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NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

LAW NO. 318

THE PRESIDENT OF THE REPUBLIC OF NICARAGUA

Informs the people of Nicaragua that:

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

Pursuant to its authority:

HAS ENACTED

The following:

LAW FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Law is to establish the legal provisions for the protection of the rights of natural or legal persons who, by natural means or genetic engineering, have created or discovered and developed a new plant variety, and to whom shall be granted the title of breeder.

Article 2

Competent Authority

The Ministry of Public Works, Industry and Trade, acting through the Intellectual Property Register (RPI), shall be the department of the executive responsible for the administration and application of this Law.

Article 3

Definitions

For the purposes of this Law, the following meanings shall apply:

Relevant characteristics means phenotypical and genotypical expressions peculiar to the plant variety that enable it to be identified as such.

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

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

(b) distinguished from any other plant grouping by the expression of at least one of said characteristics, and

(c) considered as a unit with regard to its suitability for being propagated without change.

Propagating material means any material for the reproduction of plants, whether by sexual or asexual reproduction, that may be used for the production or multiplication of a plant variety, including seeds for sowing and any whole plant or parts thereof, from which it is possible to bring about the reproduction of whole plants or seeds.

Reference specimen means the smallest entity used by the breeder to maintain his variety, from which the representative sample is taken for registration of the variety.

Reproductive or vegetative propagating material means seeds, fruits, plants or parts thereof that are used for the reproduction of plants, including also whole plants.

Breeder means a natural or legal person who has created or discovered and used a new plant variety either by natural means or genetic engineering.

Recognized priority means precedence for the grant of a breeder's right based on the filing abroad of an application that relates entirely or partly to the same subject matter in respect of which a subsequent application is filed in the Republic of Nicaragua.

Protected variety means a variety which is the subject of a breeder's right and is entered in the Intellectual Property Register (RPI) of the Ministry of Public Works, Industry and Trade, and for which the corresponding breeder's certificate has been issued.

Register means the Intellectual Property Register (RPI) of the Ministry of Public Works, Industry and Trade, in which applications and the rights granted to breeders of plant varieties will be entered.

Examination Committee means the Examination Committee for the Protection of Plant Varieties (CCPVV), a national body created under Article 69 of this Law.

Breeder's certificate means the document issued by the Ministry of Public Works, Industry and Trade (MIFIC) that recognizes and protects the breeder's right in a plant variety.

International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, October 23, 1978, and March 19, 1991 means the International Convention open to accession by States, the objective of which is the protection of plant varieties by means of industrial property rights, and which is the legal basis of the International Union for the Protection of New Varieties of Plants (UPOV).

International Union for the Protection of New Varieties of Plants (UPOV) means the intergovernmental organization with headquarters in Geneva, Switzerland, based on the International Convention for the Protection of New Varieties of Plants, the signatory countries to which constitute its membership.

Article 4

Legal Protection

This Law shall grant legal protection to the breeders of plant varieties, be they nationals of the Republic of Nicaragua or foreigners resident in the country.

Article 5

Reciprocity

The nationals of the any State, irrespective of whether they are members of the International Union for the Protection of New Varieties of Plants (UPOV), granting effective protection to the breeders of plant varieties from Nicaragua, shall be beneficiaries of this Law by virtue of reciprocity.

CHAPTER II

BREEDERS' RIGHTS

Article 6

Nature of a Breeder's Right

A Breeder's right shall be considered to be industrial property rights and the provisions in force of the Law on Inventions shall apply to them subsidiarily.

Article 7

Characteristics of the Rights

A breeder's right shall be marketable, transferable and inheritable. The heir or successor in title may make use of the rights, derive benefit from them and dispose of them throughout the term of their validity. The owner of the rights may grant third parties operating licenses for the use of protected varieties.

Article 8

Scope of a breeder’s right

The authorization of the breeder or of the person to whom a breeder’s right have been granted shall be required for the following acts performed on reproductive or propagating material of the protected variety, in the following cases:

(a) production or reproduction;

(b) preparation for the purposes of reproduction or propagation;

(c) marketing;

(d) export;

(e) import;

(f) donation.

The breeder’s authorization shall likewise be required for the use of ornamental varieties, or part thereof, that are usually marketed for purposes other than propagation, intended in this case for the production or reproduction of said variety.

The breeder may make the authorization that he has given under the foregoing paragraphs subject to certain conditions and limitations, and shall do so in writing.

Article 9

The above provisions shall likewise apply to:

(a) varieties essentially derived from the protected variety where the latter is not itself an essentially derived variety, pursuant to Article 11 of this Law;

(b) varieties that are not clearly distinguishable from the protected variety, in accordance with Article 18 of this Law;

(c) varieties whose production requires the repeated use of the protected variety

Article 10

Application of a breeder’s right

A breeder’s right shall apply to the varieties of all plant genuses and species.

Article 11

Essentially Derived Variety

A variety shall be considered essentially derived from an initial variety, if:

(a) it is mainly derived from the initial variety, or from a variety itself derived mainly from the initial variety, and at the same time retains the expressions of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety;

(b) it is clearly distinguishable from the initial variety; and,

(c) it conforms, subject to the differences resulting from the derivation, to the initial variety in the expression of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety.

Article 12

Exceptions to a Breeder's Right

The authorization of the breeder shall not be necessary for use of the protected variety, where:

(a) it is a source or ingredient for research into the genetic improvement of other plant varieties;

(b) the farmer uses the harvest produce obtained through cultivation for reproduction or multiplication purposes on his own land;

(c) the produce harvested is used or sold for human or animal consumption, or as a raw material.

Article 13

Renunciation of a Breeder's Right

The breeder may renounce the rights conferred on him by this Law; renunciation shall be evidenced in writing and shall be entered in the appropriate register. It shall be irrevocable, and the use and exploitation of the plant variety shall pass into the public domain.

Article 14

Judicial Award of a Breeder's Right

Where a person not entitled to protection files an application for a breeder's right, the holder of the right or his successor in title may file a request for award to him of the application or, where already granted, of the breeder's right.

The request for the award shall be statute-barred after five years have elapsed following the date of the publication of the grant of the breeder's right. Such an action against a defendant who has acted in bad faith shall not be subject to any statute-barring.

If the request is successful, any third party rights granted under the breeder's right during the time that has passed shall lapse.

Nevertheless, the holders of exploitation rights acquired in good faith who have taken genuine and effective measures to benefit from those rights prior to the date of notification of the request or, failing that, of the decision, may carry out or continue to carry out the acts of

exploitation resulting from the steps that they have taken, provided that equitable remuneration is paid to the rights owner.

Article 15

Rights' Owner

The entitlement to apply for a breeder's right shall belong to the natural or legal person considered to be the breeder or his successor in title.

Where two or more persons have created or discovered a variety jointly, the right to protection shall belong to them jointly. Unless otherwise provided between the joint breeders, the shares of the joint breeders shall be equal.

Where the breeder is considered to be an employee or worker, the right to apply for the breeder's right shall be governed by the employment contract under which the variety was created or discovered, in accordance with the law applicable to said contract.

CHAPTER III

CONDITIONS FOR THE PROTECTION OF A BREEDER'S RIGHT

Article 16

Conditions of Protection

A breeder's right shall be granted for a plant variety where the variety combines the following features:

(a) novelty;
(b) distinctness;
(c) homogeneity;
(d) stability;
(e) it is a denomination that complies with the provisions of Chapter VI of this Law.

The grant of the breeder's right may be dependent only on the above conditions, and shall be granted subject to the breeder having complied with the formalities provided for in this Chapter and having paid the prescribed fees.

Article 17

Novelty

A variety shall be considered novel if, on the filing date of the breeder's right application, the reproductive or propagating material, or produce harvested from the variety, has not been offered for sale or marketed by the breeder or his successor in title or representative:

(a) on national territory for up to one year prior to the filing date of the application;

(b) on the territory of any other State for more than four years or, in the case of trees and vines, for more than six years prior to that date.

Article 18

Distinctness

A plant variety shall be considered distinct if it is technically and clearly distinguishable by one or more relevant characteristics from any other variety whose existence is a matter of common knowledge on the filing date of the application; said characteristics shall be readily recognized by a person skilled in the art, and shall be described accurately in the corresponding application.

The filing in any country of an application for a breeder's right or entry in a catalogue of varieties given marketing approval shall be regarded as making the variety applied for well-known as from the application date, if the application leads to the grant of the breeder's right or to entry in the catalogue, according to the individual case.

Common knowledge of the existence of another variety may be established by reference to various factors, including:

(a) exploitation of the variety already in progress;

(b) entry of the variety in a register of varieties kept by a recognized professional association;

(c) the presence of the variety in a reference collection.

Article 19

Homogeneity

A plant variety shall be considered homogenous if it is sufficiently uniform in terms of its relevant characteristics, subject to the variation that may be expected from the particular features of its sexual reproduction or vegetative propagation.

Article 20

Stability

A plant variety shall be considered stable if its relevant characteristics remain unchanged after repeated reproduction or propagation or, in the case of a particular cycle of reproduction or propagation, at the end of each cycle.

CHAPTER IV

ESTABLISHMENT, TERM, LIMITATION

Article 21

Establishment of Registration Right and Authority

A breeder's right shall be established through entry in the Intellectual Property Register (RPI) of the Ministry of Public Works, Industry and Trade, and the granting thereby of a breeder's certificate, within the time limits and on the conditions laid down in this Law.

Article 22

Term

The rights granted to the breeder shall have a term of twenty years for all species, calculated from the date of the grant of the title of protection.

The breeder's right shall remain in force only for as long as the fees payable for the registration and maintenance of the rights are paid by the time limits specified in this Law.

Once the terms of protection for a plant variety have expired, its use and exploitation shall pass into the public domain.

Article 23

Limitation of the Exercise of Protected Rights

The free exercise of the exclusive rights granted to a breeder of plant varieties may only be limited in the public interest. In such cases, use may be made of the grant of compulsory licenses for the exploitation of registered varieties.

When a compulsory license is granted, the competent authority shall set equitable remuneration which the licensee holding the compulsory license has to pay to the breeder of the plant variety.

CHAPTER V

REGISTRATION AND APPLICATION

Article 24

Registration of Rights

Rights shall be entered in the Intellectual Property Register (RPI) of the Ministry of Public Works, Industry and Trade (MIFIC).

The RPI shall register the applications and rights granted, and shall distinguish between registration of applications and registration of rights granted. Said registers shall be public.

The RPI shall retain the contents of their files, in the form of originals or reproductions, for a period of five years from the date of withdrawal or rejection of the application, or the date of lapse of the breeder's right, according to the individual case.

Article 25

Access to Information

The RPI shall guarantee access to any information contained in register entries, and any person having a legitimate interest may consult the documents relating to the application and the grant of breeders' rights.

In the case of varieties whose production calls for the repeated use of parent varieties, the applicant may, on filing his application, request the documents and trials relating to the components to be exempted from publicity measures.

Article 26

RPI Entries

The following shall be entered in the Intellectual Property Register:

I. Applications for breeders' rights;

II. Filing records;

III. The grant of rights and the breeder's certificate, which shall specify:

(a) denomination of the protected plant variety;

(b) characteristics of the protected variety;

(c) species to which it belongs, and scientific and common name;

(d) name and address of the owner or owners of the plant variety, or their successors in title or legal representative, as well as their legal status; and

(e) date of grant and term of validity.

IV. Renunciation of the rights conferred by this Law.

V. Transfers and obligations stemming from the rights conferred by this Law;

VI. Issue of compulsory licenses as provided for by this Law;

VII. End of the validity of the rights and breeder's certificate, whether due to lapse or expiry of the period concerned, and also the precautionary institution of proceedings for invalidation and revocation of a breeder's certificate, including the final decision.

VIII. Declaration that the plant varieties have passed into the public domain.

Article 27

Recording in the Register

In order to be binding on third parties, both breeders' titles and transfers of rights shall be recorded in the Register.

Article 28

Publication

The RPI shall order the publication, in the Official Journal *La Gaceta* and/or such media as it considers suitable, of entries made in the Register, applications for breeder's titles and any information on the subject matter of this Law considered to be of interest; the cost of such publication shall be borne by the breeder.

The RPI shall regularly publish plant variety registrations and applications under the following headings:

(a) applications for the grant of breeders' rights;

(b) requests for approval of variety denominations;

(c) registration of new denominations for protected varieties;

(d) withdrawal of applications for the grant of breeders' rights;

(e) rejection of applications for the grant of breeders' rights;

(f) grant of breeders' rights;

(g) changes concerning persons (applicants, owners and agents);

(h) lapse of breeders' rights;

(i) licenses;

(j) official announcements.

The cost of the above publications shall be borne fully by the persons concerned.

Article 29

Fees

The administrative acts performed by the RPI shall be subject to the payment of service fees. For the purposes of this Chapter, the amounts and the fees provided for in Article 85 of this Law shall be applicable.

Article 30

Registration of varieties

Registrations made with the Ministry of Agriculture, Fisheries and Forestry (MAG-FOR) Directorate General of Seeds shall be valid for the purposes laid down in Law No. 280 (Law on Seed Production and Trade) published in the Official Journal *La Gaceta* No. 26 of February 9, 1998 as regards their authorization for dissemination, marketing and other effects, but shall not grant breeders' rights.

Article 31

Status of the Applicant

Any natural or legal person may apply personally, or through a duly accredited representative, for breeder status. Where a plant variety is obtained and developed by two or more natural or legal persons jointly, those persons shall specify in the application the corresponding share of each party and shall appoint a joint representative, failing which the first person named shall be considered such.

Article 32

Form and Content of the Application

The application shall be filed with the RPI, and shall include at least the following information, on pain of rejection:

(a) name and address of the applicant, or his legal representative;

(b) name and address of the breeder where he is not the applicant;

(c) identification of the species (scientific and common name);

(d) denomination proposed for the variety, or a provisional designation;

(e) where the priority of an earlier application is claimed, the UPOV Member State that received the application in question and also the filing date shall be mentioned;

(f) technical description of the variety, which contains the morphological, physiological, physical and chemical, and industrial or technological characteristics allowing it to be identified. The description shall be accompanied by drawings, photographs or any other technical feature necessary to illustrate the description. Specification of the genealogy and origin of the variety.

Similarly, the applicant shall state the grounds for the distinctiveness of the variety and shall indicate the reasons for which he considers that the variety can be distinguished from or is novel in relation to those already existing, well known or those which, in his opinion, are more alike.

The registration authority may modify the grounds for distinctiveness or assist the applicant in so doing where, on the basis of comparative studies, this is considered necessary.

The application authority may, where considered necessary, request from the applicant field trials and/or laboratory tests in order to verify the characteristics attributed to the novel variety;

(g) place for the receipt of notifications;

(h) reproduction or propagation mechanisms and description of the method used by the breeder to maintain the variety;

(i) proof of payment of the application fee;

(j) applicant’s signature.

The other data established by the Regulations or any additional technical information for the case or species which so require, according to the stipulations of the application authority.

Article 33

Proposed Denomination

The application for a breeder’s title shall propose a denomination for the variety in accordance with Article 50 of this Law, which, if it is to be approved, shall differ from any other denomination existing in the country or abroad, meet the other requirements laid down in the Regulations under this Law, and not be identical or similar, to the point of confusion, to a previously protected denomination.

Where the denomination does not meet the foregoing requirements, the Application Authority shall notify the applicant of its rejection and shall request him to propose another denomination within a fixed period of thirty (30) days.

Article 34

Reception and Processing of the Application

The Application Authority shall receive and process applications for breeder’s certificates, and shall, on its own initiative or at the request of the Plant Variety Protection Examination Committee (CCPVV), require the delivery of the plant variety or its propagating material in quantities that it considers appropriate and, where applicable, such additional documents and information as it considers necessary to determine whether the legal and regulatory provisions have been met.

Article 35

Revocation of the Application

Applications shall become void where the applicant fails to comply with instructions given to him, by a time limit of three months calculated from the date of notification of said instructions.

Article 36

Filing Date

A filing date shall be assigned to every application filed with the Application Authority that is complete and in order. The date on which the Application Authority receives the information specified in this Title shall be regarded as the filing date.

Article 37

Priority

The applicant may avail himself, with the authority of a UPOV Member State, of the right of priority of an earlier application which either he or his predecessor in title has lawfully filed in respect of the same variety. Where the application filed with the Application Authority has been preceded by two or more applications, priority may be based only on the earliest application.

Article 38

Priority Claim

Priority shall be expressly claimed within a period of twelve (12) months, starting from the day following the filing date of the first application.

In order to claim the priority of an application originally filed outside the country, the application filed with the Application Authority should not claim the grant of rights additional to those deriving from the application filed abroad.

Article 39

Obligation to File Documents

In order to benefit from the right of priority, the applicant shall submit to the Application Authority, within a period of three months starting from the filing date, copies of the documents containing the procedures and formalities established in the Regulations under this Law.

The Application Authority may request the filing, within a period of three months starting from the date of receipt of the communication, of a translation of the first application or of any documents constituting key parts of the first application.

Article 40

Effects of Priority

The effect of the priority shall be that the application shall be considered to have been filed on the filing date of the first application with respect to the conditions of protection relating to the variety.

Article 41

Postponement of the Examination

The applicant may request postponement of the examination of the variety for a maximum period of two years, starting from the expiry date of the priority period. Notwithstanding, if the first application is rejected or withdrawn, the examination of the plant variety may commence prior to the date indicated by the applicant. In this case, he shall be granted an appropriate period to submit any information and material relevant to the examination of the variety.

Article 42

Examination of the Application as to Form

The application shall comply with the requirements established with respect to substance and form; where those requirements are not fully met, the RPI shall notify the applicant that he has a period of thirty (30) calendar days to correct the omissions. If the specified period expires without the amendments being made, the application shall be deemed not to have been filed.

Article 43

Technical Examination of the Variety

The variety shall be subject to technical examination, the purpose of which shall be to determine whether the variety is distinct, homogenous and stable. Once it has been established that the variety meets the above conditions, the official description of the variety shall be established.

The technical and denomination examination shall be conducted by the MAG-FOR Directorate General of Seeds, under the supervision of the Plant Variety Protection Examination Committee (CCPVV).

The cost of the technical and denomination examination shall be paid directly by the applicant to the institution that conducts the examination, the cost of which shall be determined by the materials used and the rendering of services.

The official description may subsequently be completed or amended according to the development of agricultural and botanical knowledge, without the subject matter of the protection being altered thereby.

Article 44

Information, Documents and Materials Necessary for Examination

The applicant shall supply all the necessary information, documents or material for the purposes of the technical and denomination examination.

Article 45

Examination Cooperation

MAG-FOR may, through the Directorate General of Seeds, enter into administrative agreements with a view to cooperation in the examination of varieties and supervision of plant variety maintenance.

Article 46

Publication of the Application

Applications shall be published by the Application Authority in the Official Journal *La Gaceta* and/or in such media as it considers suitable, and shall include the items mentioned in the Regulations under this Law. The cost of publication shall be borne by the breeder.

Article 47

Substantive Examination of the Application

The application shall be examined with respect to its substance in order to establish, on the basis of the information submitted, that the variety complies with the requirements and that the applicant is qualified according to the provisions laid down in this Law. Where that is not the case, the application shall be rejected.

Article 48

Objections to the Grant of Breeders' Rights

Once the application has been published, any person may file objections to the grant of breeders' rights, in accordance with the Regulations under this Law.

Article 49

Grant of Breeders' Rights or Rejection of the Application

The RPI shall grant breeders' rights where, as a result of the technical examination and that relating to the variety denomination, the variety is found to comply with the requirements of this Law.

The grant of a breeder's right or the rejection of the application shall be entered in the Intellectual Property Register (RPI) and published in the Official Journal *La Gaceta*.

Once the breeder's title has been issued, the denomination shall remain firmly established, even where the plant variety passes into the public domain.

CHAPTER VI

DENOMINATION AND MAINTENANCE

OF PLANT VARIETIES

Article 50

Denomination

The denomination is intended to be the generic designation of the variety. Designations may be any words, combinations of words and figures, and combinations of letters and figures that may or may not have a prior meaning, provided that the signs in question serve to identify the variety. Denominations may consist solely of figures, except where this is an established practice for designating varieties.

A pre-existing variety of the same botanical species or of a similar species shall differ from any denomination that it designates in any of the UPOV Member States.

Article 51

Prohibition of the use of the denomination

A pre-existing denomination of a variety of the same botanical species or of a similar species shall differ from any denomination that it designates in the national territory or in any State. It shall be prohibited to register the denomination of any plant variety as a mark.

Article 52

Conditions for marketing

Any person who uses a protected variety as reproductive or propagating material shall use the corresponding denomination.

Where a variety is offered for sale or otherwise marketed, it shall be permitted to associate a factory or trade mark, trade name or similar indication with the denomination of the registered variety, provided that the denomination may be easily recognized.

The obligation to use the denomination of the registered variety shall persist, even though the breeders' rights have precluded the variety from passing into the public domain.

Article 53

Grounds for Rejection

Designations shall be denied registration as denominations for varieties where they:

(a) do not comply with the provisions of Article 51 of this Law;

(b) are not suitable for the identification of the variety, in particular owing to a lack of distinctiveness or linguistic suitability;

(c) are contrary to public policy and morality;

(d) consist solely of signs or information liable to mislead or cause confusion as to the characteristics, designation of species, quality, intended purpose, value, geographical source, time of production or identity of the breeder.

(e) are a mark registered or in the process of registration.

(f) are so similar as to cause a risk of confusion with a denomination that designates, on the territory of the Republic of Nicaragua, a pre-existing variety of the same or a similar species, except where the pre-existing variety has ceased to be exploited and its denomination has not acquired any particular significance.

Article 54

Registration Procedures

The proposed denomination of the variety for which protection is sought shall be filed at the same time as the application. On payment of a special fee and the mention of a provisional designation in the application, the applicant may defer the procedure for registration of the denomination for a period of thirty (30) days following the date of receipt of the application. Where no denomination proposal is filed within the period set, the application shall be rejected.

Article 55

Objections by Third Parties

An objection to the registration of the denomination may be filed, alleging any of the grounds for rejection provided for in Article 53 of this Law.

Objections and comments shall be communicated to the applicant, who may respond to them.

Once the response given by the applicant has been studied and facts supporting the objection have been found, the applicant may file a new denomination proposal.

Article 56

Registration and Cancellation of a Denomination

The RPI shall cancel the registered denomination in the following cases:

(a) if it is found to have been registered despite the provisions of Articles 51 and 53 of this Law;

(b) where the existence of a legitimate interest is invoked; or

(c) where a third party submits a court decision prohibiting the use of the denomination in connection with the variety.

The owner shall be informed of the cancellation and shall be invited to submit a proposal for a new denomination. Said proposal shall be subject to the examination and publication

procedures provided for in this Law. The new denomination shall be registered and published if it is approved; the former denomination shall be cancelled at the same time.

Article 57

Maintenance of the Variety

The owner shall maintain the protected variety or, where appropriate, its hereditary components, for as long as the breeder's right remain in force.

The owner shall submit, on an annual basis, such information, documents or material as may be considered necessary for the maintenance of the variety to be verified.

CHAPTER VII

TRANSFER OF RIGHTS AND COMPULSORY LICENSES

Article 58

Transfer of Rights

The rights conferred by the breeder's certificate shall provide entitlement to conduct, in relation to those rights, all lawful court business and may be transferred either wholly or in part by virtue of a legal instrument executed before a notary public.

Article 59

Processing

In the event of the transfer of the rights referred to in this Law, the beneficiary, transferee or successor in title to those rights shall be obliged to submit to the RPI:

(a) his name, nationality and address;

(b) documents evidencing the transfer of the rights and, where appropriate, the obligation to maintain the relevant characteristics of the plant variety or its propagating material, where those rights are marketed and exploited.

Article 60

Obligations

In the event of total transfer, the beneficiary or successor in title shall assume all the obligations and rights deriving from the breeder's title, with the exception of the right referred to in this Law.

Article 61

Registration

The transfer of rights shall take effect when those rights are recorded in the RPI, in accordance with this Law.

Article 62

Protection of Rights

The beneficiary, transferee or successor in title may institute legal actions for protection of the breeder's rights as if he were the owner thereof, unless otherwise agreed.

Article 63

Other Responsibilities

A person who receives the material from a protected plant variety shall be responsible for any use or exploitation which differs from that laid down in this Law and its Regulations.

Article 64

Grants

The RPI may grant compulsory licenses in any of the following cases:

(a) where the protected variety is declared to be of public interest.

(b) where a protected plant variety is used and is stated to be essential to satisfy the basic needs of a population sector and there are insufficient supplies, or

(c) where incorrect practices are carried out, affecting free competition.

Article 65

Application for Compulsory Licenses

Any person may request a compulsory license to be granted, corresponding to the breeder's right in the cases laid down in Article 64 of this Law, if it meets the following requirements:

(a) An applicant shall submit proof that he has sufficient capacity to carry out the use and shall prove that he has previously sought authorization from the rights owner on reasonable terms and market conditions, and also that the efforts have not had effect for a reasonable period.

(b) Three years have elapsed between the date of which the breeder's rights were granted and the date of application for the grant of the compulsory license.

(c) The person requesting the grant of the compulsory license has paid the fee prescribed in the Regulations.

Article 66

Conditions Governing Compulsory Licenses

The compulsory license shall be granted in order to supply the domestic market and its owner shall receive appropriate remuneration. In the absence of agreement, the competent judicial authority shall fix the amount and the method of payment.

No compulsory license may be granted with exclusive character, nor may it be assigned and, at the end of the period for which it was granted, the owner of the plant variety may have his rights fully restored.

Article 67

Grant of Compulsory Licenses

The decision granting a compulsory license shall specify the scope of the license, its term (minimum two years and maximum four years), the amount and method of payment of the remuneration payable to the owner;

Article 68

Revocation and Amendment of the Compulsory License

A compulsory license may be totally or partially revoked by the competent judicial authority, at the request of any interested party, if the licensee fails to discharge the obligations incumbent on him, and if the circumstances that gave rise to the grant of the license have ceased to exist and are unlikely to recur. In the latter case, said authority may take the necessary steps for the appropriate protection of the legitimate interests of the licensee affected by the revocation.

A compulsory license may be amended by the Application Authority, at the request of the party concerned, where new facts or circumstances so dictate, especially where the owner of the plant variety has granted contractual licenses on conditions more favorable than those accorded to the beneficiary of the compulsory license.

CHAPTER VIII

PLANT VARIETY PROTECTION EXAMINATION COMMITTEE

Article 69

Establishment

The Plant Variety Protection Examination Committee shall be established and shall operate under the administration of MAG-FOR, which shall be mandated to provide technical advice on:

(a) applications for breeder's rights;

(b) procedures for carrying out and evaluating technical field trials and laboratory tests;

(c) drafting relevant standards relating to the characterization and evaluation of plant varieties for descriptive purposes; and

(d) the other duties stipulated by the Regulations under this Law.

Article 70

Integration and Operation

The Plant Variety Protection Examination Committee (CCPVV) shall comprise members from the Ministries of Public Works, Industry and Trade, Agriculture, Fisheries and Forestry, Environment and Natural Resources, and shall establish the Regulations under this Law so as to determine its structure and operations. Committee members shall also come from the National Agrarian University (UNA), the National University of León and other relevant specialized centers.

CHAPTER IX

PROCEDURES AND NOTIFICATIONS

Article 71

Procedures

The procedures laid down in this Law in relation to the causes of invalidity, lapse and sanctions shall be implemented and settled in accordance with this Law.

Article 72

Notification

In administrative proceedings for invalidation, lapse and the imposition of sanctions, the opposite or potentially injured third party shall be notified so that, within a period of thirty (30) working days following notification, he may make in writing whatever statement may serve his interests.

CHAPTER X

INVALIDITY

Article 73

Causes of Invalidity

The judicial authority shall declare the breeder's right over a plant variety to be invalid only in the following cases:

(a) the variety is not novel or distinct on the application filing date or the priority date, as the case may be;

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

(c) breeders' rights were granted to a person not entitled to them, unless they have been transferred to the appropriate person.

Article 74

The Party Requesting Invalidation

Any person providing evidence of interest shall be entitled to file a request for invalidation.

CHAPTER XI

LAPSE

Article 75

Causes

Breeders' rights and the registration thereof shall lapse only in the following cases:

(a) it is found that the protected variety no longer effectively meets the requirements of uniformity and stability;

(b) the annual fee has not been paid, for a period of three (3) months following express demand therefor;

(c) the breeder is unable to provide the competent authority with the reproductive or propagating material of the protected plant variety within a period of six months following the date on which the breeder was called upon to do so;

(d) the breeder fails to submit the documents or information required for the maintenance of the variety to be verified, within the established period;

(e) the RPI cancels the registered denomination of a variety and the granted rights owner fails to propose another appropriate denomination within the time allowed, as provided for in Article 56 of this Law.

Article 76

The Party Requesting the Lapse

The RPI or any natural or legal person providing evidence of an interest shall be entitled to file a request for lapse.

Article 77

Passage into the Public Domain

Where a breeder's rights have been declared lapsed, in accordance with Article 75(a) and (b) of this Law, the plant variety in question shall pass into the public domain.

CHAPTER XII

ACTIONS FOR INFRINGEMENT OF RIGHTS

Article 78

Fraud in Connection with Variety Denominations

Without prejudice to the resulting damage and such outgoing profit as may be claimed, any natural or legal person using a protected variety denomination without the authorization of the rights owner, and who omits to use a registered denomination in violation of the provisions of this Law, will be fined between C$200,000.00 (two hundred thousand córdobas) and C$900,000.00 (nine hundred thousand córdobas), in accordance with the exchange rate as approved by the Central Bank of Nicaragua on that date.

Article 79

Civil Remedies

Any person who, without being authorized to do so, engages in acts that require the authorization of the owner of the rights to the plant variety, makes use of a denomination or fails to use a denomination of a protected variety in violation of the provisions of this Law may be reported by the breeder or by a licensee, and the civil procedure provisions laid down for rights deriving from industrial property, as established in the Patent Law in force, shall be applicable to him.

Article 80

Criminal Sanctions

Any act that involves the improper use of a breeder's right and any knowingly committed infringement shall constitute punishable offences for the purposes of this Law. In that connection, the provisions, procedures and sanctions laid down in the relevant laws shall be applicable.

Article 81

Preventive Actions

Any person initiating an action for infringement of rights protected by this Law may apply to the competent authority for the imposition of immediate measures to prevent the offence being committed.

The following preventive measures may, *inter alia*, be imposed:

(a) immediate cessation of the acts constituting the infringement;

(b) withdrawal from circulation, or prohibition of the placing in circulation, of the reproductive or propagating material of the protected plant variety by which the rights protected by this Law are infringed;

(c) withdrawal from circulation of objects, cartons, containers, packaging, paperwork, and advertising and similar material by which any of the rights protected by this Law would be infringed;

(d) seizure or confiscation of the products of the infringement and of the main materials and means having served for the commission thereof;

(e) suspension of the exploitation of the goods, materials or means referred to in the preceding subparagraphs;

(f) provision of a bond or other guarantee considered sufficient by the competent judicial authority; and,

(g) submission of documents or movable goods.

Article 82

Guarantees and Conditions in the Case of Preventive Actions

A preventive action shall be imposed only where the person applying for it proves his entitlement to act and the existence of the right infringed. The competent authority shall require the person applying for it first to provide sufficient guarantees in accordance with the Code of Civil Procedure.

Any person applying for preventive action in relation to specific merchandise shall provide the necessary information and a precise description identifying the merchandise to which the measure is to relate.

Article 83

Actions "*Inaudita altera parte*"

Where preventive action has been instituted without the intervention of the other party, that party shall be informed within three days. The party concerned may appeal to the competent authority against the action instituted. The authority may revoke, modify or confirm the preventive action.

Article 84

Duration of Preventive Action

Any preventive action shall become void as of right if the action on the main infringement is not initiated within fifteen (15) working days of the date on which the preventive action was instituted; this may be decreed at the request of a party or *ex officio* by the competent authority dealing with the case, which shall order payment of costs and damages by the party requesting the measure.

CHAPTER XIII

FEES AND OTHER PAYMENTS

Article 85

Fees

The breeder shall pay the fees established by the Application Authority for the following items:

(a) breeder's application;

(b) request concerning an amendment, change, correction, transfer or license;

(c) issue of duplicate title;

(d) information services;

(e) substantive examination.

The annual fee for maintenance of protection rights shall be C$5,000.00 (five thousand córdobas).

The amount calculated shall be paid in national legal tender, the applicable exchange rate being that set by the Central Bank of Nicaragua on the date of the transaction.

The amount payable for the technical and substantive examination shall be fixed by the Application Authority, taking into account the costs and technical service provided by the authority itself or by the institution(s) that have provided technical services for the trials, with the necessary advice being provided by the Plant Variety Protection Examination Committee (CCPVV).

Article 86

Information Services

The Application Authority shall offer such services and documentation as may be required under this Law, subject to payment of the fee prescribed above.

Article 87

Procedures for Payment of the Annual Fee for Maintenance of Protection Rights

In order for a plant variety protection title to remain in force, the annual fee shall be paid. The first payment shall be made when the application is filed and subsequent fees on January 31 each year.

CHAPTER XIV

TRANSITIONAL AND ADMINISTRATIVE PROVISIONS

Article 88

Transitional Derogation from the Novelty Condition and Transitional Fixing of the Protection Period.

(1) Varieties shall not be regarded as having lost their novelty where they have been entered in the Register of Varieties set up under Law No. 280 (Law on Seed Protection and Trade), for a period not exceeding five years prior to the entry into force of this Law.

(2) It shall likewise be considered that the varieties entered in a register of protected varieties of another country have not lost their novelty.

In relation to the protection period and subject to their compliance with the remaining requirements of this Law, the Application Authority may grant a breeder's right for the varieties detailed in paragraphs (1) and (2) for a resulting period of protection:

(a) For the varieties in paragraph (1), the difference between the national period of protection and the years of entry in the breeds register, and

(b) For the varieties in paragraph (2), the difference between the national period of protection and the years of protection completed in the country of origin. Where protection exists for the same variety in various countries, the earliest protection period shall be considered for those purposes.

In order to benefit from the condition of novelty according to paragraphs (1) and (2), and the protection period indicated in subparagraphs (a) and (b), a breeder's right shall be requested for the variety in question within a period of one year of the application of the breeders' rights in the country.

CHAPTER XV
ADMINISTRATIVE PROVISIONS

Article 89

This Law shall establish the authority of the breeder's intellectual property rights; the rights to import, distribute and market seeds shall be subject to the regulations established in Law No. 280 (Law on Seed Production and Trade), published in the Official Journal *La Gaceta* No. 26, of February 9, 1998.

Article 90

Regulations

This Law shall be regulated in accordance with Article 150 of the Political Constitution.

Article 91

Entry into Force

This Law shall enter into force ninety (90) days after its publication in the Official Journal *La Gaceta*.

Done in the City of Managua, in the Hall of Sessions of the National Assembly, on October 20, 1999. **IVAN ESCOBAR FORNOS**, President of the National Assembly. **VICTOR MANUEL TALAVERA HUETE**, Secretary of the National Assembly.

Therefore published and enacted as a National Law. Managua, November 12, 1999. **ARNOLD ALEMAN LACAYO**, President of the Republic of Nicaragua.

(*Text revised and agreed in February 2001, under the supervision of Ambrosia Lezama Zelaya, Director of the Intellectual Property Register of Nicaragua and Gloria Zelaya Laguna, Head of the RPI Department of Plant Varieties – Nicaragua*).