



This publication has been scanned from a paper copy and may have some discrepancies from the original publication.

Cette publication a été numérisée à partir d'une copie papier et peut contenir des différences avec la publication originale.

Diese Veröffentlichung wurde von einer Papierkopie gescannt und könnte Abweichungen von der originalen Veröffentlichung aufweisen.

Esta publicación ha sido escaneada a partir de una copia en papel y puede que existan divergencias en relación con la publicación original.

PLANT VARIETY PROTECTION



Gazette and Newsletter
of the International Union
for the Protection of
New Varieties of Plants
(UPOV)

UPOV

No. 82
August 1997

The International Union for the Protection of New Varieties of Plants (UPOV)—an international organization established by the International Convention for the Protection of New Varieties of Plants—is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders—for their benefit and for the benefit of agriculture and thus also of the community at large—in accordance with uniform and clearly defined principles.

Plant Variety Protection is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only—although some items are quadrilingual (English, French, German and Spanish)—at irregular intervals, usually at a rate of four issues a year. Requests for addition to the mailing list may be placed with:

UPOV

**International Union for the Protection of New Varieties of Plants (UPOV)
34, chemin des Colombettes, PO Box 18, CH-1211 Geneva 20, Switzerland**

**Telephone: +(41-22)-730 9111 - Telefax: +(41-22)-7335428 - e-mail: upov.mail@wipo.int
Telex: +412 912 ompi ch**

The picture on the front cover shows the species
Bolusanthus speciosus,
painted by Mrs. Elise Buitendag (South Africa)

UPOV PUBLICATION
No. 438(E)

ISSN 0257-9030

CONTENTS

GAZETTE

ACCESSION TO THE 1978 ACT OF THE UPOV CONVENTION

Ecuador3

RATIFICATION OF THE 1978 ACT OF THE UPOV CONVENTION

Mexico3

NEWSLETTER

UPOV

The International Union for the Protection of New Varieties of Plants in 19965

LEGISLATION

Mexico: Federal Law on Plant Varieties21
New Zealand: Plant Variety Rights Amendment.....31
 Plant Variety Rights Amendment Regulations 1997.....33
South Africa: Plant Breeders' Right Act No. 15 of 1976.....35
Uruguay: Law No. 16.811.....55

OBITUARY

Flemming Espenhein.....71

CALENDAR

UPOV Meetings in 1997.....72
Other Meetings in 1997.....72



GAZETTE**ACCESSION TO THE 1978 ACT OF THE UPOV CONVENTION****ECUADOR**

On July 8, 1997, the Government of Ecuador deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Ecuador on August 8,

1997. On that date, Ecuador became the thirty-third member State and the thirtieth bound by the 1978 Act.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available in respect of all botanical genera and species.

RATIFICATION OF THE 1978 ACT OF THE UPOV CONVENTION**MEXICO**

On July 9, 1997, the Government of Mexico deposited its instrument of ratification of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Mexico on August 9,

1997. On that date, Mexico became the thirty-fourth member State and the thirty-first bound by the 1978 Act.

According to the notification filed with the Secretary-General together with the instrument of ratification, protection is available in respect of all botanical genera and species.

NEWSLETTER

THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS IN 1996

I. COMPOSITION OF THE UNION

Members and Future Members

On August 13, 1996, Colombia deposited its instrument of accession to the 1978 Act of the Convention. That Act entered into force with respect to Colombia on September 13, 1996.

As of December 31, 1996, the Union comprised 31 member States: Argentina, Australia, Austria, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States of America, Uruguay.

Under Article 32(3) of the 1978 Act, "any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act." A similar provision is contained in Article 34(3) of the 1991 Act.

In 1996, five requests were made, by the following States:

(a) Brazil, by letter of January 31, on the basis of the 1978 Act;

(b) Kenya, by letter of September 20, on the basis of the 1978 Act;

(c) Panama, by letter of September 30, on the basis of the 1978 Act;

(d) Bulgaria, by letter of October 1, on the basis of both Acts;

(e) Trinidad and Tobago, by letter of November 18, on the basis of the 1978 Act.

At its thirteenth extraordinary session, held on April 18 in Rome, the Council examined the draft law of Brazil and the legislation of Ecuador for which examination had been requested by a letter of October 1, 1995, received by the Office of the Union on October 19, 1995, after the twenty-ninth ordinary session of the Council. The Council took a qualified decision in respect of the request by Brazil and a positive decision with regard to the request from Ecuador, noting that the legislation of the latter country was also in conformity with the 1991 Act.

At its thirtieth ordinary session, held on October 23, the Council examined the laws of Kenya and of Bulgaria and a draft law of Panama. It took a qualified decision with regard to the request from Kenya and a positive decision with regard to the requests from Bulgaria and Panama.

A draft law of Trinidad and Tobago was examined by the expedited procedure and the Council gave a positive advice on its conformity with the 1978 Act.

Situation in Relation to the Various Acts of the Convention

All member States are bound by the 1978 Act, with the exception of Belgium and Spain

which are bound by the 1961 Act, as amended by the Additional Act of 1972.

According to its Article 37(1), the 1991 Act "shall enter into force one month after five States have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978."

In 1996, three States deposited their instruments of ratification or acceptance of the 1991 Act of the Convention:

- (a) Denmark, on April 26;
- (b) Israel, on June 3;
- (c) Netherlands, on October 14.

Under Article 30(2) of the 1991 Act, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of the 1991 Act at the time of depositing its instrument.

II. SESSIONS OF THE COUNCIL AND ITS SUBSIDIARY BODIES

Council

The Council held its thirteenth extraordinary session on April 18 in Rome, under the chairmanship of Mr. Bill Whitmore (New Zealand), in response to requests for advice submitted by Brazil and Ecuador under Article 32(3) of the 1978 Act.

The Council held its thirtieth ordinary session on October 23, also under the chairmanship of Mr. Bill Whitmore. The session was attended by observers from 16 non-member States and eight international organizations.

At that session, it took the following main decisions:

(a) It pronounced on the conformity with the UPOV Convention of the laws in force

In 1996, according to the information of the Office of the Union, South Africa and Poland (as also Israel and the Netherlands) passed laws to adapt their system of protection to the 1991 Act. Several other States adopted amendments in line with that Act or drew up draft laws. It was determined that, at the close of the year, protection that complied with the 1991 Act was available in (or, on the basis of the European Community's regional system, for) 26 States.

A table annexed to this report summarizes the situation of the States with regard to the various Acts of the Convention as at December 31, 1996.

Territorial Application of the Convention

On November 27, following a procedure initiated at the beginning of the year, the Netherlands deposited a notification withdrawing an earlier notification that had extended the 1978 Act of the Convention to Aruba.

or proposed in Bulgaria, Kenya and Panama and agreed on an expedited procedure for examining any laws submitted in the period between two sessions.

(b) On a recommendation by the Consultative Committee, it took a position on the proposal to include the UPOV Convention as a source treaty in the field of application of the draft (WIPO) treaty on the settlement of intellectual property disputes between States.

(c) It approved the report of the Secretary-General on the activities of the Union in 1995 and noted the report on activities during the first nine months of 1996.

(d) It approved the report of the Secretary-General on his management during the 1994-95 biennium and noted the auditor's re-

port on the accounts of UPOV for that biennium.

(e) It approved the progress reports on the work of its various subsidiary bodies and either drew up or approved their work plans for the coming year.

(f) It unanimously elected:

– Mr. Aubrey Bould (United Kingdom) as Chairman of the Technical Working Party for Agricultural Crops;

– Mr. John Law (United Kingdom) as Chairman of the Technical Working Party on Automation and Computer Programs;

– Mr. Chris Barnaby (New Zealand) as Chairman of the Technical Working Party for Food Crops;

– Mr. Joost Barendrecht (Netherlands) as Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;

– Mr. Baruch Bar-Tel (Israel) as Chairman of the Technical Working Party for Vegetables.

(g) It further extended the term of office of Mr. Joël Guiard (France) for a further year as Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular.

Consultative Committee

The Consultative Committee held its fifty-first session on April 18 in Rome, under the chairmanship of Mr. Bill Whitmore. The Committee heard reports by the representatives of the member States on developments with respect to the application of the 1991 Act and considered the following subjects: the proposed UPOV central CD-ROM database on plant variety protection, the system of UPOV contributions, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS

Agreement) and plant variety protection, and also biodiversity, plant genetic resources and plant variety protection.

The Consultative Committee held its fifty-second session on October 22, under the chairmanship of Mr. Bill Whitmore. It mainly prepared for the thirtieth ordinary session of the Council and took a fresh look at subjects considered at the preceding session and at the question of the closing of the 1978 Act with the entry into force of the 1991 Act.

Administrative and Legal Committee

The Administrative and Legal Committee held its thirty-sixth session on October 21 under the chairmanship of Mr. H. Dieter Hoinkes (United States of America). The session was attended by observers from seven non-member States and from the European Community.

The Committee examined various questions concerning relations between the TRIPS Agreement and plant variety protection and questions raised by the Technical Committee with regard to the definition of varieties from both the theoretical and practical points of view; it also looked at the question of dispute settlement that was subsequently dealt with by the Consultative Committee and the Council.

Technical Committee

The Technical Committee held its thirty-third session from October 16 to 18, under the chairmanship of Mr. Joël Guiard (France). The session was attended by observers from five non-member States and four international organizations.

On the basis of the preparatory work carried out by the Technical Working Parties the Committee adopted Test Guidelines for the following eight taxa: Beetroot (revised); Firelily; Ginger; Leaf Chicory (wild); Pumpkin; Rape Seed (revised); *Serruria*; Spinach (revised). It further adopted corrections and modifications to the documents on Barley and African Violet.

The Committee considered the progress reports on the work of the Technical Working Parties and broadly defined the future work of those Working Parties. It also considered questions raised by the Working Parties in the light of experience gained by member States in the conduct of distinctness, uniformity and stability testing of new plant varieties.

Technical Working Parties

The Technical Working Parties held sessions outside Geneva as follows:

(a) The Technical Working Party for Agriculture Crops (TWA) held its twenty-fifth session from June 11 to 14 in Thessaloniki, Greece, under the chairmanship of Mr. H. Ghijsen (Netherlands).

(b) The Technical Working Party on Automation and Computer Programs (TWC) held its fourteenth session from June 4 to 6 in Hanover, Germany, under the chairmanship of Mr. S. Grégoire (France).

(c) The Technical Working Party for Fruit Crops (TWF) held its twenty-seventh session from April 22 to 26 in Tel Aviv, under the chairmanship of Mrs. E. Buitendag (South Africa).

(d) The Technical Working Party for Ornamental Plants and Forest Trees (TWO) held

its twenty-ninth session from April 15 to 19 in Tel Aviv, under the chairmanship of Mrs. U. Löscher (Germany).

(e) The Technical Working Party for Vegetables (TWV) held its thirtieth session from July 8 to 12 in Brno, Czech Republic, under the chairmanship of Mrs. E. Kristof (Hungary).

The basic task of four of these Working Parties is to draw up Test Guidelines. In addition to the drafts submitted to the Technical Committee for adoption, they drew up further drafts for the following taxa, to be submitted to the professional organizations for comments: Japanese Apricot, Loquat, Walnut (revision) (TWF); *Bouvardia* (TWO); Cornsalad (revision), Garlic, Onion (revision) and Shallot, Rhubarb (revision), Welsh Onion/Bunching Onion (TWV).

A subcommittee of the Technical Working Party for Fruit Crops, set up to examine the revision of the Test Guidelines for Vine, met on February 12 and 13 in Conegliano, Italy. Representatives of the International Plant Genetic Resources Institute (IPGRI) and the International Vine and Wine Office (OIV) also attended.

Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular

This Working Group did not meet in 1996.

III. SEMINARS

At the close of February and the beginning of March, UPOV held two national seminars in the Americas on the nature of and rationale for plant variety protection under the UPOV Convention, as follows:

(a) On February 27 and 28, in Havana, Cuba, in cooperation with the National Office of Inventions, Technical Information and Marks of Cuba (ONIITEM);

(b) On March 4 and 5, in Panama City, Panama, in cooperation with the Ministry of

Trade and Industry of the Republic of Panama and the Agronomic Research Institute of Panama (IDIAP).

The Spanish Government lent its assistance to the above events by providing a speaker.

(c) On April 19, an information meeting on plant variety protection under the UPOV Convention was held in Rome, Italy, in connection with the sessions of the Consultative Committee and the Council of UPOV and the second

extraordinary session of the (FAO) Commission on Genetic Resources for Food and Agriculture.

The Italian Government lent its assistance to the above event by making available the facilities of the Experimental Institute for Plant Pathology.

(d) At the close of May and the beginning of June, UPOV organized three national seminars on the nature of and rationale for plant variety protection under the UPOV Convention in Central Asia, as follows:

– On May 28, in Bishkek, Kyrgyzstan, in cooperation with the State Agency of Intellectual Property of the Kyrgyz Republic;

– On May 30, in Almaty, Kazakstan, in cooperation with the National Patent Office of Kazakstan;

– On June 3, in Tashkent, Uzbekistan, in cooperation with the State Patent Office of Uzbekistan.

The German Government lent its assistance to the above events by providing a speaker.

(e) From July 24 to 26, a regional seminar was held in Quito, Ecuador, for Andean countries, on the protection of plant varieties, organized by the Ecuadorian Ministry of Agriculture and Livestock and the Ecuadorian Association of Breeders (ASOVEC), in cooperation with UPOV and the Inter-American Institute for Agricultural Cooperation (IICA-PROCIANDINO). The Governments of Argentina, France, the Netherlands and Spain lent assistance to the event by providing one speaker each. The seminar touched on all the main aspects of protection and dealt with matters of technical examination of varieties in greater depth. Representatives of

the following States attended the Seminar: Bolivia, Colombia, Ecuador, Peru, Venezuela.

(f) In September, UPOV organized, with financial assistance from the Ministry of Agriculture, Forestry and Fisheries of Japan, the following three national seminars on the nature of and rationale for the protection of plant varieties under the UPOV Convention:

– On September 12, in New Delhi, India, in cooperation with the Indian Ministry of Agriculture.

– On September 16, in Dhaka, Bangladesh, in cooperation with the Bangladeshi Ministry of Agriculture;

– On September 19 and 20, in Hanoi, Viet Nam, in cooperation with the Vietnamese Ministry of Agriculture and Rural Development.

The Japanese Government provided a speaker as did the United Kingdom Government. Representatives of Indonesia, Malaysia, the Philippines and Thailand attended the Seminar in Hanoi.

On November 13 and 14, an international seminar was held in Bishkek and Cholpon-Ata, Kyrgyzstan, on the nature of and rationale for the protection of plant varieties under the UPOV Convention. The Seminar was organized by UPOV in cooperation with the State Agency of Intellectual Property of the Kyrgyz Republic and with the financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan. The Japanese Government provided a speaker as did the Irish Government. Representatives of the following States attended the Seminar: Belarus, Georgia, Kazakstan, Kyrgyzstan, Uzbekistan, Russian Federation, Tajikistan, Ukraine.

IV. RELATIONS WITH MEMBER STATES

On March 27, the Office of the Union received the visit of Mr. Hiroki Tanaka, Assistant Director of the Seed and Seedlings Division of the Ministry of Agriculture, Forestry and Fisher-

ies of Japan, and Mr. Masashi Hatae, official of that Division, and discussed with them the 1991 Act, with a view to producing an official transla-

tion in Japanese, and the revision of the Japanese Seeds and Seedlings Law.

On April 26, the Secretary-General received from the hands of Mr. Jakob Esper Larsen, Ambassador and Permanent Representative of Denmark in Geneva, Denmark's instrument of ratification of the 1991 Act of the UPOV Convention.

On June 4, the Secretary-General received the instrument of ratification of Israel of the 1991 Act of the UPOV Convention.

On August 13, the Ambassador and Permanent Representative of Colombia in Geneva, Mr. Gustavo Castro Guerrero, deposited with the Secretary-General the instrument of accession of Colombia to the 1978 Act of the UPOV Convention.

On October 14, the Vice Secretary-General received the visit of Mr. Jaap R.T. Frederiks, First Secretary, Permanent Mission of the Netherlands in Geneva, who deposited the instrument of accession of the Netherlands to the 1991 Act of the UPOV Convention.

V. RELATIONS WITH NON-MEMBER STATES

States of North Africa and Western Asia

On May 14, the Vice Secretary-General received the visit of Mr. Mohammed A. Khalil, Counsellor in the Office of the Commercial Attaché to the Permanent Mission of Saudi Arabia in Geneva, who sought information on UPOV.

On December 13, the Vice Secretary-General received the visits of Mr. Mohammad A.A.R. Khreisat, Director of Trade Registration and Industrial Property Protection of Jordan, and of Mr. Abdel Hafic Al-Ajlouni, of the same Office, to whom he passed information on plant variety protection.

States of Sub-saharan Africa

On November 26, the Vice Secretary-General wrote to Mrs. Elisabeth Owiredugyampoh, Acting Registrar General, Ministry of Justice of Ghana, giving information on the UPOV Convention.

On December 6, the Vice Secretary-General wrote to Mr. José C. A. Pacheco, Vice Minister for Agriculture and Fisheries of Mozambique, with information on the UPOV Convention.

On December 12, the Vice Secretary-General received visits from Mr. Paul Omondi-Mbago, Registrar-General of Kenya, and

Mr. Stephen Dominique Mtetewaunga, Principal Assistant Registrar of Patents and Trademarks of the United Republic of Tanzania. He discussed with them UPOV's proposal to organize national seminars in their countries.

On December 20, the Vice Secretary-General received the visit of Mr. Ablassé Ouedraogo, Minister for Foreign Affairs of Burkina Faso, and Mr. Jean-Baptiste Ilboudo, Ambassador Extraordinary and Plenipotentiary of Burkina Faso in Bonn, who expressed interest in plant variety protection and invited a representative of UPOV to visit their country.

States of Latin America and the Caribbean

On February 20, the Vice Secretary-General sent a letter to Mr. Carlos Alberto Pfungst, Acting Director of the Seeds Directorate of Paraguay, providing supporting information in connection with the proceedings in the National Congress of Paraguay concerning accession by that country to the 1978 Act of the UPOV Convention.

On February 27 and March 1, in the context of the national seminar, an official of the Union and Mr. Ricardo López de Haro y Wood, Technical Director for Certification and Variety Registration, National Institute of Seeds and Nursery Plants (INSPV), Spain, had discussions in Havana with Mrs. América N. Santos Riveras,

Director of the National Office for Inventions, Information Technology and Trademarks (ONIITEM) of Cuba and with other officials of that Office.

From March 6 to 8, an official of the Union and Mr. Ricardo López de Haro y Wood had discussions in Quito, Ecuador, with officials of the National Directorate of Industrial Property of the Ministry of Industry, Commerce, Integration and Fisheries, the Ministry of Agriculture and Livestock and the National Institute of Agricultural Research and with representatives of other circles interested in plant variety protection.

The meeting of the Latin American Integration Association (ALADI) held from March 13 to 15 in Buenos Aires provided the Vice Secretary-General with an opportunity to meet representatives of Bolivia and to clarify a certain number of issues with regard to a text that would align national legislation to the 1991 Act of the Convention.

On May 10, the Office of the Union wrote to Mrs. Lucia Gaxiola Rivera, Technical Secretary to the Director General of Legal Affairs in the Ministry of Agriculture, Stock-Farming and Rural Development of Mexico, commenting on the draft law for the protection of plant varieties which was then before the Mexican Congress.

On May 15, the Vice Secretary-General wrote to Dr. Maria José Amstalden Sampaio, Technical Assistant at the Brazilian Agricultural Research Corporation (EMBRAPA/CENARGEN), with suggestions concerning amendments to the Brazilian draft law that were necessary to bring it into conformity with the 1978 Act of the UPOV Convention.

On May 15, an official of the Union received the visit of Mrs. Lilia H. Carrera, Deputy Permanent Representative of Panama to the World Trade Organization (WTO) and Economic Counsellor, and replied to a number of questions put with a view to the drafting by the Panamanian authorities of a plant variety protection law.

On September 5, the Vice Secretary-General received a visit from Dr. Deborah

Lazard, Counsellor to the Director General of the Mexican Institute of Industrial Property (IMPI), and Mrs. Patricia Gaytán, Head of the Biotechnology Area of the Patent Department of IMPI, to discuss patent protection for transgenic plants and the differentiation of plant varieties.

On September 19, an official of the Union received the visit of Ambassador Carlos E. González R., Representative of Panama to WTO, and of Mrs. Lilia H. Carrera. Contacts have been maintained with Mrs. Carrera with respect to the draft law that was presented to the thirtieth session of the Council.

On October 9, the Vice Secretary-General wrote to Mr. Eduardo Benítez Paulín, Director of the National Seed Control and Certification Service of Mexico, to congratulate him on the adoption by the Mexican Congress of the plant variety protection law.

The XVth Pan-American Seed Seminar, held from October 28 to 30, provided opportunities for discussions with Dr. Maria José Amstalden Sampaio on the draft law of Brazil for the protection of cultivars, which was then before the Brazilian Congress, with Mr. José Rosales King, Director of the National Seed Office of Bolivia, who confirmed that a decree implementing the suggestions of the UPOV Council had been incorporated in the Implementing Regulations under Decision No. 345 of the Commission of the Cartagena Agreement, and with Dr. Fausto Miranda, Director of the National Seed Service of Venezuela, concerning the implementation of the above decision in his country.

From October 31 to November 3, the Vice Secretary-General visited Paraguay where he was received by Mr. Gerardo López Zárata, Vice Minister for Agriculture, and Mr. Marcial Bobadilla Guillén, Director of the Department for International Organizations of the Ministry of Foreign Affairs. He also met the Chairman of the National Agriculture Association and gave a lecture to individuals from agricultural circles. Finally, he visited the Seed Directorate (DISE) of the Ministry of Agriculture and Livestock, together with its Director, Mr. Carlos A. Pfingst,

and the research station of the National Agronomic Institute in Caacupe.

On November 8, the Office of the Union received from the Permanent Mission of Mexico a copy of the Federal Plant Variety Law of Mexico which had entered into force on October 26.

On November 27, the Vice Secretary-General discussed with Ms. Mazina Kadir, Deputy Registrar General of Trinidad and Tobago, the parliamentary procedure for her country's plant variety protection Bill. The next day, the Office of the Union distributed to the members of the Council a document examining the conformity of the draft law with the UPOV Convention and setting in motion the expedited procedure.

States of Asia and the Pacific

From January 15 to 18, the Vice Secretary-General participated in a technical consultation on an implementation framework for farmers' rights in Madras, India, organized by the M.S. Swaminathan Research Foundation with support from the Ministry of Agriculture, Government of India, the FAO and the Swedish International Development Cooperation Agency.

The consultation provided an opportunity for discussions with Mr. G. Balakrishnan, Secretary to the Government of India, Ministry of Agriculture, and other senior officials of the Indian Government on possible proposals to legislate in India on the subject of plant variety protection.

On February 16, the Vice Secretary-General met Mr. Srinivasan Narayanan, Ambassador and Permanent Representative of India to WTO, and Mr. Thjindir Khanna, Secretary, Ministry of Industry, to discuss plant variety protection issues.

On February 16, the Secretary-General wrote to Mrs. Marinela R. Castillo, Under Secretary for Policy and Planning of the Philippines, with respect to the conformity of three proposed laws concerning genetic resources and the rights

of indigenous communities and peoples, with the UPOV Convention and the TRIPS Agreement.

On March 5, the Vice Secretary-General received the visit of Mr. Clive S. K. Lau, Agricultural Officer in the Agriculture and Fisheries Department of the Government of Hong Kong, who handed him a draft of a plant variety protection Bill proposed by Hong Kong in order to meet its obligations under the TRIPS Agreement.

On May 14, the Vice Secretary-General wrote to Mr. Ian G. Hunter of the Department of Agriculture and Fisheries of Hong Kong with the comments of the Office of the Union on the draft law for the protection of plant varieties in Hong Kong.

On May 17, the Secretary-General and an official of the Union met Mr. Srinivasan Narayanan, Ambassador and Permanent Representative of India to WTO, and Mr. Asoke Mukerji, Counsellor (WTO), to discuss an issue of conformity of the legislation on plant variety protection with the TRIPS Agreement.

In July, the Office of the Union corresponded with Mr. Sarath Amarasiri, Director General for Agriculture in the Department of Agriculture of Sri Lanka, and agreed in principle to hold a national seminar in 1997.

On September 13, the Vice Secretary-General, together with an official of the Union, and with Mr. David Boreham, Controller of the Plant Variety Rights Office of the United Kingdom, and Mr. Ryusuke Yoshimura, Advisor to the Ministry of Agriculture, Forestry and Fisheries of Japan and Vice-President of the UPOV Council ("the UPOV Seminar team"), met with Mr. A. Benjamin, Additional Secretary in the Ministry of Agriculture of India, to discuss plant variety protection.

On September 17, the Vice Secretary-General and the UPOV Seminar team met Dr. Sawkat Ali, Secretary, Ministry of Agriculture of Bangladesh, and other senior officials of the Ministry in Dhaka. They also visited the Bangladesh Agricultural Research Council and

met its Executive Chairman, Mr. Sujayet Ullah Chowdhury.

On September 18, the Vice Secretary-General and the UPOV Seminar team had discussions with Professor Dr. Nguyen Quang Ha, Vice-Minister for Agriculture and Rural Development of Viet Nam. On September 21, the UPOV Seminar team visited a testing station of the National Center for Variety Evaluation and Seed Certification near Hanoi.

On October 8, the Office of the Union wrote to Dr. Jeminiano R. Escaño, Director of the Bureau of Agricultural Research of the Philippines, with its comments on House Bill No. 7591 which would, if adopted, introduce plant variety protection in the Philippines.

On October 21, the Vice Secretary-General received the visit of Mr. Ki-Ho Suh, Director General of the Office of Seed Protection and Distribution of the Republic of Korea, which office will administer the Korean plant variety protection system. They discussed the timetable for seeking the advice of the UPOV Council on the conformity of the Korean Law with the 1991 Act of the Convention.

On November 4, the Vice Secretary-General wrote to Mr. Stephen Preston of the Pacific Regional Agriculture Program, Fiji, concerning regional activities in relation to plant variety protection. The States participating in that program are: Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

States of Europe and Central Asia

States in transition to market economy

On January 23, the Office of the Union received the visit of Mr. Ruben M. Kalashian, principal expert, Armenian Patent Office, who was given documentation on UPOV.

On April 2, the Vice Secretary-General received a visit from Mr. Akil A. Azimov, Director of the State Patent Office, and Mr. T.T. Riskiev, Deputy Director of the State

Committee of the Republic of Uzbekistan for Science and Technology, who discussed the national seminar that was to be organized in Tashkent on June 3 and 4.

On May 1, the Vice Secretary-General received the visits of Mrs. Raushan T. Alshymbaeva, Deputy Chairman, National Patent Office of Kazakstan, and of Mr. Roman Omorov, Director of the State Agency of Intellectual Property of the Kyrgyz Republic. They discussed arrangements for forthcoming national seminars in their countries.

On May 13, the Vice Secretary-General wrote to Mr. Nikolay Kolev, Head of the Legal Department of the Patent Office of the Republic of Bulgaria, giving the comments of the Office of the Union on the draft plant variety protection law which was shortly to be submitted to the Bulgarian Parliament.

On May 29, the Vice Secretary-General and Dr. Hans Walter Rutz, *Regierungsdirektor*, Federal Plant Variety Office of Germany, held discussions in Bishkek with officials of the State Agency of Intellectual Property of the Kyrgyz Republic on the draft law for the protection of plant varieties in that country. They also met officials of the Office of the President.

On May 31, the Vice Secretary-General and Dr. Hans Walter Rutz met with Dr. Gani Alimovich Kaliev, President of the Kazak Academy of Agricultural Sciences in Almaty, and with the Chairman and Deputy Chairman of the National Patent Office of Kazakstan, in order to discuss proposals to legislate on the subject of plant variety protection.

On June 4, the Vice Secretary-General visited the State Patent Office of Uzbekistan in Tashkent for discussions with its Director, Mr. Akil A. Azimov, and staff of the Office on proposals for legislation.

On October 2, the Vice Secretary-General received the courtesy visit of Mrs. Radoslavka Kazandjieva, President of the Patent Office of the Republic of Bulgaria.

On October 11, the Vice Secretary-General received the visit of Mr. Rekovski Lashev, First Secretary, Permanent Mission of Bulgaria in Geneva, with whom he discussed obtaining the advice of the Council on the conformity of Bulgarian law with the 1991 Act of the UPOV Convention.

On November 11, in the context of the international seminar organized by UPOV in Kyrgyzstan, the Vice Secretary-General, Mr. Ryusuke Yoshimura (Japan), Vice-President of the Council of UPOV and Mr. John Carvill, Controller of Plant Breeders Rights of Ireland, were received by the Prime Minister of the Kyrgyz Republic, Mr. Apas Jumagulov.

On November 20, the Office of the Union wrote to Mrs. Adriana Paraschiv, Head of the Examination Department, State Office for Inventions and Trademarks of Romania, with comments on a draft of a plant variety protection law.

On November 21, the Office of the Union received a visit from Mr. David Dzamukashvili, Deputy Chairman of the Georgian Patent Office, who announced the imminent finalization of the Georgian plant variety protection law.

On December 6, the Vice Secretary-General wrote to Mr. Vitali Alexashov, Chairman of the State Commission of the Russian Federation for the Testing and Protection of Selection Achievements, to Mr. Valery I. Kudashov, Chairman of the State Patent Committee of Belarus, and to Mr. Victor Volkodav, Chairman of the State Committee of Ukraine for Plant Variety Testing and Protection, concerning the convening of a working group to study the translation of the 1991 Act into the Russian language.

On December 10, the Vice Secretary-General wrote to Mr. Akil A. Azimov (Uzbekistan) congratulating him on the enactment of the Uzbek law on the protection of selection achievements.

Other States

On February 5 and 6, the Vice Secretary-General had contacts with Mr. Aleksandar Heina, Counsellor, Permanent Mission of Croatia in Geneva, who provided a copy of a draft law of Croatia on plant variety protection and asked for the comments of the Office of the Union as a matter of urgency.

On June 11, the Office of the Union wrote to Mr. Jan Kisgeci, Director of the Federal Administration for Plant Protection and Veterinary Medicine in the Federal Ministry for the Economy of Yugoslavia, with comments on a draft law for the protection of new plant varieties.

On July 26, the Secretary-General received the visit of Professor Umek, Minister for Science and Technology, Professor Joze Osterc, Minister for Agriculture, Food and Forestry, Mrs. Alenka Urbancic, State Secretary in the Ministry for Agriculture, Food and Forestry, and Dr. Bojan Pretnar, Director of the Slovenian Intellectual Property Office, and discussed amongst other things the proposals of Slovenia to legislate on plant variety protection.

On September 16, an official of the Union received the visit of Mr. Romas Svedas, Counsellor, Permanent Mission of Lithuania, and gave him general information on UPOV.

On November 5, the Vice Secretary-General wrote to Mr. Bahattin Bozkurt, Director of the Seed Registration and Certification Center of Turkey, to express the willingness of the Office of the Union to organize an international seminar in Turkey in cooperation with the Turkish Government.

On November 22, the Vice Secretary-General wrote to Professor Joze Osterc (Slovenia) concerning his country's plant variety protection legislation.

On December 11, the Office of the Union wrote to Mr. Thorstein Tomasson, Director, Agricultural Research Institute of Iceland, with its comments on the draft law of Iceland for the protection of new plant varieties.

VI. RELATIONS WITH INTERNATIONAL ORGANIZATIONS

On February 14 and 15, the Vice Secretary-General and an official of the Union participated in parts of a meeting of the Genetic Resources Policy Committee of the Consultative Group for International Agricultural Research (CGIAR), which was held in Rolle, Switzerland.

On February 22, an official of the Union attended, as an observer, a session of the Council for TRIPS at WTO.

On March 6, the Vice Secretary-General received the courtesy visit of Mr. David Vermeris, President of the International Federation of the Seed Trade (FIS).

On March 9, the Vice Secretary-General attended, as an observer, a session of the Council for TRIPS at WTO.

From March 13 to 15, the Vice Secretary-General and an official of the Union attended the sixth meeting of the Seed Committee of ALADI in Buenos Aires in an observer capacity. The business of the Committee included the studying of a draft agreement for harmonization, following the principles of the 1978 and 1991 Acts, of the norms and policies applied by certain ALADI members with respect to plant breeders' rights.

On March 18, the Vice Secretary-General presented a paper on various aspects of intellectual property at a workshop, held by the Organisation for Economic Co-operation and Development (OECD) in Buenos Aires, devoted to trade in transgenic varieties.

From March 18 to 20, the Vice Secretary-General and an official of the Union attended, in an observer capacity, the annual meeting in Buenos Aires of the representatives of the national designated authorities under the OECD schemes for the varietal certification of seed moving in international trade.

On March 25, an official of the Union participated in Paris in a session of the Vine Breeding Group of the International Vine and Wine Office (OIV).

On April 15, the Vice Secretary-General had a meeting with Mr. Adrian Otten, Director of the Intellectual Property and Investment Division of WTO, and officials of WIPO to discuss the matter of notification of plant variety protection laws under the TRIPS Agreement and of relations between UPOV, WIPO and WTO.

On April 19, the Vice Secretary-General gave a dinner in Rome for Dr. Geoffrey Hawtin, Director General of the International Plant Genetic Resources Institute (IPGRI), and officials of that Institute together with Mr. Bill Whitmore, President of the UPOV Council, and Mr. Joël Guiard, Chairman of the Technical Committee of UPOV, at which the potential for cooperation between IPGRI and UPOV was discussed.

From April 23 to 25, the Vice Secretary-General attended, in an observer capacity, the second extraordinary session of the (FAO) Commission on Genetic Resources for Food and Agriculture in Rome.

From May 20 to 24, the Vice Secretary-General attended the Congresses of FIS and of ASSINSEL, which were held in Amsterdam.

From June 17 to 23, the Fourth International Technical Conference of FAO on Plant Genetic Resources was held at Leipzig, Germany. UPOV was represented at that Conference by the Vice Secretary-General and an official of the Union. It also had a stand in the associated exhibition.

On July 22 and 23, two officials of the Union participated in Quito in a meeting of the Sub-Regional Committee for the Protection of Plant Varieties of the countries party to the Cartagena Agreement.

On August 8, the Vice Secretary-General and an official of the Union discussed with officials of WIPO proposals to amend the Bangui Agreement (establishing the African Intellectual Property Organization (OAPI)), which include provisions for the creation of a plant variety protection system in the OAPI member States.

On September 2 and 3, the Office of the Union discussed and exchanged the texts of possible letters of agreement to be exchanged between UPOV and WTO establishing a basis for future cooperation between the two organizations.

On September 18, an official of the Office attended, as an observer, a session of the Council for TRIPS at WTO.

On September 23 and 24, the Vice Secretary-General participated in a workshop on plant breeders' rights issues in Asia, organized by the Asia and Pacific Seed Association (APSA), with support from FAO. Government representatives from Australia, India, Indonesia, Japan, the Philippines and Thailand participated in the workshop together with representatives of interested circles both within and outside the region.

On September 25 and 26, the Vice Secretary-General participated in "Asian Seed '96", the annual conference of APSA, at which he gave a brief address conveying the greetings of UPOV to some 500 participants at the conference.

On October 18, the Vice Secretary-General wrote to Mr. Bart Kiewiet, President of the Community Plant Variety Office, concerning the future relationship between the Community Office and UPOV, welcoming the willingness of the Administrative Council of

the Community Office to invite a representative of UPOV to attend its meetings as an observer.

From October 28 to 30, the Vice Secretary-General participated in the XVth Pan-American Seed Seminar held in Gramado, Brazil, in the course of which he lectured on international developments in plant variety protection. He also attended, as an observer, the seventh meeting of the Seed Committee of ALADI.

On November 1, an official of the Union attended, as an observer, a session of the Council for TRIPS at WTO.

On November 29, the Office of the Union received the visit of Mrs. Mona S. Chaya, an FAO consultant involved in a project to reconstruct the seed sector in Bosnia-Herzegovina. The project document drawn up subsequently refers in its legislative chapter to the protection of new plant varieties.

From December 9 to 13, an official of the Union participated in the third extraordinary session of the (FAO) Commission on Genetic Resources for Food and Agriculture.

On December 10, the Vice Secretary-General participated in a meeting with officials of WIPO to discuss the possible revision of the Bangui Agreement (which establishes OAPI).

VII. OTHER EXTERNAL RELATIONS

On February 3, the Vice Secretary-General participated in a seminar on current issues before the WTO Committee on Trade and Environment organized by the Quaker Office to the United Nations in Geneva. He gave a presentation on UPOV and plant variety protection.

On February 16, an official of the Union presented a paper at a colloquium held in Weinfelden, Switzerland, by OBTECTA A.G., a Swiss commercial organization offering services to plant breeders.

On March 22, an official of the Union participated in an information meeting held in Paris by the French trade associations AMSOL and SEPRONA to discuss the essential derivation concept, and presented a paper.

On November 22, the Office of the Union received the visits of Mr. Tim Stocker, Director of Governmental Affairs for Europe, and Mr. Jean Donnenthir, Legal Advisor, of the Pioneer Overseas Corporation.

From November 26 to 28, an official of the Union attended the annual meeting of the

Austrian Plant Breeders' Association in Gumpenstein, Austria, and gave two lectures.

VIII. PUBLICATIONS

The Office of the Union published:

(a) updated editions, whenever there was an event affecting the composition of the Union, of the information leaflet on UPOV and plant variety protection in Arabic, Chinese, English, French, German, Russian and Spanish;

(b) two issues of the periodical *Plant Variety Protection*;

(c) one supplement to Part I of the Collection of Important Texts and Documents in

English, French, German and Spanish, and one trilingual supplement to Part II (Test Guidelines);

(d) the first three discs in the series constituting the UPOV central database UPOV-ROM Plant Variety Database;

(e) the report, in English, on the Seminar on the nature of and rationale for the protection of plant varieties under the UPOV Convention which was held in Pretoria, South Africa, from May 3 to 5, 1995.

[Annex follows]

ANNEX

MEMBERSHIP OF THE UNION
(as of December 31, 1996)

State	Date of Signature ¹	Date of Deposit of Instrument ²	Date Upon Which State Became Bound ¹
Argentina	- - -	- - November 25, 1994 -	- - December 25, 1994 -
Australia	- - -	- - February 1, 1989 -	- - March 1, 1989 -
Austria	- - -	- - June 14, 1994 -	- - July 14, 1994 -
Belgium	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	November 5, 1976 November 5, 1976 - -	December 5, 1976 February 11, 1977 - -
Canada	- - October 31, 1979 March 9, 1992	- - February 4, 1991 -	- - March 4, 1991 -
Chile	- - -	- - December 5, 1995 -	- - January 5, 1996 -
Colombia	- - -	- - August 13, , 1996 -	- - September 13, 1996 -
Czech Republic ³	- - -	- - -	- - January 1, 1993 -
Denmark	November 26, 1962 November 10, 1972 October 23, 1978 March 19, 1991	September 6, 1968 February 8, 1974 October 8, 1981 -	October 6, 1968 February 11, 1977 November 8, 1981 -

¹ *First line:* International Convention for the Protection of New Varieties of Plants of December 2, 1961

Second line: Additional Act of November 10, 1972

Third line: Act of October 23, 1978

Fourth line: Act of March 19, 1991.

² of ratification where the State has signed the Convention or the Additional Act, as the case may be; of ratification, acceptance or approval if the State has signed the Act of 1978; of accession where it has not signed the text concerned.

³ Continuation of the accession of Czechoslovakia (instrument deposited on November 4, 1991; State bound on December 4, 1991).

State	Date of Signature ¹	Date of Deposit of Instrument ^{1,2}	Date Upon Which State Became Bound ¹
Finland	- - - -	- - March 16, 1993 -	- - April 16, 1993 -
France	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	September 3, 1971 January 22, 1975 February 17, 1983 -	October 3, 1971 February 11, 1977 March 17, 1983 -
Germany	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	July 11, 1968 July 23, 1976 March 12, 1986 -	August 10, 1968 February 11, 1977 April 12, 1986 -
Hungary	- - - -	- - March 16, 1983 -	- - April 16, 1983 -
Ireland	- - September 27, 1979 February 21, 1992	- - May 19, 1981 -	- - November 8, 1981 -
Israel	- - - October 23, 1991	November 12, 1979 November 12, 1979 April 12, 1984 June 3, 1996-	December 12, 1979 December 12, 1979 May 12, 1984 -
Italy	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	June 1, 1977 June 1, 1977 April 28, 1986 -	July 1, 1977 July 1, 1977 May 28, 1986 -
Japan	- - October 17, 1979 -	- - August 3, 1982 -	- - September 3, 1982 -
Mexico (not yet member)	- - July 25, 1979 -	- - - -	- - - -
Netherlands	December 2, 1961 November 10, 1972 October 23, 1978 March 19, 1991	August 8, 1967 January 12, 1977 August 2, 1984 -	August 10, 1968 February 11, 1977 September 2, 1984 -
New Zealand	- - July 25, 1979 December 19, 1991	- - November 3, 1980 -	- - November 8, 1981 -
Norway	- - - -	- - August 13, 1993 -	- - September 13, 1993 -

State	Date of Signature ¹	Date of Deposit of Instrument ^{1,2}	Date Upon Which State Became Bound ¹
Poland	- - - -	- - October 11, 1989 -	- - November 11, 1989 -
Portugal	- - - -	- - September 14, 1995 -	- - October 14, 1995 -
Slovakia ³	- - - -	- - - -	- - January 1, 1993 -
South Africa	- - October 23, 1978 March 19, 1991	October 7, 1977 October 7, 1977 July 21, 1981 -	November 6, 1977 November 6, 1977 November 8, 1981 -
Spain	- - - March 19, 1991	April 18, 1980 April 18, 1980 - -	May 18, 1980 May 18, 1980 - -
Sweden	- January 11, 1973 December 6, 1978 December 17, 1991	November 17, 1971 January 11, 1973 December 1, 1982 -	December 17, 1971 February 11, 1977 January 1, 1983 -
Switzerland	November 30, 1962 November 10, 1972 October 23, 1978 March 19, 1991	June 10, 1977 June 10, 1977 June 17, 1981 -	July 10, 1977 July 10, 1977 November 8, 1981 -
Ukraine	- - - -	- - October 3, 1995 -	- - November 3, 1995 -
United Kingdom	November 26, 1962 November 10, 1972 October 23, 1978 March 19, 1991	September 17, 1965 July 1, 1980 August 24, 1983 -	August 10, 1968 July 31, 1980 September 24, 1983 -
United States of America	- - October 23, 1978 October 25, 1991	- - November 12, 1980 -	- - November 8, 1981 -
Uruguay	- - - -	- - October 13, 1994 -	- - November 13, 1994 -

³ Continuation of the accession of Czechoslovakia (instrument deposited on November 4, 1991; State bound on December 4, 1991).

MEXICO

Federal Law on Plant Varieties^{1, 2, 3}

TITLE I

GENERAL PROVISIONS

SOLE CHAPTER

Article 1

The purpose of this Law is to lay down the foundations and procedures for the protection of plant breeders' rights. Its implementation and interpretation for administrative purposes shall be the responsibility of the Federal Executive, acting through the Secretariat of Agriculture, Livestock and Rural Development.

Article 2

For the purposes of this Law,

- I. "relevant characteristics" means phenotypical and genotypical expressions specific to the plant variety that permit its identification;
- II. "Committee" means the Plant Variety Validation Committee;
- III. "propagating material" means any reproductive or vegetative propagating material that can be used for the production or multiplication of a plant variety, including seed for sowing and any whole plant or part of a plant from which it is possible to reproduce plants of seeds;
- IV. "breeder" means the person, whether natural person or legal entity, who has through an improvement process obtained and developed a new plant variety of any genus and species;
- V. "improvement process" means the technique or set of techniques and processes whereby a new plant variety is developed and its protection made possible on account of its novelty, distinctness, stability and uniformity;
- VI. "Registry" means the National Registry of Plant Varieties provided for in Article 33 of this Law;

VII. "Secretariat" means the Secretariat of Agriculture, Livestock and Rural Development;

VIII. "breeder's certificate" means the document issued by the Secretariat that recognizes and protects the rights of the breeder of a plant variety that is new, distinct, stable and uniform;

IX. "plant variety" means the subdivision of a species that comprises a group of individuals with similar characteristics that is considered stable and uniform.

Article 3

The functions of the Secretariat shall be the following:

- I. to promote and encourage action for the protection of plant breeders' rights that involves the participation of the various departments and agencies of the Federal Public Administration, federated bodies and municipalities, and also the corporate and private sectors;
- II. to prosecute applications for the protection of plant breeders' rights and, on a ruling by the Committee, to decide on the issue of the breeder's certificate, as provided in this Law and the regulations under it;
- III. to issue licenses in the public interest in the circumstances provided for in this Law;
- IV. to issue guidelines according to which clerical errors in registration particulars and in documents issued by the Secretariat are to be corrected;
- V. to publish applications for protection and plant varieties granted protection according to the terms and at the intervals specified in the regulations under this Law;
- VI. to issue official Mexican rules as appropriate and to verify compliance therewith;
- VII. to act as arbitrator in the settlement of such disputes as may be referred to it by the parties over payment for damages and prejudice arising from violations of the rights protected by this Law, and in all

¹ Published in *Diario Oficial de la Federación* of October 25, 1996, Vol. DXVII, No. 19, page 23.

² Original title in Spanish: "Ley Federal de Variedades Vegetales."

³ Translated by the Office of the Union.

matters concerning alleged irregularities connected with the subject matter of this Law that are not provided for therein or in the regulations thereunder;

VIII. to decide on administrative appeals arising from the implementation of this Law;

IX. to order and conduct inspection tours, to demand particulars and other information, to carry out investigations of alleged administrative offenses, to order and enforce measures to prevent or stop the violation of the rights protected by this Law and to impose such administrative sanctions as may be provided for in the relevant enactments;

X. to promote international cooperation through the exchange of experience with institutions in other countries responsible for the registration and protection of plant breeders' rights, including the basic and further training of staff, the transfer of work and organization methodology, the exchange of publications and updating of relevant documentary files and databases, and also the keeping of a catalogue of foreign researchers;

XI. to protect the biological diversity of plant varieties that are in the public domain and which communities have the right to continue to exploit rationally as they have by tradition, which right shall be clearly specified in the regulations under this Law;

XII. such other functions as may be assigned to it by this Law or other enactments.

TITLE II

PROTECTION OF PLANT BREEDERS' RIGHTS

CHAPTER I

RIGHTS AND OBLIGATIONS OF BREEDERS

Article 4

The rights granted to plant breeders by this Law shall be the following:

- I. recognition as the breeder of a plant variety; that right shall be inalienable and imprescriptible;
- II. utilization and exploitation of the plant variety and the propagating material thereof, either themselves or by third parties with their consent, exclusively and for a limited period, with a view to production, reproduction, distribution or sale, and also with a view to the production of other plant varieties and hybrids for commercial purposes; the term of those rights shall be:

(a) eighteen years for perennial species (forest and fruit trees, vines, ornamentals) and their rootstocks;

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

The above periods shall be calculated from the date of grant of the breeder's certificate and, when they have expired, the plant variety and its utilization and exploitation shall become public property.

Article 5

The consent of the breeder of a plant variety shall not be required for the use thereof

- I. as source or research material for the genetic improvement of other plant varieties;
- II. in the multiplication of propagating material in so far as it is intended for personal use as grain for consumption or seed for sowing, in accordance with the regulations under this Law and official Mexican provisions enacted by the Secretariat;
- III. for human or animal consumption for the exclusive benefit of the person harvesting it.

Article 6

A breeder may waive the rights conferred on him by subparagraph II of Article 4 of this Law. The waiver shall be evidenced in writing, and to be valid it shall be entered in the Register. It shall be irrevocable and it shall cause the benefit and exploitation of the plant variety and its propagating material to become public property.

Article 7

A plant breeder's certificate shall be granted where the plant variety is:

- I. new; the plant variety or the propagating material thereof shall possess this characteristic when:
 - (a) it has not been the subject of disposal on the national territory, or has not been the subject of such disposal for a year prior to the filing date of the application for a breeder's certificate;
 - (b) it has not been the subject of disposal abroad, or has not been the subject of a disposal abroad for six years prior to the filing of the application in the case of perennials (vines, forest and fruit trees and ornamentals), including their rootstocks, and for four years prior to the filing of the application in the case of all other species;

for the purposes of subparagraphs (a) and (b) above, no account shall be taken of such disposals as may have taken place without the consent of the breeder of the plant variety to be protected;

II. distinct; the plant variety shall possess this characteristic where it is technically clearly distinguishable by one or more relevant characteristics from any other variety known to exist at the time of the application for protection; such characteristics shall be susceptible of precise recognition and description; the regulations shall specify the various criteria that determine whether or not a variety is known;

III. stable; the plant variety shall possess this characteristic where it retains its significant characteristics unchanged after successive acts of reproduction or propagation;

IV. uniform; the plant variety shall possess this characteristic where its significant characteristics are sufficiently uniform, subject to the expected variation attributable to its reproductive or vegetative propagation.

CHAPTER II

APPLICATION FOR THE BREEDER'S CERTIFICATE AND GRANT THEREOF

Article 8

The Secretariat shall receive and prosecute applications for the grant of breeders' certificates. To that end, it may demand the delivery of the plant variety or of propagating material thereof in such quantities as it considers appropriate, and also any additional documents and information that it considers necessary to determine whether the Mexican legal and regulatory requirements and official provisions have been complied with.

Applications shall be void if the applicant has not acceded to requests made to him within a period of three months following the notification of those requests.

Article 9

The application for a breeder's certificate shall propose a variety denomination, which, to be approved, shall be different from any other existing in the country or abroad, shall comply with the other requirements laid down in the regulations under this Law and shall not be identical or confusingly similar to one previously protected under the Industrial Property Law. The application shall specify the parentage and origin of the plant variety.

Where the proposed denomination does not meet the foregoing requirements, the Secretariat shall refuse it and

demand that the applicant propose another within a non-renewable period of 30 calendar days.

Article 10

The right of priority shall be granted to the applicant for a breeder's certificate who has previously filed the same application abroad in countries with which Mexico has entered or may yet enter into conventions or treaties on the subject.

The priority shall consist in his being accorded, as the filing date, that on which the filing took place in another country, provided that no more than 12 months have elapsed since that time.

Article 11

For the priority referred to in the foregoing Article to be recognized, the following requirements shall be met:

I. the priority must be claimed at the time of applying for the breeder's certificate, and the country of origin and filing date of the application in that country must be specified;

II. the application filed in Mexico must not seek the grant of rights additional to those deriving from the application filed abroad;

III. the requirements specified in the relevant international treaties, this Law and the regulations under it must be fulfilled within three months following the filing of the application.

Article 12

Verification of fulfillment of the requirements specified in Articles 7 and 9 of this Law shall be the responsibility of the Committee, and shall be based on the provisions of the regulations concerned and relevant Mexican official provisions.

Once all the requirements have been fulfilled, the Secretariat shall issue the breeder's certificate, which shall recognize and protect the rights referred to in Article 4 of this Law.

Article 13

Where a plant variety has been jointly bred and developed by two or more natural persons or legal entities, the application shall specify the contribution made by each and shall designate a representative in common.

Where no representative in common is expressly designated, the one named first in the application shall be considered to be such.

Article 14

Where the requirements of novelty, denomination and the formal requirements for the application have been fulfilled, the Secretariat shall issue within 120 calendar days following the filing of the application a confirmation of filing for the period prior to the grant of the breeder's certificate.

The holder of the said confirmation shall be presumed to be the breeder of the new plant variety.

Any person who, from the date of issue of the confirmation and until such time as the corresponding breeder's certificate is granted, makes use of or exploits a plant variety or the propagating material thereof without the consent of the person purporting to be the breeder shall be liable for any damages and prejudice thereby caused to the latter. The breeder may bring action seeking compensation for such damages and prejudice as from the commencement of the validity of his certificate.

Article 15

Throughout the term of validity of the breeder's certificate, the Secretariat shall be authorized to compare the relevant characteristics of the plant variety with the corresponding relevant characteristics taken into account at the time of the grant of the certificate. To that end the breeder shall be under the obligation to supply such propagating material and information as the Secretariat may request, and also to allow the conduct of inspection tours.

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

Article 16

In order to maintain the validity of the breeder's certificate, the breeder or where appropriate his successor in title shall pay the fees specified in the Federal Law on Fees.

Article 17

The record of filing and the breeder's certificate shall become void when their period of validity expires. The record shall lapse where the party concerned fails to collect it within the 12 months from the date on which its issue is notified to him.

Article 18

On the issue of the breeder's certificate, the denomination shall become definite and unchangeable, even where the term of the certificate expires and the plant variety becomes public property.

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

When used together with a trademark, trade name or other designation, the approved denomination shall be readily recognizable and distinguishable as an indication of the parentage and origin of the variety.

CHAPTER III**TRANSFER OF RIGHTS**Article 19

The rights conferred by the breeder's certificate, with the exception of the right referred to in subparagraph I of Article 4 of this Law, may be encumbered and transferred either wholly or in part, by means of any legal instrument executed before a public official authorized to attest documents.

Article 20

In the case of the transfer of the rights referred to in subparagraph II of Article 4 of this Law, the beneficiary or assignee of, or the successor in title to, the said rights shall be obliged to submit to the Secretariat:

- I. his name, nationality and address;
- II. a copy of the document evidencing the transfer of the rights, including all the obligations and rights deriving from the said transfer;
- III. a document by which the party in question assumes the obligation to maintain the relevant characteristics of the plant variety or the propagating material thereof in the event of its being marketed and exploited.

Article 21

In the case of total transfer, the beneficiary, assignee or successor in title shall assume all the obligations and rights deriving from the breeder's certificate, with the exception of the right referred to in subparagraph I of Article 4 of this Law.

Article 22

Transfers of rights shall not preclude the possibility of the said rights being licensed to others or their being exploited by the breeder himself, in the absence of provisions to the contrary.

Transfers of rights shall qualify for registration where the requirements specified in Article 20 of this Law are complied with.

Article 23

The beneficiary, assignee or successor in title may institute legal proceedings to protect the breeder's rights as if he were the owner thereof, unless otherwise agreed.

Article 24

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

CHAPTER IV

LICENSING IN THE PUBLIC INTEREST

Article 25

For the purposes of this Law, it shall be understood that there are circumstances affecting the public interest when the exploitation of a plant variety is considered essential to meet the basic needs of the sector of the population and when there is a deficiency in supply or stocks.

Where the plant variety has not been exploited within a period of three years calculated from the date of issue of the breeder's certificate, the procedure adopted shall be as if there were a situation affecting the public interest.

Article 26

In a situation affecting the public interest, the Secretariat shall proceed as follows:

- I. it shall inform the owner of the plant variety or persons authorized by him of the situation affecting the public interest and of the need to have supplies of the plant variety in sufficient quantity, as determined by the Secretariat, to resolve the emergency; where the persons concerned show an interest in resolving the emergency themselves, they shall undertake to do so in the manner laid down by the Secretariat;
- II. where the owner of the plant variety or his successors in title make it known that they have no means of or interest in resolving the emergency, the Secretariat shall make a public call for offers by third parties who have an interest in doing so;
- III. the right to resolve the emergency shall be granted by means of a fixed-term license, subject to fulfillment of the conditions specified by the Secretar-

iat in the call for offers, which shall include payment of compensation by the licensee to the owner of the plant variety or his successor in title; when the period for which the license in the public interest expires, the owner of the plant variety shall recover all his rights.

Article 27

The owner of the plant variety that has been licensed in the public interest shall be under the obligation to provide the licensee with propagating material thereof. In no event may the licensee make use of the variety or of the propagating material for a purpose other than that of resolving the emergency.

Article 28

In situations where, owing to the seriousness and scale of the emergency, one licensee cannot resolve it alone, the Secretariat may extend the license to two or more licensees to do what is necessary, at the same time, to resolve it.

TITLE III

PLANT VARIETY CERTIFICATION COMMITTEE

SOLE CHAPTER

Article 29

The Committee shall be composed of the following titular members:

- I. the Chairman, the Technical Secretary and three ordinary members, designated by the Secretariat;
- II. one representative of the Mexican Institute of Industrial Property;
- III. one representative of the Secretariat of the Environment, Natural Resources and Fisheries;
- IV. one representative of the Government Agricultural Research Institutes.

The Committee shall have a records secretary, designated by the Chairman, who shall have the right to speak but not to vote. An alternate shall be designated for each titular member.

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

Article 30

The functions of the Committee shall be the following:

- I. to decide on the acceptability of applications for breeders' certificates, and to rule on the registration thereof;
- II. to lay down the procedures for the conduct and evaluation of technical field trials or laboratory tests;
- III. to give its opinion on the formulation of official Mexican provisions on the characterization and evaluation of plant varieties for description purposes;
- IV. any other functions that may be specified in the regulations under this Law.

Article 31

The Committee shall meet at least four times a year or, where it has two or more subjects to consider, for as many sessions as the Chairman may convene. Decisions shall be taken by a majority vote of two-thirds of the members present.

Article 32

The Committee may, to assist it in its functions, set up technical support groups composed of experts on each genus or species. The producers of each genus or species may appoint an expert to represent them within such support groups, in accordance with the applicable regulations.

TITLE IV**NATIONAL REGISTER OF PLANT VARIETIES****SOLE CHAPTER**Article 33

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

- I. the application for the issue of a breeder's certificate;
- II. the record of filing;
- III. the breeder's certificate, with details of:
 - (a) the plant variety protected;
 - (b) the species to which it belongs;

- (c) its common or everyday name and its scientific name, and any approved change thereto;
- (d) the name and address of the owner or owners of the plant variety and their successors in title, and also the name, address and personal particulars of their legal representative, if any;
- (e) the period of validity and other details of the breeder's certificate issued;

IV. the waiver of the rights provided for in subparagraph II of Article 4 of this Law;

V. any transfers and encumbrances to which the rights provided for in subparagraph II of Article 4 of this Law may be made subject;

VI. the grant of licenses in the public interest referred to in this Law;

VII. the end of the validity of the record of filing or of the breeder's certificate due to either lapse or expiry of the period concerned, and also precautionary entries in connection with proceedings for the invalidation and revocation of a breeder's certificate, including the final ruling thereon;

VIII. the declaration stating that the plant varieties have become public property.

Article 34

Cancellation of an entry in the Register may be ordered in any of the following cases:

- I. in connection with transfers of rights, where cancellation is requested jointly by the breeder and by the person to whom the rights concerned have been transferred;
- II. in the case of invalidation, lapse or revocation;
- III. by court order;
- IV. in such other cases as may be provided for in this Law and other legal enactments.

Article 35

In order to be enforceable against third parties, both breeders' certificates and transfers of rights shall be entered in the Register.

Article 36

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

Article 37

The Secretariat shall publish Register entries, applications for breeders' certificates and any information considered relevant to the subject of this Law in the Official Gazette of the Federation and in such other media as it considers appropriate.

TITLE V**ADMINISTRATIVE PROCEDURES****SOLE CHAPTER**Article 38

The administrative procedures for a declaration of nullity, revocation and the imposition of sanctions laid down in this Law shall be prosecuted and settled according to this Law and, in the absence of relevant provisions therein, according to the Federal Law on Administrative Procedure.

Article 39

If it is proved that the requirements laid down in Article 7 of this Law have not been complied with at the time of the grant of the breeder's certificate, the Secretariat shall, provided the grounds for its decision are established in the appropriate proceedings, declare the said certificate null and void.

Any person may bring to the notice of the Secretariat the existence of facts or circumstances that might give rise to the nullity of a breeder's certificate.

Article 40

The Secretariat may, provided the grounds for its decision are established in the appropriate proceedings, revoke a breeder's certificate at any time in any of the following circumstances:

- I. where the fees referred to in Article 16 of this Law have not been paid for two years;
- II. where it is shown that the relevant characteristics of the plant variety have changed;
- III. where the holder fails, after six months have elapsed from the date on which he was called upon to do so, to deliver to the Secretariat propagating material of the plant variety to allow it to be grown with its relevant characteristics as defined at the time of the grant of the breeder's certificate;
- IV. where it is proved that the plant variety has ceased to meet the requirements specified in subparagraphs III and IV of Article 7 of this Law.

Article 41

In administrative proceedings for a declaration of nullity or revocation or the imposition of sanctions, the other party or the person liable to be prejudiced shall be informed so that, within a period of 30 working days following the notification, he may make in writing whatever statement serves his interests.

Article 42

In administrative procedures for the imposition of sanctions for the infringements provided for in this Law, the Secretariat may in addition do the following as precautionary measures:

- I. order the withdrawal from circulation, or prohibit the circulation, of plant varieties or propagating material that infringes the rights protected by this Law;
- II. order the withdrawal from circulation of objects, crates, containers, packages, paperwork and advertising or similar material that infringes any of the rights protected by this Law;
- III. seize any property affected by a violation of the rights protected by this Law;
- IV. order the alleged infringer to suspend or stop any acts that violate the provisions of this Law.

Where any of the above measures has been applied, the aggrieved party and the other parties concerned shall be informed, and that fact shall be specified in the record that is drawn up for the purpose.

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

Producers, nurserymen, manufacturers, importers and distributors shall be under the same obligation, and shall be responsible for immediately recovering the plant varieties or propagating material already being traded.

Article 43

The Secretariat may order the precautionary measures referred to in the foregoing Article on application by the interested party. To that end the applicant shall prove the existence of a violation of his rights, or the imminence of such a violation, or the possibility of irreparable harm being done, or a substantiated fear that evidence may be destroyed, concealed, lost or altered, in addition to which he must effect payment of security, provide any information that may be requested of him and meet such other requirements as may be laid down in legal provisions.

The party against whom the precautionary measure has been instituted may, in order to have it lifted, deposit

counter-security to cover the damages and prejudice that might be caused the party applying for the measure.

Article 44

The party applying for the precautionary measures referred to in Article 42 of this Law shall be responsible for the payment of damages and prejudice caused to the party against whom they were carried out when:

- I. the final ruling on the merits of the dispute which has been confirmed finds that there has been no violation or threat of violation of the rights of the party who applied for the measure;
- II. a precautionary measure has been applied for but the administrative procedure before the Secretariat on the merits of the dispute has not been initiated within a period of 20 days, calculated from the implementation of the measure.

Article 45

The fate of property seized, and also all matters concerning the grant and provision of security and counter-security, shall conform to the provisions in the regulations under this Law.

Article 46

Where the Secretariat acts as arbitrator, an Arbitration Board shall be formed and presided over by the head of the General Legal Department of the said Secretariat.

Article 47

The Arbitration Board shall act as an amicable broker or alternatively as an arbitrator according to the strict terms of the law, as agreed by the parties. It shall settle matters in accordance with the provisions of this Law and the regulations under it.

TITLE VI

INFRINGEMENTS

SOLE CHAPTER

Article 48

The Secretariat shall impose the following fines, in accordance with the Federal Law on Administrative Procedure, for the infringements specified:

- I. alteration of the denomination of a protected plant variety without authorization from the Secretariat: 200 to 2,000 times the minimum daily wage;

- II. improper claim to be the owner of a protected plant variety: 500 to 3,000 times the minimum daily wage;

- III. disclosure or marketing of a plant variety as being of foreign origin when it is not, or disclosure or marketing of a plant variety as being of national origin when it is not: 300 to 3,000 times the minimum daily wage;

- IV. opposition to inspection tours to be conducted in accordance with this Law and the Federal Law on Administrative Procedure: 300 to 3,000 times the minimum daily wage;

- V. commercial exploitation of the characteristics or content of a protected plant variety by attribution of the same to another plant variety that is not protected: 1,000 to 10,000 times the minimum daily wage;

- VI. failure to comply with, or violation of, the measures provided for in Article 42 of this Law: 1,000 to 10,000 times the minimum daily wage;

- VII. use or exploitation of a protected plant variety or the propagating material thereof for production, distribution or sale of the same without authorization from the owner: 2,000 to 10,000 times the minimum daily wage;

- VIII. other violations of the provisions of this Law and the regulations under it: 200 to 5,000 times the minimum daily wage.

For the above purposes, reference shall be had to the minimum general daily wage payable in the Federal District on the date of the infringement.

For the imposition of sanctions, the Secretariat shall have regard to the seriousness of the infringement and also the background, personal circumstances and socio-economic status of the infringer. In the event of repetition of the offense, the fine applicable shall be up to twice the maximum amount of the relevant sanction.

TRANSITIONAL PROVISIONS

First

This Law shall enter into force on the day following that of its publication in the Official Gazette of the Federation.

Second

Until such time as the Federal Executive issues the Regulations under this Law, the relevant administrative and regulatory provisions of the Industrial Property Law shall apply subsidiarily in so far as they are not contrary to this Law.

Third

Article 12 of the Law on Seed Production, Certification and Marketing, the fifth transitional article of the Decree reforming, adding to and derogating from various provisions of the Law on the Development and Protection of Industrial Property, published in the Official Gazette of the Federation on August 2, 1994, and any other administrative provisions contrary to this Law, are repealed.

Fourth

Those plant varieties that have been entered in the National Register of Plant Varieties referred to in the Law on Seed Production, Certification and Marketing shall be eligible for the grant of breeders' certificates, subject to compliance with the conditions laid down in this Law. The term of protection of the rights shall conform to the provisions of Article 4 of this Law, the reference date being that on which the entry number in the National Register of Plant Varieties was assigned to it. The rights acquired by virtue of the assignment of the said number shall be respected in full.

Fifth

The Mexican Institute of Industrial Property shall hand over to the Secretariat within six months of the entry into force of this Law all applications from breeders of plant varieties of all genera and species filed with it prior to the said entry into force, in accordance with the provisions of the fifth transitional article of the Decree reforming, adding to and derogating from various provisions of the Law on Development and Protection of Industrial Property, published in the Official Gazette of the Federation on August 2, 1994.

With respect to applications for patents for the protection of plant varieties currently pending under the Law on the Development and Protection of Industrial Property, the applicants may avail themselves of the benefits afforded by this Law within six months following the entry into force thereof, by means of a request filed in writing with the Secretariat for Agriculture, Livestock and Rural Development. Rights acquired by virtue of such patents as may have been granted shall be respected in full.

Sixth

The Secretariat shall recognize the right of priority referred to in Article 10 of this Law in respect of applications for the protection of the breeders' rights in plant varieties filed in other countries as from the entry into force of this Law.

Mexico City, October 3, 1996. Deputy Carlos Humberto Aceves del Olmo, President. Senator Melchor de los Santos Ordoñez, President, Deputy Sabino González Alba, Secretary. Senator Eduardo Andrade Sánchez, Secretary.- Signatures.

In accordance with the provisions of subparagraph I of Article 89 of the Constitution of the United Mexican States, and with a view to the due publication and observance thereof, I promulgate this Decree in the Residence of the Federal Executive Power, Mexico City, Federal District, on this twenty-first day of October, nineteen ninety-six. Ernesto Zedillo Ponce de León.- Signature. Government Secretary, Emilio Chuayffet Chemor.- Signature.

NEW ZEALAND

Plant Variety Rights Amendment¹

An Act to Amend the Plant Variety Rights Act 1987

2 September 1996

Analysis

Title		3. Inspection of applications
1. Short Title		4. Cancellation of grants
2. Applications		

1. Short Title

This Act may be cited as the Plant Variety Rights Amendment Act 1996, and shall be read together with and deemed part of the Plant Variety Rights Act 1987 (hereinafter referred to as the principal Act).

2. Applications

(1) Section 5 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Every application shall be made on a form approved by the Commissioner; and shall-

“(a) Be accompanied by-

“(i) The quantity of seed (if any) prescribed in respect of varieties of the kind concerned; and

“(ii) A technical questionnaire, supplied by the Commissioner and completed by the applicant, in respect of the botanical taxon to which the subject of the application belongs; and

“(iii) Where required by regulations made under section 38 of this Act, colour photographs of material of the variety to which the application relates; and

“(b) Be completed and signed by or on behalf of the applicant; and

“(c) Nominate an address for service in relation to that application (being an address within New Zealand); and

“(d) Be accompanied by the prescribed application fee.”

(2) Section 5 of the principal Act is hereby further amended omitting from subsection (2)(a) the word “In”, and substituting the words “If required by the Commissioner, and in” .

3. Inspection of applications

The principal Act is hereby amended by repealing section 8, and substituting the following section:

“8. After an application is made, the Commissioner shall hold it and any document, instrument, or photograph accompanying it and any document or instrument supplied subsequently pursuant to subsection (2) or subsection (3) of section 5 of this Act (or a copy of that document, instrument, or photograph, certified by the Commissioner to be a true copy) available for public inspection during ordinary business hours of the Office.”

4. Cancellation of grants

Section 16(2) of the principal Act is hereby amended by repealing paragraph (h).

¹ New Zealand Statutes No. 1996/141.

NEW ZEALAND

Plant Variety Rights Amendment Regulations 1997¹1. Title and commencement

(1) These regulations may be cited as the Plant Variety Rights Amendment Regulations, 1997, and are part of the Plant Variety Rights Regulations 1988² (“the principal regulations”).

(2) These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

2. Colour photographs to be supplied with certain applications

The principal regulations are amended by inserting, after regulation 5, the following regulation:

“5A.(1) This regulation applies to every variety of plant other than herbage, agricultural crops, plants grown for the purpose of harvesting vegetables, and fungi.

“(2) An application for a variety of plant to which this regulation applies must be accompanied by-

“(a) A satisfactory photograph of all or part of a typical plant of the variety, showing the variety’s distinguishing features; or

“(b) 2 or more satisfactory photographs (each being a photograph of all or part of a typical plant of the variety) that together show the variety’s distinguishing features.

“(3) A photograph is satisfactory if-

“(a) It is photograph of a plant that has been propagated from the original bred or discovered plant concerned (not of that original plant); and

“(b) It is a positive colour print (not a slide, transparency, or other negative); and

“(c) It is clear enough and large enough to enable the subject-matter to be easily identified.”

¹ Date of notification in *New Zealand Gazette*: April 24, 1997. S.R. 1997/67

² S.R. 1988/101
Amendment No. 1: S.R. 1989/227
Amendment No. 2: S.R. 1993/146

REPUBLIC OF SOUTH AFRICA

Plant Breeders' Rights Act No. 15 of 1976¹

(Assented to 15 March, 1976)

(Date of Commencement: 1 November 1977)

(English text signed by the State President)

as amended by

Plant Breeders' Rights Amendment Act, No. 5 of 1980

Plant Breeders' Rights Amendment Act, No. 14 of 1981

Plant Breeders' Rights Amendment Act, No. 38 of 1983

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

Plant Breeders' Rights Amendment Act, No. 15 of 1996²

ACT

To provide for a system whereunder plant breeders' rights relating to varieties of certain kinds of plants may be granted and registered; for the requirements which have to be complied with for the grant of such rights; for the protection of such rights and the grant of licences in respect of the exercise thereof; and to provide for incidental matters.

Section 1Definitions

In this Act, unless the context indicates otherwise-

"advertise" means to distribute to members of the public or to bring to their notice in any manner whatsoever any written, illustrated, visual or other descriptive material, oral statements, communication, representation or reference with the intention to promote the sale of any plants or any propagating material of a variety referred to in section 2 or to encourage the use thereof or to draw attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise be acquired;

"agent" means a person, resident in the Republic, who has been duly authorized by an applicant, breeder or holder to act on his behalf in connection

with any matter regarding this Act, who is for such purpose recognized by the registrar in the prescribed manner if he complies with the prescribed requirements and in respect of whom the registrar has not been notified in the prescribed manner that such authorization has been terminated;

"agreement country" means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other country and any territory over which a mandate or trusteeship is exercised, which the State President by proclamation in the *Gazette* declares to be an agreement country with a view to the fulfillment of a bilateral agreement concerning plant breeders' rights between the Republic and such country;

"applicant" means a person referred to in section 6 who applies in terms of section 7 for a plant breeders' right;

"board" means the board referred to in section 42;

"breeder" in relation to a variety referred to in section 2, means

(a) the person who bred, or discovered an developed the variety;

¹ Consolidated text kindly supplied by the authorities of the Republic of South Africa.

² Published in the *Government Gazette* of the Republic of South Africa, Vol. 370, No. 17138, of April 19, 1996.

(b) the employer or person referred to in paragraph (a), if that person is an employee whose duties are such that the variety was bred, or discovered and developed, in the performance of such duties; or

(c) the successor in title of the person referred to in paragraph (a) or the employer referred to in paragraph (b);

“convention country” means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other country and any territory over which a mandate or trusteeship is exercised, which has signed and ratified, accepted or approved or has acceded to the International Convention for the Protection of New Varieties of Plants;

“denomination” in relation to a variety in respect of which a plant breeder’s right has been granted, means the generic name for the variety;

“department” means the Department of Agriculture;

“essential characteristics” means the essential characteristics of a variety of a plant as expressed by means of a test or trial or any other acknowledged means of determining the characteristics of a variety of a plant;

“holder” in relation to a plant breeder’s right, means the person to whom such a right has been granted in terms of section 20, or who, according to an entry in the register, is the owner of such a right;

“kind of plant” means all related genera, species and subspecies of a plant which are known by the same common name;

“mark” means a mark as defined in section 2 of the Trade Marks Act, 1963 (Act No. 62 of 1963);

“Minister” means the Minister of Agriculture;

“officer” means an officer or an employee as defined in section 1 of the Public Service Act, 1957 (Act No. 54 of 1957);

“plant breeder’s right” means a plant breeder’s right granted in terms of section 20;

“prescribed” means prescribed by regulation;

“propagating material” means any material of a plant that can be used for the propagation of a plant;

“protected variety” means a variety of a plant in respect of which a plant breeder’s right has been granted;

“register” means the register kept in terms of section 4;

“registrar” means the officer designated as Registrar of Plant Breeders’ Rights in terms of section 3;

“regulation” means a regulation made under this Act;

“sell” includes agree to sell, or to offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or to exchange for to dispose of to any person in any manner for a consideration; and “sold” and “sale” have corresponding meanings;

“this Act” includes the regulations;

“variety” means any plant grouping within a single botanical taxon of the lowest known classification, which grouping, irrespective of whether or not the conditions for the grant of a plant 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.

Section 2

Application of Act

(1) This Act shall apply in relation to every variety of any prescribed kind of plant if it is new, distinct, uniform and stable.

(2) A variety referred to in subsection (1) shall be deemed to be-

(a) new if propagating material or harvested material thereof has not been sold or otherwise disposed of by, or with the consent of, the breeder for purposes of exploitation of the variety-

(i) in the Republic, not more than one year; and

(ii) in a convention country or an agreement country, in the case of

(aa) varieties of vines and trees, not more than six years; or

(bb) other varieties not more than four years,

prior to the date of filing of the application for a plant breeder’s right;

(b) distinct if, at the date of filing of the application for a plant breeder’s right, it is clearly distin-

guishable from any other variety of the same kind of plant of which the existence on that date is a matter of common knowledge;

- (c) uniform if, subject to the variation that may be expected from the particular features of the propagation thereof, it is sufficiently uniform with regard to the characteristics of the variety in question;
- (d) stable if the characteristics thereof remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(3) If the application of this Act is extended to a kind of plant to which this Act, or any law repealed by it, did not previously apply, the registrar may deem a variety of such a kind of plant which existed at the time of the extension to be new for the purposes of subsection (2)(a), notwithstanding the fact that propagating material or harvested material thereof was sold or disposed of prior to the periods of time referred to in that subsection.

(4) If an application, in any country, for the grant of a plant breeder's right in respect of, or for the entering in the official register of varieties of, a variety in fact leads to the grant of a plant breeder's right in respect of, or to the entry in the official register of, that variety in the country in question, the existence of that variety shall as from the date of the application, for the purposes of subsection (2)(b), also be deemed to have been a matter of common knowledge.

Section 3

Designation of registrar

- (1) The Minister shall designate an officer in the department as the Registrar of Plant Breeder's Rights, who shall be the authority to whom the protection of varieties is entrusted, and who shall exercise the powers to or imposed upon the registrar under this Act.
- (2) The registrar shall exercise his or her powers and carry out his or her duties subject to any instructions issued by the Minister.
- (3) (a) The registrar may authorize any officer, or with the approval of the Minister any person who is not an officer, to exercise or carry out any power or duty of the registrar.
- (b) Any decision made or order given by any such officer or any such person, may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made by the registrar.
- (4) The officer designated as registrar in terms of section 3(1) of the Plant Breeders' Right Act 1964 (Act

No. 22 of 1964), shall be deemed to have been designated as Registrar of Plant Breeders' Rights in terms of this section.

Section 4

Register of plant breeders' rights

- (1) The registrar shall keep a register in which the prescribed particulars in respect of plant breeders' rights granted in terms of this Act shall be entered.
- (2) The register shall, upon payment of the prescribed fee, be open for inspection at the office of the registrar during office hours.
- (3) The registrar shall furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register or a certificate in respect thereof.
- (4) The register kept in terms of section 4 of the Plant Breeders' Rights Act, 1964, (Act No. 22 of 1964) shall be incorporated in and form part of the register to be kept under this section, and any document supplied to the registrar under that Act in terms of any provision thereof, shall be deemed to have been furnished to the registrar under the corresponding provision of this Act.

Section 5

Register to be evidence

- (1) The register shall be *prima facie* evidence of all matters directed or authorized by the Act to be noted therein.
- (2) A certificate by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorized by this Act to be done, has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or an extract from the register, certified by the registrar, shall be admitted in evidence in any court without further proof or production of the register.

Section 5A

Entering into of certain agreements by registrar

The registrar may, with the approval of the Minister, granted with the concurrence of the Minister of Foreign Affairs and Information and the Minister of Finance, enter into an agreement with the appropriate authority in a convention country or an agreement country in terms of which the registrar may-

- (a) obtain results of tests and trials undertaken by any such authority with a variety referred to in section 19(2) of this Act, from such authority;

(b) furnish the results of the tests and trials-

- (i) undertaken by him in terms of section 19(2)(a) of this Act with a variety referred to in that section; or
- (ii) undertaken by him with a variety in respect of which the appropriate authority concerned has submitted propagating material to him for such purpose,

to the authority concerned, if an application for the protection of the variety has been made in that other country in accordance with the laws in force in the country concerned; and

(c) submit propagating material of a variety in respect of which application for a plant breeder's right has been made to him to the authority concerned in order to have the necessary tests and trials undertaken therewith and to furnish the results thereof to him,

against payment of the fees mentioned in the agreement.

Section 6

Persons who may apply for plant breeders' rights

(1) An application for the grant of a plant breeder's right may be made by the breeder of a variety of a kind of plant referred to in section 2.

(2) An application referred to in subsection (1) may only be made by a person who-

- (a) is a citizen of, or is domiciled in, the Republic or a convention country or an agreement country; or
- (b) in the case of a juristic person, has a registered office in the Republic or a convention country or an agreement country.

Section 7

Application for plant breeder's right

(1) An application for the grant of a plant breeder's right shall be made in the prescribed manner, be accompanied by the prescribed application fee and documents, and contain an address in the Republic to which any notice or communication may be sent.

(2) An application under subsection (1) by a person who is not resident in the Republic or, in the case of a juristic person, which does not have a registered office in the Republic shall be submitted only through an agent.

(3) The registrar may require-

- (a) that plants of the variety in question, or of the variety from which it originated, be shown to him; and
- (b) that such additional information or specimens as he or she may deem necessary to determine whether or not the variety concerned constitutes a variety referred to in section 2, be furnished to him or her.

Section 8

Priority and redating of applications

(1) The effective date of an application in terms of section 7 shall be the date on which it is received by the registrar, and if more than one application in respect of the same variety is received, priority shall be given by the registrar in accordance with the regulations.

(2) If an application in terms of section 7 is preceded by an application by or on behalf of the same applicant for protection of the same variety in a convention country or an agreement country and the last-mentioned application has been deposited in accordance with the laws in force in that country, the registrar shall, notwithstanding the provisions of subsection (1) of this section, give priority to the first-mentioned application if-

- (3) (a) it is submitted to the registrar in the prescribed manner within a period of 12 months of the date on which such preceding application was duly deposited in a convention country or an agreement country;
- (b) it is accompanied by a claim in respect of the priority thereof; and
- (c) it is accompanied by the prescribed application fee.

(4) A claim referred to in subsection 2(b) shall within the prescribed period, which shall not be less than three months of the date on which it was submitted to the registrar, be confirmed by lodging with the registrar a copy, certified as correct by the appropriate authority in the convention country or agreement country in question, of each document which constituted the relevant preceding application.

(5) An application given priority under subsection (2) shall, within the prescribed period, which shall not be less than two years, reckoned from the date on which the period of 12 months contemplated in subsection (2) expired, be confirmed by supplementing it in any respect necessary in order to comply with the requirements of this Act.

(6) If two or more applications for the protection of the same variety have been deposited on different dates in

different convention countries or agreement countries, the period referred to in subsection 2(a) shall be calculated from the date on which the earliest of such applications was deposited with the appropriate authority.

(7) If the registrar has given priority to an application under subsection (2), no matter referred to in section 2(4) which occurs within the period referred to in subsection (2)(a) of this section, shall constitute a ground of objection to such application.

(8) Any priority given to an application under subsection (2) shall lapse if any document referred to in subsection (3) or (4) is not submitted within the relevant period.

(9) Where an application for a plant breeder's right has been received by the registrar and a new application in respect of any part of the subject-matter of the first-mentioned application is made by the same applicant before a plant breeder's right has been granted, the registrar may direct that the new application be antedated to a date not earlier than the date on which such first-mentioned application was received by him.

(10) Where an application received by the registrar is amended otherwise than by way of explanation or correction before the application is published in terms of section 13, the registrar may direct that the date of the application shall be the date on which it is amended or, if it has been returned to the applicant, the date on which it is again received by the registrar.

Section 9

[Section 9 repealed by section 7 of Act No. 5 of 1980]

Section 10

Denomination of variety

(1) The denomination of a variety referred to in section 2 shall comply with the prescribed requirements and be proposed by the person who applies for the grant of a plant breeder's right in respect thereof, and such denomination shall be subject to the approval of the registrar.

(2) No denomination, other than the approved denomination of a variety, may at any time, whether before or after the expiry of the term of the plant breeder's right granted in respect thereof, be used in connection with such variety.

(3) The provisions of subsection (2) shall not be construed so as to prohibit the proprietor or other registered user of a mark to use such mark in conjunction with the denomination in respect of which a plant breeder's right has been granted.

(4) A variety shall be submitted to the registrar under the same denomination as the denomination by which it is

known in any other country, unless the registrar considers the denomination unacceptable in which case the applicant shall submit an alternative denomination.

Section 11

Rejection of application

(1) The registrar may reject an application made to him under section 7 if it appears to him-

- (a) that the application does not comply with any provision of this Act;
- (b) that the variety in respect of which the application is made-
 - (i) is not a variety referred to in section 2;
 - (ii) does not comply with any provision of this Act; or
 - (iii) does not belong to a prescribed kind of plant;
- (c) that the applicant is not under this Act entitled to make the application;
- (d) that the application contains a material misrepresentation;
- (e) that the application fraudulently affects the rights of the holder of a plant breeder's right or of the person to whom provisional protection has been granted in terms of section 14;
- (f) that the applicant refuses or has failed or is not able to propose an acceptable denomination;
- (g) that the propagation of the variety in question would require repeated use of propagating material or another variety for which plant breeders' rights have been granted to or applied for by another person, unless such propagating material is used under a licence issued in terms of section 25 or 27;
- (h) that the description submitted does not clearly describe the variety;
- (i) that, where such application has been preceded by an application by or on behalf of the same applicant for protection of the same variety in a convention country or an agreement country, the description submitted to him or her differs from the description submitted in such preceding application or that the description in such preceding application does not describe a variety referred to in section 2; or
- (j) that the provisions of section 19 have not been complied with at the filing of the application.

(2) If the registrar rejects an application in terms of subsection (1) he shall in writing advise the person who applied for the grant of a plant breeder's right, of his decision and of the grounds on which it is based.

Section 12

Amendment of application

(1) A person who has made an application under section 7 for the grant of a plant breeder's right, may at any time before such application is published under section 13, add to or alter the description which accompanied his application, or the proposed denomination of the variety in question.

(2) If an application is made for such addition or alteration after the said publication, the registrar may, if he is of the opinion that the addition or alteration is of material importance, direct that the date of the application for the addition or alteration shall be a date not earlier than the date of the relevant application under section 7, or that the date of the application under section 7 shall be a date not later than the date of the application for the addition or alteration, and the registrar shall in either case republish the application under section 7 in amended form.

Section 13

Publication of application

(1) If the registrar does not reject an application under section 11, he shall by notice in the *Gazette* publish such particulars relating to the application as may be prescribed.

(2) If an application published under subsection (1) is withdrawn before a plant breeder's right in respect thereof is granted or refused in terms of this Act, the registrar shall publish the fact of such withdrawal by notice in the *Gazette*.

Section 14

Grant of provisional protection

(1) The registrar may, at the request of a person whose application for the grant of a plant breeder's right is to be published under section 13(1), issue a protective direction to such person in respect of the variety in question.

(2) Such protective direction shall be issued only-

- (a) if the registrar is satisfied that such information, facilities and material as he may require to enable him to consider that application for the grant of a plant breeder's right, have been furnished to him; and

(b) if the applicant has given a written undertaking to the registrar that, subject to the provisions or subsection (3), he shall not, while the protective direction is in force, sell or consent to sell in the Republic any reproductive material of the variety in question.

(3) (a) The holder of a protective direction shall, notwithstanding an undertaking referred to in subsection (2)(b), be entitled to sell or offer for sale reproductive material of the variety in question for the purposes of multiplication or testing.

(b) All the reproductive material produced, directly or indirectly, during such multiplication or testing, as well as any unused reproductive material, shall become or remain the property of the holder of the protective direction.

Section 15

Effect of provision protection

While a protective direction is in force, the variety in respect of which it was issued shall be protected as if a plant breeder's right had been granted in respect thereof, and anything that would constitute an infringement of a plant breeder's right or would be actionable in proceedings by the holder of such right, shall, if it is done with reference to a variety so protected, be actionable.

Section 16

Termination of provisional protection

(1) A protective direction issued under section 14 shall, subject to the provisions of subsection (2), cease to be of force on the date on which the registrar finally allows or refuses the application for a plant breeder's right in respect of the variety for which the protective direction was issued.

(2) A protective direction-

(a) may be withdrawn at an earlier date by the registrar if, in his opinion, circumstances justify the withdrawal; and

(b) shall be withdrawn at an earlier date by the registrar if he is satisfied that the holder thereof-

(i) has failed to fulfill the terms of an undertaking referred to in paragraph (b) of section 14(2); or

(ii) has given an undertaking, whether enforceable by law or not, to another person in terms whereof such holder is deprived of the right to institute an action referred to in section 47, or an action for damages in re-

spect of an infringement of a plant breeder's right.

Section 17

Objection to grant of plant breeder's right

(1) Any person may within the prescribed period, in the prescribed manner and on payment of the prescribed fee, lodge an objection with the registrar to the grant of a plant breeder's right in pursuance of an application in terms of section 7.

(2) The applicant may within the prescribed period and in the prescribed manner lodge with the registrar a counter-statement against such objection.

Section 18

Hearing of an objection

(1) An objection under section 17 shall be heard on the date and at the place and time fixed by the registrar, who shall advise the person objecting and the person who applied for the relevant plant breeder's right, in writing thereof.

(2) The registrar may in his discretion appoint one or more persons who, in his opinion, have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise him with regard to the hearing of the objection, and the remuneration of any such person shall be as prescribed and shall be borne by the State.

(3) The registrar may, for the purposes of the hearing of an objection-

- (a) summon any person who, in his opinion, may give material information concerning the subject of the hearing or who he believes has in his possession or custody or under his control any document which has any bearing upon the subject of the hearing, to appear before him at a time and place specified in the summons, to be interrogated or to produce that document, and the registrar may retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and
- (c) call any person present at the hearing as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.

(4) The procedure at the hearing of an objection shall be as prescribed.

(5) The person objecting and the person who applied for the plant breeder's right in question may, if he or she appears before the registrar at the hearing of an objection, be represented by an advocate or an attorney or by a patent agent registered under section 20 of the Patents Act, 1978 (Act No. 57 of 1978).

(6) The registrar shall, after the hearing of an objection, in writing advise the person objecting and the person who applied for the grant of the relevant plant breeder's right, of his decision and of the grounds on which it is based.

(7) An application in respect of which the registrar upholds an objection shall lapse, and the registrar shall by notice in the *Gazette* publish such particulars relating to the lapsing as may be prescribed.

Section 19

Consideration and examination of applications

(1) (a) The registrar shall consider every application for the grant of a plant breeder's right published under section 13(1) and all documents and any other proof submitted to him in connection therewith, in order to ascertain whether the application complies with the requirements of this Act.

(b) Where an objection has been lodged under section 17, or an undertaking or a guarantee is required in terms of subsection (4)(b), the registrar shall delay considering the relevant application until the objection has been disposed of or the required undertaking or guarantee has been furnished.

(2) The registrar shall, in order to enable him or her to determine whether a variety qualifies for the grant of a plant breeder's right under section 2-

- (a) undertake or cause to be undertaken such tests and trials as he or she may deem necessary with a variety in respect of which an application is being considered under subsection (1); or
- (b) use the results of tests and trials obtained from the appropriate authority in a convention country or an agreement country in terms or an agreement referred to in section 5A.

(3) The person whose application is being considered shall, for the purposes of such tests and trials and at such a time and place as the registrar may determine-

- (a) pay, subject to the provisions of subsection (4), the appropriate prescribed examination fee; and
- (b) furnish the registrar-
 - (i) with the propagating material which he may require;

- (ii) with such specimens of plants of the variety or of parts of such plants as he may require; and
- (iii) with such information in connection with the variety as he may require.
- (4) (a) The costs involved in obtaining the results referred to in subsection (2)(b) shall be paid to the registrar by the person whose application is being considered at the time and place determined by the registrar.
- (b) The registrar may require that a person whose application for a plant breeder's right is being considered, furnish him with a written undertaking or a suitable guarantee regarding a payment referred to in paragraph (a), before he takes steps to obtain the results of tests and trials with the variety concerned in terms of an agreement referred to in section 5A.
- (5) The person whose application for a plant breeder's right is being considered shall furnish the registrar within 12 months from the lodging of the application with everything required by the registrar at the examination of the application, including, where applicable-
- (a) plant material for the undertaking of tests and trials;
- (b) documents or other proof;
- (c) written undertakings or suitable guarantees for the reimbursement of costs;
- (d) information required by the registrar; and
- (e) any additional plant material, documents, proof, information, undertakings or guarantees required by the registrar in order to enable him or her to do a proper examination.
- (6) (a) The registrar may in writing on application grant extension from compliance with subsection (5) for a specified period of time.
- (b) An application for extension shall be submitted to the registrar in writing and shall set out reasons for the granting of extension.
- (b) the applicant is entitled under this Act to make the application;
- (c) the variety is a variety referred to in section 2 and it conforms to the requirements of this Act; and
- (d) no moneys are due by the applicant in terms of section 19.
- (2) The registrar shall in respect of each plant breeder's right granted-
- (a) issue a certificate of registration in respect thereof to the person who applied for the grant of the right;
- (b) enter the applicable particulars referred to in section 4(1) in the register, and
- (c) by notice in the *Gazette* publish such particulars relating to the grant of such right as may be prescribed.
- (3) (a) If the registrar refuses the grant of a plant breeder's right, he shall in writing advise the person who applied for the right of his decision and of the grounds on which it is based and shall, subject to the provisions of paragraph (b), by notice in the *Gazette* publish such particulars relating to the refusal as may be prescribed.
- (b) The grounds on which the decision is based shall not be published in the said notice nor be open for inspection except by order of a court.

Section 21

Period of plant breeder's right

A plant breeder's right shall be granted for a period of-

- (a) 25 years, in the case of vines and trees; and
- (b) 20 years, in all other cases,

calculated from the date on which a certificate of registration is issued under paragraph (a) of section 20(2).

Section 22

Payment of annual fee

Section 20

Grant of plant breeder's right

(1) The registrar shall, after considering an application in terms of section 19 and examining the results of any tests or trials conducted with the variety in question, grant a plant breeder's right in respect of a variety if-

- (a) the application conforms to the requirements of this Act;

(1) A person to whom a plant breeder's right has been granted shall during the currency of such right, annually pay to the registrar the annual fee prescribed in respect of such right.

- (2) (a) The first such annual fee shall be payable on or before 1 January of the year following the date on which a plant breeder's right is granted, and any

subsequent annual fee shall be paid before 1 January of each year.

- (b) The registrar shall, subject to the payment of such additional fees as may be prescribed, upon application extend the time for the payment of an annual fee for a period not exceeding 6 months or for periods the aggregate of which does not exceed 6 months.

Section 23

Rights of holder of plant breeder's right

(1) The effect of the protection given under this Act by the grant of a plant breeder's right shall be that prior authority shall during the currency of the plant breeder's right be obtained by way of licence under section 25 or 27 by any person intending to undertake the-

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) sale or any other form of marketing;
- (d) exporting;
- (e) importing;
- (f) stocking for any of the purposes referred to in paragraphs (a) to (e),

of-

- (i) propagating material of the relevant variety; or
- (ii) harvested material, including plants, which was obtained through the unauthorized use of propagating material of the relevant variety.

(2) The Minister may by notice in the *Gazette* extend the effect of the protection contemplated in subsection (1) to products made directly from harvested material contemplated in subsection (1)(ii).

(3) The provisions of subsections (1) and (2) shall not apply if the breeder has had reasonable opportunity to exercise his or her right in respect of the propagating material of the protected variety.

(4) (a) The provisions of subsections (1), (2) and (3) shall also apply to varieties-

- (i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(ii) which are not distinguishable from the protected variety as contemplated in section 2(2)(b); or

(iii) the production of which requires the repeated use of the protected variety.

(b) For the purposes of paragraph (a)(i) a variety shall be deemed to be essentially derived from another variety if-

(i) it is predominantly derived from that other variety, or from a variety that is itself predominantly derived from that other variety while retaining the essential characteristics of that other variety; and

(ii) it is clearly distinguishable from that other variety; and

(iii) except for the differences which result from the process of derivation it conforms to that other variety in respect of the essential characteristics.

(5) Notwithstanding the provisions of subsection (1), the holder of a plant breeder's right shall during the period which the Minister may prescribe as a period for the exercise of sole rights in terms of section 25(4) in respect of the kind of plant to which such a variety belongs, have the sole right to undertake with regard to the relevant variety any activity referred to in subsection (1) or to have such activity undertaken by any other person.

(6) Notwithstanding the provisions of section 23A(a), a person who procured any propagating material of a variety in a legitimate manner shall not infringe the plant breeder's right in respect of the variety if he or she-

(a) resells that propagating material;

(b) subject to the provisions of subsection (2), sells any plant, reproductive material or product derived from that propagating material for purposes other than the further propagation or multiplication thereof;

(c) uses or multiplies that propagating material in the development of a different variety;

(d) uses that propagating material for purposes of *bona fide* research;

(e) uses that propagating material for private or non-commercial purposes; or

(f) is a farmer who on land occupied by him or her uses harvested material obtained on such land from that propagating material for purposes of propagation; Provided that harvested material obtained from the replanted propagating material shall not be used for purposes of propagation by any person other than that farmer.

(7) Notwithstanding the provisions of subsection (6)(b) an ornamental plant in respect of which a plant breeder's right has been granted and any part thereof which is normally sold for purposes other than granted and any part thereof, shall enjoy the protection of such right when it is used commercially as propagating material in the production of such ornamental plant or of a cut flower.

(8) A notice in terms of subsection (2) shall, in any case where the holder of the plant breeder's right in question is a citizen of, or is domiciled in, a convention country or an agreement country or, in the case of a juristic person, has a registered office in a convention country or an agreement country, be issued only if such holder can in terms of the laws of such country obtain corresponding protection in that country.

Section 23A

Infringement of plant breeder's right

A plant breeder's right shall be infringed by any person who-

- (a) not being the holder of the plant breeder's right, performs, or causes to be performed, an act contemplated in section 23(1) without a licence obtained under section 25 or 27;
- (b) has obtained a licence under section 25 or 27 but fails to comply with any term or condition thereof;
- (c) uses the approved denomination of a protected variety under any other denomination than the approved denomination of that variety.

Section 24

Maintenance of reproductive material

(1) The holder of a plant breeder's right shall ensure that he is in a position during the currency of the right-

- (a) to furnish the registrar on request with propagating material of the variety in respect of which the right was granted and which is capable of reproducing the said variety in such a manner that the characteristics thereof correspond with those described at the time of the grant of the relevant right;
- (b) on request to give to the registrar the information and to accord him the facilities deemed necessary by him to satisfy himself that such holder is maintaining propagating material which conforms to the requirements referred to in paragraph (a).

(2) The registrar may undertake any inspection in connection with any matter referred to in subsection (1) which he may deem necessary.

Section 24A

Power to enter premises, carry out inspections, take samples and seize certain articles

(1) The registrar, an officer in the department or a person referred to in section 3(3)(a) may, on the authority of a warrant issued under subsection (3), at any reasonable time-

- (a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analyzed, classified, prepackaged, marked, labeled, held, kept, packed, removed, transported, exhibited or sold;
- (b) direct a person in control of or employed at such place, premises or vehicle to-
 - (i) deliver any book, record or other document that pertains to that plant, propagating material substance or other article and which is in the possession or under the control of that person;
 - (ii) furnish such information as he or she has with regard to that plant, propagating material, substance or other article;
 - (iii) render such assistance as the registrar, officer or person requires to enable him or her to perform his or her functions in terms of this Act;
- (c) inspect any book, record or other document and make copies thereof or excerpts therefrom;
- (d) seize any plant, propagating material, substance, book, record or other document or article which is or may be relevant to a prosecution under this Act and keep it in his or her custody provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the registrar, officer or person concerned make copies thereof or excerpts therefrom;
- (e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analyzing, classification, prepackaging, marking, labeling, holding, keeping, packing,

- removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyze or classify such samples.
- (2) Any sample taken in terms of subsection (1)(e) or (6)-
- (a) shall consist of the quantity or mass determined by the registrar, taken in accordance with the methods determined by him or her;
 - (b) shall be taken in the presence of the person in charge of, or the owner or custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the registrar shall be completed in respect thereof;
 - (c) shall, if necessary, be packed and identified in such manner as the nature thereof permits; and
 - (d) shall with all convenient speed be tested, examined or analyzed in accordance with the methods which the registrar may determine or which may be prescribed, and the result of such test, examination or analysis shall be entered on the form determined by the registrar.
- (3) A warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the vehicle is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) and (b) is upon or in such place, premises or vehicle, and shall specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued.
- (4) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant shall be conducted with strict regard to decency and order, including-
- (a) a person's right to, respect for and the protection of his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (5) The registrar, officer or person executing a warrant in terms of this section shall immediately before commencing with the execution-
- (a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant, or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle;
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (6) The registrar, an officer in the department or a person referred to in section 3(3)(a) may without a warrant enter any place, premises or vehicle, and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so consents to such entry, search, seizure, taking of samples and removal.
- (7) (a) The registrar, officer or person who may on the authority of a warrant issued in terms of subsection (3) enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search.
- (b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly demanded admission to the place, premises or vehicle and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.
- (8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.
- (9) A warrant issued in terms of this section may be issued on any day and shall be of force until-
- (a) it is executed; or
 - (b) it is canceled by the person who issued it or, if such person is not available, by any person with similar authority; or
 - (c) the expiry of one month from the day of its issue; or
 - (d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.

(10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document shall be returned to the person from whom it was seized.

Section 25

Licences

(1) The Holder of a plant breeder's right may at the request in writing of another person grant to such person a licence in terms of which such person may be authorized to undertake any activity referred to in section 23.

(2) The licence may include conditions regarding

- (a) the quantity of propagating material of the relevant variety to be supplied to the holder of the licence, and the price thereof;
- (b) the royalties payable in respect of the exploitation of the licence;
- (c) the information to be furnished to the holder of the relevant plant breeder's right regarding the extent to which the licence is being exploited;
- (d) the period of validity of the licence, which shall not exceed the term of the relevant breeder's right;
- (e) the transfer thereof;
- (f) the punitive measures applicable with reference to any condition which is not complied with; and
- (g) any other matter which the parties may agree to.

(3) The holder of a plant breeder's right shall within the prescribed periods notify the registrar in the prescribed manner of each licence issued by him or her under this section, and shall furnish the registrar with a copy of each such licence.

(4) During the period which the Minister prescribes under section 23(5) as a period for the exercise of sole rights in respect of the kind of plant to which a variety belongs, the registrar shall not issue a compulsory licence in respect of that variety in terms of section 27.

Section 26

Application for compulsory licence

(1) Any person who is of the opinion that the holder of a plant breeder's right unreasonably refuses to grant him a licence under section 25, or that such a holder is imposing unreasonable conditions for the issue of such a licence, may in the prescribed manner and upon payment of the prescribed fee apply to the registrar for the issue to him of a compulsory licence in respect of the relevant plant breeder's right.

(2) and (3)

[Sub-sections (2) and (3) deleted by section 17(b) of Act No. 5 of 1980]

(4) The holder of such a plant breeder's right may within the prescribed period and in the prescribed manner lodge a counter-statement with the registrar in which are set out the particulars of any ground upon which he contests the application in question.

(5) The holder of such plant breeder's right shall serve a copy of the counter-statement on the person who made the application and shall furnish the registrar with proof of the service thereof.

(6) If the person who made the application and the holder of the relevant plant breeder's right at any stage after the application has been lodged with the registrar, reach an agreement with regard to the issue of a licence, the person who made the application shall inform the registrar of the agreement, whereupon the application shall lapse.

Section 27

Grant of compulsory licence

(1) An application under section 26 shall be heard on the date and at the place and time fixed by the registrar, who shall advise the person who made the application and the holder of the plant breeder's right in writing thereof.

(2) The provisions of sections 18(2), (3), (4), (5) and (6) shall *mutatis mutandis* apply with reference to the hearing of the application.

(3) If the registrar is satisfied that the holder of a plant breeder's right is unreasonably refusing a licence under section 25 or imposing unreasonable conditions for the issue thereof, and is satisfied that, as a result of such refusal the variety in question are not being satisfied or will not be satisfied, the or she may issue a compulsory licence-

- (a) which shall include the conditions referred to in paragraphs (a) up to and including (f) of section 25(2), and such other conditions as the registrar may determine;

- (b) which may at any time be reviewed by the registrar by reason of representation made to him for the amendment or withdrawal thereof.
- (4) In settling the terms of a compulsory licence the registrar shall endeavor to ensure that propagating material of the variety in question shall be available to the public at reasonable prices consistent with the holder of a plant breeder's right deriving a reasonable advantage therefrom.
- (5) (a) A compulsory licence may be granted to any person whether or not the holder of the relevant plant breeder's right has granted a licence under section 25 to any other person.

- (b) The issue of a compulsory licence shall not prevent the holder of the plant breeder's right from granting additional licences in terms of section 25.

Section 28

Joint holders of plant breeder's right

(1) Where a plant breeder's right is, after the commencement of this Act, granted to two or more persons jointly, each such person shall, subject to any written agreement to the contrary between them, be entitled-

- (a) to an equal share in such right;
- (b) to undertake in connection therewith for his own benefit any activity referred in section 23, if he discloses any such activity to the other joint holders; and
- (c) to institute any action in respect of any infringement of that right.

(2) A joint holder of a plant breeder's right shall not without the consent of the other joint holders be entitled-

- (a) to grant a licence under section 25; or
- (b) to transfer the whole or any part of his interest in such right.

(3) Where an action is founded on the sale of any propagating material by a joint holder of a plant breeder's right, such joint holder shall for the purposes of the action be deemed to be the sole holder of the plant breeder's right.

(4) The court may upon the application of any joint holder of a plant breeder's right and after giving to any other joint holder of the right an opportunity of being heard, give any direction with regard to the transfer of the right or any part thereof, or with regard to the grant of any licence in respect of the right, or with regard to the use and development of the right, as appears just and

expedient, and each joint holder shall give effect to any such direction.

(5) If any person who is required to give effect to any direction under subsection (4) fails, within the period determined by the court or, failing such a determination, after being requested in writing to do so by any joint holder of the relevant right, to execute any instrument or to do any act or thing required to give effect to the direction, the court may empower any person to execute the instrument in question or to do the act or thing in question in the name of and on behalf of the person so failing.

Section 29

Transfer of the plant breeder's right

(1) The holder of a plant breeder's right under this Act or the Plant Breeder's Right Act 1964 (Act No. 22 of 1964), shall, within the prescribed period after such right or any part thereof has been transferred to another person in the prescribed manner and upon payment of the prescribed fee-

- (a) inform the registrar of the name and address of the person to whom the right or part thereof has been transferred; and
- (b) furnish the registrar with proof that a notice of such transfer has been served on every person licensed in respect of that right.

(2) A person to whom a plant breeder's right or any part thereof has been transferred shall, if he or she appoints an agent with respect to such right, within the prescribed period and in the prescribed manner inform the registrar of the name and address of such agent.

(3) The registrar shall by notice in the *Gazette* publish such particulars relating to a transfer of a plant breeder's right of which he is informed under this section, as may be prescribed.

Section 30

State bound by plant breeder's right

(1) Subject to the provisions of subsection (2), a plant breeder's right shall in all respects bind the State in the same way as it binds any other person.

(2) No fees payable under this Act shall be payable by the State.

Section 31

State may take over plant breeder's right

(1) (a) The Minister may after consultation with the Minister of Finance by notice in the *Gazette* take over on behalf of the State the plant breeder's

right in any variety of a kind of plant from a date determined by him or her and published in the same or later notice in the *Gazette*.

- (b) As from the date determined under paragraph (a) all rights and liabilities pertaining to the said plant breeder's right shall be deemed to have been transferred to the State, and such rights shall as from that date vest in the Minister on behalf of the State.

(2) The Minister shall pay the person who was the holder of the plant breeder's right in question immediately prior to the date referred to in subsection (1)(a), such compensation as may be agreed upon or, failing agreement, as may be settled by arbitration.

Section 32

Alteration of denomination

(1) The denomination approved in respect of a variety may be altered or supplemented by the registrar-

- (a) if ordered by the court on the application of a person who in law has a preferent claim to the use of the designation in question;
- (b) on the application of the holder of a plant breeder's right in that variety;
- (c) if the information submitted to the registrar in the application for the approval of, or in connection with, the denomination in question was incorrect and the registrar is of the opinion that such denomination would not have been approved had he known that such information was incorrect; or
- (d) if information comes to light which, if discovered earlier, would in the opinion of the registrar have resulted in the refusal of such denomination.

(2) An application referred to in subsection (1)(b) shall be made to the registrar in the prescribed manner and shall be accompanied by the prescribed application fee.

(3) If an alteration or supplementation becomes necessary on a ground referred to in paragraph (c) or (d) of subsection (1), the registrar shall in writing inform the holder of the relevant plant breeder's right thereof and give the grounds on which the alteration or supplementation is deemed necessary, and such holder shall submit proposals for an alteration or supplementation within 60 days from the date of the notice to him.

(4) If the register intends approving any proposal for the alteration or supplementation of a denomination under subsection (1)(b) or (3), he shall by notice in the *Gazette* publish such particulars relating to the intended alteration or supplementation as may be prescribed.

(5) Any person may within the prescribed period, on payment of the prescribed fee, in the prescribed manner lodge an objection to the grant of such alteration or supplementation.

(6) The registrar may, after considering any objection lodged under subsection (5), approve the proposed alteration or supplementation, and shall by notice in the *Gazette* publish the prescribed particulars relating to an alteration or supplementation so approved.

(7) The registrar shall forthwith publish by notice in the *Gazette* the prescribed particulars relating to an alteration or supplementation ordered under subsection (1)(a).

Section 33

Termination of plant breeder's right

(1) A plant breeder's right shall terminate upon the expiry of the relevant period contemplated in section 21.

(2) The registrar may terminate a plant breeder's right prior to the expiry of the plant breeder's right if-

- (a) any information submitted to him or her in the application for such a right or in connection with such an application, was incorrect and if such a right would not have been granted if he or she had known that the information was incorrect;
- (b) information has come to light which, if discovered earlier, would have resulted in the plant breeder's right being refused;
- (c) priority should be given under section 8 to any other application for the grant of a plant breeder's right in the same variety;
- (d) the holder of the plant breeder's right refuses or has failed to comply or is not in a position to furnish the registrar with propagating material of the relevant variety which conforms to the requirements of paragraph (a) of section 24(1);
- (e) the holder of the plant breeder's right has failed to comply with any request under paragraph (b) of section 24(1), or he or she has prevented the registrar from undertaking an inspection referred to in section 24(2);
- (f) the holder of the plant breeder's right refuses or has failed or is not in a position to submit a proposal for an alteration or a supplementation of a denomination after having been requested to do so under section 32(3);
- (g) the annual fee in terms of section 22 was not paid within the period referred to in that section;
- (h) the plant breeder's right has been granted to a person who is not entitled thereto, unless it is

transferred to the person who is entitled thereto;
or

- (i) the holder of the plant breeder's right is ordered to terminate the plant breeder's right by an order of court.

(3) The registrar shall in writing advise the holder of the plant breeder's right in question and the holder of any licence issued under section 27 or with respect to which a notification has been given under section 25(3), of his intention to terminate a plant breeder's right under subsection (2) and of the grounds therefor.

(4) Any holder referred to in subsection (3) may, within the prescribed period, in the prescribed manner and on payment of the prescribed fee lodge an objection against the intended termination of a plant breeder's right.

(5) The provisions of sections 18(1), (2), (3), (4), (5) and (6) shall *mutatis mutandis* apply with reference to such an objection.

(6) The registrar shall publish the termination under subsection (1) or (2) of a plant breeder's right by notice in the *Gazette*.

(7) A certificate of registration issued under paragraph (a) of section 20(2) shall, within the prescribed period, be returned to the registrar by the holder thereof when the relevant plant breeder's right terminates or is terminated under this section.

Section 34

Voluntary surrender of plant breeder's right

(1) The holder of a plant breeder's right may at any time notify the registrar in the prescribed manner and upon payment of the prescribed fee that he is surrendering such right, and such holder shall furnish the registrar with proof that a copy of such notification has been served on any person licenced with respect to that right and on any other interested person.

(2) The registrar shall by notice in the *Gazette* publish such particulars relating to the surrender as may be prescribed.

Section 35

Marking of labels or containers

(1) If any propagating material of variety in respect of which a plant breeder's right has been granted is sold for purposes of propagation, the denomination of that variety shall clearly and legibly appear on a label attached thereto, or, if it is packed, on the container.

(2) If a mark is used in conjunction with the name of the relevant variety, such mark and name shall be clearly distinguishable.

Section 36

Correction of errors

(1) The registrar may authorize-

- (a) the correction of any clerical error or error in translation appearing in any plant breeder's right, the application for such a right or any document filed in pursuance of such an application, or the register;
- (b) the amendment of any document for the amendment of which no express provision is made in this Act;
- (c) the condonation or correction of any irregularity in procedure in any proceedings before him, if such condonation or correction is not detrimental to the interests of any person.

(2) The registrar may exercise the authority under subsection (1) *mero motu* or upon request in writing.

(3) Where the registrar intends exercising his authority under subsection (1) *mero motu*, he shall give notice of his intention to the holder of the plant breeder's right or the applicant for such right, as the case may be, and to any other person who appears to him to have an interest in the matter, and shall give such holder, applicant or person an opportunity of being heard before exercising his authority.

Section 37

Discretionary power of registrar

(1) (a) Whenever any discretionary power is given to the registrar by this Act he shall not exercise that power in a manner adverse to an applicant or an objector or other person who according to the register appears to be an interested party, without giving such applicant, objector or interested person an opportunity of being heard within the time prescribed or, if no time has been prescribed, within such reasonable period as shall be fixed by the registrar.

(b) An applicant, objector or other interested person referred to in paragraph (a) may waive the right to be heard.

(2) Whenever by this Act any time is specified within which any act or thing is to be done, the registrar may, save where it is expressly otherwise provided, extend the time either before or after its expiration.

Section 38Defect in form not to invalidate documents

A defect in the form of any document which is in terms of any law required to be executed in a specific manner, or in a notice issued in terms of this Act, shall not render unlawful an administrative action executed in respect of the manner to which such document or notice relates, and shall not be a ground for exception to any legal procedure which may be taken in respect of such matter, if the requirements and meaning thereof are substantially and intelligibly set forth.

Section 39Preservation and proof of documents

(1) All documents lodged with the registrar in connection with plant breeders' rights and any application for such rights shall, subject to the provisions of subsection (3), be preserved for the prescribed period.

(2) Any document referred to in subsection (1) which in the opinion of the registrar may lie for inspection by the public shall upon payment of the prescribed fees be open for inspection during office hours at the office of the registrar, and copies thereof shall on request and upon payment of the prescribed fees be furnished to any person.

(3) Where an application for the grant of a plant breeder's right has been withdrawn, the registrar shall return all the papers submitted in connection with the application, to the applicant at the address indicated in the application or, if this is not practicable, destroy them after expiry of the prescribed period.

(4) The provisions of section 5(3) shall *mutatis mutandis* apply with reference to all documents lodged with the registrar.

Section 40Secrecy

(1) No person, shall, except-

- (a) in so far as it is necessary for the proper application of the provisions of this Act; or
- (b) for the purposes of legal proceedings under this Act or any other law; or
- (c) when required to do so by any court or under any law; or
- (d) when authorized thereto by the Minister,

disclose any information acquired by him or her in the exercising of his or her powers or the performance of his or her duties in terms of this Act.

(2) Notwithstanding the provisions of subsection (1), the registrar may furnish to the holder of a plant breeder's right or to the person to whom a licence was granted under section 25, any information he or she has acquired pertaining to any action which constitutes an infringement of the plant breeder's right in question.

Section 41

[Section 41 repealed by section 24 of Act No. 5 of 1980]

Section 42Appeal against decision or action of the registrar

(1) A person who feels aggrieved by any decision or action taken by the registrar in terms of this Act may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal to the Minister against the decision or action in question.

(2) (a) The Minister shall refer to appeal for investigation and decision to a board the members of which shall be appointed by the Minister and which shall consist of-

- (i) one person designated as chairman on account of his knowledge of law;
- (ii) two persons who in the opinion of the Minister have expert knowledge of the subject of the appeal.

(b) A person appointed under subparagraph (ii) of paragraph (a) shall be disqualified as a member of the board if he has any direct or indirect personal interest in the outcome of the appeal.

(3) (a) An appeal under subsection (1) shall be heard on the date and at the time and place fixed by the chairperson and he or she shall advise the person appealing and any other party that has an interest in the appeal, in writing thereof.

(b) The chairperson may, for the purposes of the hearing of an appeal

- (i) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the registrar may retain

for examination any document so produced;

(ii) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(iii) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(c) The procedure at the hearing of an appeal shall be as prescribed.

(d) The person appealing and the registrar shall be entitled to be represented at an appeal by an advocate or an attorney or by a patent agent registered under section 20 of the Patents Act 1978 (Act No. 57 of 1978).

(4) If a person appointed under subsection (2)(a)-

(a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the chairman of the board, the Minister shall designate one of the remaining members to act as chairman.

(5) (a) If the parties do not agree under subsection (4), the investigation shall be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2)(a), in the place of the member who has died or has become incapacitated.

(b) Where an appointment has been made under paragraph (a), the investigation shall, if the parties so agree, be continued as from the stage at which the investigation was interrupted by the death or incapacitation of a member, or shall, if the parties do not so agree, be commenced *de novo*.

(6) The board may after investigation of the appeal-

(a) confirm, set aside or vary the relevant decision or action of the registrar;

(b) order the registrar to execute the decision of the board in connection therewith.

(7) (a) The decision of the board shall be in writing, and a copy thereof shall be furnished to the registrar, the appellant and any other party.

(b) No appeal shall lie against the decision of the board.

(8) If the board sets aside any decision or action by the registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, or if the board varies any such decision or action, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

Section 43

[Section 43 repealed by section 24 of Act No. 15 of 1996]

Section 44

Regulations

(1) The Minister may make regulations-

(a) prescribing any certificate or other document or form to be issued or used for the purposes of this Act;

(b) prescribing the fees payable in respect of any application, matter or document;

(c) prescribing the scale of remuneration which shall be paid to a person appointed in terms of section 18(2);

(d) prescribing the scale of remuneration which shall be paid to any member of a board appointed in terms of section 42(2);

(e) prescribing the information and facilities to be provided to the registrar by an applicant for a plant breeder's right, and the reproductive material to be submitted at the time of an application and thereafter;

(f) prescribing the tests, trials, examinations and other steps to be taken by an applicant or the registrar before a plant breeder's right may be granted, and the time within which they are to be taken;

(g) prescribing the records relating to reproductive material for sale, multiplication or export to be kept by any person who has such material in his possession or under his control, the form and manner in which they are to be kept, and how and to whom they shall be available for inspection;

(h) concerning any matter which in terms of this Act is required or permitted to be prescribed; and

- (i) concerning, generally, any matter which he considers necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved, the generality of the powers conferred by this paragraph not being limited by the provisions of the preceding paragraphs.
- (2) Different regulations may be made in terms of this section in respect of different classes or groups of plants or in respect of different kinds of plants or in such other respects as the Minister may determine.
- (3) The regulations may in respect of any contravention thereof or failure to comply therewith prescribe a penalty-
- (a) in the case of a first conviction of a fine or imprisonment for a period not exceeding six months; and
- (b) in the case of a second or subsequent conviction of a fine or imprisonment for a period not exceeding one year.
- (4) A regulation prescribing any fees shall be made only after consultation with the Minister of Finance.
- (f) who falsely represents that propagating material sold by him for the purpose of propagation or multiplication is propagating material of a variety in respect of which a plant breeder's right has been granted under this Act, or that the propagating material originates from such a variety;
- (g) who, at the sale of propagating material sold by him for the purpose of propagation or multiplication, uses a denomination therefor which is different from the denomination registered in terms of this Act for the variety in question or uses the registered denomination of another variety of the same kind of plant or uses a denomination which corresponds too closely to a registered denomination that it is misleading;
- (h) who fails to comply with an undertaking referred to in paragraph (b) of section 14(2) or fails to carry out an order referred to in section 24A(1)(b);
- (i) who, except in the circumstances referred to in section 40, discloses information acquired by him in the course of his duties or in the performance of his functions under this Act,

Section 45

Offences and penalties

(1) Any person-

- (a) who makes a false entry in the register or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register or of a document lodged with the registrar, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy;
- (b) who makes a false statement or representation, or who furnishes false information knowing it to be false;
- (c) who obstructs or hinders the registrar, an officer or a person referred to in Section 3(3)(a) in the exercise of his or her powers or the carrying out of his or her duties under this Act;
- (d) who, having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse so to appear;
- (e) who, having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;

shall be guilty of an offence and liable on conviction-

- (i) in the case of a first conviction of an offence referred to in paragraph (a) or (b) to a fine or to imprisonment for a period not exceeding two years;
- (ii) in the case of a second or subsequent conviction of an offence referred to in paragraph (a) or (b) to a fine or to imprisonment for a period not exceeding four years;
- (iii) in the case of a first conviction of an offence referred to in paragraph (c), (d), (e), (f), (g), (h) or (i) to a fine or to imprisonment for a period not exceeding one year; or
- (iv) in the case of a second or subsequent conviction of an offence referred to in paragraph (c), (d), (e), (f), (g), (h) or (i) to a fine or to imprisonment for a period not exceeding two years.
- (2) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

Section 46

Prohibition of trafficking by officers

- (1) The registrar, or an officer who under the delegation, control or direction of the registrar exercises the powers and carries out the duties assigned to or imposed upon

the registrar under this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year-

- (a) if he buys, sells, acquires or traffics in any plant breeder's right or an interest therein;
- (b) if he acquires, otherwise than in the course of his duties, or sells any propagating material of a variety in respect of which a plant breeder's right has been granted or applied for.

(2) Any purchase, sale, acquisition or assignment of any plant breeder's right by or to the registrar or any such officer shall be of no force and effect.

(3) Any reproductive material acquired by the registrar or such an officer shall be forfeited to the State.

(4) Nothing in this section contained shall apply to the person who bred, or discovered and developed, a variety of a plant or to any acquisition by inheritance.

Section 47

Compensation in respect of infringement of plant breeder's right

(1) The holder of a plant breeder's right may upon proof of an infringement of that right and without proof of damages which might arise from such infringement, recover by action in any competent court from the person who infringed the plant breeder's right compensation in respect of such infringement in an amount not exceeding R 10,000.

(2) An action under subsection (1) shall be available to the holder in lieu of any action of damages in any amount which might arise from the relevant infringement.

(3) An action referred to in subsection (1) or (2) shall not be instituted while the relevant plant breeder's right or variety is the subject of-

- (a) an objection which in terms of this Act is to be determined by the registrar; or
- (b) an appeal which in terms of section 42 is to be decided by the board.

(4) The holder of a plant breeder's rights or any person to whom a licence has been granted under section 25 or 27, the holder of the relevant plant breeder's right shall be joined as a party to those proceedings.

(5) In the case of proceedings referred to in subsection (4), instituted by a person to whom a licence has been granted under section 25 or 27 the holder of the relevant plant breeder's right shall be joined as a party to those proceedings.

(6) In addition to any other remedy, a competent court may, in proceedings due to the infringement of a plant breeder's right, make an order in respect of the custody, surrender or disposal of any book, document, plant, propagating material, product, substance or other article.

Section 48

Assignment of powers and duties by Minister

The Minister may either generally or in any particular case or in relation to particular property assign to any officer of the department any power conferred or duty imposed upon him under this Act, other than a power referred to in section 31 or 44.

Section 49

Limitation of liability

No compensation shall be payable by the State, the Minister, the registrar or an officer in respect of any act done in good faith under this Act.

Section 50

[Section 50 repealed by section 29 of Act No. 15 of 1996]

Section 51

Plant breeder's rights granted in terms of Act 22 of 1964

(1) A final or provisional plant breeder's right granted in terms of the provisions of the Plant Breeders' Rights Act, 1964, before the commencement of this Act, shall be deemed to be a plant breeder's right granted under this Act, and every provision of this Act, other than the provisions of section 22, shall *mutatis mutandis* apply with reference to any such plant breeder's right.

(2) Any application for a plant breeder's right which was received by the registrar before the commencement of this Act but in respect of which a final plant breeder's right was not granted under section 15 of the Plant Breeders' Rights Act, 1964, before such commencement, shall be dealt with in all respects as if this Act had commenced on the date of receipt of such application.

Section 52

Repeal of laws

The Plant Breeders' Rights Act, 1964 (Act 22 of 1964), and the Plant Breeders' Rights Amendment Act, 1969 (Act 72 of 1969), are hereby repealed.

The laws mentioned in the second column of the Schedule are hereby repealed as indicated in the third column of the Schedule, to the extent that such laws were in force immediately prior to the commencement of the Constitution in the various territories of the national territory of the Republic as set out in the fourth column of the Schedule.

Section 53

Short title and commencement

This Act shall be called the Plant Breeders' Rights Act, 1976, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Extension of application of Act 15 of 1976

The principal Act shall apply throughout the Republic.

SCHEDULE

LAWS REPEALED BY SECTION 30

Number and year of Law	Short Title	Extent of repeal	Area in respect of which law is repealed
Act No. 22 of 1964	Plant Breeders' Rights Act, 1964	The whole	The territory of the former Republic of Transkei
Act No. 72 of 1969	Plant Breeders' Rights Amendment Act, 1969	The whole	The territory of the former Republic of Transkei
Act No. 15 of 1976	Plant Breeders' Rights Act, 1976	The whole	The territories of the former Republic of Bophuthatswana, Venda and Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
Act No. 5 of 1980	Plant Breeders' Rights Amendment Act, 1980	The whole	The territory of the former Republic of Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
Act No. 14 of 1981	Plant Breeders' Rights Amendment Act, 1981	The whole	The territory of the former Republic of Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
Act No. 38 of 1983	Plant Breeders' Rights Amendment Act, 1983	The whole	The territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane

URUGUAY

Law No. 16.811^{1,2}

TITLE I

NATIONAL SEEDS INSTITUTE

CHAPTER I

DECLARATION OF NATIONAL INTEREST

Article 1

The breeding, production, distribution and marketing of seeds and phylogenetic creations, both within the country and abroad, are hereby declared to be in the national interest.

CHAPTER II

CREATION

Article 2

The National Seeds Institute is hereby created as a non-government legal entity under public law.

Article 3

The objectives of the National Seeds Institute shall be the following:

- (A) To promote the production and use of the best seed, of proven identity and superior quality as a means of furthering the development of the national seed industry.
- (B) To support the breeding and use of new national phylogenetic material, and also such material of foreign origin when it conforms to the conditions prevailing within the country.
- (C) To protect phylogenetic creations and discoveries by granting the appropriate property titles.
- (D) To encourage the exportation of seed.
- (E) To verify compliance with the prevailing legal provisions in the area concerned.

(F) To propose the enactment of provisions on the production, certification, marketing, exportation and importation of seed, and also on the protection of phylogenetic creations and discoveries.

Article 4

The Executive shall be competent to determine national seeds policy according to the objectives provided for in the foregoing Article, and shall be given advice and assistance by the Institute in that connection. The Institute shall conduct its action according to that national policy.

The Institute shall be linked and coordinated with the Executive through the Ministry of Livestock, Agriculture and Fisheries.

CHAPTER III

ADMINISTRATION

Article 5

The organs of the Institute shall be the Board of Directors, the Executive, the National Seeds Council and the Users' Commission.

Article 6

The Board of Directors shall be the supreme authority of the Institute, and its Members shall be persons of recognized integrity in matters pertaining to seeds, which fact they shall attest with the appropriate testimonials.

The Board shall be composed of:

- one representative from the Ministry of Livestock, Agriculture and Fisheries, who shall preside;
- one representative of seed producers;
- one representative of seed traders;

¹ Published in the *Diario Oficial* of Uruguay of February 28, 1997.

² Translated by the Office of the Union.

- two representatives of the farmers who use the seed.

The representative of the Ministry of Livestock, Agriculture and Fisheries shall have sound training in agricultural science.

The representatives of producers and traders shall be designated by the Executive on a proposal from the corresponding associative bodies, and the representatives of farmer-users on a proposal from the Users' Commission.

The Executive shall, when enacting the Regulations under this Law, specify the criteria for the selection of representatives of the private sector.

The designation of titular members of the Board of Directors shall include that of the corresponding alternates.

Article 7

The term of office of members of the Board of Directors shall be three years, and they may be re-elected for a second, consecutive term.

Outgoing members shall remain in office until the designated new members have taken up their duties.

Article 8

The monthly remuneration of the Chairman of the Board of Directors shall correspond to that of an Under-Secretary of State.

The other titular members shall be remunerated according to a system of attendance fees.

The value of the attendance fee referred to in the foregoing paragraph is set at the equivalent of one-twelfth of the monthly remuneration of the Chairman, with a minimum of four and a maximum of seven monthly sessions.

Article 9

The Board of Directors shall determine its own program of sessions.

Resolutions shall be adopted by majority consent.

In the event of equally divided votes, the Chairman shall have a casting vote.

Article 10

There shall be a Managing Director designated by the majority of the Board of Directors, confirmed by the concurrent vote of the Chairman.

He shall be a person pursuing a recognized career and having sound training in the sciences that pertain to seed production and quality control.

The Managing Director shall attend the sessions of the Board of Directors with the right to speak but not to vote.

Article 11

The Director shall be under contract for renewable periods of three years. A majority vote of the Board of Directors, including that of the Chairman thereof, shall be required for his removal or for the non-renewal of his contract.

Article 12

The National Seeds Council shall be composed of one representative from each of the following institutions: Agricultural Science Faculty, National Institute of Agriculture and Livestock Research, Association of Agricultural Engineers, National Farm Board, Institute of Agricultural and Livestock Planning, National Honorary Commission for the Citrus Growing Plan, National Institute of Vine and Wine Growing, and it shall act in plenary with the Members of the Board of Directors and the Managing Director.

The Regulations under this Law and any amendments thereto may alter the membership of the aforesaid Council by increasing the number of members.

The Council may be convened at the request of either the Board of Directors or three of its own members.

Article 13

The Users' Commission shall be composed of one delegate each from the following institutions: Rural Federation, Federated Farm Cooperatives, National Commission of Rural Development, Rural Association of Uruguay, Association of Rice Growers, National Association of Milk Producers, Farmers' Confederation of Uruguay, Uruguayan Federation of CREA Groups, Association of Agricultural Producers of Canelones. It shall hold sessions at least every four months.

The Executive shall regulate the procedure according to which the Users' Commission selects its representatives, and in doing so shall seek to ensure that the various entities are represented by at least one of the persons selected.

The Regulations under this Law may amend the membership of the Commission by increasing the number of members.

The Commission may be convened either by the Members of the Board of Directors or at the request of one-third of its own Members.

CHAPTER IV

DUTIES AND POWERS

Article 14

The Institute shall have the following duties:

- (A) To promote the development of seed activities at all stages.
- (B) To monitor the production and marketing of seed, and at the same time to ensure compliance with the provisions laid down by this Law and the Regulations under it; to that end it shall be empowered to:
- (1) sample, inspect, analyze and test seed in the process of production, transportation, sale and offering or display for sale, in any place and at any time, in order to ascertain whether legal and regulatory provisions have been met;
 - (2) have access to places in which commercial or certified seed is located or is in the process of being produced;
 - (3) effect the withdrawal from sale of any seed that does not meet the requirements of this Law;
 - (4) seek the assistance of the forces of law and order where necessary.
- (C) To assist the Executive in matter of seed policy by issuing opinions prior and fundamental to the enactment of provisions related to seed activities.
- (D) To keep the National Register of Cultivars and the General Register of Nurseries and Seed Producers and Traders.
- (E) To maintain the Register of Cultivar Ownership and grant the appropriate titles in accordance with national provisions and bilateral or multilateral international agreements.
- (F) To effect the national and international certification of seed, subject to observance of bilateral or multilateral international agreements.
- (G) To maintain the country's official seeds laboratory by carrying out analytical work and also issuing the corresponding certificates, subject to observance of bilateral or multilateral international agreements.
- (H) To authorize and advise private seed testing laboratories as provided in the applicable provisions.
- (I) To process and implement arrangements for the importation and exportation of seed.
- (J) To carry out, either by itself or through third parties, such investigations of technical character as it may consider necessary for the fulfillment of its duties and functions, and also such consultations or verifications as may have to be made with foreign organizations of the same kind.
- (K) To enter into relations of mutual cooperation and agreements with public or private bodies, either national or foreign, and also with international or regional organizations.
- (L) To promote the training and further training of officials concerned with the relevant sector, in coordination with national research and technical assistance bodies.
- (LL) To set prices for:
- entries in the National Register of Cultivars, the General Register of Nurseries and Seed Producers and Traders and the Register of Cultivar Ownership;
 - annual fees for the maintenance of entries in the aforementioned registers;
 - labels for the various categories of seed;
 - seed testing;
 - applications and annual fees for authorization of seed testing laboratories, processing plants and other service providers associated with seeds;
 - seed certification;
 - applications for cultivar property titles and processing and grant thereof;
 - any other service provided by the Institute in accordance with the provisions governing matters within its jurisdiction; the prices set shall be in strict proportion to the cost of the services provided;
- (M) To decide on and apply the appropriate sanctions for violations of the regulatory provisions established by this Law and the Regulations under it, and to set the amounts of the corresponding fines.
- (N) To enforce the sanctions imposed by it, for the purposes of which the records of its final resolutions shall constitute the titles of enforcement; those rulings shall be considered final that are expressly or tacitly accepted by the recipient of the sanctions and also those that deny leave to appeal under Article 22 of this Law.

(Ñ) To enter into agreements on payment for the sanctions imposed by it, where it sees fit.

Article 15

The Board of Directors, in its capacity as supreme administrative body of the institute, shall have the following duties:

(A) To draft the general rules of the Institute and submit them to the and submit them to the Ministry of Livestock, Agriculture and Fisheries for approval.

(B) To approve the Institute's staff regulations within six months of their installation; those regulations shall be governed by the rules of private law where not provided for.

(C) To appoint, transfer and dismiss the staff.

(D) To set the prices to be charged under the provisions of Article 14(LL) of this Law.

(E) To approve its budget and present it to the Executive, together with its program of activities.

(F) To approve plans, programs and special projects.

(G) To present the annual report and balance sheet of the Institute.

(H) To manage the resources and assets of the Institute.

(I) To acquire, encumber and dispose of property of all kinds; in the case of real property, decisions shall be passed by a special majority of at least four members.

(J) To delegate such powers as it considers appropriate by a reasoned decision passed by a majority of its members.

(K) In general, to engage in all civil and commercial acts, order acts of internal administration and carry out the material operations to which its general powers of administration give rise, due regard being had to the commitments and specialized concerns of the Institute.

Article 16

The Managing Director shall have the following responsibilities:

(A) To comply and ensure compliance with the provisions in force in the Institute's area of competence;

(B) To implement the plans, programs and resolutions approved by the Board of Directors.

(C) To carry out all tasks pertaining to staff administration and the internal organization of the Institute.

(D) To promote the establishment of relations with national bodies concerned with seed activity in general.

(E) To promote the strengthening of international technical cooperation, with special emphasis on coordination with the Institutes of other countries.

(F) Any other responsibility that the Board of Directors may entrust or delegate to it.

Article 17

The National Seed Council, in its capacity as advisory body to the National Seeds Institute, shall do the following:

(A) Advise on the drafting of the General Rules of the Institute.

(B) Advise on the drafting of plans and programs prior to the approval thereof.

(C) Advise on any matter on which the Board of Directors approaches it.

(D) Express its views on any other seed-related matter where it sees fit.

Article 18

The Users' Commission shall nominate two of the members of the Board of Directors. It shall act as the reference and advisory body for the representatives proposed by it.

For the better achievement of its aims it shall set up regional advisory commissions by area or group of areas, the membership and operating regime of which shall be determined by the Ministry of Livestock, Agriculture and Fisheries, which shall take due account of the opinion of the Commission itself and shall seek to achieve the greatest participation of basic entities.

CHAPTER V

FINANCIAL REGIME

Article 19

The resources of the Institute shall consist of the following:

(A) Charges made for services rendered under the provisions of Article 14(LL) of this Law.

(B) An annual State subsidy, to be charged to general revenue, in an amount at least equivalent to 20,000 UR (readjustable units); the Executive may adjust this amount according to developments in the Institute's income.

(C) Bequests, legacies and donations accepted by the Institute.

(D) Property or securities that are assigned to the Institute on whatever ground.

(E) The product of any fines and other sanctions imposed.

(F) Any other funds collected through application of the prevailing legislation.

CHAPTER VI

SUPERVISION AND APPEALS

Article 20

The administrative supervision of the Institute shall be exercised by the Executive, acting through the Ministry of Livestock, Agriculture and Fisheries.

The said supervision shall relate to opportuneness or appropriateness as well as legal correctness.

To that end, the Executive may convey to it such comments as it may consider relevant, and also propose the suspension of the acts commented on and any corrective action or dismissals that it may consider appropriate.

Article 21

The Internal Audit Office of the Nation shall exercise control over the financial management of the Institute, and the accounts and balance sheet reflecting the application of the budget shall be submitted to it within 90 days following the close of each accounting period.

The Regulations under this Law shall determine the forms and dates for accounts and the closing thereof and the manner in which they are to be publicized. The provisions of Article 100 of Law No. 16.134 of September 24, 1990, shall likewise be applicable.

Article 22

Decisions of the Board of Directors shall be subject to appeal for review, which shall be lodged within 20 working days from the day following that on which the record of the decision was notified to the person con-

cerned. Once the appeal has been lodged, the Board of Directors shall have 30 working days within which to investigate and settle the matter.

Where the appeal for review is rejected, the appellant may, on grounds of legality only, file an application for annulment of the decision objected to with the Court of Civil Appeals that was sitting on the date on which the decision was pronounced.

The filing of the aforementioned application shall take place within a period of 20 working days following the notification of the express refusal or, failing that, from the time at which the implicit refusal is deemed to have been pronounced.

The application for annulment may only be filed by a person having a subjective right or a direct, personal and legitimate interest that has been violated or prejudiced by the act objected to. The court shall rule in the final instance.

Article 23

Where the resolution issues from the Managing Director at the same time or subsidiarily to the appeal for review, an appeal to higher authority may be lodged with the Board of Directors.

This appeal for review shall be lodged and settled within the periods provided for in the foregoing Article, which shall likewise apply, as appropriate, to the settlement of the appeal to higher authority and to the subsequent jurisdictional examination.

CHAPTER VII

GENERAL PROVISIONS

Article 24

The Institute shall be exempt from tax of all kinds other than social security contributions. Where not specifically provided for in this Law, its operating regime shall be the same as for private activity, especially with regard to accounting, staff status and any contracts that it may conclude.

Article 25

The assets of the Institute shall be unattachable and its credits, regardless of origin, shall benefit from the privilege provided for in Article 1732(6) of the Code of Commerce.

Article 26

The technical and specialist staff of the Institute shall be selected in a competition in which shall be adversarial, on merit or adversarial and on merit, as the case may be, with a view to the award of contracts for periods of no more than five or less than two years, which shall be renewable in the manner laid down in the staff regulations referred to in Article 15(B) of this Law. The remainder of the staff shall be contracted for by the selection system provided for in the same statutes, due regard being had to the characteristics of each category.

Article 27

Information obtained in the course of the day-to-day operation of the Institute shall be treated in special and strict confidence. The Board of Directors shall enact provisions on the procedures for the disclosure of information.

CHAPTER VIII**TRANSITIONAL PROVISIONS**Article 28

The legal entity that is created shall succeed to the responsibilities and duties assigned to the Seeds Office of the Ministry of Livestock, Agriculture and Fisheries (Article 3 of Decree-Law No. 15.173 of August 13, 1981), it being for the Executive to issue the appropriate regulations within 90 days following the installation of the Board of Directors.

The movable and real property assigned to the Seeds Office shall pass as of right to the National Seeds Institute in so far as it is relevant, under the regulations, to the responsibilities and duties transferred.

Article 29

The public officials budgeted or contracted for who, on the date of this Law, are engaged in inspection assignments for the Office referred to in Article 28, and preferably those concerned with the subject of seeds, may be engaged to carry out tasks within the Institute or, failing that, may be reassigned to other departments of the public administration.

To that end, within the 60 days following the establishment of the Institute, the Ministry of Livestock, Agriculture and Fisheries shall order the transfer of the said staff for six months, renewable for the same amount of time, at the end of which the Institute shall use objective criteria to select those persons whom it intends to employ, observing the following rules for the purpose:

- The officials selected may choose between assignment to tasks within the Institute and reassignment. In the latter case the Ministry of Livestock, Agriculture and Fisheries may reassign them within its own executive units or declare them supernumerary for reassignment according to the provisions of Articles 15 to 31 of Law No. 16.127 of August 7, 1990.
- Where the official selected agrees to be incorporated in the Institute, he shall sign the corresponding employment contract according to the statutes referred to in Article 15(B) and shall renounce his status as public official.
- Nevertheless, he may seek a license without benefit of pay for up to six months in public office and sign a probationary contract with the Institute for the same period, at the end of which, if his incorporation therein and his renunciation of public office is not agreed to, he shall lose the status of selected candidate and shall continue to carry out duties as a public servant.
- Once the official has been finally incorporated in the Institute, his contractual responsibilities or functions shall automatically cease.

TITLE II**SEED****CHAPTER I****OBJECT**Article 30

The object of this Title shall be to regulate the production, certification, marketing, exportation and importation of seed, and to assure agricultural producers of the identity and quality thereof.

CHAPTER II**GENERAL PROVISIONS**Article 31

Seed that is produced, marketed or transported within the country shall be described as certified or commercial. It shall be defined by and brought into conformity with the regulations enacted by the Executive with respect to its production, marketing and quality standards.

Article 32

The regulations under this Law shall lay down the provisions to which field and processing plant trials, the taking of samples, subsequent checks and seed evaluation have to conform.

Article 33

The procedures for determining tolerances, the tolerances allowed, the certification that seed sellers have to deliver to purchasers, the packaging conditions and the characteristics of labels and seals shall be provided for in the regulations where not provided for in this Law.

Article 34

The National Seeds Institute is empowered to authorize and supervise private seed testing laboratories, processing plants and other firms or technical operatives providing seed-related services, which it shall do in accordance with the provisions of the regulations, and the latter shall also specify the operating standards and conditions to which such activities have to conform.

Article 35

The only batches of seed produced in the country that may be marketed are those that have been previously sampled and tested by authorized or official seed testing laboratories whose test findings show that the seed meets prevailing quality standards.

The Executive shall, on regulating this provision, set the date of the entry into force thereof.

Article 36

The tests and testing periods used shall conform to the international rules on seed testing of the International Seed Testing Association and any alternative or complementary provisions that may be enacted by the Ministry of Livestock, Agriculture and Fisheries on proposals from the National Seeds Institute.

Article 37

Where the test findings fall short of those prescribed by purity regulations, the seed shall, in order to be offered for sale, be reclassified under the control of the National Seeds Institute with a view to the achievement of acceptable values.

Where reclassification is not appropriate, the National Seeds Institute may order its use as a consumer product or in industrial processes or its destruction.

Article 38

The seed institutions that produce seed shall be responsible when dealing with third parties and the National Seeds Institute, for the conformity of the seed to the quality standards laid down in this Law and the Regulations under it, and for the accuracy of the information given on the labels and packaging of the seed when the said seed is sold and offered for sale by them, or when it is sold or offered for sale by third parties, and the liability of the said seed institutions shall be verified. In other cases the trader selling the seed shall be liable.

Article 39

In exceptional cases, in consideration of the practical possibility that the requirements laid down in the provisions of this Title cannot be met, and for substantiated reasons, the Ministry of Livestock, Agriculture and Fisheries, acting on a proposal from the National Seeds Institute, may defer application of the said requirements either entirely or in part.

Article 40

Where the consumer has doubts concerning the genuineness, purity, germination or treatment specified on the labels of seed bought by him, he may seek official confirmation from the National Seeds Institute according to a procedure laid down in the relevant regulations.

Complaints concerning purity, germination and processing shall be made within the 30 days following receipt of the consignment and prior to sowing. Where they relate to genuineness, complaints may be made for as long as harvesting has not taken place.

If it is found that the complaint is justified, the seller shall be obliged to repay the price of the seed and freight charges to the buyer, without prejudice to the sanctions provided for in this Law.

The buyer shall be obliged to return the seed that he has not sown with the corresponding packaging, any expenses associated with the return being payable by the seller.

CHAPTER III**PROHIBITIONS**Article 41

It shall be prohibited to market any seed:

- (1) In bulk, after processing.

- (2) Whose germination testing has exceeded the periods provided for in the relevant provisions.
- (3) Together with information on the packaging or labels that is not expressly allowed by prevailing regulations.
- (4) With a label or notice that in one way or another misleads as to the properties and condition of the seed or does not conform to prescribed standards.
- (5) That does not conform to the requirements and tolerances and other specific conditions laid down to that end by the provisions of this Law.

The National Seeds Institute shall regulate the conditions in which seed in any of the hypothetical situations provided for in this Article is transported.

Article 42

The following shall likewise be prohibited during the process of marketing or transport of seed:

- (1) The removal, alteration, mutilation or destruction of any label affixed in accordance with this Law.
- (2) The use on any label or in notice of the term "type" in conjunction with the name of the seed.
- (3) The moving, manipulation or disposal of batches of seed withdrawn from sale, or the labels thereof, without written authorization from the National Seeds Institute.

CHAPTER IV

NATIONAL REGISTER OF CULTIVARS

Article 43

The National Register of Cultivars is hereby created and placed under the authority of the National Seeds Institute.

Only those cultivars that have been entered in the said Register may be certified and marketed in the country. Exceptions may be made by regulation for species that require entry in the Register for marketing.

Cultivars registered under Decree-Law No. 15.173 of August 13, 1981, its regulatory Decree 84/983 of March 24, 1983, and its amending Decrees 418/987 of August 12, 1987, and 519/991 of September 17, 1991, shall be considered entered in the Register created by this Article.

Article 44

Cultivars entered in the Register referred to shall:

- (1) possess a characterizing proper name that prevents them from being confused with another variety already registered or from misleading as to the properties of the seed;
- (2) retain their original names, in the case of foreign cultivars;
- (3) be capable of differentiation from other cultivars already registered;
- (4) be sufficiently uniform in their characteristics as a whole, according to their reproductive or vegetative propagation system, and present those conditions of stability that enable them to be identified;
- (5) be the subject of national test data;
- (6) be sponsored by an agricultural engineer or other professional of equivalent training, for the purposes of the national test data requirement, regulations issued by the National Seeds Institute shall specify the growing periods or cycles required according to the species concerned, and it may make exceptions for species in respect of which such testing is required.

Article 45

The testing of cultivars for the purposes of acceptance in the National Register of Cultivars shall be the responsibility of the National Seeds Institute, which may conduct technical examinations either direct or through other public or private national institutions. Technical examinations shall continue to be carried out by the National Institute of Farm and Livestock Research until such time as the National Seeds Institute can take charge of them, according to a resolution accompanied by a statement of reasons issued by the Ministry of Livestock, Agriculture and Fisheries.

Article 46

The National Seeds Institute shall specify what species are to be released for sale with a variety identification.

Article 47

An entry in the Register may be canceled:

- (1) where the cultivar is shown to have lost the characteristics on the basis of which it was registered;

- (2) for failure to pay the annual fee to the National Registry of Cultivars during a period of three months following a formal request for payment.

Article 48

The National Register of Cultivars shall be brought up to date annually.

Article 49

The National Seeds Institute shall issue a resolution with a statement of reasons refusing entry in the Register where the proposed cultivar might adversely affect the environment.

Article 50

Where external demand warrants such action, the National Seeds Institute may accord the status of "seed exclusively for export" to batches of seed of cultivars that are not entered in the National Register of Cultivars. It shall likewise specify the minimum requirements and equivalent properties that have to be fulfilled for seed of the cultivars to be produced within the country.

CHAPTER V

CERTIFIED SEED

Article 51

The National Seeds Institute shall be responsible for the certification of seed and shall have the following duties in that connection:

- (1) To supervise all stages of the certification process.
- (2) To oversee the production of seed either itself or through third parties.
- (3) To keep a register of seed in existence.
- (4) To design certification labels for the various varieties and categories, and to assign them to batches of seed that meet the prescribed conditions.
- (5) To verify the identify and varietal purity of the batches of the various categories of seed by the sowing of samples on test plots; the regulations under this Law shall lay down the general standards and procedures for the imposition of specific rules to be observed in the certification of seed.

Article 52

The certification of vegetative propagating material shall be carried out by the National Seeds Institute. To that end the National Seeds Institute may enter into agreements with other public or private national institutions.

CHAPTER VI

IMPORTATION AND EXPORTATION

Article 53

The importation of seed shall require prior authorization by the National Seeds Institute. The said requirement may be dispensed with by regulation for seed produced by countries with which the appropriate reciprocal arrangements have been made.

Article 54

The regulations shall lay down the requirements to be met by seed that is imported in accordance with the tolerances set for the domestic market and also international and regional agreements assigned by the country in that connection.

Article 55

Any seed intended for importation shall be accompanied by certificates of origin and plant health, and also by the information and labels specified by regulation.

Article 56

Permits for the dispatch of seed shall not be acted upon where the seed is presented with important declarations that provide no record of prior intervention in the dispatch permit on the part of the National Seeds Institute.

Article 57

Batches of seed may not be removed from customs premises without prior documentary verification by the National Seeds Institute of the quality certificates recognized as being valid under the applicable provisions or, failing that, without prior quality testing by the competent laboratory of the National Seeds Institute, subject to any exceptions that might be made in specific cases by virtue of the relevant regulations.

The National Customs Administration shall not undertake seed testing and shall rely on that carried out by the National Seeds Institute.

Article 58

The National Seeds Institute may authorize the dispatch of batches of seed that on arrival do not conform to the standards in force, provided that the persons concerned subject them to purification treatment in an establishment authorized by the National Seeds Institute and under the latter's control.

Article 59

The importation of seed for testing, study and experimentation shall be subject to special standards laid down by regulation.

Article 60

Products imported for industrialization, consumption or any other purpose other than sowing may not be used as seed or transferred for use as seed.

Article 61

The Executive shall be authorized to do the following:

(A) Grant total or partial exemption from tax on seed imports, without prejudice to the application of the provisions of Article 2(a) and (c) of Law No. 12.670 of December 17, 1959, in relation to competing nationally-produced products, and also from the application of Article 40(a) of Title VI of the 1979 consolidated text as amended by Decree-Law No. 15.132 of May 7, 1981.

(B) Grant seed subsidies where it considers such grant appropriate within the framework of the World Trade Organization agreements approved by Law No. 16.671 of December 13, 1994.

Article 62

The Executive is authorized, through the agency of the Ministry of Livestock, Agriculture and Fisheries and in consultation with the National Seeds Institute, to suspend seed exports temporarily when the needs of the country are at stake.

CHAPTER VII**GENERAL REGISTER OF NURSERIES,
SEED PRODUCERS AND TRADERS**Article 63

The activities described in Article 82(9) of this Law, and also the production for commercial purposes, proc-

essing, storage, distribution, sale, importation and exportation of seed may only be carried out by those who have been entered in the General Register of Nurseries, Seed Producers and Traders that is kept for the purpose by the National Seeds Institute.

Those registered under Decree Law No. 15.173 of August 13, 1981, and the regulations under it, Decree 84/983 of March 24, 1983, and its amending Decrees 418/987 of August 2, 1987, and 519/991 of September 17, 1991, shall be considered entered in the Register created by this Article.

Article 64

The Executive shall enact provisions on the operating conditions of persons, whether natural persons or legal entities who devote themselves to the creation, improvement and introduction of phylogenetic material and also to the production, testing, processing, storage, distribution, sale, importation and exportation of seed.

Article 65

Nurseries, seed producers, seedsmen, seed laboratories and seed processors, importers and exporters shall conduct their activities under the technical responsibility of an agricultural engineer or other professional of equivalent background, who shall be registered with the National Seeds Institute.

TITLE III**PROPERTY RIGHTS IN NEW PLANT VARIETIES****CHAPTER I****OBJECT**Article 66

The object of this Title is to regulate the protection of property rights in new cultivars.

CHAPTER II**REGISTER OF CULTIVAR OWNERSHIP**Article 67

The National Seeds Institute shall keep the Register of Cultivar Ownership, the purpose of which shall be to recognize and guarantee rights to the breeder of a new plant variety by means of the grant and registration of a title of ownership in accordance with the International Convention for the Protection of New Varieties of Plants signed in Paris on December 2, 1961, and amended by

additional Acts signed in Geneva on November 10, 1972, and October 23, 1978, as approved by Law No. 16.580 of September 21, 1994.

The owners of property rights granted and registered under Decree-Law No. 15.173 of August 13, 1981, and its regulatory Decree 84/983 of March 24, 1983, and its amending Decrees 418/987 of August 12, 1987, and 519/991 of September 17, 1991, shall be considered entered in the register created by this Article, and the continuity of their rights shall be assured.

Article 68

The regulations under this Law shall provide for the standards, periods and procedures to which applications for protection, variety proving trials and the grant and registration of provisional and final titles of ownership have to conform.

CHAPTER III

CONDITIONS REQUIRED OF THE CULTIVAR

Article 69

For a cultivar to qualify for protection, it shall meet all of the following requirements:

(A) It shall be new, in the sense that it shall not have been offered for sale or marketed with the consent of the breeder,

- (1) within the Republic, before the filing date of the application for protection;
- (2) outside the Republic, for more than six years in the case of vines and trees, or more than four years in the case of all other plants;

it shall not be considered prejudicial to the novelty of a cultivar that it has been offered for sale or marketed in the country, with the consent of the breeder, for a period of up to four years prior to the decision according to which this species to which the cultivar belongs qualifies for protection, provided that the application for protection is filed before the expiration of a period of up to four months following the said decision by the National Seeds Institute.

(B) It shall be clearly differentiated from any cultivar the existence of which is a matter of common knowledge on the filing date of the application for protection by at least one morphological, physiological, cytological, chemical or other important characteristic, shall fluctuate little and be capable of precise description and recognition.

(C) It shall be sufficiently uniform in its characteristics as a whole according to its system of reproductive or vegetative propagation.

(D) It shall remain stable in its essential characteristics, in the sense that, at the end of each cycle of multiplication carried out in the manner specified by its breeder, it shall retain the characteristics by which the said breeder defined it.

(E) It shall have been given a denomination that is acceptable to the Registry in accordance with the provisions of the regulatory texts.

CHAPTER IV

SCOPE OF PROTECTION

Article 70

The owners of property rights in cultivars entered in the Register of Cultivar Ownership shall enjoy the rights and powers corresponding to the rights of ownership governed by the Civil Code, without prejudice to the provisions of Article 73 of this Law.

Transactions that entail modifications to or otherwise affect the rights in registered cultivars shall themselves be entered in the Register in order to be binding on third parties.

Article 71

The title of ownership duly entered in the Register of Cultivar Ownership shall entitle its owner to engage in all legally acceptable transactions concerning his property rights, and shall confer on the holder thereof the exclusive right to carry out himself, or to have carried out subject to this prior authorization, the introduction into the country, production for commercial purposes, placing on sale, marketing within the country and abroad or donation, in accordance with this Law and the Regulations under it, of the reproductive or vegetative propagating material of the cultivar in question.

CHAPTER V

EXCEPTIONS TO PROTECTED RIGHTS

Article 72

The cultivar that is the subject of the title of ownership may be used without the holder thereof being granted any right to compensation where:

(A) The product of cultivation is used or sold as a raw material or food.

(B) Seed is set aside and sown for own use and not for commercial purposes.

(C) Other breeders use it for experimental purposes or as a source of genetic material for the creation of new cultivars, on condition that the protected cultivar is not used repeatedly and systematically for the commercial production of other cultivars.

CHAPTER VI

LIMITATION OF THE EXERCISE OF PROTECTED RIGHTS

Article 73

The Executive may declare a title of ownership to be "in the public interest" for a period not exceeding two years against adequate prior compensation of the owner where it considers that the availability of the product of cultivation of the crop concerned is in the general interest.

Article 74

The Executive may order the urgent procurement of the product of a cultivar declared to be "in the public interest" in accordance with the provisions of Article 19 of Decree-Law No. 15.173 of August 13, 1981. To that end the procedure provided for in Article 3 of Law No. 10.247 of October 15, 1942, shall be observed.

CHAPTER VII

TERM OF PROTECTION

Article 75

The term of validity of the title of ownership shall run from the time of its provisional issue, and may not be less than 15 years or more than 20 years according to the species concerned and according to the provisions laid down in the Regulations.

CHAPTER VIII

NATIONAL TREATMENT AND RIGHT OF PRIORITY

Article 76

Breeders resident abroad shall enjoy the same rights as breeders resident within the Republic in so far as the legislation of the country of residence recognizes and protects their rights as breeders.

Article 77

Where a breeder resident abroad wishes to register a cultivar, he shall:

(A) elect legal domicile in Uruguay for the purpose, or appoint an authorized representative within the country;

(B) submit with the relevant application duly authenticated official documentary evidence from the country of origin that attests his fitness to register the cultivar;

(C) undertake to comply with all Uruguayan legal provisions and regulatory enactments on the ownership of cultivars.

Where a breeder resident abroad in a country that is party to a relevant bilateral or multilateral agreement with Uruguay has filed one or more applications for the registration of a cultivar in one or more such States, he shall enjoy in the Republic a period of priority of 12 months counted from the filing date of the first application. The application in the Republic shall be regarded as if it has been filed on the filing date of that first application.

CHAPTER IX

REVOCATION OR LAPSE OF PROTECTED RIGHTS

Article 78

The title of ownership of a cultivar shall be revoked or shall be canceled, as the case may be, in the following circumstances:

(A) At the request of the owner.

(B) Owing to the expiration of the legal period of protection of ownership.

(C) Where the characteristics of uniformity and stability provided for in Article 69(C) and (D) of this Law have ceased to be present.

(D) Where the holder is not capable of supplying, at the request of the National Seeds Institute, propagating material with which the cultivar may be produced in the form in which it was defined at the time of the grant of the title.

(E) Where it is shown that the title has been obtained by fraud on a third party.

(F) Where the National Seeds Institute shows, on the basis of formal evidence, that the requirements laid down in Article 6(A) and (E) of this Law were not met at the time of the grant of the title of ownership of the cultivar.

(G) For failure to pay the annual fee to the Registry of Cultivar Ownership after a period of three months following the normal invitation to pay.

Article 79

The cultivar covered by a title of ownership shall become available for public use when the said title lapses for the reasons specified in subparagraphs (A), (B), (F) and (G) of the foregoing Article and, where subparagraph (E) applies, if it is not legally possible to transfer the right to its lawful owner.

Article 80

No title of ownership shall be granted in respect of cultivars which, at the time of the application, are in public use.

CHAPTER X

ENFORCEMENT OF THE PROTECTED RIGHTS

Article 81

The provisions of Articles 311 *et seq.* of the General Code of Process and, where applicable, those of Articles 40 to 44 of Law No. 9.956 of October 4, 1940, on Trademarks and Agriculture, shall be applicable to the protection of the property rights of the breeders of new cultivars.

Any one who, without the authorization of the owner thereof, places on sale or markets in that capacity reproductive or vegetative propagating material of cultivars entered in the Register of Cultivar Ownership shall be punished with a fine equivalent to ten times the value of the sales effected by him.

Without prejudice to the foregoing, the offender shall be liable under civil law for the damages caused to the owner of the registered rights, according to the general provisions on civil liability.

TITLE IV

DEFINITIONS, SANCTIONS, APPLICABILITY AND REPEALS

CHAPTER I

DEFINITIONS

Article 82

For the purposes of the implementation of this Law and the regulations under it, unless specified otherwise, the following definitions shall apply:

- (1) "Seed" means any plant structure used for the purpose of sowing or propagation of a species.
- (2) "Species" means taxonomic units that incorporate individuals that are separated from others by reproductive barriers and in that way retain differentiated characteristics of their own, or population systems separated from each other by discontinuity in the type of variation, but which must have a genetic basis.
- (3) "Cultivar" denotes a grouping of cultivated plants that are distinguished from others of the same species by any characteristic (morphological, physiological, cytological, chemical or other), and which, on being sexually or asexually reproduced, retain the characteristics specific to them; the term "variety" is equivalent to "cultivar" when used to denote a cultivated variety.
- (4) "Hybrid" describes a cultivar resulting from a controlled crossing of parents that are sufficiently uniform for the production thereof to be systematically repeated without changes in its constitution.
- (5) "First-generation hybrid" means any cultivar resulting from the crossing of selected parent material from the first generation of which, due to the effect of "hybrid vigor," superior production is achieved but not maintained in subsequent generations owing to genetic segregation.
- (6) "Certification process" denotes the series of operations, overseen by the National Seeds Institute, that takes place in order to achieve the production of certified processed seed for sale with the prescribed technical checks.
- (7) "Seed certification" is the act of guaranteeing that the seed in question has completed the certification process, in accordance with the provisions of this Law and the Regulations under it, by means of which third parties are assured of the trueness to variety and quality of specific batches of seed.
- (8) "Commercial seed" is any seed that is offered for sale without having met or attained required standards for seed certification but which meets the conditions laid down by this Law and the regulations under it.
- (9) "Nursery" means any establishment that devotes itself to the creation, introduction, improvement or testing of species and cultivars with a view to the production and sale of seed.
- (10) "Breeder" means the person, whether natural person or legal entity, who has directed the process of creation of a new cultivar.

- (11) "Seed company" means any establishment that devotes itself to the multiplication and sale of seed.
- (12) "Batch" means a specific quantity of seed, identified by a number or a mark, that has been arranged in such a way that each portion is representative of the batch.
- (13) "Label" means the printed information on a fixed or loose label on or in the packaging, and the information printed on the packaging itself.
- (14) "Particulars" means all the specifications, conditions, characteristics and other details relating to the seed, in addition to those given on the label, which are conveyed to the public or to the consumer by various means.
- (15) "Treated" means that a substance or method has been applied to the seed to control or ward off disease, organisms, insects or other pests that attack plants, or that the seed has been given another treatment to improve its value for sowing.
- (16) "Mixture" means a quantity of seed of two or more species where none of the said species attains the minimum purity requirement imposed by current provisions for it to be considered a single species.
- (17) "Processing" means cleaning, classification, mixing, chemical or physical treatment, packaging or any other operations that may alter the purity or germination of the seed.

Article 83

With respect to aspects not provided for in the foregoing definitions, the criteria laid down by the International Seed Testing Association shall be observed.

CHAPTER II

INFRINGEMENTS AND SANCTIONS

Article 84

The Board of Directors of the National Seeds Institute shall be the agency responsible for the imposition of sanctions for violation of the current provisions on seeds and plant variety protection, the enforcement thereof being the responsibility of the Managing Director of the National Seeds Institute.

The procedure applicable in such cases shall be provided for in the regulations.

Article 85

The violations referred to in the foregoing Article shall be punished with the following, according to the seriousness of the violation and the background of the violator:

- (A) Warning.
- (B) Fine from 20 to 2,000 UR (readjustable units).
- (C) Seizure of the merchandise or of the apparatus used to commit the violation.
- (D) Destruction of the merchandise where appropriate.
- (E) Suspension of the violator from the relevant register.
- (F) Temporary or permanent disqualification.
- (G) Partial or total, temporary or permanent closure of the premises of the company, whether owned by it or by third parties, and regardless of whether they are intended for storage, processing, marketing, laboratory analysis or any other activity associated with seed production and trading; where appropriate, closure may affect only such premises as are used for a specific activity.

The sanctions provided for above may be applied in combination and adapted to the seriousness of the violation, the value of the merchandise and the background of the offender.

Article 86

Agricultural engineers with technical responsibilities and other professionals with equivalent training as referred in Article 65 who violate the provisions laid down in this Law and the regulations under it shall be liable to the following sanctions:

- (1) Warning.
- (2) The fines provided for in the foregoing Article.

Suspension of their status as seed experts for up to one year.

Sanctions shall be graduated and applied with due regard to the nature and seriousness of the violations, the degree of guilt and similar acts previously committed by the offender. The National Seeds Institute shall keep a register of violators.

Companies shall be jointly liable for the monetary sanctions inflicted on their technical staff.

CHAPTER III
APPLICABILITY AND REPEALS

1984, 67/985 of February 6, 1985, 418/987 of August 12, 1987, 528/990 of November 14, 1990, and 519/991 of September 17, 1991, shall apply with the rank of regulatory provisions.

Article 87

Until such time as the provisions of the Articles in Titles II, III and IV of this Law are approved, the provisions laid down by Decree 84/983 of March 16, 1983, and its amending Decrees 508/984 of November 14,

Article 88

Decree Laws Nos. 15.173 of August 13, 1981, and 15.554 of May 21, 1984, and also any other legal provision contrary to this Law, are repealed.

OBITUARY

Flemming Espenheim

Mr. Flemming Carl Espenheim, Denmark, Head of the Danish Office of Gene Technology and Variety Testing, passed away on July 18, 1997. He had devoted almost his entire professional life to plant variety protection administration, first at the Department of Variety Testing in the Danish Institute of Plant and Soil Science, and since 1990 at the Danish Plant Directorate.

From 1976 onwards, Mr. Espenheim represented his country regularly at sessions of the UPOV Council, the Consultative Committee and the Administrative and Legal Committee. He served as Chairman of the latter from 1985 to 1988 during which time the Committee embarked upon preparations for the revision of the Convention in the Diplomatic Conference, Geneva, 1991. His active involvement in the development of plant variety protection contributed greatly to Denmark's deposit of the first instrument of ratification to the 1991 Act, on April 26, 1996.

CALENDAR

UPOV MEETINGS IN 1997

September 1 to 5 (Svendborg, Denmark)	Technical Working Party for Ornamental Plants and Forest Trees
September 8 to 12 (Wageningen, Netherlands)	Technical Working Party for Fruit Crops
October 27 (Geneva, Switzerland)	Administrative and Legal Committee
October 28 (Geneva, Switzerland)	Consultative Committee
October 29 (Geneva, Switzerland)	Council
November 10 to 14 (Montevideo, Uruguay)	Technical Working Party for Agricultural Crops
November 24 to 28 (Valencia, Spain)	Technical Working Party for Vegetables

OTHER MEETINGS IN 1997

September 22, 1997 (Brisbane, Australia)	“Workshop on the Exercise of Plant Variety Protection Rights by Holders of the Rights” Organized by UPOV in conjunction with the Asia and Pacific Seed Association (APSA) and the Seed Industry Association of Australia (SIAA)
---	--