

Council

C/53/13

**Fifty-Third Ordinary Session
Geneva, November 1, 2019****Original:** English
Date: October 15, 2019**DEVELOPMENTS ON BOOK FOUR “PLANT VARIETIES” OF LAW PERTAINING TO THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS OF EGYPT***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 whether developments concerning “Book Four ‘Plant Varieties’ of Law Pertaining to the Protection of Intellectual Property Rights of Egypt” (Law) affect the decision of the Council of March 27, 2015.

BACKGROUND

2. The Government of Egypt initiated the procedure to become a member of UPOV by letter dated November 3, 2014, addressed to the Secretary-General of UPOV, in which Mr. Ahmed Agiba, Head of the Central Administration for Seed Testing and Certification (CASC), Under Secretary of the Ministry of Agriculture of Egypt, requested the examination of the “Draft provisions of Book Four ‘Plant Varieties’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” for conformity with the 1991 Act of the UPOV Convention. The Council at its thirty-second extraordinary session, held in Geneva on March 27, 2015, examined the “Draft provisions of Book Four ‘Plant Varieties’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” and decided to (see document [C\(Extr.\)/32/10](#) “Report”, paragraph 11):

“(a) note the analysis in document C(Extr.)/32/3;

“(b) note the information provided by the Delegation of Egypt that the English translation of the Draft Law required verification and that the following corrections would be made to the translation in accordance with the original text of the Draft Law:

“(i) to add the words ‘of this Article’ at the end of Article 192(7); and

“(ii) to add the paragraph number ‘(4)’ before the sentence ‘The Minister of Agriculture shall issue a decision establishing the rules and procedures for examination and settlement of the appeal.’ in Article 202;

“(c) take a positive decision on the conformity of the ‘Draft provisions of Book Four ‘Plant Variety Protection’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights’ (‘Draft Law’) of Egypt with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Egypt once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act; and

“(d) authorize the Secretary-General to inform the Government of Egypt of that decision.”

3. By Note No.2019.238 dated September 25, 2019, addressed to the Office of the Union, the Permanent Mission of the Arab Republic of Egypt to the United Nations Office, the World Trade Organization and other International Organizations in Geneva (Permanent Mission), reported developments in 2019 concerning the Law and requested the Council to reaffirm its decision on conformity of March 27, 2015. Note No.2019.238 is reproduced in Annex I to this document. An English translation of the amendments to the Law published in the Official Gazette on August 6, 2019, and of the corrigendum published on September 23, 2019, are reproduced as Annexes II and III of this document, respectively.

4. An explanatory note from Mr. Saad Nassar, Advisor to the Minister for Agriculture and Land Reclamation was attached to the Note from the Permanent Mission, explaining that the Law was amended by Law (26) 2015 in order to incorporate certain essential provisions of the 1991 Act. He further noted that, at the time of the deposit of the instrument of accession, the Office of the Union identified that certain provisions of the 1991 Act had not been incorporated in the Law, as amended in 2015. Mr. Nassar explained that, for conformity with the 1991 Act of the UPOV Convention and the decision of the Council of 2015, the Law had been further amended in 2019. He concluded that the text of a few articles of the Law, as last amended in 2019, were different from the text of the corresponding provisions of the Draft Law submitted to the Council in 2015. An English translation of the Explanatory Note prepared by Mr. Nassar is reproduced in Annex IV to this document.

CHANGES IN BOOK FOUR "PLANT VARIETIES" OF LAW PERTAINING TO THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AS LAST AMENDED IN 2019 IN RELATION TO THE TEXT PRESENTED TO THE COUNCIL IN 2015

5. In accordance with the decision of the Council of 2015 that the English translation of the Draft Law required verification (see paragraph 2, above), a verified English working translation of "Book Four 'Plant Varieties' of Law Pertaining to the Protection of Intellectual Property Rights of Egypt", as amended in 2015 and in 2019, is provided at https://www.upov.int/meetings/en/details.jsp?meeting_id=50801

6. The above verification of the English translation has revealed that the numbering of Article 189 of the Law has changed to Article 189*Bis* and the paragraph numbering of certain articles of the Law and corresponding cross references have been amended in accordance with the original Law in Arabic (see Articles 192, 192*Bis*, 194, 195, 198, 202 and 202*Bis*).

7. In accordance with the requirement to correct the translation, noted in the decision of the Council on March 27, 2015, paragraph 11(b)(i) of document C(Extr.)/32/10 "Report" (see paragraph 2, above), the relevant part of the verified translation of Article 192 now reads as follows:

"Article 192

"To be eligible for protection a variety shall be new, distinct, uniform, stable and shall be subject of a denomination, as follows:

[...]

"Any decision to grant protection shall require an examination for compliance with the conditions provided for under this Article.

[...]"

8. The texts of Article 193 (Third Paragraph), Article 195 (First Paragraph, (iii)), Article 195 (Second Paragraph), Article 202 and Article 202*Bis* (1) of the Law, as last amended in 2019, are different from the text of the corresponding provisions of the Draft Law that was submitted to the Council on March 27, 2015 (changes are presented in revision mode).

"Article 193" (Third Paragraph)

[...]

"Nevertheless, provisional measures are provided to safeguard the interests of the breeder during the period between the filing date of the publication of the application and the grant of protection. Such provisional measures shall apply only to those persons who are notified by the breeder of this filing.

"Under such provisional measures, the holder of a breeder's right is entitled to equitable remuneration from any person who, during the period mentioned in the preceding paragraph, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 194 of this Law."

"Article 195" (First Paragraph, (iii))

"The breeder's right shall not extend to:

[...]

"~~(iii)~~ ~~(e)~~ acts done for the purpose of breeding other varieties, and, except where the provisions of the Fourth Paragraph of Article 194(3) of this Law apply, acts provided for under the First and Second Paragraph of referred to in Article 194 (1) and (2), in respect of such other varieties."

“Article 195” (Second Paragraph)

[...]

~~“In relation to varieties included in a list of agricultural crops, which shall not include fruits, ornamentals or vegetables, s Subject to the safeguarding of the legitimate interests of the breeder, the breeder's right shall not be deemed infringed by farmers who, within reasonable limits, use for propagation purposes the product of the harvest which they have obtained by planting the protected variety or a variety covered by the Fourth Paragraph of Article 194 of this Law, those being done on their own holdings. The reasonable limits and the means of safeguarding the legitimate interests of the breeder shall be specified in the Executive Regulations.”~~

“Article 202

~~“Where any of the following cases is established, the Office of Plant Variety Protection shall issue a decision of annulment of the breeder's right certificate. The breeder's right shall be declared null and void when it is established:~~

~~“(i) if, at the time of grant of protection, the plant variety does not fulfill any of the conditions provided for under items (i) and (ii) of the First Paragraph of Article 192 of this Law.~~

~~“(ii) if, at the time of grant of protection, conditions provided for under either item (iii) or (iv) of the same Paragraph of the same Article referred to in the foregoing Article are not fulfilled, where such protection had been granted based essentially on information and documents furnished by the breeder.~~

~~“(iii) if the certificate has been granted to a person who is not entitled to it, unless the right is transferred to the person who is so entitled.~~

~~“No breeder's right shall be declared null and void for reasons other than those referred to in the first paragraph.”~~

~~“The Office shall notify the annulment decision to the party concerned in a registered letter with acknowledgement of receipt, and may be appealed within sixty (60) days from the date of notification.~~

~~“The Minister of Agriculture shall issue a decision establishing the rules and procedures for examination and settlement of the appeal.”~~

9. In relation to the translation of Article 202 of the Law, the Council noted in 2015, that as part of the verification of the translation (see paragraph 11(b)(ii) of document C(Extr.)/32/10 “Report” (see paragraph 2, above), the paragraph number “(4)” should be added before the sentence ‘The Minister of Agriculture shall issue a decision establishing the rules and procedures for examination and settlement of the appeal.’ in Article 202;”. The addition of the number of the paragraph is no longer relevant because that paragraph has been deleted. The last paragraph of Article 201 of the Law provides “The Regulations shall prescribe the rules and procedures for the notification, examination of the appeal and the decision thereon.” Therefore, relevant matters concerning appeals will be provided in the regulations.

“Article 202Bis (1)

~~“The provisions of Book Four of the Intellectual Property Rights Law, as referred to, shall apply to all plant genera and species specified by the Minister of Agriculture, and shall apply to all genera and species at the expiration of a period of ten (10) years from the date of implementation of this Law.”~~

10. In relation to the changes in Article 202Bis (1) of the Law, by Note N. 2019.240 of September 30, 2019, the Permanent Mission transmitted to the Office of the Union a list of 48 genera or species to which the Law applies in accordance with Article 202Bis (1) of the Law. Article 202Bis (1) of the Law corresponds to the obligation under Article 3(2) of the 1991 Act and the declaration attached to the Note from the Permanent Mission provides for a number of genera or species beyond the minimum requirement of 15 in Article 3(2)(i) of the 1991 Act.

CONCLUSION

11. In the opinion of the Office of the Union, the above changes to Book Four "Plant Varieties" of Law Pertaining to the Protection of Intellectual Property Rights, as last amended in 2019, do not affect the substantive provisions of the 1991 Act of the UPOV Convention.

12. *The Council is invited to:*

(a) note that certain provisions of Book Four "Plant Varieties" of Law Pertaining to the Protection of Intellectual Property Rights, as last amended in 2019, contained changes in relation to the text of the corresponding provisions of the Draft Law submitted to the Council in 2015 (see document C(Extr.)/32/10 "Report", paragraph 11, and paragraph 2, above);

(b) agree that the changes introduced in Book Four "Plant Varieties" of Law Pertaining to the Protection of Intellectual Property Rights", as last amended in 2019, presented in this document and its Annex II and III, do not affect the substantive provisions of the 1991 Act of the UPOV Convention and, subject to that agreement, and

(c) reaffirm the decision on conformity of March 27, 2015, and inform the Government of Egypt that the instrument of accession of Egypt may be deposited.

[Annexes follow]

*Permanent Mission of the Arab Republic of Egypt
to the United Nations Office
& International Organizations
in Geneva*



البعثة الدائمة لجمهورية مصر العربية
لدى الأمم المتحدة
والمؤسسات الدولية
في جنيف

CHAN.2019. 238

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office, the World Trade Organization and other International Organizations in Geneva, presents its compliments to the Office of the International Union for the Protection of New Varieties of Plants (UPOV), and with reference to its note CHAN.2019.216 dated 16 September 2019, has the honor to attach hereby the following documents:

- 1- A copy of Law No. 144 of 2019 which includes amendments to few articles of Book Four "Plant Varieties" of Law no. 82 of 2002 pertaining to the Protection of Intellectual Property Rights. The law has been published in the official gazette on 6 August 2019, and entered into force on 7 August 2019. An English version of the Law is also attached.
- 2- A copy of the corrigendum of article 198 of Law no. 144 of 2019 that has been published in the official gazette on 23 September 2019.

The Mission kindly requests UPOV Secretariat to present these amendments, as well as the explanatory note prepared by Dr. Saad Nassar Advisor to the Minister of Agriculture (attached with the Mission's latter note), to the UPOV Council in order to reaffirm its decision of conformity with the text presented to UPOV Council in 2015, to complete the procedures of Egypt's membership to UPOV.

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office, the World Trade Organization and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the International Union for the Protection of New Varieties of Plants (UPOV), the assurances of its highest consideration.

AY
Geneva, 25 September 2019

International Office of the
International Union for the Protection of New Varieties of Plants (UPOV).

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[Translation]
[Original: Arabic]

ARAB REPUBLIC OF EGYPT

OFFICIAL GAZETTE

ISSUE NO. 31BIS(D)

Dated August 6, 2019

[CERTIFIED COPY]

LAW NO. 144 OF 2019
AMENDING CERTAIN PROVISIONS
OF THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS ACT NO. 82 OF 2002

IN THE NAME OF THE PEOPLE,

THE PRESIDENT OF THE REPUBLIC,

The House of Representatives having approved the following Law, it is hereby promulgated:

ARTICLE I

Articles 192 (Third Paragraph), 192Bis (Second Paragraph), 193 (Third Paragraph), 194 (Last Paragraph), 195 (First Paragraph, (iii); and Second Paragraph), 198, 201 (Fourth Paragraph), and 202, 202Bis(1), of the Protection of Intellectual Property Rights Act issued by Law No. 82 of 2002, shall hereby be replaced by the following provisions:

Article 192 (Third Paragraph)

In the course of the examination, the Office of Plant Variety Protection may grow the variety or carry out other necessary tests, either by itself or by commissioning a third party; provided that, in any case, it takes into account the results of growing tests or other trials which have already been carried out.

Article 192Bis (Second Paragraph)

Subject to the Fifth Paragraph of this Article, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, either during the validity of the breeder's right or after its expiration.

Article 193 (Third Paragraph)

Nevertheless, provisional measures are provided to safeguard the interests of the breeder during the period between the filing date and the grant of protection. Such provisional measures shall apply only to those persons who are notified by the breeder of this filing.

Article 194 (Last Paragraph)

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

Article 195 (First Paragraph, (iii) and Second Paragraph)

The breeder's right shall not extend to:

(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of the Fourth Paragraph of Article 194 of this Law apply, acts provided for under the First and Second Paragraph of Article 194, in respect of such other varieties.

Subject to the safeguarding of the legitimate interests of the breeder, the breeder's right shall not be deemed infringed by farmers who, within reasonable limits, use for propagation purposes the product of the harvest which they have obtained by planting the protected variety or a variety covered by the Fourth Paragraph of Article 194 of this Law, those being done on their own holdings.

Article 198

The breeder's right shall not extend to acts concerning material of the protected variety, or of any variety covered by the provisions of the fourth paragraph of Article 194 of this Law, or any material derived from the said material, which has been sold or otherwise marketed by the breeder or with his consent in the Arab Republic of Egypt or abroad, with the exception of the following acts:

(i) acts of additional propagation of any variety mentioned in this paragraph
(ii) acts of export of material of the protected variety which enable its propagation in a country where the variety, its genus or genotype are not protected, unless where the exported material is for consumption purposes.

The materials provided for under the First Paragraph of this Article, which are not covered by breeder's right protection, shall mean,

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

Where the Statute of a regional organization of which Egypt is a Member so provide, acts done in State Members of that regional organization shall be considered to have been done in Egypt.

Article 201 (Fourth Paragraph)

The Office of Plant Variety Protection shall publish, at the expense of the right holder, in a monthly gazette issued by the Office, applications for certificates and grants of breeders' rights, the proposed denominations for the variety, and approved denominations for the variety. Where an application is rejected, the Office shall notify the rejection decision and the reasons thereof. Any interested party may, within sixty (60) days from the publication date or the date of notification, as the case may be, oppose the decision to grant a certificate of breeder's right or to reject an application for the protection.

Article 202

Where any of the following cases is established, the Office of Plant Variety Protection shall issue a decision of annulment of the breeder's right certificate:

- (i) if, at the time of grant of protection, the plant variety does not fulfill any of the conditions provided for under items (i) and (ii) of the First Paragraph of Article 192 of this Law.
- (ii) if, at the time of grant of protection, conditions provided for under either item (iii) or (iv) of the same Paragraph of the same Article referred to in the foregoing Article are not fulfilled, where such protection had been granted based essentially on information and documents furnished by the breeder.
- (iii) if the certificate has been granted to a person who is not entitled to it, unless the right is transferred to the person who is so entitled.

The Office shall notify the annulment decision to the party concerned in a registered letter with acknowledgement of receipt, and may be appealed within sixty (60) days from the date of notification.

Article 202Bis(1)

The provisions of Book Four of the Intellectual Property Rights Law, as referred to, shall apply to plant genera and species specified by the Minister of Agriculture, and shall apply to all genera and species at the expiration of a period of ten (10) years from the date of implementation of this Law.

ARTICLE II

This Law shall be published in the Official Gazette, and shall enter into force on the day following the date of its publication. It shall repeal any other provision which is contrary to its provisions.

[Annex III follows]

[Translation]
[Original: Arabic]

**ARAB REPUBLIC OF EGYPT
OFFICIAL GAZETTE**

ISSUE NO. 38BIS

Dated September 23, 2019

[EXTRACT]

The Presidency of the Council of Ministers, Advisory Board of the Council of Ministers

CORRIGENDUM

This is to notify that there was a material error in the Official Gazette No. 31Bis(D), dated August 6, 2019, containing the publication of Law No. 144 of 2019 Amending certain provisions of the Law on Intellectual Property Right Protection No. 82 of 2002. The error concerns the First Paragraph of Article 198 under Article I of the above-mentioned Law, which read as follows:

Article 198

The breeder's right shall not extend to acts concerning material of the protected variety, or of any variety covered by the provisions of the fourth paragraph of Article 194 of this Law, or any material derived from the said material, which has been sold or otherwise marketed by the breeder or with his consent in the Arab Republic of Egypt **or abroad**, with the exception of the following acts:

The above paragraph is hereby corrected to read as follows:

Article 198

The breeder's right shall not extend to acts concerning material of the protected variety, or of any variety covered by the provisions of the fourth paragraph of Article 194 of this Law, or any material derived from the said material, which has been sold or otherwise marketed by the breeder or with his consent in the Arab Republic of Egypt, with the exception of the following acts:

[End of Corrigendum]

[Annex IV follows]

[Translation]
[Original: Arabic]

**EXPLANATORY NOTE
ON
EGYPT'S ACCESSION TO
THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)**

The Delegation of the Ministry of Agriculture and Land Reclamation had submitted, in its capacity as observer during the Council of UPOV's session held in Geneva in March 2015, a draft law under examination by the House of Representatives. The draft law introduced amendments to certain provisions of Book Four 'Plant Varieties' of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights in order to bring it in conformity with the 1991 Act of the UPOV Convention.

Subsequently, the Council adopted a positive decision (attached hereto [see document C(Extr.)/32/10 "Report" paragraph 11]) on the accession of Egypt to UPOV, subject to the Law being promulgated with no changes as compared with the draft law submitted to UPOV and the House of Representatives, and Egypt depositing the required documentation for its accession.

However, the promulgated Law contained some changes. Consequently, when the Ministry of Foreign Affairs deposited the required documentation for Egypt's accession to UPOV, in accordance with Republican Decree No. 84 of 2017 which approved Egypt's accession to the International Convention for the Protection of New Varieties of Plants subject to ratification by the House of Representatives which subsequently ratified the Decree, the [Office of the] Union held that the law as promulgated differed from the previously submitted version and thus required some amendments to be in conformity with the version approved by the Council as well as with the 1991 Act of the UPOV Convention.

Therefore, new Law No. 144 of 2019 was issued with amendments to certain provisions of Book Four 'Plant Varieties' of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights and was published in the Official Gazette issue no. 31 *bis*(D) on August 6, 2019.

The Egyptian law was thus aligned with the 1991 Act of the UPOV Convention and the draft version previously approved by the Council of UPOV in March 2015 with the exception of the following:

- i. article 193, paragraph 2 was amended to provide that the [provisional]protection period starts from the date of filing instead of the date of publication;
- ii. the two phrases related to vegetative reproduction were removed from Article 195; and
- iii. the provisions of the Law were applied to plant varieties and species (Article 202 *bis*),

noting that said amendments do not affect the issue of compatibility between the Egyptian Law and the 1991 Act of the UPOV Convention, as discussed and agreed upon with UPOV's secretariat before the promulgation of the Law.

Done on September 10, 2019

**Advisor to the Minister [for Agriculture and
Land Reclamation]**

[Signature]

Dr. Saad Nassar