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UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES
GENÈVE

CONSEIL

Quarante-troisième session ordinaire
Genève, 22 octobre 2009

**EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI N° 4013
SUR LA PROTECTION DES OBTENTIONS VÉGÉTALES DE LA RÉPUBLIQUE
DU GUATEMALA AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

Document établi par le Bureau de l'Union

Introduction

1. Par une lettre datée du 10 septembre 2009, S. E. M. Lars Pira, vice-ministre des affaires étrangères du Gouvernement de la République du Guatemala (ci-après dénommé "Guatemala"), a demandé l'examen du "projet de loi N° 4013 sur la protection des obtentions végétales" (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 lettre 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 lettre et le projet de loi en espagnol tels qu'ils ont été communiqués par le Gouvernement guatémaltèque sont reproduits dans les annexes I et II de la version espagnole du document C/43/15.

2. L'article 34.3) de l'Acte de 1991 dispose que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de sa législation avec les dispositions de la présente Convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé".

3. Le Gouvernement du Guatemala a déjà entamé la procédure pour devenir membre de l'UPOV, par une lettre datée du 20 septembre 2006, dans laquelle S. E. M. Bernardo López Figueroa, ministre de l'agriculture, de l'élevage et de l'alimentation du Gouvernement du Guatemala, demandait l'examen du projet de loi de 2006 sur la protection des obtentions végétales du point de vue de sa conformité avec l'Acte de 1991.

4. À sa quarantième session ordinaire, tenue le 19 octobre 2006, le Conseil a décidé

“a) de prendre note des renseignements figurant dans le document C/40/15, tel qu'il a été modifié par le Conseil;

“b) de rendre une décision positive, sous réserve de l'incorporation dans l'article 16.2) du projet de loi du membre de phrase “dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes de l'obteneur” après le terme “using”, quant à la conformité du projet de loi sur la protection des obtentions végétales avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, conformément à l'article 34.3) de cet acte, ce qui permettra à la République du Guatemala de déposer son instrument d'adhésion dès lors que le projet de loi aura été promulgué et la loi sera entrée en vigueur; et

“c) d'autoriser le secrétaire général à informer le Gouvernement du Guatemala de cette décision.”

5. Le 26 mars 2009, le Bureau de l'Union a été informé que le projet de loi de 2006 sur la protection des obtentions végétales ayant fondé la décision positive prise en 2006 par le Conseil concernant l'adhésion à l'Acte de 1991 n'était plus pertinent et que le Gouvernement élaborait un autre projet de loi.

6. Le 5 mai 2009, à la demande du Gouvernement du Guatemala, le Bureau de l'Union a formulé des observations sur une nouvelle version du projet de loi et informé les autorités concernées que cette nouvelle version du projet de loi ou la loi adoptée devrait être soumise au Conseil pour examen de sa conformité avec l'Acte de 1991. Pour ce motif, et en application de l'article 34.3) de l'Acte de 1991, le Gouvernement du Guatemala a déposé une nouvelle demande (voir le paragraphe 1 du présent document) pour solliciter l'avis du Conseil quant à la conformité du projet de loi n° 4013 de 2009 (voir l'annexe II du présent document) avec l'Acte de 1991.

Fondement de la protection des obtentions végétales au Guatemala

7. Au Guatemala, la protection des obtentions végétales 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

8. L'article 3 du projet de loi contient des définitions conformes aux définitions correspondantes figurant dans l'article premier de l'Acte de 1991.

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

9. L'article premier du projet de loi dispose : "cette loi a pour objet d'octroyer des droits des obtenteurs et de les protéger par la délivrance d'un titre de protection", ce qui est conforme 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

10. L'article 4 du projet de loi se lit comme suit :

"Article 4.– Genres et espèces devant être protégés

"La présente loi sera initialement appliquée à 15 genres ou espèces végétaux au moins énumérés dans le règlement respectif. Elle sera ensuite appliquée à tous les genres et espèces végétaux au plus tard dix ans après son entrée en vigueur".

11. Les dispositions de l'article 4 du projet de loi sont conformes aux obligations énoncées à l'article 3.2) de l'Acte de 1991.

Article 4 de l'Acte de 1991 : Traitement national

12. L'article 5 du projet de loi se lit comme suit :

"Article 5.– Nationalité, domicile et siège

"Les droits prévus par la présente loi sont acquis :

"a) aux ressortissants de la République du Guatemala, c'est-à-dire, les citoyens guatémaltèques de naissance et naturalisés, et à toutes les personnes qui ont leur domicile ou siège dans ce pays;

"b) lorsque le Guatemala sera partie à une convention internationale ayant rapport à l'octroi d'une protection pour les variétés végétales, il offrira aux ressortissants des parties contractantes à ladite convention ainsi qu'aux personnes qui ont leur domicile ou siège dans l'une de ces parties contractantes les droits prévus par la présente loi."

13. Les dispositions de l'article 5.b) du projet de loi sont conformes aux obligations 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

14. Les articles 7 à 11 du projet de loi contiennent des dispositions sur les conditions de protection qui sont conformes aux dispositions des articles 5 à 9 de l'Acte de 1991.

15. L'article 51 du projet de loi instaure un régime de nouveauté transitoire pour les "variétés de création récente" sur la base de l'article 6.2) de l'Acte de 1991. L'article 51 du projet de loi prévoit ce qui suit :

"Article 51.— Protection des variétés connues

"Sans préjudice des dispositions de l'article 7 de la présente loi, le droit d'obtenteur peut également être accordé pour une variété même si celle-ci n'est plus nouvelle à la date d'entrée en vigueur de la loi en ce qui concerne l'espèce examinée, aux conditions suivantes :

"a. la demande doit être présentée dans l'année qui suit la date susmentionnée; et

"b. la variété doit :

"i. avoir été inscrite au Registre des variétés commerciales pour sa commercialisation ou dans un registre de variétés tenue par une association professionnelle et admis aux fins du présent article par l'organisme compétent;

"ii. avoir fait l'objet d'un droit d'obtenteur dans une Partie contractante, ou d'une demande de droit d'obtenteur dans une Partie contractante, à condition que celle-ci aboutisse par la suite à l'octroi du droit; ou,

"iii. avoir fait l'objet faire l'objet de pièces établissant à la satisfaction de l'organisme compétent la date à laquelle la variété a cessé d'être nouvelle selon les dispositions de l'article 7 de la présente loi;

"c. lorsqu'un droit d'obtenteur a été octroyé en application du présent article, son détenteur sera tenu d'accorder des licences, à des conditions raisonnables, pour permettre la poursuite de toute exploitation commencée de bonne foi par une autre partie avant le dépôt de la demande correspondante.

"La durée du droit d'obtenteur octroyé en application du présent article est calculée à compter de la date de l'inscription visée à l'alinéa b)i), de la date d'octroi du droit d'obtenteur visée à l'alinéa b)ii) ou de la date visée à l'alinéa b)iii) ci-dessus, à laquelle la variété a cessé d'être nouvelle. Le cas échéant, la date la plus ancienne est retenue."

16. Il est recommandé de modifier le renvoi figurant à l'alinéa 1 de l'article 51 du projet de loi en remplaçant "article 7" par "article 8".

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

17. Les articles 33 et 35 du projet de loi contiennent des dispositions relatives au dépôt de demandes. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 10 de l'Acte de 1991.

18. Il est recommandé de modifier le renvoi figurant à l'alinéa 1 de l'article 35 du projet de loi en remplaçant "article 34" par "article 33".

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

19. L'article 34 du projet de loi contient des dispositions sur le droit de priorité qui sont conformes aux dispositions de l'article 11 de l'Acte de 1991.

20. Il est recommandé de modifier le renvoi figurant à l'alinéa 4 de l'article 34 du projet de loi en remplaçant "article 36.4)" par "article 35.3)".

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

21. Les articles 36 à 38 et 50 du projet de loi contiennent des dispositions relatives à l'examen de la demande qui sont conformes aux dispositions de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

22. Les alinéas 2 et 3 de l'article 19 du projet de loi contiennent des dispositions sur la protection provisoire qui sont conformes aux dispositions de l'article 13 de l'Acte de 1991.

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

23. L'article 15 du projet de loi contient des dispositions sur l'étendue du droit de l'obtenteur qui sont conformes aux dispositions de l'article 14 de l'Acte de 1991. L'alinéa 2.2) de l'article 15 du projet de loi contient des dispositions qui sont conformes aux dispositions facultatives dénommées "Actes à l'égard de certains produits" de l'article 14.3) de l'Acte de 1991.

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

24. L'alinéa 1 de l'article 16 du projet de loi contient des dispositions relatives aux exceptions au droit d'obtenteur qui sont conformes aux dispositions de l'article 15.1) de l'Acte de 1991.

25. Les alinéas 2 et 3 de l'article 16 du projet de loi contiennent les dispositions ci-après sur l'exception facultative énoncée à l'article 15.2) de l'Acte de 1991 :

"Article 16

"Exceptions au droit d'obtenteur

"[...]

"Le droit d'obtenteur n'est pas considéré comme violé si les agriculteurs, dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes de l'obtenteur, utilisent à des fins de reproduction ou de multiplication, sur leur propre exploitation, le produit de la récolte qu'ils ont obtenu par la mise en culture, sur leur propre exploitation, d'une variété protégée ou d'une variété qui est essentiellement dérivée ou qui n'est pas nettement distincte. "

"Les dispositions de l'alinéa 2 du présent article ne s'appliquent pas à l'utilisation du matériel de reproduction ou de propagation, y compris les plantes entières et les parties de plantes, des espèces fruitières, ornementales et forestières. "

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

26. L'article 17 du projet de loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui sont conformes aux dispositions de l'article 16 de l'Acte de 1991.

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

27. L'article 22 du projet de loi contient des dispositions sur la limitation de l'exercice du droit d'obtenteur qui sont conformes aux dispositions de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

28. L'article 20 du projet de loi dispose ce qui suit :

“Article 18

“Réglementation économique

“Le droit d'obtenteur est indépendant des mesures adoptées par l'État en vue de réglementer la production, le contrôle et la commercialisation du matériel des variétés ou l'importation et l'exportation de ce matériel.”

29. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 10 de l'Acte de 1991.

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

30. L'alinéa 1 de l'article 19 du projet de loi contient des dispositions relatives à la durée du droit d'obtenteur qui sont conformes aux dispositions de l'article 19 de l'Acte de 1991.

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

31. Les articles 43 à 46 du projet de loi contiennent des dispositions sur la dénomination de la variété qui sont conformes aux dispositions de l'article 20 de l'Acte de 1991.

32. Il est recommandé de modifier le renvoi figurant à l'alinéa 1.a) de l'article 44 du projet de loi en remplaçant “article 44” par “article 43”, à l'alinéa 3 de l'article 45 et à l'alinéa 1.a) de l'article 46 du projet de loi en remplaçant “article 45” par “article 44”.

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

33. L'article 24 du projet de loi contient des dispositions sur la nullité du droit d'obtenteur qui sont conformes aux dispositions de l'article 21 de l'Acte de 1991.

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

34. L'article 25 du projet de loi contient des dispositions sur la déchéance de l'obtenteur qui sont conformes aux dispositions de l'article 22 de l'Acte de 1991.

35. Il est recommandé de modifier le renvoi figurant à l'alinéa 2.c) de l'article 25 du projet de loi en remplaçant "article 47" par "article 44".

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

36. En ce qui concerne l'obligation de "prévoir[r] les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), l'article 48 et l'article 49 du projet de loi disposent ce qui suit :

"Article 48.– Recours légaux

"Quiconque

"a. accomplit, sans y être autorisé, des actes qui requièrent l'autorisation du titulaire en vertu de l'article 15 de la présente loi;

"b. utilise une désignation en violation de l'article 44 de la présente loi; et,

"c. omet d'utiliser une dénomination variétale en violation de l'article 44 de la présente loi;

"peut être poursuivi par le titulaire ou par le titulaire d'une licence exclusive, et toute réparation sera applicable comme dans toute poursuite correspondante entreprise du fait de la violation d'un autre droit de propriété.

"Sous réserve du contenu de la présente loi, les dispositions applicables à l'exercice des droits conférés par un brevet sont applicables par analogie à l'exercice des droits conférés par un droit d'obtenteur.

"Une partie qui accomplit des actes requérant l'autorisation du titulaire en vertu de l'article 15 de la présente loi ou qui, de quelque manière que ce soit, porte atteinte aux droits conférés à l'obtenteur par la présente loi sera obligé de payer des dommages-intérêts. Lors du calcul de ces dommages-intérêts, le service compétent peut prendre en considération l'un quelconque des éléments suivants :

"a. la valeur des avantages obtenus par le défendeur par suite des actes illicites;

"b. le manque à gagner subi par l'obtenteur en raison des actes illicites; ou

"c. le prix que l'auteur de l'atteinte aurait payé à l'obtenteur au titre d'une licence contractuelle aux conditions de l'utilisation légitime de l'obtention végétale.

“Article 49.– Sanctions pénales

“Quiconque

“a. produit du matériel d’une variété protégée par l’article 15 de la présente loi ou visée à cet article, sans l’autorisation du titulaire du droit d’obtenteur;

“b. commercialise du matériel d’une variété protégée en sachant que ce matériel a été obtenu en violation des droits du titulaire du droit d’obtenteur;

“c. conclut des contrats en vue de transporter le matériel de reproduction ou de multiplication d’une variété protégée vers un territoire situé hors du champ d’application de la présente loi, sans avoir obtenu une autorisation spéciale du titulaire du droit;

“est réputé avoir porté atteinte au droit d’obtenteur, ce qui, sans préjudice de la responsabilité civile correspondante, est passible d’une peine d’un à quatre ans d’emprisonnement et d’une amende de 1000 à 10 000 quetzales.

“Sous réserve des dispositions de la présente loi, les dispositions applicables à l’exercice des droits conférés par un brevet sont applicables par analogie à l’exercice des droits conférés par un droit d’obtenteur.

“Une partie qui accomplit des actes requérant l’autorisation du titulaire en vertu de l’article 15 de la présente loi ou qui, de quelque manière que ce soit, porte atteinte aux droits conférés à l’obtenteur par la présente loi sera obligé de payer des dommages-intérêts. Lors du calcul de ces dommages-intérêts, le service compétent peut prendre en considération les dispositions de l’article 48 de la présente loi.

“À la demande du titulaire, le juge peut, au moyen de procédures accessoires, surseoir à la poursuite des actes en question, et prendre tout autre mesure applicable prévue par le droit commun. Le juge peut ordonner des mesures préventives immédiates si le titulaire justifie sa demande par des pièces établissant l’atteinte ou l’atteinte imminente, à condition qu’il offre des garanties suffisantes.”

37. Il est recommandé de modifier le renvoi figurant à l’alinéa 1.b) et c) de l’article 48 du projet de loi en remplaçant “article 44” par “article 43”.

38. En ce qui concerne l’obligation visée à l’article 30.1)ii) de l’Acte de 1991, l’alinéa 1 de l’article 41 du projet de loi dispose ce qui suit :

“Article 41

“Octroi du droit d’obtenteur

“L’organisme compétent [Division phytozoogénétique] octroie le droit d’obtenteur lorsque, à la suite de l’examen technique de la variété, il est établi que la variété satisfait les conditions énoncées à l’article 7 et le déposant remplit les autres obligations de la présente loi.”

39. L’article 31 du projet de loi reprend à l’obligation de publier les renseignements sur les demandes de droits d’obtenteur, les droits d’obtenteur délivrés et les dénominations proposées et approuvées, telle qu’elle est énoncée à l’article 30.1)iii) de l’Acte de 1991.

Conclusion générale

40. De l'avis du Bureau de l'Union, le projet de loi contient les dispositions de fond de l'Acte de 1991. Ainsi, une fois que les modifications recommandées dans le présent document en ce qui concerne la correction des renvois seront incorporées au projet de loi, que ce dernier aura été adopté et que la loi sera entrée en vigueur, le Guatemala sera en mesure de "donner effet" aux dispositions de l'Acte de 1991, ainsi qu'il est prévu à l'article 30.2).

41. *Le Conseil est invité :*

a) *à prendre note de l'analyse faite dans le présent document;*

b) *sous réserve de l'incorporation dans le projet de loi des modifications établies dans le présent document en ce qui concerne la correction des renvois, à rendre une décision positive quant à la conformité du projet de loi du Guatemala n° 4013 de 2009 sur la protection des obtentions végétales avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, qui permette au Guatemala de déposer son instrument d'adhésion à l'Acte de 1991, après que les modifications recommandées dans le présent document en ce qui concerne la correction des renvois auront été incorporées dans le projet de loi, que celui-ci aura été adopté et que la loi sera entrée en vigueur; et*

c) *à autoriser le secrétaire général à informer le Gouvernement du Guatemala de cette décision.*

[Les annexes suivent]

ANNEXE I

Traduction d'une lettre datée du 10 septembre 2009

adressée par : M. Lars Pira
Vice-ministre guatémaltèque des affaires étrangères

à : M. Francis Gurry
Secrétaire général de l'Union internationale pour la protection
des obtentions végétales

Monsieur le Secrétaire général,

J'ai l'honneur de me référer à la procédure d'adhésion de la République du Guatemala à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991.

À ce titre, j'ai le plaisir de vous informer que le 11 juin 2009, la Commission du Congrès de la République du Guatemala chargée de l'économie et du commerce extérieur a émis un avis favorable au sujet du projet de loi n° 4013, intitulé "Loi de protection des obtentions végétales", devant être examiné et approuvé par le Congrès en séance plénière.

Avant d'engager la procédure susmentionnée, le Gouvernement de la République du Guatemala, en vertu de l'article 34.3) de la Convention internationale pour la protection des obtentions végétales, souhaiterait demander à Votre Excellence de transmettre le projet de loi n° 4013, intitulé "Loi de protection des obtentions végétales", au Conseil de l'Union internationale pour la protection des obtentions végétales (UPOV) afin qu'il émette un avis sur la conformité de ce projet de loi avec les dispositions de la Convention UPOV.

Veuillez agréer, Monsieur le Secrétaire général, l'assurance de ma très haute considération.

(Signé :
Lars Pira
Vice-Ministre)

S.E. M. Francis Gurry
Secrétaire général
Union internationale pour la protection des obtentions végétales (UPOV)
34, chemin des Colombettes
CH-1211 Genève 20

Pièce jointe: copie du projet de loi n° 4013, intitulé "Loi de protection des obtentions végétales"

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[in English / en anglais / auf Englisch / en Inglés]

**DRAFT LAW No. 4013 ON THE PROTECTION OF
NEW VARIETIES OF PLANTS OF 2009**

Article 1.- Purpose. The purpose of this Law shall be to recognize and protect the rights of breeders of new plant varieties, protected by a plant protection title.

Article 2.- Scope of Application. This Law shall be enforceable throughout the territory of the Republic of Guatemala.

Article 3.- Definitions. For the purposes of this Law, the following shall mean:

Area: Plant and Animal Breeding Area (hereinafter Area) of the Unit of Norms and Regulations of the Ministry of Agriculture, Livestock and Food.

MAGA: Ministry of Agriculture, Livestock and Food,

Breeder: A natural person or a legal entity who has bred, discovered and developed a variety; the person who is the employer of the aforementioned person or who has commissioned the latter's work, unless otherwise agreed, or the successor in title of the first or second aforementioned person, as the case may be.

Right of priority: The right of the person applying for the breeder's right to file an application for the grant of the breeder's right for the same plant variety who can claim priority based on a prior application for registration, submitted in due form in a State or intergovernmental organization that is a party to a treaty or convention by which Guatemala is bound, for a period of no more than 12 months from the date of filing of the first application.

Regulations: Regulations issued by the Executive Enabling Authority for the Protection of New Plant Varieties.

Variety: A plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be:

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

Article 4.- Genera and Species to be Protected. This Law shall initially be applied to at least 15 plant genera or species listed in the respective regulations. It shall subsequently be applied to all plant genera and species at the latest ten years after the entry into force of this Law.

Article 5.- Nationality, Place of Residence and Registered Office. The following shall benefit from the rights laid down by this Law:

- (a) Nationals of the Republic of Guatemala, that is, natural and naturalized Guatemalans, and all persons having their place of residence or business in the country;
- (b) When Guatemala is a party to an international agreement relating to the granting of protection for plant varieties, it shall offer the nationals and persons having their place of residence or business in parties who are members of the agreement the same rights laid down in this Law.

Article 6.- Agent or Legal Representative. To be a party to a procedure in conformity with this Law and assert rights deriving therefrom, the agent or legal representative shall be resident in Guatemala.

Article 7.- Conditions of Protection. The breeder's right shall be granted where the variety is:

- (a) new;
- (b) distinct;
- (c) uniform;
- (d) stable, and
- (e) the applicant complies with the formalities established by this Law before the authority with whom the application has been filed; the variety shall be designated by a denomination in accordance with Article 44 of this Law; and the applicant shall pay the required fees. The grant of breeder's right shall not be subject to any further or different conditions from those mentioned above.

Article 8.- Novelty. A variety shall be deemed to be new if, at the date of filing of the application or at the priority date, 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,

- a. in the territory of Guatemala earlier than one year before the date of filing; and,
- b. in a territory other than that of Guatemala earlier than four years or, in the case of trees or vines, earlier than six years.

Novelty shall not be lost as a result of any sale or disposal to others:

1. that is the result of an abuse to the detriment of the breeder or his beneficiary or successor in title;
2. that forms part of an agreement for the transfer of the rights in the variety;
3. that forms part of an agreement under which another person has increased propagating material of the variety concerned, on behalf of the breeder or his beneficiary or successor in title, provided that the property in the propagated material reverts to the breeder or his beneficiary or successor in title and provided that the propagated material is not used for the production of another variety;
4. that forms part of an agreement under which another person undertakes field tests or laboratory trials, or small-scale processing trials, with a view to evaluating the variety;
5. that forms part of the fulfilment of a statutory or administrative obligation, in particular concerning biological security or the entry of varieties in an official catalogue of varieties accepted for trade;
6. that involves harvested material which constitutes a surplus product of the creation of the variety or of the activities referred to in (c) to (e) of this Article, provided that the said material is sold or disposed of anonymously, without any variety identification, for purposes of consumption.

Article 9.- Distinctness.

A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the application, or the applicable date of any priority claim.

The filing in any country of an application for the grant of a right for another variety or for the entry of the variety in an official register of cultivars shall make the said variety a matter of common knowledge as from that date insofar as the act concerned leads to the grant of a right or the entry of the other variety in the official register of cultivars, as the case may be.

Knowledge of the existence of the said other variety may be established by various references, such as commercial exploitation of the variety which is already under way, entry of the variety in a register of varieties maintained by a recognized professional association, or the presence of the variety in a reference collection.

Article 10.- Uniformity. A variety shall be deemed to be uniform if it is sufficiently uniform in its essential characteristics, due account being taken of the variations that may be expected from the manner of its reproduction or propagation.

Article 11.- Stability. A variety shall be deemed to be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of propagation or reproduction.

Article 12.- Principles. The breeder shall be entitled to apply for a breeder's right; where two or more persons have bred, or discovered and developed, a variety jointly, entitlement to protection shall be vested in them jointly, unless the joint breeders agree otherwise.

If they file the application as joint breeders, they shall be entitled to equal shares of protection. The breeder's right shall be transferable by any title whatsoever.

Article 13.- Presumption of Title. An applicant shall be deemed to be the holder of the right to protection. If the application is filed by a beneficiary or successor in title, it shall be accompanied by the act under which the right to breed the plant variety was acquired.

Article 14.- Judicial Assignment of an Application for a Breeder's Right. Where an application for a breeder's right has been filed by a person not entitled to protection, the entitled person may bring an action for the assignment to him of the application or, if already granted, of the breeder's right.

Such action shall be barred after five years following publication in the Official Gazette of the grant of the breeder's right. An action brought against a defendant who has acted in bad faith shall not be subject to any limitation.

When the action succeeds, any rights granted by the defendant to persons on the basis of the application or, where relevant, the breeder's right, shall become null and void. However, the holder of any exploitation right acquired in good faith who has taken genuine and effective measures with a view to exercising his rights before the date of notification of the action or, failing such notification, of the final decision, may perform or continue to perform the acts of exploitation resulting from the measures taken, subject to payment of equitable remuneration to the entitled person.

Article 15. Scope of the Breeder's Right. The following acts in respect of the propagating material of the protected variety shall require the authorization of the holder, subject to provisions covering exceptions to the right and its exhaustion:

- a. production or reproduction;
- b. conditioning for the purposes of propagation;
- c. offering for sale;
- d. selling or other marketing;
- e. exporting;
- f. importing; or,
- g. stocking for any of the purposes mentioned in (a) to (f) above.

The breeder may make any authorization granted subject to conditions and limitations.

Subject to the provisions relating to exceptions to and the exhaustion of the breeder's right, the acts referred to in the previous paragraph shall require the authorization of the breeder:

1. in respect of harvested material, including whole plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material; and,
2. in respect of products made directly from harvested material of the protected variety falling within the provisions of subparagraph (1) above through the unauthorized use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

The provisions of paragraphs 1 and 2 shall apply to the following:

- I. varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- II. varieties which are not clearly distinguishable from the protected variety in accordance with Article 9 of this Law; and,
- III. varieties whose production requires the repeated use of the protected variety.

For the purposes of subparagraph (i) above, a variety shall be deemed to be essentially derived from another variety ("the initial variety"), when:

- i. it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- ii. it is clearly distinguishable from the initial variety; and,
- iii. except for the differences 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.

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 16.- Exceptions to the Breeder's Right.

1. The breeder's right shall not extend to:

- (a) acts performed privately and for non-commercial purposes;
- (b) acts performed for experimental purposes; and,
- (c) acts performed for the purpose of breeding other varieties, and, except where the provisions of paragraph 3 of Article 15 apply, acts referred to in paragraphs 1 and 2 of Article 15 in respect of such other varieties.

The breeder's right shall not be deemed to be infringed if farmers, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or one which is essentially derived or not clearly distinguishable.

The provisions of paragraph 2 of this Article shall not apply to the use of reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental or forest species.

Article 17.- Exhaustion of the Breeder's Right. The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of paragraph 3 of Article 15, which has been sold or otherwise marketed by the breeder or with his consent in the territory of Guatemala, unless such acts:

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

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

- 1. propagating material of any kind;
- 2. harvested material, including whole plants and parts of plants; and,
- 3. any product made directly from the harvested material.

Article 18.- Measures Regulating Commerce. The breeder's right shall be independent of any measure taken by the State to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material.

Article 19.- Duration of the Breeder's Right. The breeder's right shall be valid for twenty-five (25) years for trees and vines and for twenty (20) years for other plants. In all cases, the duration shall be computed from the date of grant of protection to the year of expiration.

The applicant shall enjoy all of the rights provided for by this Law, starting from the date of filing of the application solely on a provisional basis while the application is being processed.

To ensure enforceability against others, applicants shall record, in all of their proceedings with others, that the use of their rights enjoys provisional protection during the period running from the filing of the application and the granting of the right.

Article 20.- Assignment of Property. As the breeder's right is a subject which concerns intellectual property, the general legal norms of legislation governing the subject shall apply, unless otherwise stipulated in this Law.

Such rights may be subject to assignment by one or more beneficiaries or successors in title. To be valid, such assignment must be in writing. Any act conveying or amending the breeder's right shall not affect the rights acquired by others prior to the date of this act.

An act conveying or amending a breeder's right shall be enforceable on others as soon as it has been registered with the Ministry of Agriculture, Livestock and Food.

Notwithstanding, prior to its entry, an act shall be enforceable on others who have acquired the rights since the date of this act but who were aware of the existence of this act when they acquired such rights.

Article 21.- Contractual Licenses. Licenses for use shall be granted in accordance with the provisions of the respective regulations, as follows:

- (a) the applicant or owner may grant to others an exclusive or non-exclusive license for use which covers all or part of the holder's rights provided by this Law;
- (b) the license is granted by means of a written contract.

The exclusive license or the non-exclusive licenses shall be entered in the Register of Applications or the Register of Rights, as the case may be, and shall be published in the Official Gazette.

Licenses may only be enforceable if the rights to the breeder's right have been acquired in good faith and if this was entered on the date of acquisition.

Article 22.- Compulsory Licenses. Further to a request by the authority or an interested party, Area may, for reasons of public interest and provided that the interested party is heard, order at any time that the plant variety be used or applied industrially or commercially by a government institution or by one or more public or private legal entities that have been appointed to this end; or that the said plant variety, notwithstanding the proceedings under way for the granting of the breeder's right, may remain open for the granting of one or more compulsory licenses, in which case the competent national authority may grant such a license to any person who applies for it, subject to the conditions that have been stipulated for that purpose.

The compulsory license shall confer on the applicant a non-exclusive right to perform all or part of the acts covered by Article 15 of this Law, with a view to supplying the domestic market.

Upon granting a compulsory license, Area shall set the conditions for such granting, that is, the scope of the license, including its duration and the acts for which it is granted, which shall be limited to the purposes behind its granting, the amount corresponding to equitable remuneration and the form of payment to the holder as well as the necessary conditions for ensuring that the license serves its purpose, and shall pay the corresponding fee to Area.

Area may require the holder to make available to the beneficiary of the compulsory license the quantity of propagating material needed for the reasonable use of the compulsory license, provided that the payment indicated in the fee is made.

The compulsory license shall be granted primarily for purposes of supplying the domestic market and Area may cancel the compulsory license if the circumstances which warranted its grant no longer prevail and it is unlikely that they will recur, while taking the necessary steps to protect the legitimate interests of the licensees. For this purpose, in addition to the evidence provided by the breeder, Area shall gather the information it deems necessary to check those facts.

Area shall revoke the compulsory license if the beneficiary violates the conditions under which it was granted.

Before granting a compulsory license, Area may hear the professional national organizations from the sector of activity in question. It shall issue a ministerial agreement declaring that the act is in the public interest.

Article 23.- Premature Expiration. The breeder's right shall expire before the deadline provided in Article 19 of this Law if renunciation submitted by the owner is registered by means of a written declaration addressed to Area.

Article 24.- Nullity of the Breeder's Right. The breeder's right shall be declared null and void when it is established:

- (a) that the variety was not new or distinct on the date of filing of the application or, as the case may be, the date of priority;
- (b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the variety was not uniform or stable on the above-mentioned date; or,
- (c) the breeder's right has been granted to a person not entitled to it, in accordance with the provisions laid down in Article 14 of this Law.

If it is declared null and void, the breeder's right shall be deemed not to have been granted.

Article 25.- Cancellation of the Breeder's Right. The breeder's right shall be cancelled if it is established that the variety is no longer uniform or stable.

Furthermore, the breeder's right shall be cancelled if, within a period of two (2) months and after having been requested to do so:

- (a) the breeder does not provide Area with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- (b) the breeder has not paid such fees as may be due to maintain the validity of his right;
- (c) the breeder does not propose, where the denomination of the variety is cancelled, another suitable denomination in accordance with Article 47 of this Law, within the time limit granted.

The cancellation shall be valid from the date on which it is entered in the register of rights for plant varieties granted.

Entries concerning breeder's rights shall be verified.

MAGA shall be responsible for publication.

Article 26.- Publication of the Lapse of the Breeder's Right. Entries concerning the premature expiration, nullity and cancellation of a breeder's right, as covered by Articles 23, 24 and 25 of this Law, as well as the corresponding grounds, shall be made in the Register of New Plant Varieties.

Such expirations shall be published electronically by MAGA.

Article 27.- Authority Responsible for the Protection of New Plant Varieties. All of the functions provided for in this Law for the protection of the rights of new plant varieties shall be performed by the Plant and Animal Breeding Area of the Unit of Norms and Regulations of the Ministry of Agriculture, Livestock and Food.

Article 28.- Right of Defense. Any decisions taken by Area which are prejudicial to the interests of a party to the proceedings shall be communicated to the said parties, together with the corresponding grounds.

Said party shall have an opportunity to submit observations in writing, in the 30 days following the date of receipt of the communication.

Article 29.- Appeal. Decisions taken by Area may be appealed in accordance with the provisions laid down in the Law of Judicial Review.

Article 30.- Registers. Conservation of Files. Area shall maintain a register of applications and a register of rights.

Applications for breeder's rights shall be published once they have been granted.

Interested parties may:

- (a) consult the documents relating to the application;
- (b) consult the documents relating to a breeder's right that has already been granted; and,
- (c) visit field trials and examine the necessary additional trials conducted pursuant to Article 37 or Article 50.

In the case of varieties whose production requires repeated use of other varieties (components), the applicant may, upon filing the application, request that the documents and trials relating to the components be exempted from advertising media.

Area shall conserve the files, originals or reproductions for a period of five years starting from the date on which the application was withdrawn or rejected, or, as the case may be, the date on which the breeder's right lapsed.

Article 31.- Official publication. Area shall publish the following information twice a year on MAGA's Website:

- a. applications for the grant of breeder's rights;
- b. applications for denominations of varieties;
- c. registration of new denominations of protected varieties;
- d. withdrawal of applications for the grant of breeder's rights;
- e. rejection of applications for the grant of breeder's rights;
- f. grants of breeder's rights;
- g. changes relating to persons (applicants, owners and agents);
- h. lapses of breeder's rights;

- i. assignment of property;
- j. contractual licences and compulsory licences;
- k. official announcements.

Article 32.- Fees. Administrative acts performed by Area with a view to the application of this Law shall give rise to the charging of a fee, which shall be set on a regulatory basis so as to cover all of the expenses deriving from the delivery of the following services:

- (a) processing of applications for title to new plant varieties;
- (b) technical examination of varieties;
- (c) grants of title to new plant varieties;
- (d) publication of decrees in the Official Gazette;
- (e) annual payment of breeder's rights;
- (f) change of denomination, assignment of property, licenses for use, dispatching of copies, certificates and duplicates of documents;
- (g) reinstatement of titles that have already been cancelled;
- (h) fee for compulsory licensing;
- (i) when Area has agreed that the technical examination shall be carried out by a natural person or legal entity recognized by MAGA for the delivery of the service and sets the fee to be paid for the execution of the technical examination of the varieties referred to in (b), the applicant shall pay the corresponding fee to the Institution, which shall perform the examination while retaining a percentage for Area to be determined statutorily.

This fee shall be paid by natural persons or legal entities who apply for and receive from Area one of the services defined by this Law.

Sums collected as payment for services rendered and the financial resources generated shall be deposited on a special Area account.

Article 33.- Forms and substance of the application. A person seeking protection for a plant variety shall file an application with Area and pay the corresponding fee.

The application shall include as a minimum the following information in order to be accepted:

- (a) name and address of the breeder and, as the case may be, of his agent and his residence card number;
- (b) name, certified copy of the residence card or equivalent thereof, and the address of the person who has bred or discovered and developed the variety, if it is not the applicant;
- (c) identification of the botanical taxon (botanical name and common name);
- (d) proposed denomination for the variety, or a provisional designation;
- (e) in the event that priority is claimed, the date and the authority with which the application for priority was filed;
- (f) technical description of the variety;
- (g) receipt for payment of the application fee; and,
- (h) signature of the application with a paralegal.

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

Article 34.- Priority. The applicant may avail himself of a right of priority based upon an earlier application that has been duly filed for the same variety, by himself or by his predecessor in title, with the authority of a Contracting Party or State, in accordance with the provisions of this Law.

Where the application filed with Area is preceded by several such applications, priority may be based only on the earliest application.

The right of priority shall be expressly claimed in the application filed with Area. It may only be claimed within a period of 12 months from the date of filing of the earliest application. The day of filing shall not be included in the said period.

In order to avail himself of the right of priority, the applicant shall submit to Area, within three months of the filing date referred to in Article 36.4, a copy of the first application, certified to be a true copy by the authority of the Contracting Party with which that application was filed.

Area may request that a translation of the first application be produced within three months from the date of receipt of the request, in the event that it is not in Spanish, in accordance with the provisions of Article 37 of the Law on the Judicial Authority relating to documents from abroad.

The applicant shall be entitled to a period of up to two years from the date of expiry of the priority period, or, if the first application is rejected or withdrawn, of an appropriate period from the time of rejection or withdrawal, within which to furnish Area with the information, documents or material requested for the purpose of the examination.

The effect of priority shall be that, with regard to the conditions of protection attaching to the variety, the application shall be deemed to have been filed at the date of filing of the first application.

Article 35.- Examination of the form of the application. Area shall examine the application with regard to form, in accordance with the information specified in Article 34 of this Law.

If the application is incomplete or fails to meet the requirements, Area may request the applicant to correct it within a period of three months from the date of receipt of the notification. Any application which has not been corrected within that period shall be deemed to have been abandoned.

A complete application which meets the requirements shall be assigned a date of filing, which shall be entered in the Register of Applications. The date of filing shall be deemed to be the date on which Area has received the information mentioned in Article 33 of this Law.

Article 36.- Examination of the substance of the application. Area shall examine the substance of the application in order to verify, on the basis of the information, documents and material provided in the application, that the variety fulfils the conditions for grant established in Article 7 and that the applicant is entitled as per Article 12, both of this Law.

If the examination reveals an obstacle to the grant of the breeder's right, the application shall be rejected.

Article 37.- Technical examination of the variety. The variety shall form the subject matter of a technical examination designed to:

- a. verify that the variety belongs to the announced botanical taxon;
- b. determine that the variety is new, distinct, uniform and stable; and,

- c. once it has been established that the variety meets the above-mentioned conditions, establish the official description of the variety.

The technical examination shall be performed under the following conditions:

- I. the technical examination shall be conducted under Area's supervision.
- II. when growing trials have been or are being performed along with other necessary trials by the authority of the other Contracting Party, the results may be obtained by Area and the examination may be based on the said results.
- III. When the examination is not based on the results obtained as a complement to (b), the examination shall be based on growing trials and the other necessary trials performed by Area or another institution commissioned to that end.

Area shall determine the practical arrangements for the examination.

The official description mentioned in (c) may be supplemented or changed at a later date depending on developments with regard to agrobotanical knowledge, without, however, changing the subject matter of protection.

Article 38.- Information, documents and material required for the examination. The breeder shall provide all of the necessary information, documents or material which Area requires for the technical examination, at the latest within a period of four months as from the date of notification to the breeder.

Failing such information, the application shall be rejected.

Article 39.- Publication of the application. The application shall give rise to a decree in the Official Gazette which shall contain at least the elements mentioned as described in Article 33 of this Law.

Once the application has been published, any person may submit to Area, within two months following the date of publication, observations relating to the grant of the breeder's right. Such observations shall be made in writing and shall be justified. The documents which serve as proof shall be attached thereto.

Observations may only be submitted with a view to asserting that the variety does not meet one of the conditions established in Article 7 or that the applicant is not entitled to protection under the provisions of Article 12, both of this Law.

Article 40.- Observations. Observations shall be notified within three months to the applicant, who shall have three months, computed from the date of the corresponding notification, to comment on the observations and state whether he intends to maintain, modify or withdraw his application; such deadline shall be extended on the basis of a reasoned request from the applicant.

The breeder may or may not respond to the observations within the period of three months and may submit changes to his application.

The analysis of the observations shall take place as follows:

- a. The observations submitted shall be analyzed:
 - i. independently of the normal procedure for analyzing applications, when a lack of novelty of the variety or a lack of title by the applicant is invoked;
or

- ii. in conjunction with the technical examination of the variety, when a lack of distinctiveness, uniformity or stability is invoked.
- b. Area may decide to change the arrangements for the technical examination of the variety with a view to responding to the observations as well as possible.

The author of the observations may be asked to submit additional information and documents in support of his observations, as well as the necessary plant material for the technical examination, by means of the procedure set out in Article 38 of this Law.

Article 41.- Grant of the Breeder's Right. Area shall grant the breeder's right when, as a result of the technical examination of the variety, it is established that the variety meets the conditions laid down in Article 7 and the applicant has satisfied the other requirements of this Law.

The grant of the breeder's right shall be entered in the Register of Applications.

The breeder's right shall also be entered in the Register of Rights and shall be published in the Official Gazette. The description of the variety may be included in the Register as a reference to Area's technical files.

Article 42.- Rejection of an Application for a Breeder's Right. The Office shall reject an application if it is established that it does not meet the conditions laid down in Article 7 of this Law or the other requirements stipulated in this Law; such rejection shall be entered in the corresponding Register of Applications.

Article 43.- Subject Matter of the Denomination and Signs likely to Constitute a Denomination.

The denomination shall serve as the generic designation of the variety.

The following elements may serve as denominations: any words, combinations of words, combinations of words and figures, and combinations of letters and figures which may or may not have a pre-existing meaning, provided that the said signs serve to identify the variety. The denomination may not consist entirely of figures unless this is an established practice to designate varieties. It shall not be likely to mislead or lead to confusion as to the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from any denomination which designates, in the territory of any of the UPOV Member States, an existing variety of the same plant species or a related species.

When a denomination has already been used for the variety in another Contracting Party, or has been proposed or registered in another Contracting Party, such denomination may only be used for the purposes of the proceedings with Area, unless this has provided grounds for rejection under Article 45 of this Law, in which case Area shall oblige the breeder to propose another denomination for the variety.

Any propagating material of a protected variety offered for sale, sold or marketed in any other form shall use the denomination of this variety, including after the date of expiration of the breeder's right for the variety, provided that no prior rights bar its use. This obligation shall also apply to varieties covered by the breeder's right under Article 15 of this Law.

The obligation to use a denomination shall not end with the breeder's right with which it originated.

The prior rights of others shall be reserved if, under a prior right, the use of the denomination of the variety is prohibited for a person who is obliged to use it, in accordance with the provisions of paragraph 4, in which case Area shall require the breeder to propose another denomination for the variety.

When a variety is offered for sale or marketed in another form, the use of a factory or trade mark, trade name or similar indication shall be allowed, provided that the denomination is easily recognizable.

Article 44.- Grounds for Rejection. An application for registration as a denomination for varieties shall be rejected for designations which:

- a. do not comply with the provisions of Article 44 of this Law;
- b. are not suitable for the identification of the variety, particularly due to a lack of distinctive character or because of linguistic unsuitability;
- c. are contrary to public order or morality,
- d. consist exclusively of signs or indications, which may serve, in the sector of the varieties and seeds, to designate the species, quality, quantity, destination, value, geographic origin or season of production.

Registration shall also be refused as a denomination of varieties for designations which contain an element which hinders or is likely to hinder the free use of the denomination in relation to the variety, in particular an element registered as a mark for products tied to the variety.

Article 45.- Registration Procedure. The denomination proposed for the variety for which protection is sought shall be submitted at the same time as the application, together with the sample.

Subject to the payment of a fee and the indication of a provisional designation in the application, the applicant may defer the procedure for registration of the denomination. If that is the case, the applicant shall submit the proposal for a denomination within thirty (30) days as from the date of receipt of the invitation addressed to him by Area. If the proposal is not submitted within this deadline, the application shall be abandoned.

The proposal for a denomination shall be published in the Official Gazette, unless Area establishes that there are grounds for rejection under Article 45 of this Law. The proposal shall also be notified to the authorities of the Contracting Parties.

Any interested party may submit, within a period of three months following publication, an observation concerning the registration of denomination, based on any of the grounds for refusal laid down in Article 44 of this Law. The authorities of other Contracting Parties may also submit observations.

The observations shall be notified to the applicant, who shall have three months to answer them. The applicant may, on the basis of the objections and observations, submit changes to the proposal.

If the changes to the proposal are not in conformity with Article 44 of this Law, Area may warn the applicant that he must propose a denomination that is in conformity. If the applicant fails to comply, the application shall be rejected.

The denomination shall be registered at the same time as the grant of the breeder's right.

Article 46.- Cancellation of a Denomination and Registration of a New Denomination. A competent court may order the cancellation of the registered denomination:

- a. if it is established that the denomination was registered despite grounds for rejection as per Article 45 of this Law;
- b. if a party submits a court decision prohibiting the use of the denomination in relation to the variety.

The holder may lodge an appeal for the setting aside of the cancellation of his denomination.

Article 47.- Annual Fee. The holder shall pay an annual fee to maintain the validity of his right.

The fee shall be paid during the first 15 days of the month of January of every year following the grant of the right. The sum collected shall be deposited on a special Area account.

Article 48.- Legal Remedies. Any person who:

- a. without being authorized to do so, performs acts which require the authorization of the holder under Article 15 of this Law;
- b. uses a designation in violation of Article 44 of this Law; and,
- c. fails to use a variety denomination in violation of Article 44 of this Law:

May be denounced by the holder or by the holder of an exclusive license, and any compensation shall be applicable as with any corresponding investigations performed due to a violation of another property right.

Subject to the content of this Law, the provisions applicable to the exercise of the rights conferred by virtue of a patent shall be applicable *mutatis mutandis* to the exercise of the rights by virtue of a breeder's right.

A party who performs any act requiring the authorization of the holder under Article 15 of this Law or who in any way infringes the rights conferred by this Law upon the breeder shall be obliged to pay compensation for damages. When calculating such damages, the competent authority may take any of the following elements into consideration:

- a. the value of the utility obtained by the defendant as a result of the unlawful acts;
- b. the lost profit incurred by the breeder as a consequence of the unlawful acts; or
- c. the price which the infringer would have paid the breeder for a contractual license under the conditions for legitimate use of the new plant variety.

Article 49.- Criminal Sanctions. Anyone who:

- a. produces material of a variety that is protected or covered by Article 15 of this Law, without the authorization of the holder of the variety;
- b. trades in material of a protected variety, with the knowledge that such material has been obtained in violation of the rights of the holder of the breeder's right;
- c. contracts to transport propagating material of a protected variety to a territory outside the scope of application of this Law, without special authorization from the holder of the right;

Shall be deemed to have committed a violation of the breeder's right which, without prejudice to the corresponding civil liability, shall be punishable by one to four years' imprisonment and a fine ranging from one thousand to ten thousand quetzales.

Subject to the provisions of this Law, the provisions applicable to the exercise of the rights conferred by a patent shall be applied *mutatis mutandis* to the exercise of the rights by virtue of a breeder's right.

A party who performs any act requiring the authorization of the holder in conformity with Article 15 of this Law or who in any way infringes the rights conferred by this Law upon the breeder, shall be obliged to pay compensation for damages. When calculating such damages, the competent authority may take the provisions of Article 48 of this Law into consideration.

At the holder's request, the judge may, through ancillary proceedings, grant the suspension of the acts denounced, in addition to taking any other applicable measure provided for by common law. The judge may order immediate precautionary measures if the holder justifies his request with evidence of the infringement or imminent infringement, provided that he offers sufficient security.

Article 50.- Cooperation with regard to the Examination. Area shall be empowered to conclude administrative cooperation agreements for the technical examination of the varieties and for the verification of the maintenance of the varieties with the authorities of the Contracting Parties or with their supervisory authorities.

Article 51.- Protection of Known Varieties. Without prejudice to the provisions of Article 7 of this Law, a breeder's right may also be granted for a variety even though it is no longer new at the date of entry into force of this Law with regard to the species considered, under the following conditions:

- a. The application shall be submitted within the year following the above-mentioned date; and,
- b. The variety must:
 - i. have been entered in the Register of Commercial Varieties for commercialization or in a register of varieties maintained by a professional association and accepted by Area for the purposes of this Article;
 - ii. have been the subject of a breeder's right in a Contracting Party, or have been the subject of an application for a breeder's right in a Contracting Party, provided that the application leads subsequently to the grant of the breeder's right; or,
 - iii. have been the subject of evidence acceptable to Area, relating to the date on which the variety ceased to be new in compliance with the provisions of Article 7 of this Law;
- c. When a breeder's right has been granted under this Article, the holder should grant licenses, on reasonable terms, to allow the continuation of any exploitation began in good faith by another party prior to the above-mentioned filing of the application.

The duration of the breeder's right granted under this Article shall be computed from the date of registration mentioned in (b)(i), the date of grant of the breeder's right mentioned in (b)(ii) or the date mentioned in (b)(iii) above, on which the variety ceased to be new. As relevant, the earliest of these dates shall be chosen.

Article 52. Regulations. The Executive Authority, at the request of the Ministry of Agriculture, Livestock and Food, shall issue the Regulations within a period of no more than ninety (90) days following the entry into force of this Law.

Article 53.- Final Provisions. The provisions and references relating to plant varieties in the Law on Industrial Property, Decree No. 57-2000 of the Congress of the Republic are hereby repealed, in particular Articles 97 and 98 and the second sentence of Article 93.

Patents for plant varieties granted under the Articles of the Law on Industrial Property that are repealed shall remain valid until their expiration.

Applications for patents for plant varieties which are being processed when this Law enters into force shall be converted into applications for the grant of breeder's rights.

Such conversion shall be requested in writing within a period of twelve (12) months following the date of entry into force of this Law.

Article 54.- Entry into Force. This Law shall enter into force thirty (30) days after its publication in the Official Gazette.

TO BE FORWARDED TO THE EXECUTIVE AUTHORITY FOR RATIFICATION, ENACTMENT AND PUBLICATION.

ISSUED IN THE PALACE OF THE LEGISLATIVE AUTHORITY IN GUATEMALA CITY ON THE ____ DAY OF THE MONTH OF _____ THE YEAR TWO THOUSAND AND NINE.

[End of Annex II and of document/
Fin de l'annexe II et du document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]