

Annex 4: Proclamation No. 481/2006: Plant Breeders' Rights Proclamation

FEDERAL DEMOCRATIC NEGARIT GAZETA
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Proclamation No. 481/2006

Plant Breeders' Right Proclamation....Page 3339

PROCLAMATION NO. 481/2006

A PROCLAMATION TO PROVIDE FOR PLANT BREEDERS' RIGHT

WHEREAS, the utilization of new plant varieties developed through research play a significant role in improving agricultural production and productivity;

WHEREAS, the development of new plant varieties requires considerable effort and investment;

WHEREAS, it is necessary to provide for recognition and economic reward for those who contribute to such effort and investment so as to encourage their involvement in the sector;

WHEREAS, it is necessary and appropriate to ensure that the farming and pastoral communities of Ethiopia, who have been conserving and continue to do so in the future the agro-biodiversity resource used to develop new plant varieties, continue to their centuries old customary practice of use and exchange of seed;

NOW, THEREFORE, in accordance with Article 55 (1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE GENERAL PROVISION

1. Short Title

This Proclamation may be cited as the “Plant Breeders’ Right Proclamation No. 481/2006.”

2. Definitions

In this Proclamation unless the context otherwise requires:

- 1/ “applicant” means a person who has filed an application with the Ministry for a plant breeders’ right;
- 2/ “Ministry” means the Ministry of Agriculture and Rural Development;
- 3/ “breeder” means a person who:
 - a) has bred and developed a new plant variety; or
 - b) has employed or commissioned the work of the person who has bred or developed a new plant variety; or
 - c) is a successor in title of the person mentioned in (a) or (b) of this Sub-Article;
- 4/ “holder” means a person to whom a plant breeders’ right has been granted by the Ministry;
- 5/ “new plant variety” means a variety that:
 - a/ by reason of one or more identifiable characteristics, is clearly distinguishable from all other varieties the existence of which is a matter of common knowledge at the date of application for a plant breeders’ right;
 - b/ is stable in its essential characteristics, in that after repeated reproduction or multiplication, at the end of each cycle, remains true to its description;

- c/ having regard to its particular features of sexual reproduction or vegetative propagation, is sufficiently homogenous or is a well-defined multi-line; and
- d/ its material has not been sold or otherwise disposed of to others by the breeder for purposes of commercial exploitation of the variety:
 - i) in the territory of Ethiopia, earlier than one year before the date of filling of application for plant breeders' right with the Ministry; or
 - ii) in the territory of any other state, earlier than six years in the case of varieties of tree, fruit tree or grape vines, or in the case of other species, earlier than four years before the date of the application.
- 6/ "Plant" means a living-organism which is not an animal and which can reproduce itself naturally.
- 7/ "protected variety" means a new plant variety that is protected by a plant breeders' right granted by the Ministry;
- 8/ "variety" means a plant grouping within a single botanical taxon of the lowest known rank, which can be:
 - a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - b) distinguished from any other plant grouping by the expression of at least one of said characteristics; and
 - c) considered as a unit for being propagated unchanged;
- 9/ "Farmers variety" means a plant variety having specific attributes and which has been discovered, bred, developed or nurtured by Ethiopian farming communities or a wild relative of variety about which the Ethiopian farming communities have common knowledge;
- 10/ "Wild relative" means a plant variety which is not domesticated by man and which is found in the wild by nature.
- 11/ "Propagating material" means any part of a plant which can be propagated.
- 12/ "Person" means natural person or juridical person.
- 13/ "Institution" means a state or private organization having juridical personality.

3. Scope of Application

- 1/ This Proclamation shall apply to new plant varieties of the genera and species, which the Ministry shall determine by directives;
- 2/ The Ministry may revise, from time to time, as necessary, the list of the plant genera and species to which this Proclamation shall apply.

PART TWO PLANT BREEDERS' RIGHT

4. Protection of Right

Subject to the conditions and limitations provided for in this Proclamation, a breeder shall be granted a plant breeders' right in respect of his new plant variety.

5. Scope of Plant Breeder's Right

- 1/ Subject to the exemptions and restrictions provided for in this Proclamation, a plant breeders' right entitles the holder an exclusive right to:
 - a) sell, including the right to license other persons to sell, the seed or propagating material of the protected variety; and
 - b) produce, including the right to license other persons to produce, propagating material of the protected variety for sale.
- 2/ The carrying out of the activities referred to in Sub-Article (1) of this Article by other persons with respect to a protected variety is prohibited unless with the authorization of the holder.

6. Exemptions to Plant Breeders' Right

- 1/ Notwithstanding the existence of a plant breeder's right, any person or farmers' community may:
 - a) propagate, grow and use a protected variety for purposes other than commerce;
 - b) sell plants or the propagating material of the protected variety for use as food or for any other use that does not involve growing the plant or the propagating material of the protected variety;
 - c) sell plants or propagating material of a protected variety as they are within a farm or any other place where plants of the variety are grown;
 - d) use plants or propagating material of a protected variety as an initial source of variation for purpose of developing another new plant variety except where the person makes repeated use of plants or propagating material of the variety for the commercial production of another variety;
 - e) sprout a protected variety for use as food for home consumption or for the market;
 - f) use a protected variety in further breeding, research or teaching;
 - g) obtain, with the conditions of utilization, protected variety from gene banks or plant genetic resources centers.
- 2/ Notwithstanding the provisions of Sub-Article (1) of this Article, farmers cannot sell farm-saved seed or propagating material of a protected variety in the seed industry on commercial scale.

7. Restrictions on Plant Breeders' Right

- 1/ The Ministry may, when public interest so requires, due to the following grounds, put restrictions on the exercise of a plant breeders' right where:
 - a) problems arise due to competitive practices of holders;
 - b) food security, nutritional or health needs or biological diversity are found adversely affected;
 - c) a high proportion of a protected variety offered for sale is being imported;
 - d) the requirements of the farming community for propagating material of a particular protected variety are not met;
 - e) it is considered important to promote public interest for socio-economic reasons and for developing indigenous and other technologies.
- 2/ When the Ministry decides to put restrictions on the exercise of a plant breeders' right, it shall:
 - a) give to the holder the copy of the decision setting out the particulars of the restrictions;
 - b) give public notice of the restrictions; and
 - c) specify the compensation to be paid to the holder.
- 3/ where the holder is dissatisfied with the compensation decided to be paid, he may lodge his appeal in accordance with Article 34 of this Proclamation.

8. Compulsory Licensing

- 1/ Without prejudice to the provisions of Article 8 of this Proclamation, the Ministry may, to safeguard public interest, grant a compulsory license upon application by any interested person.
- 2/ The Ministry may grant a compulsory license only if:
 - a) the holder is not producing and selling the propagating material of the protected variety in sufficient amount to meet the needs of the general public and has refused to license other persons to produce and sell the propagating material of the protected variety or is not willing to give such license under reasonable terms; or
 - b) there exist no condition under which the holder can be expected to give a permit to use his protected variety.

- 3/ Where the Ministry grants compulsory license, it shall determine the remuneration the person to whom the compulsory license is granted shall pay to the holder, the duration of the compulsory license and other conditions as necessary. The duration of a compulsory license shall not be shorter than three years and longer than five years; provided, however, that the Ministry may extend the duration if an application for extension is made and the conditions warranting compulsory licensing continue to exist.
- 4/ A person to whom a compulsory license is granted shall have a non-exclusive right to perform all or any of the activities for which the authorization of the holder would have been required.
- 5/ Compulsory licensing shall not preclude the holder from using the variety or to grant license to others.

9. Duration of Plant Breeders' Right

Without prejudice to other provisions of this Proclamation, a plant breeders' right shall exist for a period of 20 years in the case of annual crops, and 25 year in the case of trees, vines and other perennial trees from the date the successful application for a plant breeders' right was accepted.

10. Persons Entitled to Plant Breeders Right

- 1/ A breeder shall be entitled to a plant breeders' right in respect of his new plant variety, whether or not the breeder is an Ethiopian national or a foreigner, or is an Ethiopian resident or not, and whether the variety was bred locally or abroad.
- 2/ Where two or more persons bred the variety jointly or that they are joint successors, they shall jointly be entitled to plant breeders' right; provided however, that only one or some of such persons may apply for a plant breeders' right provided that the remaining other persons have given their consent in writing to this effect.
- 3/ Where the breeder is a public or a private institution, the plant breeders' right shall be granted in the name of the institution.
- 4/ Where a variety has been bred by two or more persons independently of each other, the entitlement to plant breeders' right shall belong to the person who has first filed an application with the Ministry for plant breeders' right.
- 5/ Where an application is filed by a person who is not entitled to plant breeders' right, the person who is entitled to the plant breeders' right may apply to the Ministry for the assignment of the application to him.

11. Application

A breeder who wants to be granted a plant breeders' right in respect of a new plant variety shall, present written application to the Ministry. The conditions and procedure in accordance with which applications may be lodged, examined and decided shall be specified by regulations.

12. Provisional Protection

- 1/ The applicant shall be deemed to have a plant breeders' right in respect of the new variety during the period between the date the application for plant breeders' right is filed and the granting of plant breeders' right or the final rejection of the application.
- 2/ The genetic material of the new plant variety under provisional protection shall not be used for non-research purposes. The Ministry shall take the necessary measures to prevent the use of the genetic material of such variety for non-research purposes.

13. Opposition

Where an application is lodged for a plant breeders' right, any person, who considers that the granting of plant breeders' right will be contrary to public interest, or that the variety does not fulfill the requirements for granting plant breeders' right, or that the applicant is not entitled to

plant breeders' right, may lodge with the Ministry an opposition to the application setting out the particulars for the opposition. The conditions and procedure pursuant to which opposition shall be lodged, examined and disposed shall be specified by regulations.

14. Granting of Plant Breeders' Right

The Ministry shall grant a plant breeders' right if it is satisfied that:

- 1/ the plant variety is new;
- 2/ there is no ground, as provided for in this Proclamation, to refuse the granting of plant breeders' right to the applicant;
- 3/ the breeder has a proof that he has obtained the genetic resource used to develop the variety in accordance with the relevant laws on access to genetic resources;
- 4/ a plant breeders' right has not been granted to another person in respect of the variety;
- 5/ there has been no earlier application, that has not been withdrawn or rejected, for a plant breeders' right in respect of the new variety in question; and
- 6/ all fees payable in relation to the granting of plant breeders' right have been paid.

15. Register of Plant Breeders' Right

The Ministry shall keep a register of plant breeders' rights. The particulars that may be entered in the register shall be specified by regulations.

16. Publication of Plant Breeders' Right

Where the Ministry grants a plant breeders' right, it shall give public notice to that effect.

17. Deposition of Samples

The Ministry shall, for the purpose of conservation, cause that the holder deposits at the Institute of Biodiversity Conservation sample of the new plant varieties with respect to which a plant breeders' right have been granted.

18. Maintenance of Variety

- 1/ The holder shall have the obligation to maintain the variety to ensure that all the characteristics of the variety at the date of granting the right are maintained throughout the duration of the plant breeders' right.
- 2/ The Ministry may, to ensure that the variety is maintained, require the holder to furnish material of the variety or any other necessary information.

PART THREE
TRANSFER AND REVOCATION OF PLANT BREEDERS' RIGHT

19. Transfer of Right

- 1/ Plant breeders' right may be transferred to other persons by a contract or by the law.
- 2/ A transfer of plant breeders' right by a contract may have no effect unless entered in the register of plant breeders' right.

20. Surrender of Plant Breeders' Right

- 1/ A holder may surrender his plant breeders' right by giving notice to the Ministry.
- 2/ Upon receiving notice of surrender, the Ministry shall enter same in the register of plant breeders right and give public notice thereof.
- 3/ Where an action in respect of a plant breeders' right is pending before a court, the Ministry shall not register the surrender except by leave of the court or by consent of the parties in the court proceeding.

21. Plant Breeders' Right Granted to a Person not Entitled to

- 1/ Where a plant breeders' right has been granted to a person who is not entitled to, the person who is entitled to the plant breeders' right may apply to the Ministry demanding that the plant breeders' right be transferred to him.

- 2/ The Ministry shall, upon examining the application for the transfer and the response of the holder and ascertaining that the right has wrongly been granted to the holder and that the applicant is entitled thereto, cause the plant breeders' right to be transferred accordingly.

22. Revocation

- 1/ The Ministry shall revoke a plant breeders' right if;
 - a) it is proved that the variety was not new or that facts exist which, if known before the granting of the right, would have resulted in the refusal of the right;
 - b) the holder has failed to pay the prescribed fee payable in respect of the plant breeders' right within 90 days after having been notified that the payment has fallen due; or
 - c) the holder has failed to maintain the variety.
- 2/ Where the Ministry decides to revoke a plant breeders' right in accordance with Sub-Article (1) of this Article, it shall give written notice of the revocation to the holder stating the grounds for the decision, and it shall give public notice of the revocation.

23. Application for Revocation

Any person whose interest is affected by the granting of a plant breeders' right may apply to the Ministry for the revocation of the plant breeders' right in accordance with this Proclamation. The procedure in accordance with which an application for revocation of plant breeders' right may be examined and decided shall be specified by regulations.

PART FOUR

INFRINGEMENT OF PLANT BREEDERS' RIGHT

24. Act of Infringement

Any act in respect of a protected variety for which the authorization of the holder is required and which is done without such authorization shall constitute an act of infringement of a plant breeders' right.

25. Legal Action

- 1/ A holder whose plant breeders' right has been infringed may institute an action in court to require the cessation of the act of infringement and claim compensation for damage.
- 2/ The court shall order the cessation of an act of infringement and the payment of compensation for the damage caused on the holder unless the defendant forthwith proves that the plant breeders' right alleged to have been infringed has to be revoked in accordance with the provisions of article 23(1) of this Proclamation.

26. Counter Claim

- 1/ A defendant in an action against infringement may institute a counter claim for the revocation of the plant breeders' right in question, if it is revocable in accordance with Article 23(1) of this Proclamation.
- 2/ The court shall order the revocation of the plant breeders' right in question, if any of the grounds specified in Article 23(1) of this Proclamation is proved to exist by the counter claim.
- 3/ Where the court orders the revocation of the plant breeders' right, the defendant shall serve the copy of the court order to the Ministry. Upon receiving the court order, the Ministry shall register the revocation of the plant breeders' right and give public notice of the revocation.

PART FIVE FARMERS' RIGHT

27. Principle

Farmers' Right stem from the enormous contributions that local farmers have made and will continue to make in the conservation and sustainable use of plant genetic resources that constitute the basis of breeding for food and agricultural production.

28. Farmers' Right

- 1/ In relation to the use of plant varieties, farmers shall have the following rights:
 - a) to save, use, exchange and sell farm-saved seed or propagating material of farmers' varieties;
 - b) to use protected varieties including material obtained from gene banks or plant genetic resource centres to develop farmers' varieties;
 - c) to save, use, multiply, exchange and sell farm-saved seed or propagating material of protected varieties.
- 2/ Notwithstanding the provisions of Sub-Article (1) of this Article, farmers may not sell farm-saved seed or propagating material of a protected variety in the seed industry as a certified seed.

PART SIX MISCELLANEOUS PROVISIONS

29. Penalty

Any person who infringes a plant breeders' right shall, in addition to the confiscation of the seed or propagating material of the protected variety which is the proceed of the infringement, be punished with imprisonment not exceeding three years or a fine up to five thousand Birr or with both such imprisonment and fine.

30. Appeals

A party who is aggrieved of a decision on the granting, refusal, revocation or restriction of a plant breeders' right may lodge an appeal to the federal high court within sixty days from the date of receipt of the decision.

31. Fees

The amount and schedule of payment of fees to be paid in relation to plant breeders' right shall be determined by regulations to be issued hereunder.

32. Issuance of Regulations

The Council of Ministers may issue regulations for the proper implementation of this Proclamation.

33. Inapplicable Laws

No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, have effect in respect of matters provided for by this Proclamation.

34. Effective Date

This Proclamation shall come into force upon publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 27th day of February, 2006

**GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL DEMOCRATIC
REPUBLIC OF ETHIOPIA**