

Plant Breeder`s Right Directive Number 769/2021

DIRECTIVE NO 769/2021

Directive Issued by the Ministry of Agriculture of the Federal
Democratic Republic of Ethiopia No.....

The Ministry of Agriculture has issued this directive based on the powers vested upon it by the Plant Breeder's Right Proclamation No.1068/2010

Short Title

This directive may be cited as the Plant Breeder's Right Directive No. 769/2021

1. Crops where the Plant Breeder's Right is not enforceable upon

The Ministry:

- 1/ shall not enforce Plant Breeder's Right on plant genera and species if these are prescribed in other appropriate laws to cause health and safety damage on the environment, human beings, animal and plants biodiversity
- 2/ shall without prejudice to this article sub article 1 above; ensure through consultation with the concerned institutions regarding the plant genera and species that this directive should not cover in its enforcement.

3. Ways an application for Plant Breeder's Right is submitted and examined

- 1/ An application for granting Plant Breeder's Right submitted by a right holder or his legal agent shall fulfill the following:
 - a/ Right holder's name and address
 - b/ Agent's name and address if application is submitted by an agent
 - c/ variety's family and crop species including its common name
 - d/ The proposed denomination
 - e/ Breeder's candidate variety reference code
 - f/ Name of the plant breeder who has breed, or discovered and developed a new plant variety; the candidate variety

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- g/ Brief description about the breeding or development process
 - h/ access permit if the variety developed from domestic biodiversity
 - i/ the name of the country if the variety is protected outside Ethiopia
 - j/ Include any document if any special privilege to the applicant is anticipated due to international and continental agreements that the country ratified.
 - k/ Duration the variety has been in foreign or domestic market
 - l/ Prior consent on breeding maintenance of the seed of the variety.
 - m/ letter of request for Breeder's right together with the application template of the ministry if application is submitted by research institution, or farmer/ or community or their representative.
- 2/ Application for Plant Breeder's Right may be submitted to the ministry with the designated application fee documents in one of the following:
- a/ postal services
 - b/ the ministry's official electronic application
 - c/ fax
 - d/ physical submission
- 3/ The ministry examines the application submitted for plant Breeder's right through following:
- a/ Ensure whether the application submitted is according to the provision of this article sub article 1
 - b/ Ensure documents submitted with the application are correct
 - c/ Ensure the characteristics of the variety described in the application are distinct from the ministerial reference variety descriptor of other protected varieties.

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d/ If the variety descriptor gets acceptance by the ministry it will be decided to carryout test for Distinctness, uniformity and stability.

e/ Without carrying out additional DUS test, the Ministry may accept a DUS report submitted by an applicant, if it is done by an institution that has recognition by the ministry.

4. Variety descriptor and way of submission

- 1/ The Ministry shall prepare variety descriptor based on crop types considering internationally accepted practices and characteristics of plant parts, either describing them individually or collectively as follows;
 - a/ leaf
 - b/ reproduction organ of the plant
 - c/ stem
 - d/ root
 - e/ growth habit
 - f/ as appropriate may include other characteristics
- 2/ plant variety descriptor shall be prepared in detail with qualitative, quantitative and pseudo qualitative characteristics and shall be made accessible to users.

5. Granting of Plant Breeder`s Right for farmers and community varieties shall be done as follows;

- 1/ Farmers and community varieties can be granted with Plant Breeder`s right when the national biodiversity institution confirms the crop species':
 - a/ Center of origin is Ethiopia or
 - b/ is listed in the country's list of center of diversity
- 2/ Notwithstanding letters /a/ and /b/ of sub article one of this article, when farmers as individuals or as communities want to apply for plant Breeder`s right developed by themselves in a conventional way, they will be entitled to do so according to the provisions in article 4 of the Plant Breeder`s Right Proclamation.

6. Application submission procedures by any farmer for plant breeder`s right as an individual or as a community and conducting field assessment shall be implemented as follows:

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- 1/ First level application shall be submitted to the kebele level agriculture office
- 2/ When submitting application, the applicant should specify variety's descriptor that distinguishes it from other varieties and attach other relevant documents as may be specified in the format annexed with this directive.
- 3/ The kebele agriculture office conducts survey within the kebele regarding the candidate variety that requested plant Breeder's right and ensures that there is no objection and hence provide a supporting letter to the applicant
- 4/ The woreda agricultural office based on the information provided on this article sub article 3 above shall conduct intra woreda survey and ensure that there is no objection and writes letter of support to the zonal or regional agricultural office
- 5/ The zonal or regional agricultural office based on this article sub article 4 above carries out as appropriate **intra** zonal or intraregional survey to ensure the variety does not exist in the other zones primarily using its seed regulatory body or if lacks regulatory body through its crop development department and submits evidences together with the application to the ministry.
- 6/ The ministry, based on the application and other relevant evidences received according to this article sub article 5:
 - a/ Request the national biodiversity institution its consent on the local candidate variety
 - b/ The ministry after receiving of report from the national biodiversity institution invites objection if any in a mass media with widely coverage. The duration of the invitation notice shall be indicated in the notice

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- c/ The ministry shall decide DUS test to be carried out if no objection shows up during the time duration of the notice.
- 7/ The ministry may perform farmers and communities' DUS tests :
 - a/ in its own testing station or
 - b/ in delegated research centers and universities near to the applicant's address.
- 8/ DUS testing trial design and sample size shall be implemented based on each crop protocols prepared by the ministry
- 9/ Farmers and communities variety uniformity will be determined according to Ethiopian Standard Agency minimum standard set for off type of Quality Declared Seeds of the lower seed class.
- 10/ In accordance with this article sub article 9 above plant Breeder's right will be granted to the applicant if the variety is found acceptable and no opposition is submitted.

7. Granting Plant Breeder's Right to Public Research Institutions shall be implemented as follows

Criteria that need to be fulfilled by public research institutions to be granted with plant Breeder's Right after fulfilling DUS test

- 1/ Application Requesting the ministry for Plant Variety Protection by the research institution
- 2/ Name of the research center who bred or discovered and develop the variety
- 3/ List of participating Breeder's and other professionals in the research process including evidence of their recruitment in the public institution
- 4/ Evidence that the variety was bred or discovered and developed using public fund
- 5/ The ministry ensuring fulfillment of the provisions in this article sub articles 1-4 grants the institution a certificate stating that the variety is a public good

8. The ministry for reasons of public interest may put restrictions on plant Breeder`s right under the following conditions

- 1/ By restricting seed production of the protected variety in areas with rich indigenous **plant** biodiversity.
- 2/ Until a protected variety`s negative impact on other varieties is known
 - a/ permit seed multiplication/production of the protected variety on with specific agro-ecologies,
 - b/ Restriction of seed production of the protected variety in areas where related families of the variety are under production
 - c/ By maintaining isolation distance between varieties inin the seed production system
 - d/ Restricting seed production or sales until the conditions for restriction are lifted
- 3/ If a protected variety seed after the fulfillment of a conducive condition could not be produced according to the demand of the user due to unwillingness or capacity limitation.

9. Prior to implementing compulsory licensing for reasons of public benefit the government may offer the right holder the following support choices

- 1/ Facilitate foreign currency access and usage
- 2/ Facilitate land access or support in the implementation of contract farming
- 3/ Facilitate conducive environment to access of other inputs and supports

10. The ministry after facilitating the necessary support based on article 8 and before deciding the implementation of the compulsory licensing

- 1/ inform the right holder in written to express his views

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2/ The right holder shall respond to the ministry's notice within
15 working days

3/ The ministry based on the response of the applicant

a/ If he agrees to satisfy the need of the users compulsory
licensing shall not be implemented

b/ If he does not agree to fulfill users demand, compulsory
licensing shall be implemented

**11. The ministry shall use the following criteria to select
applicants for compulsory licensing**

1/ Applicant must have a valid Certificate of competence and
trade license in seed production.

2/ Better seed market share in the country when compared with
others

3/ One who has established an internal seed quality control
system based on the certificate of competence provision and
administration directive or beyond that

4/ In comparative terms who has a better storage,
logistics/transport/ and manpower

5/ One who has better track record on customer satisfaction
feedbacks

6/ one who has private land or has land lease agreement for
longer period

7/ As may appropriate one who can fulfill other additional
criteria

**12. Any person based on the criteria set out in article 17 sub
article 2 of the proclamation may submit his objection on an
application submitted to acquire plant Breeder's right as
follows:**

1/ the person who submits his objection shall do so in
electronic, **physical appearance** or application in fax.

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- 2/ The ministry in accordance with the provisions of this article sub article 1 above shall inform the applicant on the nature of objection within 5 working days
- 3/ The right holder shall respond in ten working days after receiving the ministry's notification.
- 4/ If the objection presented relates to damages associated with public benefits:
 - a/ Public health, animal and or plant health
 - b/ Food and nutrition security
 - c/ Environmental safety
 - d/ Sovereignty
 - e/ Biodiversity conservation and community right
 - f/ Connected to other related issues; the ministry will investigate the issue in collaboration with relevant institutions
- 5/ If the objection is in relation to unfulfillment of criteria to grant right the ministry shall:
 - a/ carry out study or research to ensure its nobility and its duration in the market is not exceeding what is permitted.
 - b/ compare the variety with reference variety provided by the applicant to ensure the variety presented for protection is distinct
 - c/ As appropriate implements other testings
- 6/ If the objection is related to claim over right, documents that support the right ownership shall be presented by the person presenting the objection
- 7/ The ministry based on the outcomes of its investigations carried out may decide the following:
 - a/ Reject the objection and proceed with the right granting process accepting the application or

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b/ May reject the application of the plant breeder's right, if the objection presented is acceptable.

13. **Investigating and giving decision on application of objection to cancel plant Breeder's right after the right is granted will proceed as follows:**

1/ If the submitted application is related to damages on public benefit or is related to failure in fulfilling criteria, the ministry to investigate the application will follow article 11 sub article 4 and 5 of this directive

2/ if the application of objection submitted for cancelation of plant Breeder's right due to failure to maintain the protected variety shall be investigated as follows

a/ The ministry shall instruct in written the right holder on the t objections presented against him within 15 days

b/ The ministry based on the report submitted by the owner of the variety, verifies at field level whether the variety maintains the characteristics it had upon granting of the right.

c/ Based on the field feedback take varietal sample and carry out additional testing in the field or in the laboratory

3/ The ministry may decide one of the following after investigating based on this article sub article 1 and 2

a/ Reject application and approve the previous right holder or

b/ Cancel only the right previously granted based on the application or

c/ Cancel the right previously granted based on the application and transfer the right to the appropriate body

14. Sample size for DUS testing shall be determined based on the ministry's technical guideline prepared for each crop species.

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15. Seed sample size of a protected variety, duration and storage type shall be determined according to the ministry's technical guideline
16. This directive shall be enforceable since 27th day of February, 2021

Umer Hussien
Minister of Agriculture