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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

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EXAMINATION OF THE CONFORMITY OF A BILL OF THE REPUBLIC OF HONDURAS WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated March 16, 2000, addressed to the Secretary-General, Mr. Guillermo Alvarado Downing, Secretary of State in the Offices of Agriculture and Livestock of Honduras, 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 of Honduras on the Protection of New Plant Varieties (hereinafter referred to as "the Bill"). The Bill is reproduced in Spanish only in the Annex to this document.

2. Honduras 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 Honduras

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

Article 1 of the Convention: Definitions

4. Article 2 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 to set up the basis of and procedures for the protection of the rights of the breeders of new plant varieties." 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 4 of the Bill provides that at the date of coming into force the Law will apply to at least 15 plant genera or species and that at the end of a period of 10 years it will cover all plant genera and species. The Bill of Honduras 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 Honduras, 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 other State which grants effective plant variety protection to the nationals of Honduras. The Bill of Honduras 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 13 of the Bill sets out the conditions of novelty, distinctness, uniformity and stability and 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. In order for this to be in accordance with Article 5 of the Convention the following should be added to Article 13 of the Bill:

“ ..provided that the variety is given a denomination in accordance with the provisions of Article 16 and ...”.

9. In addition, the definitions for the requirements of new, distinct and stable should be amended as follows in order to be consistent with the Convention:

New: replace the definition in Article 13 of the Bill by the definition in Article 6(i) of the Convention.

Distinct: to complement the definition in Article 13 of the Bill by adding the following sentence:

“In particular, the filing of an application for the granting of a breeder’s right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder’s right or to the entering of the said other variety in the official register of varieties, as the case may be.”

Stable: to complement the definition in Article 13 of the Bill by adding the following sentence: “or, in the case of a particular cycle of propagation, at the end of each such cycle.”

10. Articles 54 y 55 of the Bill provides for the 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 will not conform with Articles 5 to 9 of the Convention unless it incorporates the modifications suggested in paragraphs 8 and 9.

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 Honduras.

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

Article 11 of the Convention: Right of Priority

14. Article 17 of the Bill provides for a right of priority in terms basically according to the Convention. Nevertheless the following text should be added as a first paragraph in Article 17 c):

“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.”

15. With the incorporation of the suggested amendment Article 17 of the Bill will comply with Article 11 of the Convention.

Article 12 of Convention: Examination of the Application

16. Article 15 of the Bill provides that the Secretary of Agriculture and Livestock shall receive and process applications and it empowers the Secretary to require the making available of the propagating material of the variety and complementary documents and information considered necessary to verify that the legal and regulatory requirements and the official Honduran norms are satisfied.

17. Article 18 also establishes that checking the requirements of novelty, distinctness, uniformity, stability as well as that of a denomination will be the responsibility of the Qualifying Committee of Plant Varieties.

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

Article 13 of the Convention: Provisional Protection

19. Article 20 of the Bill makes provision for provisional protection from the issuing of the certificate of application filing, which must be done within 120 days after the filing of the application. The breeder will be able to exercise the provisional protection after the entering into force of his title. The Bill conforms with Article 13 of the Convention.

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

20. Article 7(2) 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.

21. 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 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) of the Convention.

22. Article 7(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.

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

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

24. Article 8, paragraphs a), b) and c) of the Bill reproduces Article 15(1) of the Convention almost verbatim.

25. Article 9 of the Bill provides for a "farmer's privilege" that will not apply to fruit, ornamental and forest species, as permitted by Article 15(2) of the Convention.

26. The Bill is thus in conformity with Article 15 of the Convention.

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

27. Article 8, paragraph d) and Article 10 of the Bill set 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

28. Chapter IV of the Bill contains provisions on the granting of emergency licenses in circumstances affecting public interest. The proposed legislation of Honduras conforms with the requirements of Article 17 of the Convention.

Article 18 of the Convention: Measures Regulating Commerce

29. Article 14 of the Bill affirms the independence of the breeder's right from any measures taken by Honduras 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

30. Article 11 of the Bill specifies that the period of protection shall be 25 years in the case of perennial species and 20 years in the case of other species, counted from the grant of the title. Those periods conform with Article 19 of the Convention.

Article 20 of the Convention: Variety Denomination

31. Article 16 of the Bill contains provisions with respect to denominations that must be complemented by the regulations in order to satisfy Article 20 of the Convention.

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

32. Article 42 of the Bill requires the competent national authority 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 obtain.

33. The Bill is thus in conformity with Article 21 of the Convention.

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

34. Under Article 43 of the Bill, the Secretary of Agriculture and Livestock shall cancel a breeder's title when it is established that the holder has failed to meet his obligation to maintain the protected variety, or that the variety is no longer uniform or stable, or 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, or when the fees were not paid for two years.

35. Article 12 of the Bill contains provisions on the premature termination of the breeder's right where the holder surrenders it.

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

Article 30 of the Convention: Implementation of the Convention

37. Article 30(1)(i) of the Convention requires adhering States to provide for appropriate legal remedies for the effective enforcement of breeders' rights. Articles 44 to 50 and Chapter I of Title Six of the Bill make provisions in this sense. Under Article 3, paragraphs 4 and 8, the Secretary is empowered to rule for the amendment of administrative errors.

38. Article 30(1)(ii) of the Convention requires adhering States to "maintain an authority entrusted with the task of granting breeders' rights..." The Secretary of Agriculture and Livestock has been appointed under Article 3 of the Bill as the competent national authority.

39. 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 3.5) and Article 40 of the Bill provides for the publication of such information in the Official Bulletin.

40. The Bill, thus, makes adequate provisions for the implementation of the Convention in Honduras.

General Conclusion

41. In the opinion of the Office of the Union, the Bill of Honduras includes most of the provisions of the Convention. Nevertheless in order to be fully in conformity with the Convention the modifications mentioned in paragraphs 8, 9, 14, 17 and 31 should be included.

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

(a) to take a positive decision on the conformity of the legislation of Honduras with the provisions of the Convention, subject to its amendment as mentioned in paragraph 41;

(b) to request the Office of the Union to offer its assistance to the Government of Honduras in respect of the amendments to be made to the Bill;

(c) to further advise the Government of Honduras that

i) after consultation with the Office of the Union as to whether its proposed amendments to the Bill are adequate, and

ii) after adoption of the Bill with the incorporation of such amendments but without other substantial changes, and after making implementing regulations,

it may deposit an instrument of accession to the 1991 Act of the UPOV Convention.

43. 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.

ANNEX

WHEREAS the Government of Honduras has proposed, as part of its development strategy, to integrate the country in the international market, thereby providing an appropriate environment for national and foreign investment,

WHEREAS it is a priority of the Government to promote inventive activity in the widest range of forms,

WHEREAS the improvement and development of new varieties has to be fostered by the Government, due regard being also had to progress in plant improvement techniques,

WHEREAS, because no legislation exists in the country that might favor the effective protection of the rights of the owners of improved plants (new plant varieties), it has become necessary to draw up a national instrument on the basis of the international principles that govern that area of concern,

WHEREAS the rights in new plant varieties have a strong economic effect that calls for protective involvement on the part of the State, not only in the field of registration but also as a supervisory body over collective management agencies that seeks conciliatory arrangements in such disputes as may arise and imposes such administrative sanctions as may be provided for,

IT IS DECREED AS FOLLOWS:

PLANT VARIETY PROTECTION LAW

TITLE I
GENERAL PROVISIONS

CHAPTER I

OBJECT OF THE LAW

Article 1.

The object of this Law is to establish the foundations and procedures for the protection of the rights of breeders of new varieties of plants. Its application and interpretation, for administrative purposes, shall be the responsibility of the Secretariat of Agriculture and Animal Husbandry, acting through the Seed Certification Department of the National Agricultural and Livestock Health Service (SENASA), for which purposes it shall be provided with budgetary credits and full administrative support for the establishment of the Register.

Article 2.

For the purposes of this Law,

“Relevant characteristics” means phenotypical and genotypical expressions specific to the plant variety that allow it to be identified;

“Committee” means the Plant Variety Classification Committee;

“Propagating material” means any material for sexual or asexual reproduction 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 obtain whole plants or seed;

“Breeder” means the natural or legal person who, by means of an improvement process, has obtained and developed a plant variety of any genus or species;

“Improvement process” means the technique or set of techniques and procedures that enable a plant variety to be developed;

“Register” means the National Register of Plant Varieties;

“Secretariat” means the Secretariat of Agriculture and Animal Husbandry;

“Breeder’s title” means the document issued by the Secretariat that recognizes and protects the rights of the breeder of a new, distinct, stable and uniform plant variety.

“Plant variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered a unit with regard to its suitability for being propagated unchanged.

Article 3.

The Secretariat shall have the following responsibilities:

- (i) To foster and promote activities related to the protection of breeders’ rights in which the various departments and agencies of the public administration and also the social and private sectors participate;
- (ii) To rule on applications for the protection of breeders’ rights, subject to the finding of the Committee concerning the grant of a breeder’s title as provided in this Law and the Regulations under it;
- (iii) To issue emergency licenses in the cases provided for in this Law;
- (iv) To lay down guidelines according to which clerical errors in data recorded and documents issued by the Secretariat may be corrected;
- (v) To publicize applications for protection and protected plant varieties as provided and with the frequency specified in the Regulations under this Law;

- (vi) To introduce the appropriate official standards and ensure compliance with them;
- (vii) To act as arbiter in the settlement of disputes that are brought before it by the persons concerned regarding the payment of damages for the violation of rights protected under this Law, and in dealing with all matters concerning alleged irregularities in the subject matter to which this Law relates but which are not provided for therein or in the Regulations under it;
- (viii) To rule on administrative appeals concerning the implementation of this Law;
- (ix) To order and carry out inspection tours, to request information and data, to carry out investigations into alleged administrative infringements, to order and enforce measures to prevent or stop the violation of the rights protected by this Law and to impose administrative sanctions in accordance with the provisions of the relevant enactments;
- (x) To promote international cooperation through the exchange of experience with institutions responsible for the registration and protection of breeders' rights in other countries, including the vocational training and further training of staff, the transfer of working and organizational methods, the exchange of publications and the updating of documentary files and databases on the subject, and also to keep a catalogue of foreign researchers;
- (xi) Any other responsibilities that may be entrusted to it by this or other legislation.

Article 4.

This Law shall apply to at least 15 plant genera or species on the date of its entry into force, and to all plant genera and species within ten years.

Article 5.

The following shall be eligible for the rights provided for in this Law:

- (a) Nationals of Honduras and all persons who have their domicile or headquarters in Honduras;
- (b) Nationals of a State or intergovernmental organization party to the International Convention for the Protection of New Varieties of Plants, and all persons who have their domicile or headquarters on the territory of a State or intergovernmental body party to the International Convention for the Protection of New Varieties of Plants;
- (c) Nationals of any State which, without being a State or intergovernmental organization party to the International Convention for the Protection of New Varieties of Plants, grants effective protection to nationals of Honduras.

For the purposes of the second subparagraph above, where the party to the International Convention for the Protection of New Varieties of Plants is a State, “nationals” means the nationals of that State and, where the party to the International Convention for the Protection of New Varieties of Plants is an intergovernmental organization, it means the nationals of any of its member States.

Article 6.

Representative: any person who has neither domicile nor headquarters in Honduras may only be party to a procedure engaged in under this Law and invoke rights thereunder on condition that he has a representative with domicile or an office in Honduras. The representative shall hold a power of attorney for dealings with the Secretariat and for litigation relating to the protection of new plant varieties.

TITLE II PROTECTION OF PLANT BREEDERS' RIGHTS

CHAPTER I

RIGHTS AND OBLIGATIONS OF THE BREEDER

Article 7.

The rights that this Law grants to plant breeders are the following:

- (i) The right to be recognized as the breeder of a plant variety. That right is inalienable and imprescriptible.
- (ii) The permission of the breeder or owner of the breeders' rights shall be required for the following acts:
 - Production or reproduction (multiplication);
 - Preparation for reproduction or multiplication purposes;
 - Offering for sale;
 - Sale or any other form of marketing;
 - Export;
 - Import;
 - Possession for any of the above purposes.

The breeder may make his permission subject to conditions and limitations.

- (iii) Subject to the provisions of Articles 8 and 10, the permission or the owners shall be required for the acts specified under subparagraph (ii) that are performed on harvested material, including whole plants and parts thereof, such material having been obtained through unauthorized use of reproductive or vegetative propagating material of the protected variety, except where the owner has been able to exercise his rights

reasonably in relation to the said reproductive or vegetative propagating material.

(iv) The provisions of subparagraphs (i) and (ii) shall apply also:

- (a) to varieties essentially derived from the protected variety where it is not itself an essentially derived variety;
- (b) to varieties that are not clearly distinguished from the protected variety;
- (c) to varieties the production of which requires repeated use of the protected variety.

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

- (a) it is derived mainly from the initial variety or from a variety which is itself mainly derived from the initial variety, retaining at the same time the expressions of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety;
- (b) it is clearly distinguished from the initial variety;
- (c) it conforms, except for the differences resulting from the derivation, to the initial variety in the expression of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety.

Essentially derived varieties may be obtained for instance by breeding a natural or induced mutant of a somoclonal variant, by selecting a variant individual from among plants of the initial variety, by backcrossing or by genetically engineered transformations.

The breeder may make his permission subject to conditions and limitations.

Article 8.

Exceptions to breeders' rights.

Breeders' rights shall not extend:

- (a) to acts performed for non-commercial purposes in a private environment;
- (b) to acts performed experimentally;
- (c) to acts performed with a view to the creation of new varieties, except where the provisions of Article 7(iv) are applicable to the acts specified in Article 7(ii) and (iii) performed in relation to such varieties;
- (d) to acts performed on material of the variety or a variety covered by Article 7(iv) that has been sold or otherwise marketed on the territory of Honduras by the owner or with his consent, or material derived from the said material, except where such acts entail

further reproduction or vegetative propagation of the variety in question, or where they entail the export of material of the variety that enables it to be reproduced in a country that does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is intended for consumption.

Article 9.

Breeders' rights shall not be infringed by a person who reserves and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety. Commercial use of the multiplication, reproduction or propagating material of fruit, ornamental and forest species, including whole plants and parts thereof, is excepted from the provisions of this Article.

Article 10.

For the purposes of the provisions of Article 8(d), "material" means, in relation to a variety:

- (a) reproductive or vegetative propagating material in any form;
- (b) harvested material, including whole plants and parts thereof;
- (c) any product manufactured directly from harvested material.

Article 11.

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

- (a) Twenty-five years for perennial species (forest and fruit varieties, vines and ornamentals), including rootstocks in each case;
- (b) Twenty years for species not included in the foregoing subparagraph.

These terms shall be counted as from the date of issue of the breeder's title and, when they have expired, use and exploitation shall pass into the public domain.

Article 12.

The breeder may renounce the rights conferred by Article 7 of this Law; renunciation shall be effected in writing, and to be valid it shall be entered in the Register. 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.

A breeder's title shall be granted for a plant variety provided that the variety is:

(a) new; the plant variety shall possess this characteristic when the propagating material or harvested material of the variety has not been sold or delivered to third parties by the breeder or with his consent for the purposes of exploitation:

- on the national territory within the year prior to the filing date of the application for a breeder's title;

- abroad within the six years prior to the filing of the application in the case of vines, forest trees, fruit trees and ornamental trees, including their rootstocks, and within the four years prior to the filing of the application for all other species;

(a) distinct; the plant variety shall possess this characteristic where it is clearly distinguished from any other variety the existence of which is a matter of common knowledge on the filing date of the application;

(b) stable; the plant variety shall possess this characteristic where its relevant characteristics remain unchanged after successive acts of reproduction or propagation;

(c) uniform; the plant variety shall possess this characteristic where it is sufficiently uniform in its relevant characteristics, subject to the variation that may be expected due to its sexual reproduction or vegetative propagation.

The grant of breeders' rights may not be made subject to additional or different conditions, provided that the applicant has complied with the formalities specified in this Law and paid the appropriate fees.

Article 14.

Breeders' rights shall be independent of any measures adopted by Honduras to regulate the production, testing and marketing of material of varieties on its territory, or its import into and export from Honduras.

CHAPTER II

APPLICATION FOR AND GRANT OF THE BREEDER'S TITLE

Article 15.

The Secretariat shall receive and prosecute applications for the issue of breeders' titles. To that end it may require that the plant variety or propagating material thereof be delivered to it in such quantities as it considers appropriate, and that where applicable it be provided with such additional documentation and information as it considers necessary to determine whether legal and regulatory requirements and official Honduran standards have been met.

Applications shall be without effect until such time as the applicant complies with the requirements imposed on him within a period of three months counted from the notification of the said requirements.

Article 16.

In the application for a breeder's title a denomination shall be proposed for the variety, which, to be approved, shall be different from any other existing in the country or abroad, shall comply with the other requirements specified in the Regulations under this Law and shall not be identical or confusingly similar to another, protected earlier under the Industrial Property Law. The application shall specify the parentage and origin of the plant variety.

Where the proposed denomination does not comply with the foregoing requirements, the Secretariat shall reject it and require the applicant to propose another within an absolute period of 30 working days.

Article 17.

The applicant may enjoy the priority of an earlier application for the same variety legally filed by himself or his successor in title with the authority of a Contracting Party.

(a) If the application filed with the Office has been preceded by two or more applications, the priority may only be based on the earliest such application.

Priority shall be expressly claimed in the application filed with the Office. It may only be claimed within a period of 12 months following the filing date of the first application.

(b) In order to benefit from the right of priority, the applicant shall submit a copy of the first application to the Office within three months following the filing date.

The Office may ask for a translation of the first application to be submitted within a period of three months following the date of receipt of the communication.

(c) In addition, the applicant shall be entitled to request deferment of the examination of the variety by a maximum of two years following the expiry date of the priority period (three years following the filing date of the first application). If however the first application is rejected or withdrawn, the Office may start the examination of the variety before the date specified by the applicant, in which case the applicant shall be allowed a suitable period for the submission of the information, documents or material necessary for the examination to take place.

Article 18.

Verification of compliance with the requirements specified in Articles 13 and 16 of this Law shall be the responsibility of the Committee on the basis of the provisions of the relevant regulations and the appropriate Honduran official standards.

Once all the requirements have been met, the Secretariat shall issue the breeder's title, which shall recognize and protect the rights referred to in Article 7 of this Law.

Article 19.

Where a plant variety has been bred and developed jointly by two or more natural or legal persons, the application shall specify the degree of participation of each one of them and designate a joint representative.

Where the joint representative is not expressly designated, the first person named in the application shall be taken to be such.

Article 20.

Where the requirements of novelty, denomination and formal completion of the application have been met, the Secretariat shall, within the 120 days following the filing of the application, issue a record of filing pending the grant of the breeder's title, and the application shall be published. With regard to the period between the date of issue of the record of filing and the grant of the corresponding breeder's title, the owner shall be entitled to receive equitable remuneration from any person who, during the intervening period, has engaged in acts which after the grant of rights would require authorization by the owner in accordance with the provisions of Article 7 of this Law.

The breeder may demand such remuneration as from the start of the validity of his title.

Article 21.

During the period of validity of the breeder's title, the Secretariat shall be entitled to compare the relevant characteristics of the plant variety with the corresponding relevant characteristics taken into account at the time of the grant of the breeder's title.

To that end the breeder shall be obliged to supply such propagating material and information as the Secretariat may request for the purpose, and also to allow inspection tours.

For the purposes of the foregoing the Secretariat may, where necessary, seek the intervention of the Committee.

Article 22.

In order to keep the breeder's title in force, the breeder or his successor in title, as the case may be, shall pay the fees specified in the Regulations under this Law.

Article 23.

The record of filing and the breeder's title shall become void on the expiry of their validity. The record shall lapse if the party concerned fails to collect it within the 12 months following the date on which he was notified of its issue.

Article 24.

On the grant of the breeder's title, the denomination shall be final and unchangeable, even where the validity of the title expires and the plant variety passes into the public domain.

Any person who uses or exploits the plant variety for whatever purpose shall be obliged to use and respect the approved denomination.

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

CHAPTER III

TRANSFER OF RIGHTS

Article 25.

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

Article 26.

In the case of the transfer of the rights referred to in Article 7(ii) of this Law, the beneficiary or assignee of the rights or the successor in title shall be obliged to submit to the Secretariat:

- (a) his name, nationality and domicile;
- (b) a copy of the document evidencing the transfer of the rights and including all the obligations and rights deriving from the transfer;
- (c) a document in which the party assumes the obligation to maintain the relevant characteristics of the plant variety or its propagating material in the event of its being marketed and exploited.

Article 27.

In the case of total transfer the beneficiary, assignee or successor in title shall assume all the obligations and rights deriving from the previous title, with the exception of the right referred to in Article 7(i) of this Law.

Article 28.

The beneficiary, assignee or successor in title may initiate legal proceedings for protection of the breeders' rights as if he were the owner thereof, unless otherwise agreed.

CHAPTER IV

EMERGENCY LICENSES

Article 29.

For the purposes of this Law, it shall be considered that there is an emergency when 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 supplies or deliveries.

Article 30.

In the event of an emergency, the Secretariat shall proceed as follows:

- (a) It shall inform the owner of the plant variety or persons authorized by him of the emergency and of the need for the plant variety to be available in sufficient quantities, in the judgement of the Secretariat, to provide for the emergency. Where they show interest in responding to the emergency, they shall undertake to do so on such terms as may be laid down by the Secretariat.
- (b) Where the owner of the plant variety or his successors in title declare that they are not capable of or interested in responding to the emergency, the Secretariat shall, by means of a public announcement, call upon third parties who do have an interest in doing so.
- (c) The right to respond to the emergency shall be granted in the form of a license for a specified period, conditional on compliance with the requirements which shall be stated by the Secretariat in the public announcement and shall include the payment of compensation to the owner of the plant variety or his successor in title.
- (d) On the expiry of the period for which the emergency license has been granted, the owner of the plant variety shall automatically recover all his rights.

Article 31.

The owner of the plant variety in respect of which an emergency license has been granted shall be obliged to provide the licensee with the propagating material. In no event may he make use of the variety or of the propagating material for a purpose other than that of the emergency.

Article 32.

In situations where, owing to the seriousness and scale of the emergency, a single licensee cannot adequately respond to it, the Secretariat may extend the license to two or more interested parties so that they may simultaneously do what is necessary to overcome the emergency.

TITLE III

CHAPTER I

PLANT VARIETY CLASSIFICATION COMMITTEE

Article 33.

The Committee shall be composed of the following standing members:

- (a) The Chairman, the Technical Secretary and three additional representatives designated by the Secretariat.
- (b) A representative of the Directorate of Intellectual Property.

The Committee shall have a Records Secretary, who shall have the right to speak but not to vote, and who shall be designated by the Chairman. Each titular member shall designate his own alternate.

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

Article 34.

The functions of the Committee shall be the following:

- (i) To rule on the acceptability of applications for breeders' titles and their entry in the Register;
- (ii) To specify the procedures for the conduct and assessment of technical trials in the field or in the laboratory;

- (iii) To give its opinion on the drafting of official provisions on the characterization and evaluation of plant varieties for description purposes;
- (iv) Such other functions as may be specified in the Regulations under this Law.

Article 35.

The Committee shall meet at least four times a year or when there are two or more items of business to be dealt with, and it may sit for as many times as it is convened by its Chairman. Decisions shall be taken by a two-thirds majority vote of the members present.

Article 36.

To assist it in its functions, the Committee shall form technical support groups composed of specialists in each genus or species, and may also consult, or elicit information from, other Central American countries.

TITLE IV

CHAPTER I

NATIONAL REGISTER OF PLANT VARIETIES

Article 37.

The Secretariat shall establish a Register which shall be public and in which at least the following shall be entered:

- (a) The application for issue of a breeder's title;
- (b) The record of filing;
- (c) The breeder's title, with details of :
 - (i) the protected plant variety;
 - (ii) the species to which it belongs;
 - (iii) its common and scientific names, and any approved change thereto;
 - (iv) the name and address of the owner or owners of the plant variety or their successors in title, and the name, address and status, where appropriate, of their legal representative;
 - (v) the validity and other particulars of the breeder's title issued;
 - (vi) renunciation of the rights conferred by Article 7(ii) of this Law;
 - (vii) any transfers and pledges to which the rights referred to in Article 7(ii) of this Law may be made subject;

(viii) the issue of the emergency licenses referred to in this Law;

(ix) the end of the validity of the record of filing or of the breeder's title, either through lapse or through expiry of the relevant term, and also the preventive initiation of proceedings for the invalidation and revocation of a breeder's title and its final cancellation;

(x) a statement in which it established that a plant variety has passed into the public domain.

Article 38.

Breeders' titles and also transfers of rights, in order to be binding on third parties, must be entered in the Register.

Article 39.

The Secretariat shall guarantee access to the information contained in Register entries.

Article 40.

The Secretariat shall publish in the official journal *La Gaceta*, and in such media as it considers appropriate, entries made in the Register, applications for breeders' titles and any information regarded as having a bearing on the subject matter of this Law.

TITLE V

CHAPTER I

ADMINISTRATIVE PROCEDURES

Article 41.

The administrative procedures for invalidation and revocation and the imposition of the sanctions provided for in this Law shall be substantiated and settled according to the terms of this Law and, where not provided for, according to the Law on Administrative Procedure.

Article 42.

The Secretariat shall declare breeders' rights null and void if it is found:

(i) that the variety was not new or distinct (Article 13) on the filing date of the application or on the priority date, as the case may be;

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

(iii) that breeders' rights have been granted to a person not entitled to them, and that the entitled person has neither filed nor waived his right to file an application for legal assignment.

Unless otherwise provided in this Law, breeders' rights declared null and void shall be regarded as not having been granted.

Any person may bring to the notice of the Secretariat the existence of facts that might give rise to the invalidation of breeders' rights.

Article 43.

The Secretariat may, subject to observance of the relevant procedure, revoke a breeder's title at any time in any of the following circumstances:

- (a) Where the fees referred to in Article 22 of this Law have not been paid for two years;
- (b) Where it is found that the relevant characteristics of the plant variety have changed;
- (c) Where the owner does not provide the Secretariat with propagating material for breeding the plant variety with its relevant characteristics, as defined on the grant of the breeder's title, after six months have elapsed following the date on which it was requested;
- (d) Where it is found that the plant variety has ceased to comply with the requirements specified in Article 13(c) and (d) of this Law;
- (e) Where the breeder does not propose another suitable denomination in the event of cancellation of the variety denomination after the grant of rights.

Article 44.

In the administrative proceedings for invalidation and revocation and the imposition of sanctions, the affected or potentially prejudiced party shall be informed so that, within a period of 30 working days following the notification, he may make such statement in writing as best suits his interests.

Article 45.

In administrative proceedings for the imposition of sanctions for the infringements provided for in this Law, the Secretariat may, in addition, adopt the following preventive measures:

- (i) It may order the withdrawal from circulation or prevent the circulation of plant varieties or propagating material in relation to which rights protected under this Law have been infringed;
- (ii) It may order the withdrawal from circulation of objects, packaging, containers, wrappers, paperwork, advertising copy and similar material with which any of the rights protected by this Law have been infringed;
- (iii) It may order the alleged infringer to suspend or discontinue acts constituting a violation of the provisions of this Law.

Where any of the above measures has been instituted, the affected and interested parties shall be notified, which fact shall be mentioned in the record that is taken for the purpose.

Where the plant variety or its propagating material is being traded, traders shall be under the obligation to abstain from disposing of it as from the date on which the decision is notified to them.

There shall be the same obligation on producers, nurserymen, manufacturers, importers and distributors, who shall be responsible for immediately recalling such plant varieties or propagating material as may be already on the market.

Article 46.

The Secretariat may order one of the preventive measures referred to in the foregoing Article at the request of the party concerned. To that end the petitioner shall prove that a violation of his rights is taking place or is imminent, that he is liable to suffer irreparable damage or that he has a well-founded fear that evidence may be destroyed, concealed, lost or altered; he shall also post a bond which shall conform to the provisions of the Regulations under this Law, and shall provide such information as may be asked of him and meet such requirements as are laid down in legal provisions.

The person against whom the preventive measure has been taken may post a counterbond as provided in the Regulations under this Law, to cover any damages that might be caused to the petitioner, with a view to having the said measure lifted.

Article 47.

The party requesting one of the preventive measures referred to in Article 42 [*sic – Tr.*]of his Law shall be liable for the payment of damages caused to the person against whom they were taken where:

- (i) the definitive finding on the substance of the dispute is that there has been no violation or threat of violation of the rights of the party requesting the measure;
- (ii) a provisional measure has been requested and the administrative procedure before the Secretariat on the substance of the dispute has not been initiated within a period of 20 days counted from the adoption of the measure.

Article 48.

The fate of bonded property, and all matters concerning the posting and application of bonds and counterbonds, shall conform to the provisions of the Regulations under this Law.

Article 49.

Where the Secretariat acts as arbitrator, an Arbitration Board shall be set up which shall be presided over by the holder of the position of Legal Adviser to the Secretariat itself.

Article 50.

The Arbitration Board shall act as amicable compositor, or alternatively as arbitrator in the strict sense of the Law, as agreed by the parties. It shall settle business in accordance with the provisions of this Law and the Regulations under it.

TITLE VI

CHAPTER I

INFRINGEMENTS

Article 51.

The Secretariat shall impose the following fines for the infringements specified below:

- (i) Alteration of the denomination of the protected plant variety without the authority of the Secretariat: 200 to 2,000 times the minimum daily wage.
- (ii) Presentation of oneself as the owner of a protected plant variety without being such owner: 500 to 3,000 times the minimum daily wage.
- (iii) Disclosure or marketing of a plant variety as being of foreign origin when it is not, or disclosure or marketing of a plant variety as being of national origin when it is not: 300 to 3,000 times the minimum daily wage.
- (iv) Opposition to inspection tours conducted in accordance with this Law: 300 to 3,000 times the minimum daily wage.
- (v) Commercial exploitation of the characteristics or content of a protected plant variety by attributing them to another plant variety that is not protected: 1,000 to 10,000 times the minimum daily wage.
- (vi) Non-compliance with or violation of the measures imposed under Article 45 of this Law: 1,000 to 10,000 times the minimum daily wage.

(vii) Use or exploitation of a protected plant variety or its propagating material for production, distribution or sale thereof without the authority of the owner: 2,000 to 10,000 times the minimum daily wage.

(viii) All other violations of the provisions of this Law and the Regulations under it: 200 to 5,000 times the minimum daily wage.

For the purposes of the foregoing, the reference shall be the minimum general wage payable in the country on the date of the infringement.

For the imposition of sanctions, the Secretariat shall have regard to the seriousness of the offense and also to the background, personal circumstances and socio-economic position of the infringer. In the event of a repeat offense, the applicable fine shall be up to twice the upper limit of the sanction otherwise applicable.

CHAPTER II

FINAL PROVISIONS

Article 52.

Until such time as the Executive enacts the Regulations under this Law, the relevant administrative and regulatory provisions of the Intellectual Property Law shall apply subsidiarily in so far as they do not conflict with this Law.

Article 53.

All other administrative provisions contrary to this Law are repealed.

Article 53.

Without prejudice to the provisions of Article 13(a), breeders' rights may likewise be granted for a variety that is already no longer new on the date of entry into force of this Law for the species concerned, on the following conditions:

- (a) The application must be filed within the year following the aforesaid date;
- (b) the variety must have been entered in the National Register of Varieties referred to in the Seeds Law, or been the subject of breeders' rights or an application for breeders' rights in a State or intergovernmental organization party to the International Convention for the Protection of New Varieties of Plants, provided that the application leads to the grant of breeders' rights.

Article 55.

The term of the breeders' rights granted under this Article shall be calculated from the date of registration mentioned or from the date of grant of breeders' rights.

Article 56.

Where breeders' rights have been granted under this Article, the owner shall grant licenses on reasonable terms to permit the continuation of any exploitation started in good faith by a third party prior to the filing of the application for the said rights.

Article 57.

The Directorate of Intellectual Property shall convey to the Secretariat, within the six months following the entry into force of this Law, the applications of breeders of new plant varieties in all genera and species that have been filed with it prior to the entry into force of this enactment.

Article 58.

Where applications for patents to protect plant varieties are pending under the Law on the Development and Protection of Industrial Property, the applicants may avail themselves of the advantages afforded by this enactment within six months following the entry into force thereof by written application to the Secretariat of Agriculture and Animal Husbandry.

Article 59.

Rights acquired under such patents as may have been granted shall be fully respected.

Article 60.

This Law shall enter into force on the day of its publication in the Official Journal *La Gaceta*.

[End of Annex and of document]