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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**  
GENÈVE

**CONSEIL**

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**Genève, 19 octobre 2006**

**EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI  
DE LA RÉPUBLIQUE DOMINICAINE SUR LA PROTECTION DES DROITS  
D'OBTENTEUR AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. Par une note verbale datée du 30 août 2006, la Mission permanente de la République dominicaine auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève a demandé l'examen du "projet de loi sur la protection des droits d'obtenteur" (ci-après dénommé "projet de loi") du point de vue de sa conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). Les traductions en français de la note verbale et en anglais du projet de loi réalisées par le Bureau de l'Union font l'objet des annexes I et II du présent document. La note verbale et le projet de loi en espagnol tels qu'ils ont été communiqués par le Gouvernement de la République dominicaine sont reproduits aux annexes I et II de la version espagnole du présent document.

2. La République dominicaine n'a pas signé l'Acte de 1991. En vertu de l'article 34.2) de cet acte, elle doit donc déposer un instrument d'adhésion pour devenir Partie contractante sur la base de l'Acte de 1991. Conformément à l'article 34.3) de cet acte, un instrument de ce type ne peut être déposé que si l'État en question a demandé l'avis du Conseil sur la conformité de sa législation avec les dispositions de l'Acte de 1991 et si la décision du Conseil faisant office d'avis est positive.

### Fondement de la protection des obtentions végétales en République dominicaine

3. En République dominicaine, la protection des obtentions végétales sera régie par le projet de loi lorsque celui-ci aura été adopté. On trouvera ci-après une analyse de ce projet de loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

#### Article premier de l'Acte de 1991 : Définitions

4. L'article 3 du projet de loi contient les définitions des termes pertinents employés dans celui-ci. En particulier, la définition de la "variété" est conforme à la définition figurant à l'article 1.vi) de l'Acte de 1991. La définition du terme "obtenteur" est aussi conforme à la définition figurant à l'article 1.iv) de l'Acte de 1991.

#### Article 2 de l'Acte de 1991 : Obligation fondamentale des Parties contractantes

5. L'article 4 du projet de loi prévoit que le "*Secretaría de Estado de Agricultura*" (Ministère de l'agriculture) "octroie et protège les droits d'obtenteur conformément à la présente loi" et à la Convention UPOV; cette disposition satisfait à l'obligation fondamentale prévue à l'article 2 de l'Acte de 1991.

#### Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

6. L'article 5 du projet de loi dispose que "tous les genres et espèces végétaux sont protégés par la présente loi". Cette disposition est conforme à l'article 3.2)ii) de l'Acte de 1991. Il convient de noter que, conformément à l'article 36.1)ii) de l'Acte de 1991, lorsqu'elle déposera son instrument d'adhésion, la République dominicaine devra notifier dans une déclaration que la loi s'applique à tous les genres et espèces végétaux.

#### Article 4 de l'Acte de 1991 : Traitement national

7. L'article 6 du projet de loi contient des dispositions relatives au traitement national et au principe de réciprocité qui satisfont aux exigences de l'article 4 de l'Acte de 1991.

#### Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

8. Les articles 7 à 11 du projet de loi énoncent les conditions de la protection conformément aux dispositions des articles 5 à 9 de l'Acte de 1991.

9. L'alinéa 1 de l'article 8 du projet de loi prévoit un régime de nouveauté transitoire pour les variétés de création récente, conformément à l'article 6.2) de l'Acte de 1991.

10. Il convient de noter que, conformément à l'article 7 de l'Acte de 1991, le dépôt, *dans tout pays*, d'une demande d'octroi d'un droit d'obtenteur pour une autre variété ou d'inscription d'une autre variété sur un registre officiel de variétés est réputé rendre cette

variété notoirement connue. Il est recommandé d'insérer les termes "dans tout pays" après les termes "registre officiel de variétés" dans le projet de loi ou son règlement d'exécution afin de faciliter l'interprétation de la notion de notoriété.

#### Article 10 de l'Acte de 1991 : Dépôt de demandes

11. L'article 12 du projet de loi traite du dépôt de demandes. Le projet de loi ne contient aucune disposition contraire à l'article 10 de l'Acte de 1991.

#### Article 11 de l'Acte de 1991 : Droit de priorité

12. L'article 13 du projet de loi contient des dispositions relatives au droit de priorité qui sont conformes à l'article 11 de l'Acte de 1991.

#### Article 12 de l'Acte de 1991 : Examen de la demande

13. L'article 14 du projet de loi incorpore les dispositions essentielles de l'article 12 de l'Acte de 1991.

#### Article 13 de l'Acte de 1991 : Protection provisoire

14. L'article 15 du projet de loi contient des dispositions sur la protection provisoire qui sont conformes à l'article 13 de l'Acte de 1991.

#### Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

15. Les articles 16 et 17 du projet de loi confèrent au droit d'obtenteur une portée conforme à celle prévue à l'article 14 de l'Acte de 1991. L'alinéa II de l'article 16 du projet de loi prévoit également la protection facultative envisagée à l'article 14.3) de l'Acte de 1991 concernant les "actes à l'égard de certains produits".

#### Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

16. L'article 18 du projet de loi contient des dispositions relatives aux exceptions au droit d'obtenteur qui sont conformes à l'article 15 de l'Acte de 1991.

17. L'alinéa unique de l'article 18 du projet de loi prévoit l'exception facultative envisagée à l'article 15.2) de l'Acte de 1991 dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes de l'obtenteur. En outre, les variétés fruitières, ornementales et forestières sont exclues de cette exception.

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

18. L'article 19 du projet de loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui sont conformes à l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

19. Les articles 20 à 22 du projet de loi contiennent des dispositions relatives à la limitation de l'exercice du droit d'obtenteur pour des raisons d'intérêt public qui sont conformes à l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

20. L'article 23 du projet de loi reprend les principes de l'article 18 de l'Acte de 1991. En outre, le projet de loi ne semble pas contenir par ailleurs de dispositions contraires à l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

21. L'article 24 du projet de loi contient des dispositions relatives à la durée du droit d'obtenteur qui sont conformes à l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination de la variété

22. Les articles 25 à 32 du projet de loi contiennent des dispositions sur les dénominations variétales qui sont conformes à l'article 20 de l'Acte de 1991. Il convient de noter que le terme "*Estado miembro de UPOV*" (État membre de l'UPOV) figurant à l'article 26.b) du projet de loi doit être interprété comme désignant un membre de l'UPOV.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

23. L'article 33 du projet de loi contient des dispositions relatives à la nullité du droit d'obtenteur qui sont conformes à l'article 21 de l'Acte de 1991.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

24. L'article 34 du projet de loi contient des dispositions sur la déchéance du droit d'obtenteur qui sont conformes à l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la convention

25. Les articles 47 à 50 du projet de loi traitent des mesures et recours prévus au civil et au pénal pour la défense des droits d'obteneur. Ils prévoient notamment des mesures conservatoires et des mesures à la frontière, ainsi que des dispositions particulières en cas de non-respect ou d'utilisation abusive d'une dénomination variétale. Le projet de loi satisfait à l'obligation visée à l'article 30.1)i) de l'Acte de 1991.

26. Les articles 3, 35 et 44 du projet de loi prévoient que "*la Oficina de Registro de Variedades y de Protección de los Derechos de Obtentor de la Secretaría de Estado de Agricultura*" (le Service d'enregistrement des variétés et de protection des droits d'obteneur du Ministère de l'agriculture) est le service chargé de l'application et de l'administration de la loi, ainsi que de l'octroi des droits d'obteneur. Le projet de loi satisfait donc à l'obligation visée à l'article 30.1)ii) de l'Acte de 1991.

27. En ce qui concerne l'obligation de veiller à ce que le public obtienne par une publication périodique des renseignements sur les demandes de droits d'obteneur et les droits d'obteneur octroyés, ainsi que sur les dénominations proposées et approuvées, les articles 51 à 53 du projet de loi contiennent des dispositions relatives au Bulletin officiel et aux exigences de publication qui satisfont aux obligations visées à l'article 30.1)iii) de l'Acte de 1991.

Conclusion générale

28. De l'avis du Bureau de l'Union, le projet de loi incorpore en substance l'Acte de 1991 et, dès lors que celui-ci aura été adopté sans modification quant au fond, la loi permettra à la République dominicaine de "donner effet" aux dispositions de l'Acte de 1991, ainsi qu'il est prévu à l'article 30.2).

29. *Le Conseil est invité à :*

a) *prendre note des renseignements ci-dessus;*

b) *prendre, quant à la conformité du projet de loi de la République dominicaine sur les droits d'obteneur avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, une décision positive, conformément à l'article 34.3) de cet acte, qui permette à la République dominicaine de déposer son instrument d'adhésion dès lors que le projet de loi aura été adopté et la loi sera entrée en vigueur; et*

*c) autoriser le Secrétaire général à  
informer le Gouvernement de la République  
dominicaine de cette décision.*

[Les annexes suivent]

## ANNEXE I

**Traduction d'une note verbale datée du 30 août 2006 (référence MPRD/06-262)**

**adressée par :** Mission permanente de la République dominicaine  
auprès de l'Office des Nations Unies à Genève

**à :** Union internationale pour la protection  
des obtentions végétales (UPOV)

La Mission permanente de la République dominicaine auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève présente ses compliments au Secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV), M. Kamil Idris, et a l'honneur de l'informer que le projet de loi de la République dominicaine pour la protection des droits d'obtenteur a été soumis au Congrès national pour approbation.

La République dominicaine a l'intention d'adhérer à la Convention internationale pour la protection des obtentions végétales (Convention UPOV du 19 mars 1991). À cet effet, en vertu de l'article 34.3 de la Convention UPOV, le Gouvernement de la République dominicaine demande l'avis du Conseil de l'UPOV sur la conformité du projet de loi annexé à la présente note verbale avec les dispositions de la Convention UPOV.

La Mission permanente de la République dominicaine saisit cette occasion pour réaffirmer à M. Kamil Idris les assurances de sa très haute considération.

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **CHAPTER II GENERAL OBLIGATIONS**

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

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

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

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

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

**TITLE II  
BREEDER'S RIGHT**

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

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

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

**Article 8. Criteria of novelty.** The variety shall be deemed new if, at the date of filing of the application for a breeder's right, plant propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:

- (i) in the national territory, provided that the application has been filed earlier than one year before that date, and
- (ii) in another territory, earlier than four years or, in the case of trees and vines, earlier than six years before that date.

**Paragraph 1.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Paragraph I.** With respect to the acts relating to harvested material and subject to Articles 18 and 19, the acts referred to in items (i) to (vii) of paragraph (a) in respect of harvested material, including entire plants and parts of plants, obtained by unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

**Paragraph II.** With respect to acts relating to certain products and subject to Articles 18 and 19, the acts referred to in items (i) to (vii) of paragraph (a) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

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

- (i) essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) which are not clearly distinguishable in accordance with Article 9 from the protected variety, and
- (iii) whose production requires the repeated use of the protected variety.

**Paragraph I.** A variety shall be deemed to be essentially derived from another variety (“the initial variety”), when:

- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- (ii) it is clearly distinguishable from the initial variety, and
- (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

**Paragraph II.** Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

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

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

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

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

- (a) further propagation of the variety in question;
- (b) an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) it is established that the conditions laid down in Articles 10 and 11 are no longer fulfilled.
- (b) within a prescribed period and after being requested to do so:
  - (i) the breeder does not provide the Office for Registration of Varieties and Protection of Breeder's Rights of the SEA with the information, documents or material deemed necessary for verifying the maintenance of the variety.
  - (ii) the breeder fails to pay such fees as may be payable to keep his right in force, or
  - (iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

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

### TITLE III

## ORGANIZATION AND PROCEDURE

### CHAPTER I

## ORGANIZATION, POWERS AND GENERAL OPERATING STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER II

### VALIDITY OF THE BREEDER'S RIGHT

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

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

## CHAPTER III

### INFRINGEMENT OF THE BREEDER'S RIGHT

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

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER IV

### PUBLICATIONS

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

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

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

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

## TITLE VI

### FINAL PROVISIONS AND TRANSITIONAL CLAUSES FINAL PROVISIONS

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

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



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

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

[Fin de l'annexe II et du document]