an application and the breeder's right shall be treated in all respects as patent rights, and the general law relating to such property defined by the Patent, Drawings, Industrial Models and Utility Models Law, Law No. 6867, except as otherwise provided in this Law, shall be applicable thereto.
2. Such items of property may be transferred to one or more successors in title. Any transfer by assignment shall be made in writing.
3. Any act by which the right to apply for the grant of a breeder's right is transferred or modified shall not affect the rights acquired by third parties before the date of the act.
4. Any act by which the rights under an application or a breeder's right are transferred or modified, including judicial assignment, shall not be binding on third parties until it has been entered in the Register of Applications or the Register of Rights, as the case may be.
5. However, an act shall be binding before such entry on third parties who acquire rights after the date of the act with notification of the act.

CHAPTER V EXPLOITATION LICENSES

Article 20. Contractual Licenses

1. The applicant or the holder may grant an exclusive or non-exclusive license relating to all or any of the rights provided for in Chapter III of this Part to any person.
2. The license contract shall be in writing.
 - (a) any exclusive or non-exclusive license shall be entered in the Register of Applications or the Register of Rights, as the case shall be, and a notice concerning it shall be published in the Official Journal *La Gaceta*.
 - (b) Exclusive licenses shall not be binding on a third party who has acquired rights in the breeder's right in good faith unless it was so entered prior to the date of acquisition.

Article 21. Compulsory Licenses

1. Any person may, by means of an application filed with the Office, seek the grant of a compulsory license in respect of the breeder's right. The Office shall grant the compulsory license only where this is necessary to safeguard the public interest.

2. A compulsory license shall not be granted unless all the following conditions are fulfilled:
 - (a) the applicant shall prove that he has the capacity for the exploitation and shall prove that he has tried to obtain the authorization from the title holder on reasonable commercial conditions and terms; and that attempts have proven not to be effective within a reasonable length of time;
 - (b) three years have elapsed between the date of the grant of the breeder's right and the date of the application for the grant of a compulsory license;
 - (c) the applicant for the grant of a compulsory license has paid the fee prescribed in the Regulations.
3. The compulsory license shall confer on the licensee a non-exclusive right to perform all or any of the acts referred to in Article 14, for the supply of the national market.
4. When granting a compulsory license, the Office shall fix the conditions under which it is granted, shall limit the scope and the duration for the authorized purposed and shall state an equitable remuneration that the licensee has to pay to the holder. The licensee shall give the holder adequate security for the payment of the remuneration, and shall pay the corresponding fee to the Office.
5. The Office may require the holder to provide the licensee with as much propagating material as is necessary for reasonable use to be made of the compulsory license, provided that the payment of adequate remuneration to the holder has been made.
6. The duration of the compulsory license shall be fixed by the Office. Only under exceptional circumstances shall the compulsory license be granted for less than two or more than four years. The term of the license may be extended where the Office is satisfied, on the basis of a new examination, that the conditions for the grant of the license continue to exist on the expiry of the first term.
7. The Office shall withdraw the compulsory license where its owner has violated the conditions under which it was granted.
8. Before granting a compulsory license, the Office may hear national professional organizations active in the field concerned.

CHAPTER VI

LAPSE OF THE BREEDER'S RIGHT

Article 22. Premature Termination

The breeder's right shall terminate before the term provided in Article 18.1:

- (a) where the holder surrenders it in a written declaration addressed to the Office,
- (b) according to Article 31 where the annual fee has become due and has not been paid.

2. In the first case, the date of termination shall be that specified in the declaration or, if none is specified, the date of receipt of the declaration. In the second case, it shall be the due date of the fee.

Article 23. Nullity

1. The Office shall declare a breeder's right null and void when it is established:
 - (a) that the variety was not new or distinct on the date of filing of the application or, where relevant, on the date of priority,
 - (b) that, where the grant of the breeder's right has been essentially based on information and documents submitted by the applicant, the variety was not uniform or stable on the said date,
 - (c) that the breeder's right has been granted to a person who is not entitled to it and the entitled person has not brought an action under Article 13 or has renounced the right to bring such an action.
2. The breeder's right that has been declared null and void shall be deemed never to have been granted.
3. Any person having a legitimate interest may file a request for annulment with the Office.

Article 24. Cancellation

1. The Office shall cancel a breeder's right when it is established that the holder has failed to meet his obligation under Article 47.1 and that the variety is no longer uniform or stable.
2. The Office shall cancel a breeder's right when:
 - (a) the holder does not meet a request made by the Office under Article 47.2 for the purpose of verifying the maintenance of the variety,
 - (b) the Office proposes to cancel the existing denomination of the variety under Article 45 and the breeder does not propose a suitable denomination within the period prescribed by the Office.
3. A breeder's right may only be cancelled after the holder has been given notice of his obligation and allowed a reasonable period, specified in the notice, to comply therewith.
4. The cancellation shall be effective as from the date on which the entry thereof in the Register of Rights. It shall be published in the Official Journal.

Article 25. Publication of the Lapse

The premature termination, nullity or cancellation of a breeder's right, under Article 22, 23 or 24, and the grounds for it, shall be entered in the Register of Rights. It shall also be published in the Official Journal.

PART III
ORGANIZATION AND PROCEDURE

CHAPTER I
ORGANIZATION, COMPETENCE AND GENERAL RULES OF PROCEDURE

Article 26. Plant Variety Protection Office

1. All the functions provided for in this Law for the protection of new plant varieties shall be performed by the National Seeds Office as laid down in Articles 1, 8, 15 and 20 of the Law No. 6289.

Article 27. Right to be Heard by the Office

1. Any proposed decision of the Office adversely affecting a party to proceedings before it shall be communicated to that party with a statement of the reasons underlying it.

2. The said party shall be given an opportunity to submit comments orally or in writing within 30 days from the date of receipt of the notice.

Article 28. Appeals

1. Rulings handed down by the Office shall have remedy of complaint, and furthermore they can be appealed at the Board of Directors.

2. Rulings handed down by the Board of Directors shall be challenged by means of the contentious administrative proceedings as laid down in the of Law No. 6289, Regulatory Law on Contentious Administrative Justice.

Article 29. Registers; Preservation of Files

1. The Office shall maintain a Register of Applications and a Register of Breeders' Rights. Registrations shall be public.

2. Any person having a legitimate interest may:

- (a) inspect the documents relating to applications,
- (b) inspect the documents relating to breeders' rights already granted,
- (c) inspect the growing tests and other necessary tests under Article 37 or Article 48.

3. In the case of varieties the production of which requires repeated use of other varieties (components), the applicant may, when making his application, request that the documents and tests relating to the components be withheld from inspection.

4. The Office shall preserve the originals or copies of the documents in the files until five years after the withdrawal or rejection of the application, or the lapse of the breeder's right, as the case may be.

Article 30. Official Publication

1. The Office shall regularly record the following in the Official Journal:
 - (a) applications for the grant of breeders' rights;
 - (b) applications for variety denominations;
 - (c) registrations of new denominations for protected varieties;
 - (d) withdrawals of applications for the grant of breeders' rights;
 - (e) rejections of applications for the grant of breeders' rights;
 - (f) grants of breeders' rights;
 - (g) changes in the persons (applicants, holders and procedural representatives);
 - (h) lapses of breeders' rights;
 - (i) transfers of ownership;
 - (j) contractual and compulsory licenses;
 - (k) official announcements.

Article 31. Fees

1. The administrative acts of the Office for the implementation of this Law shall give rise to the payment of fees, which shall be set by regulation in such a way that they cover all the expenditure incurred in the rendering of the following services:

- (a) processing of the application for the new plant variety title;
- (b) conduct of the technical examination of the variety;
- (c) grant of the new plant variety title;
- (d) publication of decrees in the Official Journal;
- (e) annual maintenance of breeders' rights;
- (f) restoration of rights;
- (g) change of denomination, transfer of ownership, exploitation license, issue of copies, certificates and duplicates of any document;
- (h) reinstatement of an invalidated title;
- (i) compulsory license.
- (j) Where the conduct of the technical examination to be done by any National or Foreign Institution has been agreed by the Office; the fee to be paid by the conduct of the technical examination of the variety under Article 31.1(b) shall be the true cost that the Office must pay to that Institution including certain percentage stated in the implementing regulations-

2. Natural persons or legal entities seeking and receiving any of the services specified in this Law from the National Seeds Office shall be obliged to pay the above fees.

3. The proceeds from payment for services surrendered and the financial resources laid down in Article 21 of the Law 6289 shall be credited to a special National Seeds Office account at any of the banks of the national banking system, and the administration thereof shall be under the supervision of the Office of the Comptroller General of the Republic.

4. The proceeds referred to in paragraph 3 above shall be administered by the National Seeds Office, acting through its Board of Directors, which shall approve budgets in accordance with the annual programs drawn up by executive sector.
5. The said proceeds shall be used exclusively to serve the purposes of this Law, under the responsibility of those who legally administer them.

Article 32. Restoration of Rights

1. Where, in spite of having taken all due care in the particular circumstances, the applicant or the holder, or any other party to proceedings before the Office, has been unable to observe a time limit in dealings with the Office, his rights shall, on request, be restored if the loss of any right or means of redress provided for in this Law is directly attributable to his failure to observe the said time limit.
2. The request shall be submitted within two months after the cause of non-compliance has ceased to operate and, in any event, within one year following the expiry of the unobserved time limit. The request shall be properly substantiated and shall be accompanied by the fee for restoration of rights.
3. The Board of Directors of the National Seeds Office shall rule on the request.
4. Where the request is granted, the petitioner shall be given a time limit equal to the unobserved time limit, starting on the date of receipt of notice of the decision, within which to perform the omitted act.
5. Where the rights are restored, the petitioner may not assert his rights against any person who, in good faith, has engaged in, or taken genuine and effective measures with a view to, exploitation in the period between the loss of the rights and the publication of the notice on the restoration thereof.

CHAPTER II APPLICATION

Article 33. Form and Content of the Application

1. Any person wishing to have a variety protected shall file an application with the Office and pay the application fee.
2. The application shall contain at least the following elements:
 - (a) the name and address of the applicant and, where relevant, his procedural representative, including the national identity card number or the registration card number for legal entities;
 - (b) the name, national identity card number and address of the breeder, if he is not the applicant;

- (c) the identification of the botanical taxon (Latin and common name);
- (d) the denomination proposed for the variety, or a provisional designation (breeder's reference);
- (e) where the priority of an earlier application is claimed, the Contracting Party with which the application was filed and the filing date;
- (f) a technical description of the variety;
- (g) proof of payment of the application fee.

3. The detailed form and content of the application, and the documents to be attached, shall be specified in the Regulations under this Law.

Article 34. Priority

1. The applicant may avail himself of a right of priority based on an earlier application that has been duly filed for the same variety, by himself or by his predecessor in title, with the authority of a Contracting Party.

- (a) Where the application filed by the Office is preceded by several such applications, priority may be based only on the earliest application.
- (b) The right of priority shall be expressly claimed in the application filed with the Office. It may only be claimed within a period of 12 months from the date of filing of the earliest application. The day of filing shall not be included in the said period.

2. (a) In order to avail himself of the right of priority, the applicant shall submit to the Office, within three months from the filing date referred to in Article 35.4, a copy of the first application, certified to be a true copy by the authority of the Contracting Party with which that application was filed.

(b) Where the first application is not written in Spanish, the Office may request that a translation thereof be produced within three months from the date of receipt of the request.

3. (a) The effect of priority shall be that, with respect to the conditions of protection attaching to the variety, the application shall be deemed to have been filed on the date of filing of the first application.

(b) The applicant shall moreover be entitled to request that the examination of the variety be deferred by up to two years from the date of expiry of the priority period (three years from the date of filing of the first application). However, where the first application is rejected or withdrawn, the Office shall be entitled to initiate the examination of the variety before the date specified by the applicant; in such case it shall allow the applicant an appropriate period within which to furnish the information, documents or material required for the purpose of the examination.

CHAPTER III PROCESSING OF THE APPLICATION

Article 35. Examination as to Formal Requirements; Filing Date

1. In accordance with the information stated in Article 33.2, the Office shall examine whether the application satisfies the formal requirements for applications.
2. Where the application is clearly unacceptable by reason of the botanical taxon to which the variety belongs, the documents constituting the application shall be returned to the applicant, and the application fee shall be refunded.
3. Where the application is incomplete or incorrect, the Office shall request the applicant to correct it within 30 days from the date of receipt of the request. Any application that is not corrected within the prescribed period shall be deemed not to have been filed.
4. Any application that is complete and correct shall be given a filing date and shall be recorded in the register of applications. The date on which the information referred to in Article 33.2 is received by the Office shall be taken to be the filing date.

Article 36. Examination of the Application as to Substance

1. The Office shall examine the application as to substance in order to verify, on the basis of the information given in the application, that the variety is new (Article 7), and that the applicant is entitled under Article 11.
2. Where the application reveals an obstacle to the grant of the breeder's right, the application shall be rejected. That decision may be appealed against under Article 28.

Article 37. Technical Examination of the Variety

1. The variety shall undergo a technical examination the purpose of which shall be:
 - (a) to verify that the variety belongs to the stated botanical taxon,
 - (b) to establish that the variety is distinct, uniform and stable, and
 - (c) where the variety is found to meet the aforesaid requirements, to establish an official description of the variety.
2.
 - (a) The technical examination shall be undertaken under the supervision of the Office.
 - (b) Where growing tests or other necessary tests have been or are being undertaken by the authority of a Contracting Party, and where the results of those tests may be obtained by the Office and transposed to the agroclimatic conditions of the State, the examination may be based on the said results.
 - (c) Where the examination is not based on results obtained under subparagraph (b), the examination shall be based on growing tests and other necessary tests made:

- (i) by the Office or by another institution on its behalf,
- (ii) by the applicant at the request of the Office.

3. The office shall state the practical procedure for the examination.
4. The official description referred to in paragraph 1(c) may be subsequently extended or amended on the basis of developments in agrobotanical knowledge without the subject matter of protection being affected thereby.

Article 38. Information, Documents and Material Required for the Examination

1. The applicant shall submit to the Office all the information, documents or material requested by the Office for the purposes of the technical examination.
2. Failure to submit the requested information, documents or material shall cause the application to be rejected, unless the applicant claims a case of *force majeure* to explain his omission.

Article 39. Publication of the Application. Objections to the Grant of the Breeder's Right

1. As a minimum, the elements of the application referred to in Article 33.2 shall be published in the Official Journal.
2. As from the publication of the application any person may, within a two month period, file objections to the grant of a breeder's right with the Office.
3. The objections shall be made in writing and substantiated. The documentary evidence shall be attached.
4. The objections may only be based on the allegation that under Article 11 the variety is not new, distinct, uniform or stable or that the applicant is not entitled to protection.

Article 40. Consideration of Objections

1. Objections to the grant of a breeder's right shall be communicated without delay to the applicant, who shall have a period of not less than three months within which to express his views on the objections and state whether he intends to maintain, amend or withdraw his application; the period may be extended on the basis of a properly substantiated request from the applicant.
2. Where the applicant does not respond within the prescribed period, the application shall be deemed to have been withdrawn. Where he responds and seeks to maintain the application, with or without amendment, his response shall be communicated to the author of the objection, who shall have 30 days within which to express his views on the response and state whether he intends to maintain or withdraw his objection.
3. (a) An objection that has been maintained shall be examined:

- (i) independently of the normal processing of the application where it is based on the allegation that the variety lacks novelty or the applicant is not entitled to protection,
 - (ii) in the course of the technical examination of the variety where it is based on the allegation that the variety lacks distinctness, uniformity or stability.
 - (b) The Office may modify the conditions of the technical examination of the variety in order to accommodate consideration of the objection.
4. The author of an objection may be required to submit further information and documents in support of his objection, or such plant material as is necessary for the technical examination. Article 38 shall apply *mutatis mutandis*.

Article 41. Grant of the Breeder's Right. Rejection of the Application

1. Where it is satisfied as a result of the examination that the variety fulfils the requirements of Article 6 and that the applicant has fulfilled the other requirements set out in this Law, the Office shall grant the breeder's right.
2. Where it is not so satisfied, the Office shall reject the application.
3. The grant of the breeder's right, or the rejection of the application, shall be recorded in the Register of Applications and published in the Official Journal.
4. The grant of the breeder's right shall also be recorded in the Register of Breeders' Rights. The description of the variety may be included in the Register by reference to the technical files of the Office.

CHAPTER IV VARIETY DENOMINATION

Article 42. Purpose of the Denomination and Signs that may Constitute a Denomination

1. The denomination of a protected variety shall be its generic designation.
2. The denomination may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without an existing meaning, provided that such signs allow the variety to be identified.
3. Where a denomination has already been used for the variety in the State or a Contracting Party, or proposed or registered in a Contracting Party, only that denomination may be used for the purposes of the procedure before the Office, unless there is a ground for refusal under Article 43. Any synonyms shall be recorded in the Register of Applications and the Register of Rights.
4. (a) For as long as a variety is exploited, it shall be prohibited to use, in the territory of Costa Rica or of a Contracting Party, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the

same or a closely related species. The prohibition shall remain in force after the variety has ceased to be exploited where the denomination has acquired particular significance in relation to the variety.

- (b) The aforesaid prohibition shall also apply to denominations registered in Contracting Parties.
5. Any person who offers for sale, sells or otherwise markets propagating material of a protected variety shall be obliged to use the denomination of that variety. This obligation shall also apply to the varieties referred to in Article 14.4(a)(ii).
6. The obligation to use a denomination shall not end with the breeder's right that gave rise to it.
7. Prior rights of third parties shall not be affected.
8. When a variety is offered for sale or otherwise marketed, the use of the registered variety denomination in association with a trademark, trade name or other similar indication shall be permitted, subject to the denomination remaining easily recognizable.

Article 43. Grounds for Refusal

- 1. (a) Without prejudice to the provisions of the Convention and the rules established by the Union, registration as the denomination of a variety shall be denied to a designation that:
 - (i) does not conform to the provisions of Article 42,
 - (ii) is not suitable for the identification of the variety, in particular owing to lack of distinctiveness or linguistic unsuitability,
 - (iii) is contrary to public policy or morality,
 - (iv) consists exclusively of signs or indications that may serve, in the plant varieties and seeds sector, to designate kind, quality, quantity, intended purpose, value, geographical origin or time of production,
 - (v) is identical or confusingly similar to a denomination that designates, in the territory of Costa Rica or a Contracting Party, an existing variety of the same or a closely related species, unless the existing variety is no longer exploited and its denomination has not acquired any particular significance.
- (b) The Office shall name the species that are closely related within the meaning of subparagraph (a)(vi) above.
- 2. (a) Without prejudice to the provisions of the Convention and the rules established by the Union, registration as the denomination of a variety shall also be denied to a designation containing an element that hampers or is liable to hamper the free use of the denomination in connection with the variety, in particular an element that under trademark law would be denied registration as a trademark for products bearing some relation to the variety.
- (b) Such designations shall be refused if the holder of the rights in the element concerned has lodged with the Office a written objection to the proposed denomination.

Article 44. Registration Procedure

1. (a) The denomination proposed for a variety shall be submitted together with the application for protection.

(b) Subject to payment of the prescribed fee and the inclusion of a provisional designation for the variety in the application, the applicant may have the procedure for the registration of the denomination deferred. In such a case, the applicant shall propose a denomination for the variety within 30 days from the date of receipt of a request addressed to him by the Office. If the applicant fails to submit a proposal within the prescribed period, the application shall be rejected.
2. If the Office has found no ground for refusal under Article 43.1(a), the proposed denomination shall be published in the Official Journal. It shall also be communicated to the authorities of the Contracting Party.
3. Any interested person may, following publication, file an objection to the registration of the denomination based on any one of the grounds for refusal under Article 3. The authorities of the Contracting Parties may submit observations.
4. Objections and observations shall be communicated to the applicant, who shall have 30 days within which to reply.
5. (a) The applicant may, on the basis of the objections and observations, submit a new proposal.

(b) Where the proposed denomination does not conform to the provision of Article 43, the Office shall request the applicant to submit a new proposal within 30 days from the date of receipt of the notice. Failure to submit a proposal within the prescribed period shall entail the rejection of the application.
6. (a) The new proposal shall be subject to the examination and publication procedure provided for in this Article.

(b) Where the new proposal does not conform to the provisions of Article 43, the Office may serve notice on the applicant to propose a denomination that does conform to the said provisions. Failure to respond shall cause the application to be rejected.
7. Where objections or observations have been received, any decision of the Office shall be accompanied by a statement of its reasons for the decision; it shall be notified to the parties. The refusal of a proposed denomination shall likewise be accompanied by a statement of the reasons for the refusal.
8. The denomination shall be registered at the same time as the breeder's right is granted.

Article 45. Cancellation of a Denomination and Registration of a new Denomination

1. The Office shall cancel a registered denomination:

- (a) when it is established that the denomination has been registered despite the existence of a reason for refusal under Article 43.1(a),
 - (b) when the holder so requests and demonstrates a legitimate interest,
 - (c) when the holder or any other person produces a judicial decision prohibiting the use of the denomination in connection with the variety.
2. The Office shall inform the holder of the intended cancellation and request him to propose a new denomination within 30 days from the date of receipt of the request. If the variety is no longer protected, the proposal for a new denomination may be made by the Office.
3. The proposed new denomination shall be subject to the examination and publication procedure provided for in Article 44. The new denomination shall be registered and published once approved; the former denomination shall be cancelled at the same time.

CHAPTER V

KEEPING THE BREEDER'S RIGHT IN FORCE

Article 46. Annual Fee

1. The holder shall pay the annual fee to keep his breeder's right in force (Article 31.1(v)).
2. The fee shall fall due at the beginning of the calendar year to which it relates. It shall be payable by 31 January.

Article 47. Maintenance of the Variety

1. The holder shall be under an obligation to maintain the protected variety or, where relevant, its hereditary components for the whole duration of the breeder's right.
2. At the request of the Office, he shall provide it or an authority designated by it, within the prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety.

Article 48. Verification of the Maintenance of the Variety

1. The Office shall verify that the variety and, where relevant, its hereditary components are maintained throughout the period of protection.
2. Where it is suspected that a variety is not maintained and the suspicions are not removed by the information and documents submitted by the holder under Article 47(2), the Office shall order the verification of the maintenance of the variety under conditions specified by it. The verification shall include growing tests and other tests in which the material submitted by the holder is compared with the official description and the official sample of the variety.

3. Where the verification suggests that the holder has failed to maintain the variety, the holder shall be heard (Article 27) before a decision to invalidate the breeder's right is taken under Article 23.1.

Article 49. Supply of Samples

1. The title holder shall provide a proper sample of the variety to be protected when filling the application for the grant for plant variety protection.

2. At the request of the Office, the holder shall provide the Office or any authority designated by the latter, within a prescribed period, with reasonable samples of the protected variety or, where relevant, of its hereditary components for the purpose of:

- (i) establishing or renewing the official sample of the variety,
- (ii) undertaking the comparative examination of other varieties for the purposes of protection.

3. At the request of the Office the holder shall maintain or preserve the official sample on behalf of the Office.

PART IV ENFORCEMENT

Article 50. Civil Remedies

1. Any person who:

- (a) without being entitled to do so, performs acts that require the authority of the holder under Article 13,
- (b) uses a designation whose use is prohibited by Article 42.4,
- (c) fails to use a variety denomination whose use is obligatory under Article 42.5

may be sued by the holder or the holder of an exclusive license and all such relief shall be available to the latter as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

2. Subject to the provisions of this Law, the provisions of the Law on the enforcement of rights under a patent shall apply *mutatis mutandis* to the enforcement of rights under a breeder's right.

3. Whoever engages in any other act of exploitation of the protected variety, or who in any other way infringe the rights that this Law confers on the breeder, shall be obliged to indemnify for damages and prejudice. To calculate the consequential damage the National Authority may take into account some of the following elements:

- (a) the amount of the profits gained by the defendant as result of the illegal exploitation of the protected variety.

- (b) the foregone amount by the breeder in view of the illegal exploitation.
- (c) the amount that the breeder should charge to the offender by granting a license in the terms of the illegal exploitation of the variety.

4. At the request of the holder the court may, in an incident ruling, order the suspension of the acts reported and also any other applicable measure provided for in ordinary legislation; it may likewise order immediate precautionary measures where the holder justifies his complaint with proof of infringement or imminent infringement, on condition that a sufficient guarantee is provided.

Article 51. Criminal Penalties

1. Persons who:

- (a) have produced material of a protected variety without the consent of the holder thereof;
- (b) are trading in material of a protected variety in the knowledge that it has been produced in violation of the rights of the holder of the breeder's right;
- (c) repeatedly use reproductive material of a protected variety to produce propagating material of another variety;
- (d) contract for the transport of the propagating material of a protected variety to a territory outside the area of application of this Law without the special authority of the holder of the right,

will be considered as having committed a criminal offense.

2. Subject to the provisions of this Law, the provisions of the Law on the enforcement of rights under a patent shall apply *mutatis mutandis* to the enforcement of rights under a breeder's right.

3. Whoever engages in any other act of exploitation of the protected variety, or who in any other way infringes the rights that this Law confers on the breeder, shall be obliged to indemnify for damages and prejudice. The calculation of them could be done by the office under Article 50.3.

3. Upon the request of the holder, the judge may, by incidental action, agree to the suspension of the reported acts, like any other applicable means provided by the common law. The judge may order preventive measures when the holder justifies his request with proofs of the infraction or its imminence, providing that sufficient warranties are given.

PART V FINAL AND TRANSITIONAL PROVISIONS

Article 52. Cooperation in Examination

The Office shall be entitled to conclude administrative agreements for cooperation in the examination of varieties and the verification of the maintenance of varieties with the authorities of Contracting Parties or with their supervisory authorities.

Article 53. Protection of Known Varieties

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

- (a) the application shall be filed within the year following the said date; and
- (b) the variety must
 - (i) have been entered in the National Catalogue of Varieties Admitted to Trade or in a register of varieties held by a professional organization recognized by the Office, on the advice of the Council, for the purposes of this Article,
 - (ii) have been the subject of a breeder's right in a Contracting Party, or be the subject of an application in a Contracting Party, provided that the application subsequently leads to the granting of the breeder's right, or
 - (iii) be the subject of proof acceptable to the Office concerning the date on which the variety ceased to be new under the provisions of Article 6.

(2) The duration of the breeder's right granted under this Article shall be calculated from the date of the entry referred to in paragraph (1)(b)(i), above, the date of the grant of the breeder's right referred to in paragraph (1)(b)(ii), above, or the date upon which the variety ceased to be new referred to in paragraph (1)(b)(iii), above. Where relevant, the earliest of those dates shall be used.

(3) Where a breeder's right is granted under this Article, the holder shall be under the obligation to grant licenses on reasonable terms in order to allow the continuation of any exploitation initiated in good faith by a third party before the said filing.

Article 54. Entry into Force

1. This Law shall enter into force from the date of the publication in the Official Journal *La Gaceta*.

[End of document]