



C/47/18

ORIGINAL: English

DATE: September 28, 2013

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Forty-Seventh Ordinary Session
Geneva, October 24, 2013**

DEVELOPMENTS ON THE PLANT BREEDERS' BILL OF GHANA

*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The purpose of this document is to invite the Council to consider developments concerning the Plant Breeders' Bill of Ghana (Draft Law) in relation to its decision of November 1, 2012.
2. The Council, at its forty-sixth ordinary session, held in Geneva on November 1, 2012, decided to:
 - "(a) note the analysis in document C/46/14 and the following changes proposed by the Delegation of Ghana in the Plant Breeders' Bill of Ghana (Draft Law):
 - (i) the deletion of the word "conclusively" in Section 15(2);
 - (ii) the replacement of the words "Plant Breeders Advisory Committee" by "Plant Breeders Technical Committee" in Section 30; and
 - (iii) the deletion of the word "seed" in Section 43(g);
 - "(b) take a positive decision on the conformity of Draft Law with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Ghana, once the Draft Law is modified as recommended in paragraphs 10, 18 and 24 of document C/46/14, and in subparagraph (a) above, with no additional changes, and the Draft Law is adopted and the Law is in force, to deposit its instrument of accession to the 1991 Act; and
 - "(c) authorize the Secretary-General to inform the Government of Ghana of that decision."

(see document C/46/19 "Report", paragraph 12, underlining has been added for emphasis).

3. On September 4, 2013, the Office of the Union received a letter from Her Excellency Mrs. Marietta Brew Appiah-Opong, Attorney General and Minister of Justice of Ghana reporting that, during the first reading of the Draft Law by the Parliament of Ghana in June 2013, additional changes, which were not part of the decision of the Council of November 1, 2012, had been introduced. She also reported that the second reading by the Parliament was expected to take place in October 2013. The letter is reproduced in Annex I to this document.

4. The Office of the Union has noted that the Draft Law that was presented to the Parliament in June 2013 incorporated the changes contained in the decision of the Council of November 1, 2012 (see paragraph 3, above). The additional changes that were introduced during the first reading of the Draft Law by the Parliament in June 2013, which were not part of the decision of the Council of November 1, 2012, are presented in revision mode in Annex II to this document (in English only). The full text of the Draft Law can be consulted at http://www.upov.int/meetings/en/details.jsp?meeting_id=29623.

5. In the opinion of the Office of the Union the additional changes, which were not part of the decision of the Council of November 1, 2012, do not affect the substantive provisions of the 1991 Act of the UPOV Convention.

6. *The Council is invited to:*

(a) note that the Plant Breeders' Bill of Ghana, which was presented to the Parliament incorporated the changes in the decision of the Council of November 1, 2012 (see document C/46/19 "Report", paragraph 12, and paragraph 2, above); and

(b) agree that the additional changes, as presented in the Annex II to this document, do not affect the substantive provisions of the 1991 Act of the UPOV Convention, and, subject to that agreement,

(c) confirm the decision on conformity of November 1, 2012.

[Annexes follow]

C/47/18

ANNEX I

In case of Reply the
number and date of this

letter should be quoted

Our Ref:



REPUBLIC OF GHANA

MINISTRY OF JUSTICE
P. O. BOX MB 60
ACCRA

4TH SEPTEMBER 2013

Fax: 667609

Tel: 665051

**MR. PETER BUTTON
VICE-SECRETARY GENERAL
UPOV COUNCIL
34 CHEMIN DES COLOMBETTES
1211 GENEVA 20
SWITZERLAND**

Dear Mr. Peter Button,

GHANA'S DRAFT BILL ON PLANT BREEDER'S RIGHT 2013

The purpose of this letter is to report on developments concerning the Plant Breeders' Bill of Ghana and to request the UPOV Council to consider those developments in relation to its decision on November 1, 2012.

I would like to report that during the first reading of the Bill by the Parliament of Ghana in June 2013, additional changes were introduced which were not part of the decision of the UPOV Council of November 1, 2012. In our opinion, these changes do not affect the substantive provisions of the 1991 Act of the UPOV Convention.

The second reading of the Bill by the Parliament is expected to take place in October 2013. I would be grateful if the additional changes in the Bill could be presented to the UPOV Council, in order to seek the UPOV Council's confirmation of its decision on conformity of Ghana's Draft Bill in November 1, 2012.

The full text of the Bill incorporating the additional changes is attached for ease of reference. Thank you for your cooperation on the above matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Brew'.

**MARIETTA BREW APPIAH-OPONG (MRS.)
ATTORNEY-GENERAL AND MINISTER OF JUSTICE**

[Annex II follows]

EXTRACT FROM THE PLANT BREEDERS' BILL OF GHANA (DRAFT LAW)

(Changes to relevant Sections during the first reading of the Draft Law by the Parliament of Ghana
in June 2013 are presented in revision mode)

A
BILL
ENTITLED

PLANT BREEDERS ACT, 2013

Eligibility for a plant breeder right

8. [...]

(3) Where two or more persons have jointly bred or discovered and developed a variety, they are ~~both~~ eligible to apply jointly for a plant breeder right with respect to that variety.

[...]

Presumption of protection

10. [...]

(2) ~~Where the application is made by the successor in title of the applicant, the applicant shall support the application with proof of the successor's title. Where the application is by an applicant who is a successor-in-title, the applicant shall support the applicant with the proof of the successor's title.~~

Priority of application

11. (1) An applicant may ~~declare~~ claim the right of priority of an earlier application that has been duly filed for the grant of a plant breeder right for the same variety by the applicant or the predecessor in title of the applicant with a State or intergovernmental organisation which is party to a treaty to which the Republic is a party.

[...]

Provisional protection of plant breeder rights

15. [...]

(2) For the period of provisional protection, the applicant is deemed to be the holder of a plant breeder right in relation to any person who during the period has carried out an act which would require the breeder's authorisation under section 20, ~~once the plant breeder right is granted.~~

[...]

Objection

16. [...]

(2) The objection shall be made in writing ~~and supported by the grounds of objection.~~
to the Registrar.

Consideration of objections

17. (1) The Registrar shall within the prescribed period, ~~notify~~ give notice in writing to the applicant of the objection to the grant of the plant breeder right.

[...]

(5) Where the applicant maintains the application, the Registrar shall ~~notify~~ give notice in writing to the person who objects to the grant of the plant breeder right.

[...]

(9) ~~The Minister may appoint a person to advise the Registrar for the purposes of the examination of applications, having regard to that person's expert knowledge in the area of plant breeding. The Registrar may, on arriving at a decision in sub-clause (8), request the Minister to appoint a person to advise the Registrar for the purposes of the examination of an application in relation to the objection, having regard to the expert knowledge of that person in the area of plant breeding.~~

Record of entries in register

18. The Registrar shall record in the register, each entry of the

- (a) withdrawal or refusal of an application for a plant breeder right, ~~and~~
- (b) decision ~~of~~ on the nullification or cancellation of the registration of the plant breeder right.

Protection of varieties of recent creation

19. (1) A variety shall be deemed to be new in accordance with section 4 even where the sale or disposal of that variety to another person took place in this country within

- (a) four years before the application for a plant breeder right; or
- (b) six years before the application for a plant breeder right in the case of trees or ~~of~~ vines.

(2) ~~Subsection (1)~~ This section applies only to an application for a plant breeder right that is made within one year after the commencement of this Act.

Scope and duration of plant breeder right

Requirement of authorisation of holder of a plant breeder right for specific acts

20. [...]

(6) An essentially derived variety may be obtained ~~for example~~ by the selection of a

- (a) natural mutant or induced mutant,
- (b) somaclonal variant, or
- (c) variant individual from a plant of the initial variety, back crossing or transformation by genetic engineering.

[...]

Assignment

24. (1) ~~An application for the grant of a~~ A plant breeder right may be assigned or otherwise transferred to one or more successors in title.

(2) The assignment or transfer shall be

(a) in writing; and

(b) signed by the parties concerned.

(3) An assignment or transfer under this section does not affect a right acquired by a third party unless it is recorded in the register and published in the *Gazette* or *Varieties Bulletin*.

Contractual licence

25. (1) The holder of, ~~or the applicant for,~~ a plant breeder right, may grant to any person, a licence that relates to any of the rights provided for under this Act.

[...]

Compulsory licence

27. [...]

(4) A person to whom a licence is granted under this section shall pay the holder an equitable remuneration in the absence of an agreement on the amount.

~~(5) The method of payment as regards the remuneration and the amount shall be determined by a competent court taking into account the circumstances of each individual case.~~

(5) Where there is no agreement on the amount to be paid for the licence, the Registrar shall apply to a court of competent jurisdiction to determine

(a) the amount to be paid; and

(b) the method of payment as regards the remuneration, taking into account the circumstances of each case.

[...]

Registry of varieties

40. (1) There is established by this Act a registry for plant varieties which shall be located at the Registrar-General's Department.

~~(2) The registry shall be headed by the Registrar who shall be assisted by an Assistant Registrar appointed in accordance with article 195 of the Constitution.~~

(2) The Registry shall be headed by the Registrar who shall be assisted by a person not below the rank of a Principal State Attorney.

[...]

Register of plant breeder rights

41. (1) There is established by this Act a register of plant breeder rights.

(2) The Registrar shall keep and maintain the register.

- (3) The Registrar shall record in the register the following entries:
- (a) applications for the grant of plant breeder rights;
 - (b) applications for variety denominations;
 - (c) grants of plant breeder rights;
 - (d) withdrawals ~~and applications for the grant~~ of plant breeder rights;

[...]

Plant Breeders Technical Committee

43. (1) There is established by this Act a technical committee to be known as the Plant Breeders Technical Committee consisting of the following members appointed by the Minister;

- (a) the Registrar who shall be an ex-officio member;
- (b) the Director of the Crops Research Institute;
- ~~(c) the Director of the Directorate of Crops Services, Ministry of Agriculture;~~
- (c) the Director of the Crops Services Directorate of the Ministry responsible for Agriculture
- (d) the Director of Plant Protection and Regulatory Services Directorate of the Ministry of Agriculture;
- (e) one representative of one of the Faculties of Agriculture in one of the public universities in Ghana nominated on a rotational basis for a term of three years at a time by the public universities;
- (f) the Director of the Savannah Agricultural Research Institute; and
- (g) one representative from the plant breeding private sector who is engaged in the industry.
- (h) a person with expertise in intellectual property law not below the rank of a Principal State Attorney.

(2) The Registrar shall not vote on a matter for decision at a meeting.

New Section

Tenure of office of members of the Technical Committee

- (1) A member of the Technical Committee appointed otherwise than by reason of that member's office shall, hold office for a period of three years and is eligible for re-appointment but a member shall be reappointed for one term only.
- (2) A member of the Technical Committee who is absent from three consecutive meetings of the Committee without sufficient cause ceases to be a member of the Technical Committee.
- (3) A member of the Technical Committee may at any time resign from office in writing addressed to the Minister.
- (4) Where a member of the Technical Committee is for sufficient reason, unable to act as a member, members of the Technical Committee shall inform the Minister who shall determine whether the inability would result in the declaration of vacancy.
- (5) Where there is vacancy
 - (a) under subsection (3) or (4) or section 44(2).
 - (b) as a result of a declaration under subsection (5), or

(c) by reason of the death of a member

the Minister shall appoint a person to fill the vacancy.

New Section

Meetings of the Technical Committee

(1) The Technical Committee shall meet at least once every three months for the dispatch of business at the times and in places determined by the chairperson in consultation with the Registrar.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Technical Committee convene an extraordinary meeting of the Technical Committee at the place and time determined by the chairperson in consultation with the Registrar.

(3) The quorum at a meeting of the Technical Committee is four.

(4) The chairperson shall preside at meetings of the Technical Committee and in the absence of the chairperson; a member of the Technical Committee elected by the members present from among their number shall preside.

(5) Matters before the Technical Committee shall be decided by a majority of the members present and voting.

(6) The Technical Committee may co-opt a person to attend a Technical Committee meeting but that person shall not vote on a matter for decision.

Disclosure of interest

44. (1) A member of the Technical Committee who has an interest in a matter for consideration by the Technical Committee

(a) shall disclose the nature of that interest and the disclosure shall form part of the record of the consideration of the matter; and

~~(b) shall not participate in the deliberations of the Technical Committee as regards that matter.~~

(b) shall recuse himself or herself and shall not participate in the deliberations of the Technical Committee as regards the matter.

[...]

Plant Breeders Development Fund

46. [...]

(3) For the purposes of achieving the object of the Fund, moneys of the Fund shall be applied for the following activities:

(a) ~~the regular~~ publication of information as regards
(i) applications for the grant of plant breeder rights; and
(ii) proposed and approved variety denominations;

(b) the maintenance of variety collections for the purposes of examination,

(c) the examination of varieties, and

~~(d) the protection of plant breeder rights.~~

(d) the maintenance of the register for the protection of plant breeder rights.

Sources of money for the Fund

47. (1) The ~~funds~~ sources of money for of the Plant Breeders Development Fund include
- (a) ~~fees as regard and charges paid for~~ applications, registration and other relevant services rendered in pursuance of this Act;
 - (b) donations, grants and other voluntary contributions;
 - (c) moneys approved by Parliament; and
 - (d) any other moneys that are approved by the Minister responsible for Finance.

(2) The Registrar may ~~retain~~ apply a percentage of internally generated funds realised in the performance of functions for the purposes of this Act.

~~(3) The percentage of internally generated funds retained by the Registrar shall be as specified in writing by the Minister responsible for Finance.~~

(3) The percentage of internally generated funds applied for by the Minister shall be as approved by Parliament.

Management of the Fund

48. (1) The ~~Technical Committee~~ Registrar is responsible for the management and disbursement of the Fund and is answerable to the Minister.

~~(2) The Technical Committee shall make rules and procedures for the operation and management of the Fund subject to the approval of the Minister.~~

(2) The Registrar shall subject to the Financial Administration Act, 2003 (Act 654), make rules and procedures for the operation and management of the Fund subject to the approval of the Minister.

(3) Moneys in the Fund shall be paid into a bank account opened by the Registrar for the purpose of the Fund with the approval of the ~~Controller and Accountant General~~ Minister responsible for Finance.

(4) The administrative expenses ~~of the Fund~~ related to the management of the Fund shall be charged on the Fund.

Accounts and audit

49. (1) The ~~Technical Committee~~ Registrar shall keep books of account and records ~~in relation to them~~ in the form approved by the Auditor-General.

(2) The ~~Technical Committee~~ Registrar shall submit its accounts to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

Annual report and other reports

50. (1) The ~~Technical Committee~~ Registrar shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall within one month after the receipt of the annual report submit the report to Parliament with ~~a statement any other comments~~ that the Minister considers necessary.

(4) The ~~Technical Committee~~ Registrar shall also submit to the Minister any other report which the Minister may require in writing.

Appeal Board Appeals Board

51. (1) There is established by this Act an ~~Appeal Board~~ Appeals Board which shall consider and determine appeals provided under section 53.

~~(2) The Appeal Board consists of five members including one expert in legal and administrative matters and four experts qualified in agricultural science.~~

~~(2) The Appeals Board consists of~~

- ~~(a) one expert in legal matters who is the chairperson, and~~
- ~~(b) four experts qualified in agricultural sciences.~~

(3) The Minister shall appoint the members of the ~~Appeal Board~~ Appeals Board.

~~(4) The provisions of sections 46 and 47 as regards the disclosure of interest and allowances apply to a member of the Appeal Board.~~

~~(4) The provisions of sections 44 and 45 as regards disclosure of interest and allowances shall apply to a member of the Appeals Board.~~

~~(5) The Appeal Board may co-opt a person to act as an adviser at its meetings but that person shall not vote on a matter for decision at the meeting.~~

~~(5) The Appeals Board may co-opt an expert to attend its meetings but a co-opted member shall not vote on a matter for decision at the meeting.~~

~~(6) A person co-opted under subsection (5) may be an expert.~~

~~(7) The Appeal Board shall have the power to~~

- ~~(a) prescribe its own rules of procedure,~~
- ~~(b) order and secure the attendance of witnesses, and~~
- ~~(c) order the production of documents.~~

~~(7)-(6) The Appeals Board shall have the power to~~

- ~~(a) summon and compel the attendance of witnesses, and~~
- ~~(b) order the production of documents.~~

~~(8)-(7) The Minister may by legislative instrument, make Regulations to govern the proceedings of the Appeals Board.~~

~~(8) The Appeal Board shall keep a record of its proceedings.~~

~~(9) (8) The Appeals Board shall record its proceedings and shall submit the record to the Registrar.~~

Tenure of office of members of the ~~Appeal~~ Appeals Board

52. (1) A member of the ~~Appeal Board~~ shall hold office for a period not exceeding three years and is eligible for re-appointment.

(1) A member of the Appeals Board shall hold office for a period of three years and is eligible for reappointment for one term only

(2) The quorum at a meeting of the Appeal Board is three including the chairperson.

(3) A member may at any time resign from office in writing addressed to the Minister.

(4) Where a member of the ~~Appeal~~ Appeals Board is, for a sufficient reason, unable to act as a member, generally or in relation to a particular proceeding, the Minister may appoint another person to perform the functions of that member or in relation to those proceedings ~~for a period of not more than six months at one time.~~

(5) A person appointed ~~to act as member for a period~~ under subsection (4), shall have during the period of appointment or in relation to the proceedings in question the same powers as the member in whose place that person is appointed.

Appeal from decision of the Registrar

53. (1) An order or decision of the Registrar is subject to appeal to the ~~Appeal Board~~ Appeals Board.

(2) A person who is aggrieved by any decision or order made by the Registrar may appeal to the ~~Appeal Board~~ Appeals Board, by submitting to the ~~Appeal Board~~ Appeals Board a notice of appeal within sixty days after the publication or the receipt of the notice of the decision.

(3) The notice of appeal shall be made in writing and accompanied with the ~~appropriate~~ supporting evidence.

(4) The ~~Appeal Board~~ Appeals Board may conduct investigations if it considers it necessary to do so and hold a hearing or make a decision based on written submissions.

~~(5) The Appeal Board may confirm, set aside or vary any decision of the Registrar.~~

(5) The Appeals Board may affirm, set aside or vary a decision of the Registrar.

(6) The ~~Appeal Board~~ Appeals Board shall give the reasons for its decision in writing.

~~(7) The Minister may order the Appeal Board to review a decision made under subsection (6), if the Minister is of the opinion that, because of new evidence or developments, the previous decision is inappropriate.~~

(7) The Appeals Board may review a decision made under subsection (6) on an application by an aggrieved person, if the Appeals Board is of the view that because of new evidence or developments, the previous decision is inappropriate.

~~(8) A person may appeal to the High Court on a point of law against a decision taken by the Appeal Board within sixty days after the date of its notification.~~

(8) An aggrieved person may appeal to the High Court on a point of law against a decision taken by the Appeals Board within sixty days after the date of its notification

(9) The ~~Appeal Board~~ Appeals Board may by way of case stated, refer a question of law to the High Court for its opinion.

(10) The decision of the High Court, whether on an appeal or on a case stated is binding on the ~~Appeal Board~~ Appeals Board.

[...]

Varieties Bulletin

55. (1) There is established by this Act an official bulletin to be known as the Varieties Bulletin.

(2) The Registrar shall

(a) keep and maintain the Varieties Bulletin in an accurate form;

~~(b) ensure the accessibility of the Varieties Bulletin in the hard copy format and the electronic format.~~

(b) ensure that the Varieties Bulletin is accessible in both the hard and Electronic copy forms.

(3) The Varieties Bulletin shall be maintained as a secured electronic database.

~~(4) The purpose for which the Varieties Bulletin is to be maintained is confined to matters provided in this Act.~~

(4) the Varieties Bulletin shall contain only matters related to this Act.

Publication of notices and information

56. (1) The Registrar shall publish in the *Gazette* or Varieties Bulletin the following notices:

(a) applications for plant breeder rights and the respective proposed denominations;

(b) grants of plant breeder rights;

(c) grants of approved denominations;

(d) decisions ~~of~~ on the nullification or cancellation of plant breeder rights;

(e) withdrawals or refusals of applications for plant breeder rights; and

(f) ~~and~~ any other publication required under this Act.

[...]

Civil remedies

57. (1) Where a person is aggrieved by the infringement of a plant breeder right, that person may bring an action High Court for

(a) an order of injunction to prevent the commission or continuation of the commission of the act of infringement or to prohibit the continuation of the infringement;

(b) the recovery of damages for the infringement;

(c) the forfeiture, seizure or destruction of propagating or harvested material which has been produced contrary to this Act;

(d) an order requiring the Customs Division of the Ghana Revenue Authority to detain goods that infringe on the right of a plant breeder imported or ready for export; and

(e) any other remedy that the court considers necessary.

(2) Subsection (1) does not preclude an action being brought under any other enactment for the enforcement of ~~a person's right~~ the right of a person.

Offences

58. A person who wilfully

- (a) offers for sale, sells or markets the propagating material of a variety protected in Ghana;
- (b) markets propagating material of a variety protected in Ghana without the registered variety denomination; or
- (c) uses the registered variety denomination of a variety protected in Ghana for another variety of the same plant species or closely related species likely to cause confusion

commits an offence and is liable on summary conviction to a fine ~~of not more than two thousand penalty units or to a term of imprisonment of not more than two years or to both of not less than five thousand penalty units and not more than eight thousand penalty units.~~

[...]

Regulations

60. (1) The Minister may make Regulations

[...]

- (i) to govern appeals and the proceedings of the ~~Appeal Board~~ Appeals Board; and
- (j) for any other matter necessary for the effective implementation of this Act.

~~(2) A person who commits an offence under the Regulations is liable on summary conviction to a fine of not more than five thousand penalty units.~~

Interpretation

61. In this Act, unless the context otherwise requires,

[...]

“harvested material” means entire plants and parts of plants obtained through the use of propagating material;

[...]

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