

Council

C/Analysis/2020/2

Analysis Document

Original: English

Date: May 22, 2020

ANALYSIS DOCUMENT AS A BASIS FOR THE PROCEDURE FOR THE EXAMINATION BY CORRESPONDENCE OF THE DRAFT LAW ON PLANT VARIETY PROTECTION OF THE UNITED ARAB EMIRATES CONCERNING ITS CONFORMITY WITH THE 1991 ACT OF THE UPOV CONVENTION*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. By letter dated April 28, 2020, addressed to the Secretary-General of UPOV, His Excellency, Sultan Abdulla AlHebsi, Assistant Under Secretary, Regions Sector, Ministry of Climate Change and Environment, requested the examination of the Draft Law on Plant Variety Protection of the United Arab Emirates (hereinafter referred to as the "Draft Law"), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a copy of the English translation of the Draft Law.

PROCEDURE OF EXAMINATION OF LAWS OR DRAFT LAWS BY CORRESPONDENCE

2. Article 34(3) of the 1991 Act provides that "any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

3. In the context of the organization of a single set of sessions from 2018, and in order to facilitate the examination of laws of future members, the Council, at its fifty-first ordinary session, held in Geneva on October 26, 2017, approved the proposals to amend document UPOV/INF/13/1 "Guidance on how to become a member of UPOV", in order to introduce a procedure for examination of laws by correspondence and adopted a revision of document UPOV/INF/13/1 (document UPOV/INF/13/2) (see document C/51/22 "Report", paragraph 20(g)).

4. On the above basis, the procedure of examination of laws or draft laws by correspondence in document [UPOV/INF/13/2](#) "Guidance on how to become a member of UPOV" provides as follows:

Applicability of the procedure of the examination of the Draft Law by correspondence

"11. The procedure of examination of laws by correspondence will be applicable if:

"(i) the request is received less than four weeks prior to the week of the earliest ordinary session of the Council and more than six months before the date of the subsequent ordinary session of the Council; and

"(ii) the analysis of the Office of the Union anticipates a positive decision and does not identify any significant issues concerning the conformity of the legislation with the UPOV Convention."

5. In accordance with paragraph 11 of document UPOV/INF/13/2, the letter with the request of examination of the Draft Law was received on April 28, 2020, being more than six months before the date of the fifty-third ordinary session of the Council. The Office of the Union anticipates a positive decision and has not identified any significant issues concerning the conformity of the Draft Law with the UPOV Convention.

Posting of the analysis document and the Draft Law on the UPOV website

“14. [...]”

“(i) the analysis document and the law will be posted on the UPOV website within six weeks of receipt of the request and members and observers to the Council will be informed accordingly; and

“(ii) members or observers will have the opportunity to provide comments within 30 days from the date the analysis document is posted on the UPOV website.”

6. In accordance with paragraph 14 of document UPOV/INF/13/2, the Office of the Union has posted this Analysis document (document C/Analysis/2020/2) concerning the United Arab Emirates in order to provide an opportunity for comments from Council members and observers (see UPOV Circular E-20/051 of May 22, 2020). The Analysis document contains, in Annex II, the English translation of the Draft Law of the United Arab Emirates.

BACKGROUND

7. On January 16, 2013, the Office of the Union received, from Mr. Mohamed Makkawi, Seed Technologist, Biodiversity and Protected Department, Water Resources and Nature and Conservation Affairs, Ministry of Environment and Water, a copy of the Arabic and English versions of the Federal Law No.(17) of 2009 on the Protection of New Varieties of Plants (Law of 2009). After an initial overview, the Office of the Union informed Mr. Makkawi of its view that a number of provisions of the Law of 2009 did not correspond to the provisions of the 1991 Act.

8. On September 13, 2015, H.E. Mr. Al Hammadi, Undersecretary at the Ministry of Environment and Water requested observer status in the Council and assistance on legislative matters. On December 11, 2015, the Office of the Union sent a Note Verbale to the Permanent Mission of the United Arab Emirates in Geneva accompanying a letter addressed to H.E. Mr. Al Hammadi, enclosing the detailed comments of the Office of the Union on the Law in relation to the 1991 Act.

9. On December 14, 2015, in Dubai, United Arab Emirates, the Office of the Union participated in legal consultations concerning the development of plant variety protection legislation and UPOV membership matters. On December 18, 2015, the Office of the Union sent comments on the Law reflecting the conclusions at the legal consultations.

10. On October 21, 2018, Ms. Fatima Obaid Alkalbani, Head of Agriculture Development, Ministry of Climate Change and Environment, reported on the progress of the internal process of modification of the Law and requested information on the contribution fees for joining UPOV.

11. On October 27, 2019, Ms. AL-Akel, International Organizations Executive, Office of the United Arab Emirates to the World Trade Organization (WTO) in Geneva provided a Draft Law to the Office of the Union with a request for comments. On December 20, 2019, the Office of the Union provided comments on the Draft Law dated October 27, 2019.

12. On February 27, 2020, Mr. Mohamed Ahmed Hamdan Al Dhanhani, Director of the Agriculture Development & Health Department, Ministry of Climate Change and Environment, provided another English translation of the Draft Law and the original version in Arabic to the Office of the Union. In order to clarify any discrepancies between the two language versions, and in consultation with the Government of the United Arab Emirates, the Office of the Union arranged for a verified English translation in relation to the original version in Arabic. The verification confirmed that there were certain discrepancies between the two language versions.

13. On April 10, 2020, the Office of the Union received an updated version of the verified English translation of the Draft Law. On April 14 and 22, 2020, the Office of the Union provided comments on the verified English translation of the Draft Law and information on the procedure for the examination of the Draft Law by correspondence.

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN THE UNITED ARAB EMIRATES

14. In the United Arab Emirates, the protection of new plant varieties in accordance with the 1991 Act will be governed by the Draft Law, once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act Definitions

15. Article 1 of the Draft Law contains definitions of breeder and variety corresponding to the definitions in Article 1(iv) and (vi) of the 1991 Act, respectively.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

16. Article 2(1) of the Draft Law refers to the protection and grant of breeders' rights.

Article 3 of the 1991 Act: Genera and Species to be Protected

17. Article 2(2) of the Draft Law provides that "[t]his Law shall be applied on the date of its coming into force to all plant genera and species" corresponding to the provisions of Article 3(2)(ii) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

18. In relation to the persons entitled to file applications, the Draft Law does not place any restriction on the nationality, place of residence of natural persons or place of registered offices for legal entities. Article 12 of the Draft Law concerning the "Right of Priority" covers the requirements for members of the Union. The Draft Law corresponds to the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

19. Articles 5 to 9 of the Draft Law contain provisions concerning the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

20. Article 6(2) and (3) of the Draft Law contains provisions concerning the optional provision of Article 6(2) "Varieties of recent creation" of the 1991 Act, as follows:

"(2) Where, according to Article 2(2), this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) of this Article even where the sale or disposal of to others described in that paragraph took place in the territory of United Arab Emirates within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

"(3) The provision under paragraph (2) of this Article, shall only apply to applications for a breeder's right filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned."

Article 10 of the 1991 Act: Filing of Applications

21. Article 11 of the Draft Law contains provisions on the filing of applications. The Draft Law does not seem to contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

22. Article 12 of the Draft Law contains provisions on the right of priority corresponding to the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

23. Article 19 of the Draft Law contains provisions concerning the examination of the application corresponding to the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

24. Article 21 of the Draft Law contains provisions on provisional protection corresponding to the provisions of Article 13 of the 1991 Act, as follows:

“(1) Provisional protection is provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder’s right and the grant of that right.

“(2) The applicant is considered to be the holder of a breeder’s right in relation to any person who, during the period provided in paragraph (1), has carried out acts which, once the right is granted, require the breeder’s authorization as provided in Article 14. The applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the publication date the breeder’s right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.”

Article 14 of the 1991 Act: Scope of the Breeder’s Right

25. Article 14 of the Draft Law contains provisions on the scope of the breeder’s right corresponding to the provisions of Article 14 of the 1991 Act.

26. Article 14(2)(b) of the Draft Law contains provisions concerning the optional provision of Article 14(3) “Acts in respect of certain products” of the 1991 Act as follows:

“(b) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2a) of this item through the unauthorized use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.”

Article 15 of the 1991 Act: Exceptions to the Breeder’s Right

27. Article 15(1) of the Draft Law contains provisions concerning the compulsory exceptions to the breeder’s right corresponding to the provisions of Article 15(1) of the 1991 Act.

28. Article 15(2) to (4) of the Draft Law contains provisions concerning the optional exception under Article 15(2) of the 1991 Act, as follows:

“(2) Small farmers shall not infringe the breeder’s right, in relation to varieties included in a list of agricultural plants, if they use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14 (3)(a)(i) or (ii) of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

“(3) The varieties of fruit, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.

“(4) The conditions for the implementation of the provisions under paragraph (2) of this Article, in respect of the list of agricultural plants and the information to be provided by the farmer to the breeder, shall be stipulated in the regulations.”

Article 16 of the 1991 Act: Exhaustion of the Breeder’s Right

29. Article 16 of the Draft Law contains provisions concerning the exhaustion of the breeder’s right which correspond to the provisions of Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

30. Article 25 of the Draft Law contains provisions concerning the restrictions on the exercise of the breeder's right which correspond to the provisions of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

31. Article 28 of the Draft Law contains provisions concerning measures regulating commerce which correspond to the provisions of Article 18 of the 1991 Act. The Draft Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

32. Article 17 of the Draft Law contains provisions concerning the duration of the breeder's right which correspond to the provisions of Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

33. Article 18 of the Draft Law contains provisions on variety denominations corresponding to the provisions of Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

34. Article 23 of the Draft Law contains provisions on the nullity of the breeder's right corresponding to the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

35. Article 24 of the Draft Law contain provisions on the cancellation of the breeder's right corresponding to the provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

36. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), Article 26 of the Draft Law provides as follows:

"(1) The penalties provided for in this Law do not prejudice any severer penalty stipulated in any other law.

"(2) The following legal remedies shall be available for the enforcement of breeders' rights:

"(a) Whoever violates the provisions of Articles 14 and 21 of this Law shall be punished by imprisonment for no less than two months and a fine of no less than ten thousand dirhams and no more than two hundred fifty thousand dirhams.

"(b) The penalty shall be doubled in case of recidivism.

"(c) The court may order the seizure of the infringing material and order its destruction at the expense of the infringer or its disposal. It may also, if the infringement is committed on behalf or for the interest of a legal person, or a commercial or professional establishment, order its closing down for a period not exceeding six months, and the publication of the summary of the judgment in one or more daily newspapers at the expense of the infringer.

"(d) Anyone who violates any other provision of this Law shall be punished by a fine of no less than ten thousand dirhams and no more than two hundred fifty thousand dirhams."

37. Article 1, Article 4 and Article 18(3) of the Draft Law refer to the Registrar as the authority entrusted with the task of granting breeders' rights, as required by Article 30(1)(ii) of the 1991 Act.

38. Article 20 of the Draft Law corresponds to the obligation to publish information concerning applications for and grant of breeders' rights, and proposed and approved denominations as required in Article 30(1)(iii) of the 1991 Act.

General Conclusion

39. In the opinion of the Office of the Union, the Draft Law incorporates the substantive provisions of the 1991 Act. On that basis, once the Draft Law is adopted with no changes and the Law is in force, the United Arab Emirates would be in a position "to give effect" to the provisions of the 1991 Act, as required by its Article 30(2).

[Annexes follow]

ANNEX I



Our ref: MOCCAE/EA/1584/2020
Date: 28/04/2020

Mr. Francis Gurry
Secretary-General
International Union for the Protection of New Varieties of Plants (UPOV)
Geneva, Switzerland

Dear Secretary-General Gurry,

We are pleased to inform you that the Ministry of Climate Change and Environment of the United Arab Emirates (UAE) has approved a Draft Federal Law on amending the Federal Law No. (17) of 2009 on the Protection of New Varieties of Plants. Moreover, we would like to inform you that issuing the law will require to go through the government protocol, which will take time to be officially published.

The UAE intends to adhere to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (UPOV Convention).

Pursuant to the provisions of Article 34(3) of the UPOV Convention, it would be greatly appreciated if the Council of UPOV could examine by correspondence the conformity of the Draft Law of the UAE with the provisions of the UPOV Convention.

Thank you.
Kind regards,



**For and on behalf of / Undersecretary
Ministry of Climate Change and Environment**

Enclosure: [Translation of the Draft Law in English]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II
[in English only / en anglais seulement / nur auf Englisch / solamente en inglés]

Translation in English of the Draft Law on Plant Variety Protection of the United Arab Emirates of April 2020

Article 1

Definitions

In the course of applying the provisions of this Law, the following words and expressions shall have the meaning assigned to each of them, unless the context otherwise requires:

The State: United Arab Emirates.

Ministry: Ministry of Climatic Change and Environment (MOCCAE).

Minister: Minister of Climatic Change and Environment

Variety means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, and distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged.

Breeder means the person who bred, or discovered and developed, a variety, the person who is the employer of the aforementioned person or who has commissioned the latter's work, or the legal successor in title of the first or second aforementioned person, as the case may be.

Plant breeder's right certificate: A document issued as evidence of a grant of a breeder's right.

Breeder's right means the right of the breeder provided for in this Law;

Register: Register of new varieties of plants and breeders' rights.

Registrar: Registrar of new varieties of plants and the breeders' rights who is appointed by the Minister.

Protected variety: A variety that has been granted a breeder's right in accordance with the provisions of this Law.

Applicant: The person who applies for a grant of a breeder's right.

Holder of the breeder's right: The breeder whom the registrar grants a breeder's right.

Breeder's right certificate holder: Any person awarded the certificate of a breeder's right.

Propagating material: Any plant material or parts, cells, tissues, organs or a genetic material of plants, that can be used for the propagation of plants or for reproduction by seedling, cultivation or grafting or budding.

UPOV: the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in the 1991 Act;

Member of UPOV: a State party to the UPOV Convention of 1961 / Act of 1972 or the Act of 1978 or a Contracting Party to the 1991 Act;

Regulations: the Regulations and Ministerial Decisions issued under this Law.

Article 2

Objectives of the law and its scope

- (1) The objective of the Law is to grant and protect breeders' rights.
- (2) This Law shall be applied on the date of its coming into force to all plant genera and species.

Article 3

Register of New Plants Varieties Protection

A register is designated in the Ministry under the name "Register of the New Plant Varieties Protection" concerning new plant varieties and breeders' rights in accordance with the provisions of this Law and the Regulations.

Article 4

The Registrar, and its tasks

The Minister shall appoint a Registrar for supervising the register, and undertaking the competences stipulated in this Law, particularly the following:

1. The Registrar shall carry out any other tasks in accordance with the provisions of this Law and its by-law.
2. Coordinating with the international, regional and local bodies involved in the registrar's work.
3. Any other tasks assigned by the Minister in connection to the objectives of this Law.

Article 5

Conditions of protection

(1) The breeder's right shall be granted where the variety is:

1. new
2. distinct
3. uniform
4. stable

(2) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 18, that the applicant complies with the formalities provided for in this Law and that he pays the required fees.

Article 6

Novelty

(1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:

(i) in the territory of the United Arab Emirates earlier than one year before the date of filing of the application and

(ii) in a territory other than that of the United Arab Emirates earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) Where, according to Article 2(2), this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) of this Article even where the sale or disposal of to others described in that paragraph took place in the territory of United Arab Emirates within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

(3) The provision under paragraph (2) of this Article, shall only apply to applications for a breeder's right filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned.

Article 7

Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 8

Uniformity

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 9

Stability

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Article 10

The person entitled to the breeder's right

The person entitled to the breeder's right is the breeder in accordance with the definition in Article 1 of the Law

Article 11

Filing of Application

Applications for the grant of a breeder's right shall be subject to the following requirements:

- (1) The filing date of the application for a breeder's right shall be the date of receipt of the application duly filed as prescribed by the Regulations.
- (2) MOCCAIE shall not refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

Article 12

Right of priority

- (1) Any breeder who has duly filed an application for the protection of a variety in a Member of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the Registrar, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.
- (2) Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.
- (3) In order to benefit from the right of priority, the breeder shall, in the application filed with the Registrar, claim the priority of the first application. The Registrar shall require the breeder to furnish, within a period of not less than three months from the filing date of the application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.
- (4) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the Registrar, any necessary information, document or material required for the purpose of the examination under Article 19 of this Law.

Article 13

Transfer of Applications and Rights

Applications for and grants of breeders' rights may be transferred to others. Such transfers shall be notified to the Registrar.

Changes of applicants or holders of the breeders' rights shall be published in accordance with the Regulations under this Law.

Article 14

Scope of the Breeder's Right

(1) (a) Subject to Articles 15 and 16 of this Law, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) Production or reproduction (multiplication)
- (ii) Conditioning for the purpose of propagation
- (iii) Offering for sale
- (iv) Selling or other marketing
- (v) Exporting
- (vi) Importing
- (vii) Stocking for any of the purposes mentioned above (i-vi).

(b) The breeder may make the authorization mentioned in the paragraph above, subject to conditions and limitations.

(2) Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of subparagraph (1)(a) of this Article, shall require authorization by the breeder in the following cases:

(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(b) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2a) of this item through the unauthorized use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

(3) (a) The provisions of paragraphs (1) and (2) shall also apply in relation to

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

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

- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- (ii) it is clearly distinguishable from the initial variety and

(iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

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

Article 15

Exceptions to the Breeder's Right

(1) The breeder's right shall not extend to

(i) acts done privately and for non-commercial purposes,

(ii) acts done for experimental purposes and

(iii) acts done for the purpose of breeding new varieties, and, except where the provisions of Article 14(3) apply, acts referred to in Article 14(1) and (2) in respect of such other varieties.

(2) Small farmers shall not infringe the breeder's right, in relation to varieties included in a list of agricultural plants, if they use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14 (3)(a)(i) or (ii) of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

(3) The varieties of fruit, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.

(4) The conditions for the implementation of the provisions under paragraph (2) of this Article, in respect of the list of agricultural plants and the information to be provided by the farmer to the breeder, shall be stipulated in the regulations.

Article 16

Exhaustion of the Breeder's Right

(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(3), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the United Arab Emirates, or any material derived from the said material, unless such acts

(a) involve further propagation of the variety in question or

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

(2) For the purposes of paragraph (1), "material" means, in relation to a variety,

(a) propagating material of any kind,

(b) harvested material, including entire plants and parts of plants, and

- (c) any product made directly from the harvested material.

Article 17

Term of Protection

The breeder's right shall be granted for a period of 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall be 25 years from the said date.

Article 18

Variety denomination

(1) The variety shall be designated by a denomination which will be its generic designation. Subject to paragraph (4), 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, even after the expiration of the breeder's right.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the Registrar. If it is found that the denomination does not satisfy the requirements of paragraph (2), the Registrar shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the Registrar at the same time as the breeder's right is granted.

(4) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with paragraph (7) of this Article, is obliged to use it. The Registrar shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted to all members of UPOV under the same denomination. The Registrar shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

(6) The Registrar ensures that the authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any Member of UPOV may address its observations, if any, on the registration of a denomination to the Registrar.

(7) Any person who offers for sale or markets propagating material of a variety protected within the territory of the United Arab Emirates is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(8) When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 19

Examination of the Application

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the Registrar may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the Registrar may require the breeder to furnish all the necessary information, documents or material as specified in the regulations.

Article 20

Publication

The public shall be informed concerning

- applications for and grants of breeders' rights, and
- proposed and approved denominations.

Article 21

Provisional Protection

(1) Provisional protection is provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

(2) The applicant is considered to be the holder of a breeder's right in relation to any person who, during the period provided in paragraph (1), has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14. The applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the publication date the breeder's right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.

Article 22

Renunciation

The breeder's right is considered as terminated in case of renunciation of that right by its holder before the expiration of the term of protection. Renunciation must be notified in writing by the holder of the breeder's right to the Registrar as prescribed by the Regulations. The date of the notification shall be considered as the date of renunciation of the breeder's right.

Article 23

Nullity of the Breeder's Right

(1) The breeder's right shall be declared null and void when it is established

(i) that the conditions laid down in Articles 6 or 7 were not complied with at the time of the grant of the breeder's right,

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right, or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

Article 24

Cancellation of the Breeder's Right

(1) (a) The breeder's right shall be cancelled if it is established that the conditions laid down in Articles 8 or 9 are no longer fulfilled.

(b) Furthermore, the breeder's right shall be cancelled if, after being requested to do so and within the prescribed period,

(i) the breeder does not provide the Registrar with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(ii) the breeder fails to pay such fees as may be payable to keep his right in force, or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).

Article 25

Compulsory License from the Minister

The free exercise of a breeder's right shall not be restricted in the territory of the United Arab Emirates for reasons other than of public interest.

When any such restriction has the effect of the Minister, upon a recommendation of the Ministry of Defense or the Ministry of Interior, granting a compulsory license whereby a third party is authorized to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

Article 26

Penalties

(1) The penalties provided for in this Law do not prejudice any severer penalty stipulated in any other law.

(2) The following legal remedies shall be available for the enforcement of breeders' rights:

(a) Whoever violates the provisions of Articles 14 and 21 of this Law shall be punished by imprisonment for no less than two months and a fine of no less than ten thousand dirhams and no more than two hundred fifty thousand dirhams.

(b) The penalty shall be doubled in case of recidivism.

(c) The court may order the seizure of the infringing material and order its destruction at the expense of the infringer or its disposal. It may also, if the infringement is committed on behalf or for the interest of a legal person, or a commercial or professional establishment, order its closing down for a period not exceeding six months, and the publication of the summary of the judgment in one or more daily newspapers at the expense of the infringer.

(d) Anyone who violates any other provision of this Law shall be punished by a fine of no less than ten thousand dirhams and no more than two hundred fifty thousand dirhams.

Article 27

The Death of the Breeder without an Heir or Legatee

The Ministry shall exercise the right of the breeder on the protected variety if he dies without an heir or legatee.

Article 28

Measures Regulating Commerce

The breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material.

In any case, such measures shall not affect the application of the provisions of this Law.

Article 29

Judicial Appeal Period

Judicial appeal is allowed to be filed against the administrative decisions issued pursuant to this Law and in accordance with applicable procedures during the period of sixty days from the date of publication in the Official Gazette or from the date of the notification of the decision to the interested party, as the case may be.

Article 30

Supervision

The Minister of Justice shall, issue a decision, in agreement with the Minister, to select staff that will have the status of judicial officers in the application of the provisions of this Law.

Implementation

Supervision over the implementation of this Law, shall be performed by the Ministry.

Article 31

Annual Fees

The holder of the breeder's right shall pay the prescribed annual fees during the first thirty days of each year of the term of protection.

Article 32

Schedule of Fees

The Cabinet shall issue a resolution specifying the prescribed fees in accordance with the provisions of this Law.

Article 33

The Minister shall issue the Regulations of this Law, and the decisions necessary for its implementation.

Article 34

Any provision in other Laws contrary to or inconsistent with the provisions of this Law shall be invalid.

Article 35

This Law shall be published in the Official Gazette, and shall come into force as of the day following the date of its publication.

[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]