WHEREAS, the Constitution of the Federal Democratic Republic of Ethiopia stipulates the right to ownership of private property and it is considered that plant breeder’s right to fall under this category; moreover it is important to protect the right holders to enable import of new varieties that benefit the community;

WHEREAS, it has become necessary to ensure the guarantee of Plant Breeder’s right by harmonizing it with international practice and thereby to boost the economic contribution of the sector;

WHEREAS, it has become necessary to establishment of transparent and accountable working system to resolve disputes arising among Breeders with respect to the protection of their research output

WHEREAS, it is found necessary and appropriate to maintain the centuries old customary knowledge and practice of saving, using and exchanging seed by farmers and pastoral
WHEREAS, it has become necessary to enact legal framework that facilitate registration of rights, restriction and responsibilities of Breeders to enhance the contribution;

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

PART ONE

GENERAL

1. Short Title
This Proclamation may be cited as the “Plant Breeder’s Right Proclamation No. 1068/2017”.

2. Definitions
In this Proclamation, unless the context otherwise requires:

1/ “applicant” means a person who has submitted application with the Ministry to obtain a plant breeder’s right;

2/ “breeder” means a person who:
   a) has breed, or discovered and developed a new plant variety;
   b) has employed or commissioned the work of a person who has breed, or discovered and developed a new plant variety; or
   c) is a successor of the person mentioned under paragraph (a) or (b) of this sub-article;

3/ “Botanical seed” means the reproductive part of a plant is a fertilized ovule containing the plant embryo.

...
3/ “commercial marketing” means any trade in seed other than the marketing that is conducted between small holder farmers or pastoral communities, or between small holder farmers; pastoral communities and their cooperative societies;

4/ “denomination” means the official name of a variety in respect of which a plant breeder right has been granted;

5/ “essentially derived variety” means a variety that:
   a) is predominantly derived from an initial variety, or from a variety that is itself predominantly derived from an initial variety while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
   b) is clearly distinguishable from the initial protected variety; and
   c) except for the differences resulting from the act of derivation, conforms to the initial protected variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

6/ “farmers or pastoral communities variety” means variety which is:
   a) traditionally cultivated and developed by farmers or pastoral communities in their fields; or
   b) predominantly breed or selected by farmers or pastoral communities from various plant source;
“Protected variety” means a new plant variety that is protected by a plant breeder’s right granted by the Ministry;

“holder” means a person to whom a plant breeder’s right has been granted by the Ministry;

“multiline” means an assemblage of individual breeding lines in a stated proportion to breed varieties;

“plant” means a living organism excluding the animal kingdom and microorganisms that are capable of reproduction;

“protected variety” means a new plant variety that is protected by a plant breeder’s right granted by the Ministry;

“seed” means true botanical seed, bulbs, tubers, cuttings, rhizomes, roots, seedlings or any other plant propagating material intended for planting;

“sell” means advertisement, marketing, import and export of plant seeds, convey and includes granting a license to other persons to sell plant seeds pursuant to this Proclamation;

“small holder farmer or pastoral community” means a farmer or pastoral community who is officially granted a certificate of possession of land not more than 10 hectares and engaged in agricultural development using predominantly his own and family labor and his lively hood is predominately dependent on agriculture;

“variety” means a plant grouping within a single botanical taxonomy 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 with regard to its suitability for being propagated unchanged;

17/ “Ministry” means the Ministry of Agriculture and Natural Resource;

18/ “person” means a natural or juridical person;

19/ any expression in the masculine gender includes the feminine.

3. **Scope of Application**

This Proclamation shall apply to all genera and species of plants throughout the country, except those genera and species of plants excluded by the directives of the Ministry.

**PART TWO**

**PLANT BREEDER'S RIGHTS**

4. **Criteria for Protection of Plant Variety**

1/ A plant variety shall be eligible for protection, when:

a) distinct in one or more identifiable characteristics from any other variety, the existence of which is a matter of common knowledge at the date of application;

b) uniform with regard to its particular features of sexual reproduction or vegetative propagation, sufficiently homogenous or a well-defined multiline;
2/ The variety available on the commercial market on the effective date this Proclamation shall be eligible for protection pursuant of sub-article (1) (d) of this Article when:

a) application is lodged within one year from the entry into force of this Proclamation; and

b) the breeder’s right is entered in the register of Plant breeders’ right as provided under Article 10 of this Proclamation.

3/ The Ministry shall prescribe less stringent distinctness, uniformity and stability requirements for the eligibility of farmer or pastoral community’ varieties for plant breeders’ right by ministerial directive.

4/ The Ministry may recognize the distinctness, uniformity and stability results obtained for the same variety in other countries recognized as having equivalent testing procedures.

5/ Not withstanding sub-article (1) (d) of this Article, the Ministry may allow the registration of plant breeder’s right already
Where an improved variety is developed using material from a farmers’ or pastoral communities’ variety, wild relatives of crop plant and other varieties and community knowledge a plant breeder’s right may only be registered abroad, where such registration is deemed to be in Ethiopia’s national interest; provided, however, that the duration of the right shall be calculated from the date the right was first registered in the foreign country.

5. Scope of Plant Breeders’ Right

1/ Subject to the exemptions and restrictions provided for in this Proclamation, a plant breeder’s right gives the holder the exclusive right to:

a) sell or give permission to other persons to sell and

b) produce or give permission to other persons to produce for market,

the protected seed or the propagating material of the protected variety.

2/ The provisions of sub-article (1) of this Article shall also apply in respect of:

a) varieties which are essentially derived from a protected variety where this protected variety is not itself an essentially derived variety;

b) varieties that are not clearly distinguishable from the protected variety; and

c) varieties whose productions require the repeated use of the protected variety.

3/ Where an improved variety is developed using material from a farmers’ or pastoral communities’ variety, wild relatives of crop plant and other varieties and community knowledge a plant breeder’s right may only be granted and exercised if the breeder has, in accordance with prevailing national laws on access and benefit-sharing of biodiversity of the country:
### Exemptions to Plant Breeder’s Right

The following varieties do not confer plant breeder’s right:

1. privately or for non-commercial purposes;

2. for experimental, research or educational purposes; or

3. for the purpose of breeding other varieties.

### Farmers’ or pastoral communities’ Right

Notwithstanding any other provisions this Proclamation, the following farmer’s or pastoral community’s rights on protected variety shall be recognized and protected:

1. small holder farmers or pastoral community shall have the right to save, use, exchange and sell farm-saved seed of any variety on the non-commercial marketing;
2/ any farmer or pastoral community shall have the right to save and use farm-saved seed of any variety of food crops and other species that directly supporting his livelihoods.

8. Restrictions on Plant Breeder’s Right
1/ The Ministry may, when public interest requires due to the following grounds, put restrictions on the exercise of a plant breeder’s right where:
   a) the right holder of a protected seed variety is unable or unwilling to meet the demand for seed of a particular protected variety; or
   b) the exercise of the right is likely to adversely affect food security, public health, biological diversity, the environment or other matters of public interest, as determined in consultation with the competent authorities on such matters.

2/ The restriction on plant breeder’s right shall only be limited to the conditions and extents specified in the directives of the Ministry; and shall be lifted as soon as conditions stated in this article sub article 1(a) are improved.

3/ When the Ministry decides to put restrictions on the exercise of a plant breeder’s right, it shall:
   a) give to the right holder the copy of the decision specifying the particulars of the restrictions;
   b) notify the restriction to the public at large; and
   c) determine the compensation to be paid to the right holder based on this article sub article 1(a).
9. 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 seed 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 seed of the protected variety or is not willing to give such license under reasonable terms; or

b) it is necessary to ensure only national food security or public health.

3/ The amount of remuneration to be paid by the compulsory licensee to the right holder, the validity period of the compulsory license and other conditions necessary shall be determined by Regulation to be issued.

4/ A person to whom a compulsory license is granted shall have corresponding right and accountability to perform any activity for which the authorization of the holder would have been required; this shall be performed with the knowledge of the ministry.

5/ The granting of compulsory licensing shall not preclude the holder from using the variety or to grant a license to others.

6/ The Ministry may cancel or terminate the compulsory license on one of the following grounds:
1. **Eligibility for Plant Breeder's Right**

1/ Any plant breeder’s whether he is an Ethiopian or a foreign national, or resident in Ethiopia or elsewhere, may apply for a plant breeder’s right in respect of a new plant variety that is either bred locally or abroad.

2/ Any person representing the community that developed the variety, in the case of farmers’ or pastoral communities’ varieties, may apply for the community to obtain plant breeder’s right.

3/ Where two or more persons breed a variety together they shall have right to secure joint holders right; provided, however, that anyone or more than one joint owner may apply and obtain a separate plant breeder’s right if the remaining eligible joint owners have given their consent in written document authenticated by a notary.

10. **Duration of Plant Breeder's Right**

The protection of plant breeder's right shall commence from the date of the grant of the breeder’s right; and shall be for 20 years in the case of annual crops; and 25 years in the case of trees, vines and other perennial plants.

a) if the reasons for granting compulsory license no longer exist or are unlikely to persist or;

b) if the licensee has neither begun to exploit the license nor made serious preparations to do so within a reasonable time frame or;

c) if the conditions stipulated under issue regulation pursuant to sub-article (3) of this Article are not respected.
4/ Where the breeder is a public or private institution, the plant breeder’s right shall be granted in the name of the institution.

5/ Where two or more persons breed a variety independently from the other, the first to file an application with the Ministry shall be granted the plant breeder’s right.

12. Use of Variety Denomination

1/ Any person who, within the territory of Ethiopia, sells seed of a protected variety on the commercial marketing shall use the denomination of such variety.

2/ Where the variety denomination is used in writing, it shall readily be distinguishable and clearly legible; and if the denomination is associated with a trademark, trade name or similar indication it shall easily be recognizable as such.

13. Restrictions on the Use of Variety Denominations

1/ The variety denomination given to plant breeders as protected plant variety shall not, be similar another variety of the same botanical species or confuse with denomination of other protected variety.

2/ 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 expiry of the breeder’s right.

3/ If a person who has obligation to use the denomination of protected variety registered pursuant to Article 12(1) of this Proclamation is forbidden not to use the denomination of variety due to prior rights registered, the Ministry shall require the breeder to submit another denomination for the variety which may not affect third parties right.
14. Responsibility of the Ministry

The Ministry shall have the following responsibilities with respect to plant breeder’s right:

1/ receive, examine and give decision on the submitted application and administer the plant breeder’s right;

2/ administer plant breeder’s right and conduct candidate varieties distinctness, uniformity and stability testing;

3/ maintain the list of countries from which plant breeder’s right varieties distinctness, uniformity and stability testing shall directly be accepted in the application process pursuant to Article 4(4) this Proclamation;

4/ maintain the Register of Plant breeder’s right in accordance with Article (20) of these proclamation;

5/ verify and investigate allegations of infringement in accordance with Article (27) of these proclamation and make accountable based on available national law.

15. Application Procedure

1/ Any breeder wishing to obtain a plant breeder’s right in respect of a new plant variety shall present a written application to the Ministry. The detail conditions and procedure in accordance with which applications shall be lodged, examined and decided shall be specified in the directive to be issue by the Ministry.
2/ Every applicant shall submit a sworn affidavit, together with supporting documentation, declaring the following conditions:

a) the origin or source of the genetic resources used to breed or develop the variety;

b) that the genetic or breeder seed used in breeding or developing the variety was lawfully acquired and, where applicable, in compliance with the requirements of prior informed consent and benefit sharing as provided under Article 5(3) of this Proclamation; and

c) that the variety does not contradict to National Bio-safety Proclamation No. 655/2009, or that the applicant has obtained all necessary authorization from the competent authority and complied with all other applicable legal requirements.

16. Preliminary Determinations and Provisional Protection

1/ The Ministry shall, within 14 days of receiving an application for a plant breeder’s right, make a preliminary determination as to whether it merits a full examination under this Proclamation.

2/ If a positive preliminary determination is passed pursuant to sub-article (1) of this Article, a provisional plant breeder’s right shall be granted as of the date of such determination until final decision is give either in the form of granting of the right or rejection of the application.

3/ The application shall be rejected and the applicant shall be notified in the specified time if the preliminary determination passed pursuant to sub-article (1) of this Article is negative.
17. **Publication of Notice for call of Opposition**

1/ The Ministry shall, by the expense of the applicant, notice for call of opposition to the application of plant breeder’s right in a mass media having wider circulation containing the following information:

a) the applicants name and address;

b) detail information of variety for which plant breeder’s right is sought.

2/ Where an application is submitted for a plant breeder’s right, Any person who considers that the granting of such right may be contrary to public interest, or that the variety does not fulfill the requirements for granting a plant breeder’s right, or that the applicant is not entitled to the plant breeder’s right, may lodge opposition to the Ministry within the time specified in the notice.

3/ The detail conditions and procedure for examination and disposal of opposition shall be determined in the directive issued by the ministry.

18. **Granting of Plant Breeder’s Right**

1/ The Ministry shall grant a plant breeder’s right if it is satisfied that:

a) the criteria, eligibility and application requirements set forth in Articles (4), (11) and (15) of this Proclamation have been met;

b) there are no grounds under this Proclamation to reject the application;
(a) Where the Ministry grants a plant breeder’s right, it shall give public notice in a mass media having wider circulation.

(b) The holder shall deposit a sample of the protected variety within the ministry.

(c) the breeder has proven that he has obtained the genetic resource used to develop the variety in accordance with the relevant laws on access to genetic resources;

d) a plant breeder’s right has not been granted to another person in respect of the new variety in question;

e) there has been no earlier application that was rejected for a plant breeder’s right in respect of the new variety in question; and

f) all fees payable in relation to the granting of the plant breeder's right have been paid.

2/ No assignment, transfer or other disposition of plant breeders’ right shall take effect prior to its entry into the Register of Plant breeder's right and publication by the Ministry.

3/ Where the Ministry grants a plant breeder’s right, it shall give public notice in a mass media having wider circulation.

19. Deposition of Samples

The holder shall deposit a sample of the protected variety within the ministry.

20. Maintenance of the Variety

1/ The holder shall have the obligation to maintain the essential characteristics of the variety throughout the validity period of the plant breeder’s right.
2/ The Ministry may require the holder to furnish the variety itself or any other information the variety to ensure that the variety is maintained.

PART FOUR
TRANSFER AND REVOCATION OF PLANT BREEDER’S RIGHT

21. Transfer of Right
1/ Plant breeder’s right may be transferred to other persons by contractual agreement or by the operation of law.

2/ The transfer of a plant breeder’s right by contractual agreement shall have no effect unless entered in the register of Plant breeders’ right.

22. Surrender of Right
1/ Any holder may surrender his plant breeder’s right by giving notice to the Ministry.

2/ The Ministry shall, upon receiving notice of surrender in accordance with sub-article (1) enter it in the register of Plant breeders’ right and publicize it in mass media having wider circulation.

3/ Where any case is pending before a court in respect of a plant breeder’s right, the Ministry shall not register the surrender except by leave of the court or by consent of the parties in the court proceeding.

4/ Any holder who surrenders his plant breeder’s right on his own will, shall be accountable for damages arising from the use of the protected variety.

23. Application for Revocation of Plant Breeder’s Right
1/ Any person whose interest is affected by the granting of a plant breeder’s right may apply to the Ministry for the revocation
and, where applicable, the transfer of the right in accordance with Articles (24) and (25) of this Proclamation respectively.

2/ The procedures for examining and deciding on applications revocation shall be specified in the directive issued by the Ministry.

24. Transfer of Rights Granted Improperly

1/ The person who claims to be entitled to the plant breeder’s right may apply to the Ministry demanding that the plant breeder’s right improperly granted to other person has to be transferred to him.

2/ The Ministry shall, upon examining the application for the transfer and the response of the holder if ascertains that the right was wrongly granted to the holder and that the applicant is entitled to it, cause the plant breeder’s right to be transferred accordingly.

25. Revocation of Right

1/ The Ministry shall revoke a plant breeder’s 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 rejection of the application;

b) the holder has failed to pay the prescribed fee payable in respect of the plant breeder’s right within 90 days after having been notified that the payment has fallen due; or

c) the holder has failed to maintain the characteristics of the variety.
Any plant breeder's right holder claiming infringement 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 the plant breeder's right.

Infringement of Plant Breeders' Rights

PART A

27. Claims of Infringement

1. 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 the plant breeder's right.

3. Where a plant breeder's right is obtained by fraud or misrepresentation, the Ministry shall revoke the right and refer to the appropriate justice organ in writing for the institution of criminal case.

PART B

3. Where the Ministry decides to revoke a plant breeder's right in accordance with sub-article (1) of this Article, it shall:

a) give written notice to holder that the right is going to be revoked;

b) give written notice to the holder to present his objection together with evidence within 30 days after the notice was given.

c) after hearing the objection, give public notice if the decision revokes the rights of the breeder.

26. Act of Infringement of Plant Breeders' Rights

27. Claims of Infringement

28. Evidence

29. Suspension of the Breeder's Right

30. Revocation of the Breeder's Right

31. Reinstatement of the Breeder's Right

32. Enforcement of Judgment

33. Administrative Actions

34. Penalties

35. Amendment of this Article


37. Entry into Force

Any infringer shall be liable to the following penalties:

Penalties:

a) a fine not exceeding the value of the infringer's profit,

b) a fine not exceeding 100% of the value of the infringer's profit,

c) a fine not exceeding 200% of the value of the infringer's profit,

d) a fine not exceeding 500% of the value of the infringer's profit,

e) a fine not exceeding 1000% of the value of the infringer's profit,

f) a fine not exceeding 2000% of the value of the infringer's profit,

g) a fine not exceeding 5000% of the value of the infringer's profit,

h) a fine not exceeding 10000% of the value of the infringer's profit,

i) a fine not exceeding 20000% of the value of the infringer's profit,

j) a fine not exceeding 50000% of the value of the infringer's profit,

k) a fine not exceeding 100000% of the value of the infringer's profit,

l) a fine not exceeding 200000% of the value of the infringer's profit,

m) a fine not exceeding 500000% of the value of the infringer's profit,

n) a fine not exceeding 1000000% of the value of the infringer's profit,

o) a fine not exceeding 2000000% of the value of the infringer's profit,

p) a fine not exceeding 5000000% of the value of the infringer's profit,

q) a fine not exceeding 10000000% of the value of the infringer's profit,

r) a fine not exceeding 20000000% of the value of the infringer's profit,

s) a fine not exceeding 50000000% of the value of the infringer's profit,

t) a fine not exceeding 100000000% of the value of the infringer's profit,

u) a fine not exceeding 200000000% of the value of the infringer's profit,

v) a fine not exceeding 500000000% of the value of the infringer's profit,

w) a fine not exceeding 1000000000% of the value of the infringer's profit,

x) a fine not exceeding 2000000000% of the value of the infringer's profit,

y) a fine not exceeding 5000000000% of the value of the infringer's profit,

z) a fine not exceeding 10000000000% of the value of the infringer's profit.
3/ The Ministry shall examine the complaint and give decision within 30 working days.

4/ The defendant may raise as an objection against the pleading that:
   a) the pleading in question do not constitute an infringement of the plant breeder’s right; or
   b) the plant breeder’s right has been surrendered on the grounds specified under Article (22) of this Proclamation.

5/ If the Ministry ascertains that an infringement of the plant breeder’s right is taking place, it shall promptly notify to the infringer and order the immediate cessation of the activities in question.

6/ The holder may seek relief in the regular court of law if the Ministry fails to respond to his complaint within 30 days.

7/ Any party aggrieved by the decision of the Ministry may lodge pleading in the regular court of law in accordance with Article (30).

28. Judicial Remedies

1/ Where the Ministry or a court of law finds an infringement of right, the holder may seek the following remedies in the regular court:
   a) cessation of the act of infringement;
   b) reasonable compensation for damages;
   c) seizure of any harvest of the protected variety that was sold or produced without the holder’s authorization.
MISCELLANEOUS PROVISIONS

29. **Criminal Liability**

Any person who infringes a plant breeders' right shall be subject to criminal liabilities.

30. **Court Action**

Any person aggrieved by a decision of the Ministry on the granting, refusal, revocation, transfer, restriction, compulsory licensing or infringement of a plant breeder’s right may lodge an action in the regular court of law within 60 days from the date of receipt of the decision.

31. **Fees**

“The amount fees to be paid in relation to plant breeder’s right protection shall be effected in accordance with seed Regulation issued to implement the Seeds Proclamation.”

32. **Power to issue Regulation and Directive**

1/ The Council of Ministers may issue regulations necessary for the implementation of this Proclamation.

2/ The Ministry shall issue directives necessary for the implementation of this Proclamation and regulations issued pursuant to sub-article (1) of this Article.

33. **Repealed and Inapplicable Laws**

1/ Proclamation No. 481/2006 on Plant Breeder’s Right is hereby repealed.
2/ No law, regulation, directive or practice shall, insofar as it is inconsistent with this Proclamation, have effect in respect of matters provided for by this Proclamation.

34. Effective Date

This Proclamation shall enter into force on the date of publication in the Federal Negarit Gazette.

Done at Addis Ababa, this 1st day of March, 2018.

MULATU TESHOME (DR.)

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA