

## **PLANT BREEDERS' RIGHTS ORDINANCE, 2000**

An Ordinance to provide for granting of property rights to the Plant Breeders for the development of new plant varieties.

AND WHEREAS the establishment of a viable seed industry is critical to the development of agriculture;

It is hereby enacted as follows:

### **PRELIMINARY**

#### **1. Short title, extent and commencement.-**

- (a) This Ordinance may be called the Plant Breeders' Rights Ordinance, 1999.
- (b) It extends to the whole of Pakistan.
- (c) It shall come into force at once.

#### **2. Definitions.-**

In this Ordinance, unless there is anything repugnant to the subject or context:

- (a) "Applicant" means the natural or legal person who has filed an application for the grant of the Plant Breeders' Rights pursuant to section 8.
- (b) "Application" means an application under section 4, in respect of a new plant variety for which protection is sought under the Plant Breeders' Rights Ordinance.
- (c) "Breeder" means the natural or legal person, an institution, a farming community, a farmer or an organization which has bred or discovered and developed a new variety of plant.
- (d) "Certificate" means the certificate of Plant Breeders' Rights issued under section 25 of this Ordinance.
- (e) "Marketing" includes any transaction affected in the course of trade whereby the property in propagating material passes from one person to another.
- (f) "Plant variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant breeder's right are fully met, can be;
  - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
  - distinguished from any other plant grouping by the expression of at least one of the said characteristics;
  - considered as a unit with regard to its suitability of the plant grouping for being propagated unchanged.

- (g) “Protected variety” means a plant variety for which a Certificate of Plant Breeders’ Rights has been issued under this Ordinance.
  - (h) “Successor” means a person to whom the right of the breeder to make an application for Plant Breeders’ Rights has been assigned.
  - (i) “Essentially derived variety” means a variety derived from the protected variety, where the protected variety is not itself an essentially derived variety, while it retains the expression of essential characteristics that result from the genotype or combination of genotype of the initial variety. (Different forms of essentially derived varieties will be described in the rules formulated by the Federal Government).
  - (j) “Genetically Modified Organisms” (GMOs) means genetic material which has been bred by genetic engineering involving molecular techniques that modify, recombine and transfer genes. This includes recombinant deoxyribonucleic acid (DNA) techniques that transfer genes between species that have no probability of exchanging genes in nature. This term shall apply to varieties derived from a living modified organism;
  - (k) “Farmer” means one who cultivates the crops either cultivating land himself for his own purpose or through a person employed for cultivating for the purpose.
3. Plant Breeders’ Rights Office
- (a) The Federal Government shall establish an Office known as Plant Breeders’ Rights Office as a branch of the Directorate General of the Federal Seed Certification & Registration Department, Ministry of Food, Agriculture & Livestock, established through the promulgation of Seed Act, 1976
  - (b) The Federal Government shall appoint a Director, Plant Breeders’ Rights who shall exercise as authority of the Plant Breeders’ Rights Office. The Federal Government shall also appoint as many officers/staff, as it deemed fit to assist the Director, Plant Breeders’ Rights.
4. **Application for grant of Plant Breeders’ Rights**
- (a) An application for a Certificate of Plant Breeders’ Rights shall be filed in the Plant Breeders’ Rights Office, which filing shall be subject to rules established by the Federal Government.
  - (b) The Plant Breeders’ Rights Office shall regularly publish an Official Gazette, Plant Breeders’ Rights Journal which shall contain published information about the granting of new Certificates of Plant Breeders’ Rights, as well as notices and other information concerning obtaining of such Certificates.
5. **CRITERIA FOR PLANT BREEDERS’ RIGHTS**

A Certificate of Plant Breeders' Rights shall be granted to the owner of any variety of sexually or asexually reproduced plant which is;

- (a) novel,
- (b) distinct,
- (c) uniform,
- (d) stable, and
- (e) designated by an acceptable denomination.

For the purposes of this law:

- (a) **Novel.**— A variety shall be considered novel unless:
  - i) it has been sold or marketed, with the agreement of the applicant, for more than one year in Pakistan before filing of the application for a Certificate of Plant Breeders' Rights under this law;
  - ii) it has been sold or marketed, with the agreement of the applicant, for more than six years in the case of trees or vines and for more than four years in the case of all other plants in a foreign country before filing of the application for a Certificate of Plant Breeders' Rights under this law;
- (b) **Distinct.**— A variety shall be considered distinct if it clearly differs by one or more identifiable morphological, physiological or other common knowledge at the date of the application. In particular, the filing of an application for granting of Plant Breeders' Rights for another variety or for entering of another variety in an official register of varieties, in any country, shall be deemed to render the other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a Plant Breeders' Rights or to the entering of the said other variety in the official register of varieties, as the case may be.
- (c) **Uniform.**— A variety shall be considered uniform if, subject to the variation that may be expected from the particular features of sexual reproduction or vegetative propagation, is sufficiently homogeneous, and that any variations are describable, and commercially acceptable.
- (d) **Stable.**— A variety shall be considered 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.
- (e) **Acceptable denomination.**— An acceptable denomination shall be the generic designation of the variety and must enable the variety to be identified. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of its breeder. It must also not be contrary to law, public order or morality.

## 6. Species to which this law is applicable

- a) This law shall apply to all sexually (vegetatively) propagated plant species, except plant varieties with terminator genes or other similar technology and microorganisms. However, in view of the development of Seed Industry, the Federal Government from time to time will notify the genera/species to be covered for protection under this Ordinance. The manner in which a variety has been developed, whether through cross-breeding, bio-technology, mutation, selection or otherwise, shall not affect its eligibility for a Certificate of Plant Breeders' Rights and the enforcement of that Certificate.
- b) A new plant variety shall be eligible for Plant Breeders' Rights subject to:
  - i. Providing a declaration from the breeder that the variety is safe and has no negative consequences on human, plant or animal health and welfare of the public.
  - ii. Providing, for genetically modified varieties (GMOs), a Certificate from the relevant authority that the variety is not prejudicial to the environment, public, plant and animal health and bio-diversity.

#### **7. Testing of the variety**

The novelty of a variety shall not be affected by its testing so long as the testing is conducted for scientific (including improvement) purposes. Market testing shall not be regarded as testing for purposes of this section.

### **ENTITLEMENT TO PLANT BREEDERS' RIGHTS**

#### **8. Right to apply for a Certificate of Plant Breeders Rights**

- (i) The owner of a variety or his successor in title shall be entitled to apply for a Certificate of Plant Breeders' Rights subject to the conditions and requirement of this Ordinance.
- (ii) The owner shall be the breeder or discoverer of the variety or the successor in title of either of them. The owner may be a natural or legal person, but where the applicant for Plant Breeders' Rights is a legal person, the breeder of the variety shall be named in the application.
- (iii) In case of public sector breeders, the plant variety developing institute will be entitled for ownership rights. The eventual royalty will be shared both by the institute and breeder and his team by the ratio of 70:30, respectively.
- (iv) An error committed in good faith in the naming of the breeder shall be corrected any time by a written submission to the Plant Breeders' Rights Office of a written correction.

#### **9. National Gene Fund**

A part of royalty so collected shall be deposited to the national gene fund for maintaining national plant genetic resources.

**10. Persons entitled to Plant Breeders' Rights**

An application for the grant of a Certificate of Plant Breeders' Rights may be filed by the owner of a variety, provided the owner is a natural person who is a national or resident of Pakistan or a legal person having its registered office in Pakistan.

**11. Joint breeders**

- (a) When two or more persons have jointly bred or discovered the variety for which protection is sought, they shall be considered joint breeders. One joint breeder may file an application for plant Breeders' rights naming all of the joint breeders. A Certificate of Plant Breeders' Rights shall be issued in the name of all of the joint breeders.
- (b) Where the breeder is an employee, entitlement to Plant Breeders' Rights shall be determined by the employment relationship in the context of a variety developed.

**12. Presumption of entitlement**

In proceedings before the Plant Breeders' Rights Office for the grant of a Certificate of Plant Breeders' Rights, the applicant shall be deemed to be entitled to such a grant. In the case where two or more breeders independently breed the same variety and apply for protection, the entitlement for Plant Breeders' Rights shall vest with the person who first applied for the Certificate.

**13. Death or incapacity of the breeder**

The legal representatives of the deceased breeder and of those under legal incapacity may apply for a Certificate of Plant Breeders' Rights on behalf of such person, under the same conditions and requirements as apply to other owners of varieties.

**THE APPLICATION**

**14. Filing the application**

An application for a Certificate of Plant Breeders' Rights shall be filed by the owner of the variety for which protection is sought, or as provided in section 8, clause I & ii of this Ordinance, by the legally authorized representative of the owner. The application shall be in writing in Urdu or English language and shall be signed by or on behalf of the owner and shall be accompanied by the fee as prescribed in the regulations.

**15. Requirements of the application**

An application for a Certificate of Plant Breeders' Rights shall require:-

- (a) an appropriate denomination of the variety;
- (b) a description of the variety, as complete as reasonably possible, setting forth its novelty, parentage/pedigree and breeding history. A drawing and photograph to understand and evaluate the novelty of the variety;
- (c) descriptions and drawings or photographs disclosing clearly the distinctive characteristics of the variety from other varieties of the same crop;
- (d) a written statement of the applicant establishing ownership of the variety, or other necessary explanation of the applicant's right to file the application;
- (e) the name, signature and address of the applicant, and the name and address of the breeder, if not the applicant;
- (f) a complete technical questionnaire in the form prescribed by the Plant Breeders' Rights Office in respect of the variety;
- (g) an adequate seed sample of the plant variety for use of the Plant Breeders' Rights Office for conducting tests to evaluate whether seeds of such variety or propagating material alongwith parental material conform to the standards as may be specified by regulations.

**16. Filing date**

The filing date of an application shall be the date when the items identified in paragraphs (a) to (g) of section 15 along with prescribed fee are received by the Plant Breeders' Rights Office.

**17. Amending the description**

- (a) The description of the variety as set forth in the application may be corrected or supplemented at any time within 6 months on payment of a prescribed fee by the owner that any error in the previous description was made in good faith.
- (b) The filing date of an application shall be the date when the items identified in paragraph (a) to (f) of section 15 along with prescribed fee are received by the Plant Breeders' Office.

**18. Right of priority**

- (a) Any person who earlier filed a regular application for the grant of Plant Breeders' Rights in a foreign country shall enjoy under this Ordinance for the filing of an application for the same variety a right of priority for a period of twelve months from the filing date of the first application. If the last day of the priority period falls on, a holiday on which the Plant Breeders' Rights Office is not open for business, the period for filing the application shall end at the closing hour of the first day on which Plant Breeders Rights Office receives application.

- (b) The effect of the right of priority shall be that the date of priority shall count as the date on which Plant Breeders' Rights is applied for under this Ordinance.
- (c) The documents and other items needed to claim priority, the time limits for doing so, and other procedural matters needed for a administration of subsections (a) to (b) shall be set forth in rules established by the Federal Government.

**19. Confidential status of the application**

- (a) The specified contents of the application for Certificate of plant Breeders' Rights shall be kept confidential by the Plant Breeders' Rights Office.
- (b) The requirement for confidentiality can be waived of by the holder of Plant Breeders' Rights Certificate.
- (c) Notwithstanding Paragraph (a), the Federal Government may establish regulations for the publication of applications or parts of applications when the public interest demands such publication.

**20. Assistant and transfer**

- (a) An application for the issuance of a Certificate of Plant Breeders' Rights and the Certificate granted are considered personal property and assignable in writing.
- (b) Each assignment shall be registered in the Plant Breeders' Rights Office. No assignments shall have effect against third party until it has been registered.
- (c) Plant Breeders' Right Office shall notify the registered assignment for public information in accordance with prescribed rules.

**EXAMINATION OF THE APPLICATION**

**21. Examination of the application**

The Plant Breeders' Rights Office shall cause an examination to be made to each application, in accordance with regulations established for this purpose. This examination shall be conducted to variety and establish a definitive description of the candidate variety and to determine if all requirements of this Ordinance have been satisfied.

**22. Refusal to grant a Certificate of Plant Breeders' Rights and reconsideration**

- (a) Whenever an application is refused, or any objection or requirement made by the examiner, the Plant Breeders' Rights Office shall notify the applicant thereof, stating the reason(s) for the refusal together with such information and references as may be useful in judging the propriety of continuing processing of the application, with or without amendment of the application, the application shall be reconsidered.

- (b) For taking appropriate action after receipt of a refusal from the Plant Breeders' Rights Office, the applicant shall be given six months for re-submission or the application.

**23. Testing of varieties**

The examination required under section 21 shall be conducted, in so far as the characteristics of the variety under examination are concerned, primarily on the basis of scientific information and data supplied by or on behalf of the applicant. The Federal Government shall establish Rules concerning:

- (a) the nature of the information and data to be supplied;
- (b) the carrying out of trials in Pakistan and their inspection by or on behalf of the Plant Breeders' Rights Office; and
- (c) acceptance for the purposes of the examination of information and data derived from official sources within and outside Pakistan.

**24. Maintenance of the variety**

The holder of the Plant Breeders' Rights shall be obliged:

- a) to ensure the maintenance of plant variety or where relevant, its hereditary components for the whole duration of the Plant Breeders' Rights;
- b) to provide to the Plant Breeders' Rights Office or an authorized agency, within the prescribed period with the information, documents or material deemed necessary for verifying the maintenance of the variety.

**THE CERTIFICATE OF PLANT BREEDERS' RIGHTS**

**25. Issuance of the Certificate**

A Certificate of Plant Breeders' Rights shall be issued in the name of the President of the Islamic Republic of Pakistan and shall be signed by the Director of the Plant Breeders' Rights Office. The Certificate shall be recorded in the Plant Breeders' Rights Office and the record shall be publicly available during ordinary business hours. Notice of issuance of the Certificate shall be published in the Official Gazette. A fee for the issuance of a Certificate of Plant Breeders' Rights shall be established by the Rule made by the Federal Government. There shall be annexed to the Certificate the definitive description of the protected plant variety established by the Plant Breeders' Rights Office.

**26. Annual fee**

The holder of the Certificate of Plant Breeders' Rights shall pay an annual fee to keep the Plant Breeders' Rights in force. The Rules for annual fee will be established by the Federal Government.

**27. Ownership Rights**

The owner of the Plant Breeders' Rights under this Ordinance shall have the right to exclude others from:

- (a) offering for sale or selling or marketing of the reproductive or vegetative propagating material of the protected variety or offering it for sale in Pakistan;
- (b) importing the reproductive or vegetative propagating material of the protected variety into Pakistan or exporting it from Pakistan;
- (c) conditioning or multiplying the reproductive or vegetative propagating material of the protected variety;
- (d) using the protected variety in producing a hybrid;
- (e) carrying out any of the acts identified in (a), (b) (c) and (d) above in relation to an essentially derived variety (provided the protected variety is not itself an essentially derived variety (provided the protected variety is not itself an essentially derived variety));
- (f) instigating or promoting any of the acts identified in (a), (b), (c) and (d) above.

**28. Provisional protection**

In respect of the period between the filing of the application and the grant of the Certificate of Plant Breeders' Rights, the owner of the Certificate shall be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the Certificate was issued, would fall within the owners right to exclude others under section 27 of this Ordinance.

**29. The tenure of the Certificate of Plant Breeders' Rights**

The term of the Certificate of Plant Breeders' Rights as provided for in section 24 shall be 25 years in the case of trees and vines and 20 years in the case of all other plants, from the date of grant of the Certificate. (For plants such as trees, vines and their rootstocks, the above mentioned period can further be extended for a period not exceeding five years).

**30. Public interest in the variety**

- (a) Any person may, by means of an application filed with the Federal Government request the grant of a compulsory license in respect of a variety protected by a Certificate of Plant Breeders' Rights.
- (b) The compulsory license shall confer on its owner the non-exclusive right to perform any or all of the activities set forth in section 27 of this Ordinance. If the parties cannot agree on a reasonable royalty, the Plant Breeders' Rights Office may fix the amount of royalty. The Federal Government shall require any holder of a compulsory license to make reasonable use thereof in meeting market demand.
- (c) A compulsory license shall not be granted unless all of the following conditions are met:

- (i) The applicant for a compulsory license must be in a financial and business position to exploit the licensed variety in an adequate manner.
  - (ii) The owner of the Certificate of Plant Breeders' Rights has refused to allow the applicant for the compulsory license to produce or market propagating material of the protected variety in a manner adequate for the needs of the general public.
  - (iii) Three years have elapsed between the time of grant of the Certificate of Plant Breeders' Rights and the making of an application for the grant of the compulsory license.
  - (iv) The demand for the protected variety in Pakistan is adequately met on reasonable terms.
- (d) A compulsory license shall be granted for a maximum period of three years. The compulsory license shall be revoked by the Federal Government, however, should the license fail to comply with the terms and conditions of the license.
- (e) Carrying out any of the acts identified in (a), (b), (c) and (d) above in relation to an essentially derived variety (provided the protected variety is not itself an essentially derived variety).
- (f) Instigating or promoting any of the acts identified in (a), (b), (c) and (e) above.

### **31. Farmers exemption**

Nothing contained in this Ordinance shall affect a farmer's traditional right to save, use, exchange, share or sell his farm produce of a protected variety under this Ordinance except where a sale is for the purpose of reproduction under a branded marketing arrangement.

### **32. Exemption for scientific research**

The use or reproduction of a protected variety, without authorization of its owner, for plant breeding or other bonafide scientific research shall not constitute an infringement under section 27 of this Ordinance unless it is used for commercial production of F<sub>1</sub> hybrid.

### **33. Exhaustion of the right of the owner of a Certificate of Plant Breeders' Rights**

- (a) The owner's right under a Certificate of Plant Breeders' Rights shall not extend to acts concerning any material of the protected variety, or of an essentially derived variety which has been sold or otherwise marketed by the owner or with his consent in Pakistan, or any material derived from the said material, unless such acts involve:
  - (i) further propagation of the variety in question or;

- (ii) 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.
- (b) For the purpose of paragraph (a), “material” means, in relation to a variety,
  - (i) propagating material of any kind, and
  - (ii) harvested material, including entire plants and parts of plants.

**34. Remedy for infringement**

The owner of a protected variety shall have a remedy by way of a civil action in a court of competent jurisdiction for infringement of Plant Breeders’ Rights.

**35. Injunctions, damages and attorney’s fees**

A court of competent jurisdiction, having ruled in favour of the owner of the Certificate sued upon, shall decree an appropriate remedy. The court may grant an injunction against future infringing acts by the defendant. In every case, the court shall award damages to the owner of the right at least equal in amount to the losses suffered by the owner. In aggravated cases, punitive damages, attorney’s fees, or both, may be awarded.

**36. Time limitation on infringement suit, notice of infringement**

- (a) No suit for infringement of a Certificate of Plant Breeders’ Rights shall be brought more than three years following the committing of the infringement.
- (b) Damages will not be assessed against a defendant for infringement of Plant Breeders’ Rights for acts committed before actual or constructive notice is given to the defendant that variety is a protected plant variety. Constructive notice may be given by marking of the container of the protected variety, or by any other appropriately visible indication that the variety is protected.

**MISCELLANEOUS**

**37. Non-resident Certificate owners**

Each owner of a Certificate of Plant Breeders’ Rights not residing in Pakistan shall designate in writing the name and address of a natural or legal person on whom judicial and other notices may be served.

**38. Rules for the Proceedings in the Plant Breeders’ Rights Office**

The Federal Government shall establish rules not inconsistent with this Ordinance for the conduct of proceedings in the Plant Breeders’ Rights Office.

**39. Fees – Setting and collection**

The Federal Government shall establish the fee for the implementation of this Ordinance, including services rendered to the applicants and the public. The prescribed fee shall be deposited with the Plant Breeders' Rights Office.

**40. Cancellation and nullity of Certificate of Plant Breeders' Rights**

- (a) The rights of the holder of a Certificate of Plant Breeders' Rights shall terminate upon the expiry of the prescribed period referred to in section 29 of this Ordinance.
- (b) The Plant Breeders' Rights Office may cancel a Certificate of Plant Breeders' Rights at any time during its term if found that:
  - i. any information supplied in the application concerned or in relation to that application was incorrect;
  - ii. the variety concerned was not novel, distinct, uniform or stable at the date of filing of the application as required under section 5 of this Ordinance.
- i. the owner has failed to pay within the prescribed period such fees as may be payable to keep the Plant Breeders' Rights in force;
- ii. the applicant has failed to provide an alternative denomination of the variety which is the subject matter of protection, in case where the earlier denomination of such variety provided to Plant Breeders' Rights Office was not permissible for protection under this Ordinance.
- iii. the variety proved harmful to the environment, ecology and public and animal health.
- (d) The Plant Breeders' Rights Office shall cancel a Certificate of Plant Breeders' Rights if the owner, after being requested to do so, has failed (within a prescribed period) to furnish to Plant Breeders' Rights Office with the reproductive or propagating material capable of producing the protected variety with its morphological and physiological characteristics described in the definitive description established when the protection was granted.
- (e) Before canceling a Certificate or declaring it null and void under this section, the Plant Breeders' Rights Office shall give the owner a written notice of its intention. The owner shall give sufficient cause within one month of the date of the notice..

**41. Seller's Warranty on sale of protected variety etc.**

- i. The seller of the protected plant variety shall be deemed to warrant that the denomination of variety is genuine and not falsely applied, unless contrary is expressed in writing signed by or on behalf of seller and delivered at a time of sale of the variety or its propagating material or contract to and accepted by the buyer.

- ii. The sale of the seed of the protected varieties shall be subject to the rules and procedures of the Seed Act of the Government of Pakistan.

**42. Appeals**

Any right holder aggrieved by a decision of the Plant Breeders' Rights Office to decline to issue a Certificate or to cancel a Certificate or to declare it null and void may, within 60 days after being given notice of that decision by the Plant Breeders' Rights Office, appeal to the competent court of law.

**43. Advisory Committee**

The Federal Government shall constitute an advisory committee called "Plant Breeders' Rights Committee" to carry out the following functions:

- i) To propose such measures as to encourage development of seed industry in the country.
- ii) To advise regarding grant or cancellation of compulsory licenses and issuance or cancellation of Plant Breeders' Rights Certificate by the Plant Breeders' Rights Office.
- iii) To advise on other matters arising under this Ordinance.
- iv) The committee shall meet at least once a year and submits its report to Federal Secretary, Food & Agriculture.

**Membership of the Advisory Committee**

The advisory committee shall consist of the following:

- |     |   |                  |
|-----|---|------------------|
| 1.  | Agricultural Development Commissioner, Ministry of Food, Agriculture & Livestock, Islamabad | Chairman         |
| 2.  | The Chairman, Pakistan Agriculture Research Council, Islamabad                              | Member           |
| 3.  | Director General, Federal Seed Certification & Registration Department                      | Member           |
| 4.  | Controller Patent Office, Karachi   | Member           |
| 5.  | Representative from Law & Justice Division, Islamabad                                       | Member           |
| 6.  | Representative of Ministry of Environment, Islamabad  | Member           |
| 7.  | One representative of public sector from each Province                                      | Member           |
| 8.  | One representative of private seed sector   | Member           |
| 9.  | One representative of farmers from each province  | Member           |
| 10. | Director, Plant Breeders' Rights Office   | Member/Secretary |

**44. Expert Sub-Committees**

The Advisory Committee may appoint sub-committees of experts from Government and non-governmental organizations as the committee may deem necessary for performance of its functions.