Introduction

Plant variety protection in the Arab Republic of Egypt was created by Law 82/2002 on the Protection of Intellectual Property Rights, which was adopted in 2002, specifically Book 4 of this law entitled 'Plant Varieties.' Some aspects of the law closely echo the standards set out in the International Convention for the Protection of New Varieties of Plants (UPOV Convention). For example, to be protectable, a variety must be novel, distinct, uniform and stable. It also requires that newly protected materials represent advanced values for cultivation and use.

However, some aspects of the law introduced requirements and processes that are not present in the UPOV conventions. Until 2015, the law included Article 200, which created an obligation to disclose 'the genetic resource relied on to develop the new plant variety.' It also required that 'the breeder has acquired that resource by legitimate means under the Egyptian law,' noting that this requirement 'extends to traditional knowledge and experience accumulated among local communities the breeder could have relied on in his efforts to develop the new plant variety.' The law also stated that 'a register shall be established in the Ministry of Agriculture and Land Reclamation to include the Egyptian plant genetic resources, both wild and domesticated.' The intention of this register was to facilitate the process of breeders both identifying potentially useful materials to use in their breeding efforts and to identify from whom they needed consent to use the materials. The idea was that, eventually, all wild or domesticated Egyptian plant genetic resources would be registered in order to fully encompass all of the traditional knowledge linked to genetic resources in Egypt.

In 2015, Presidential Decree 82/2002 dismissed article 200 from Book 4 of Law 82/2002. It also modified Article 192 of Law 82/2002 to include the requirement of a breeder's consent prior to the production, sale, export or import of varieties that are essentially derived from protected breeders’ varieties. These changes were made to satisfy the requirement of the UPOV Council to accept Egypt's full membership in UPOV. The Presidential Decree also reaffirmed the right of farmers to save and plant on their own holdings seed that
they harvested from protected varieties, without the permission of the holder of the breeders’ right.

Background

Negotiations for an association agreement with the European Union (EU) were set in motion in 1995 and concluded in June 2001. The agreement entered into force on 1 June 2004, after ratification by the Egyptian People’s Assembly and all EU member states. The association agreement states that Egypt should be a member of the UPOV Convention as part of the overall agreement. The association agreement, together with the obligation under Article 27(3)(b) of the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), prompted Egypt to develop an intellectual property rights protection law including a chapter (Chapter 4) related to new plant variety protection that is compliant with the 1991 UPOV Convention.8

The government of Egypt submitted its law to the UPOV Council in 1999 for consideration vis-à-vis its conformity with the UPOV Convention.9 The UPOV Council indicated that the sections in the Egyptian law requiring declarations of origin of materials used by breeders and agreements with authorities pursuant to national law are not consistent with the UPOV Convention. In addition, they indicated that it was necessary to include treatment of essentially derived varieties (which the law did not recognize). International trade requirements were not the only influences on the development of the Egyptian law. Inspired partly by the Convention on Biological Diversity and the Indian Protection of Plant Varieties and Farmers’ Rights Act, the Ministry of Higher Education and Scientific Research wanted to include additional text linking plant breeders’ rights to farmers’ rights.10

Status of implementation

Despite some efforts by the government to establish an official registration list of farmers’ varieties as part of the country’s plant genetic resources as anticipated in the law, it was not successful. In 2007, a prime ministerial decree suspended Article 200 of Law 82/2002 and the obligation for applicants to provide details about the sources of genetic material used to develop a new plant variety. The same decree suspended creation of the register of Egyptian plant genetic resources, including farmers’ varieties. For a while, it was not clear if or when this suspension will be lifted. However, it was confirmed with Presidential Decree 26/2015 referred to above. This decree, along with some other changes to the law, has made it possible for Egypt to be accepted as a member of the UPOV Convention.

Meanwhile, there is still interest among a range of stakeholders in the country to go ahead with exploring a range of mechanisms to advance farmers’
rights. The idea came from a study managed by the Genetic Resources Policy Initiative (GRPI)-Egypt project to list all eligible rights related to farmers that include not only registration of their innovative varieties but also all other tabulated rights (land ownership, access to extension services, access to certified seeds, benefit sharing of using their indigenous knowledge, access to fertilizers, free irrigation water and so on). In light of recent developments, it seems that these efforts will need to take place within the existing legal structures – that is to say, without any new laws in support of such initiatives. One possible element would be to further develop a register of farmers’ varieties by a farmers’ independent association as a means of taking stock of what materials exist and where they are located as well as to ‘defensively publish’ a list of them. Conditions for registration on a joint farmers/nongovernmental organization-operated database of this nature would likely have to be different from the standard criteria of distinctness, uniformity and stability, perhaps focusing mostly on distinctiveness, with considerably looser conditions of uniformity and stability. The Agricultural Research Centre coordinated a study in 2007–8, surveying hot spots of farmers’ varieties throughout the country, identifying 31 varieties of field crops (including cereals, forages and legumes) as well as vegetables, fruit and medicinal plants.

Notes

3 Law 82/2002, supra note 1, Article 192.
4 Ibid.
5 Ibid., Article 200.
6 Ibid.
7 Ibid.