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Access to Genetic Resources and Community Knowledge, and
Community Rights Proclamation Page 3351**

PROCLAMATION NO. 482/2006

A PROCLAMATION TO PROVIDE FOR ACCESS TO GENETIC RESOURCES AND COMMUNITY KNOWLEDGE AND COMMUNITY RIGHT

WHEREAS, the immense biodiversity wealth Ethiopia is endowed with must be conserved and sustainably utilized for the benefit and development of its peoples;

WHEREAS, it is necessary to recognize the historical contribution Ethiopian communities made to the conservation, development and sustainable utilization of biodiversity resources;

WHEREAS, Ethiopia is a part to the Convention on Biological Diversity and Convention requires the enactment of access legislation;

WHEREAS, Ethiopia has agreed to the African Model Law on Community, Farmers' and Plant Breeders' Right and Access to Biological Resources;

WHEREAS, it is necessary to protect and encourage the customary use of genetic resources by Ethiopian communities which are relevant to the conservation and sustainable use of the biodiversity resources of the country;

WHEREAS, it is necessary to recognize and protect the knowledge of Ethiopian communities generated and accumulated with respect to the conservation and utilization of genetic resources and promote the wider application of such knowledge with the approval and sharing benefits by such communities;

WHEREAS, it is necessary to involve communities in the making of decisions concerning the use of genetic resources and community knowledge and sharing of benefits derived from the utilization thereof;

WHEREAS, in order to realize these objectives, it is necessary to determine by law the access to genetic resources and community knowledge, and to provide for the rights of communities over genetic resources and community knowledge;

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 PROVISIONS**

1. Short Title

This Proclamation may be cited as “Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482 /2006.”

2. Definitions

In this Proclamation, unless the context requires otherwise:-

- 1/ “access” means the collection, acquisition, transfer or use of genetic resources and/or community knowledge;
- 2/ “biological resource” includes genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystem with actual or potential value for humanity;
- 3/ “derivative” means product extracted or developed from biological resource this may include products such as plant varieties, oils, resins, gums, chemicals and proteins;
- 4/ “*ex situ*” means a condition in which genetic resource is found outside of its natural habitat;
- 5/ “exploration” means an activity to find out the existence or the status of a given genetic resources;
- 6/ “genetic resource” means any genetic material of biological resource containing genetic information having actual or potential value for humanity and it including derivatives;

- 7/ “*in situ*” means a condition in which genetic resource is found in its natural habitat or ecosystem;
- 8/ “Institute” means the Institute of Biodiversity Conservation established by Proclamation No. 120/1998 (as amended);
- 9/ “local community” means a human population living in a distinct geographical area in Ethiopia as a custodian of a given genetic resource or creator of a given community knowledge;
- 10/ “person” means a natural or juridical person;
- 11/ “prior informed consent” means the consent given by the Institute and the concerned local community based on an access application containing a complete and accurate access information to a person seeking access to a specified genetic resource or community knowledge;
- 12/ “relevant institution” means a state organ responsible for administering or having special technical expertise on a specific sector of genetic resources or community knowledge;
- 13/ “state” means, the Government of the Federal Democratic Republic of Ethiopia or its Regional State, as applicable;
- 14/ “community knowledge” means knowledge, practices, innovations or technologies created or developed over generations by local communities on the conservation and use of genetic resources.
- 15/ “Biodiversity” means the variability among living organisms from all sources of ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

3. Objectives

The objective of this Proclamation is to ensure that the country and its communities obtain fair and equitable share from the benefits arising out of the use of genetic resources so as to promote the conservation and sustainable utilization of the country’s biodiversity resources;

4. Scope of Application

- 1/ This Proclamation shall apply on access to genetic resources found in *in situ* or *ex situ* conditions and community knowledge.
- 2/ Notwithstanding the provision of Sub-Article (1) of this Article, this Proclamation shall not apply to:
 - a/ the customary use and exchange of genetic resources and community knowledge by and among Ethiopian Local communities; and
 - b/ the sale of produce of biological resources for direct consumption, that do not involve the use of the genetic resource thereof.

5. Ownership

- 1/ The ownership of genetic resources shall be vested in the state and the Ethiopian people.
- 2/ The ownership of community knowledge shall be vested in the concerned local community.

PART TWO **PROTECTION OF COMMUNITY RIGHTS**

6. Principle

Local communities shall have the following rights over their genetic resources and community knowledge:

- 1/ the right to regulate the access to their community knowledge;
- 2/ an inalienable right to use their genetic resources and community knowledge;
- 3/ the right to share from the benefit arising out of the utilization of their genetic resources and community knowledge.

7. Art. 7. Right to regulate access

- 1/ The right of local communities to regulate access to their community knowledge shall include the following:
 - a/ the right to give prior informed consent for access to their community knowledge;
 - b/ when exercising the right to give prior informed consent, the right to refuse consent when they believe that the intended access will be detrimental to the integrity of their cultural or natural heritages;
 - c/ the right to withdraw or place restriction on the prior informed consent they have given for access to their community knowledge where they find out that such consent is likely to be detrimental to their socio-economic life or their natural or cultural heritages;
 - d/ the right to demand the restriction or withdrawal of the prior informed consent given by the Institute for access to their genetic resources where they found out that is likely to be detrimental to their socio-economic life or their natural or cultural heritages;
- 2/ The conditions and the procedure in accordance to which local communities shall give prior informed consent for access to their community knowledge shall be specified by a regulation;

8. Use Right

- 1/ Local communities shall have an inalienable right to use or exchange among themselves their genetic resources or community knowledge in the course of sustaining their livelihood systems in accordance with their customary practices or norms.
- 2/ No legal restriction shall be placed on the traditional system of local communities on the use and exchange of genetic resources and community knowledge;

9. Art. 9 Right to share benefit

- 1/ Local communities shall have the right to share from the benefit arising out of the utilization of their community knowledge;
- 2/ Local communities shall have the right to obtain 50% of the benefit shared by the state in the form of money from the benefits derived out of the utilization of their genetic resources in accordance with Article 18 (1) of this proclamation;
- 3/ The money obtained pursuant to Sub-Article (1) and (2) of this Article shall be put to the common advantage of the concerned local communities;
- 4/ The procedure in accordance to which such monetary shall be used for the common advantage of local communities shall be specified by regulation to be issued under this proclamation.

10. Protection of Community Rights

- 1/ The rights of local communities over their genetic resources and community knowledge shall be protected as they are enshrined in the customary practices and norms of the concerned communities.
- 2/ An item of community knowledge shall be identified, interpreted and ascertained in accordance with the customary practices and Norma of the concerned local community.
- 3/ The non-registration of any community knowledge shall not render it unprotected by community rights.
- 4/ The publication or oral description of a given genetic resource or a community knowledge, or the presence of the genetic resources in gene bank or any other conservation center or that it is in use shall not affect its protection as community rights.

PART THREE
CONDITION OF ACCESS

11. Requirement of Permit

- 1/ Without prejudice to the provisions of Sub-Article 2(a) of Article 4 of this Proclamation, no person shall access genetic resources or community knowledge unless in possession of written access permit granted by the Institute based on prior informed consent.
- 2/ Unless otherwise explicitly expressed, the granting of permit to access genetic resources shall not be construed to constitute permit to access the community knowledge associated therewith and vice versa.
- 3/ Without prejudice to the provisions of Sub-Article 2(b) of Article 4 of this Proclamation, no person shall export genetic resources out of Ethiopia unless in possession of export permit granted by the Institute to this effect.
- 4/ Notwithstanding the provisions of Sub-Article (1) of this Article organs of the state which are empowered by law to conserve genetic resources may not be required to obtain access permit from the Institute to collect genetic resource or community knowledge in the discharge of their duties; provided however, that they may not transfer the genetic resources or community knowledge to third persons or export same out of Ethiopia unless they are given explicit permit by the Institute, When collecting genetic resources and community knowledge, employees of such institutions must carry with them a letter to this effect.

12. Basic Pre-Conditions of Access

- 1/ Access to genetic resources shall be subject to the prior informed consent of the Institute.
- 2/ Access to community knowledge shall be subject to the prior informed consent of the concerned local community.

- 3/ The state and the concerned local community shall obtain fair and equitable share from benefits arising out of the utilization of genetic resources and community knowledge accessed.
- 4/ An access applicant who is a foreigner shall present a letter from the competent authority of his national state or that of his domicile assuring that it shall uphold and enforce the access obligations the applicant.
- 5/ In cases of access by foreigners, the collection of genetic resources and community knowledge shall be accompanied by the personnel of the Institute or the personnel of the relevant institution to be designated by the Institute.
- 6/ The research based on the genetic resources accessed shall be carried out in Ethiopia and with the participation of Ethiopian nationals designated by the Institute, unless where it is impossible.
- 7/ Where the research on the genetic resources accessed is permitted to be carried out abroad, the institution sponsoring and/or hosting the research shall give a letter of assurance that they observe the access obligations attached thereto.

13. Conditions for Denial of Access

The Institute may deny access to genetic resources; where:

- 1/ The access requested is in relation to the genetic resource of an endangered species;
- 2/ The access may have adverse effects upon human health or the cultural values of the local community;
- 3/ The access may cause undesirable impact on the environment;
- 4/ The access may cause danger of loss of ecosystem;
- 5/ The access is intended to use genetic resources for purposes contrary to the national laws of Ethiopia or the treaties to which Ethiopia is a party;

- 6/ The applicant has violated hitherto access conditions or access agreements.

14. Issuance of Access Permit

- 1/ A person who wants to obtain permit to access genetic resources or community knowledge shall present an application in writing to the Institute. The conditions and procedure in accordance with which applications shall be presented examined and prior informed consent shall be given shall be specified by regulations.
- 2/ Upon giving of prior informed consent, the Institute shall, based on the provisions of this proclamation, negotiate and conclude genetic resources access agreement.
- 3/ Where the access application involves access to community knowledge, the Institute shall negotiate and conclude the access agreement based on the prior informed consent of the concerned local community to that effect.
- 4/ The Institute shall not grant permit for exporting genetic resources out of Ethiopia unless the condition provided under Article 12 (6) of this Proclamation is met.

15. Special Access Permit

- 1/ The Institute may, without the need to strictly follow the access procedure provided for in this Proclamation, grant specific access permit to Ethiopia national public research and higher learning institutions and intergovernmental institutions based in the country, so that they have facilitated access to genetic resources and community knowledge for purpose of development and academic research activities they undertake within the country. Where the Institute grants specific access permits to such institutions, it shall determine, as appropriate, the obligations they shall assume while having access under such permit.
- 2/ An access to genetic resources under a multilateral system of access to which Ethiopia is a party shall be made in accordance with the conditions and procedure specified

thereof. The condition and procedure in accordance with which access to genetic resources under multilateral systems shall be implemented shall be determined by regulations.

16. Contents of Access Agreement

An access agreement shall specify, among other things, the following issues:

- 1/ the identity of the parties to the agreement;
- 2/ the type and quantitative description of the genetic resource permitted to be accessed;
- 3/ the description of the community knowledge permitted to be accessed or associated with the genetic resource to be accessed;
- 4/ the locality where the genetic resource or community knowledge is to be collected or the person providing same;
- 5/ the institution with which the sample of the genetic resource and the description of community knowledge accessed shall be deposited;
- 6/ the intended use the genetic resource or the community knowledge;
- 7/ the relation of the access agreement with existing or future access agreements on the same genetic resource or community knowledge;
- 8/ the relevant institution designated by the Institute to participate in the collection of and/or the research based on the genetic resource to be accessed and be in charge of monitoring the implementation of the access agreement;
- 9/ the benefit the state shall get from the access to genetic resources;
- 10/ where the agreement involves access to community knowledge, the benefit the concerned local community shall obtain from the use thereof;

- 11/ the duration of the access agreement;
- 12/ dispute settlement mechanisms; and
- 13/ the obligations the access permit holder shall have under this Proclamation.

17. Obligations of Access Permit Holder

A person who shall be given an access permit shall have the following obligations:

- 1/ deposit the copy of the access permit granted to him with the relevant regional institution in the district where the genetic resource is to be collected and show the access permit up on request;
- 2/ not to deplete population of farmers planting stock or wild species or to remove significant genetic variation from local gene pool during collection;
- 3/ where the genetic resource is to be collected from protected areas, to observe the rules and regulations of the administration of the protected area;
- 4/ deposit the sample of the genetic resources and collected and the collection data, and the description of community knowledge accessed with the Institute or the relevant institution the Institute may designate;
- 5/ observe the type and quantitative limits of the genetic resource permitted to be accessed;
- 6/ upon request, to supply to the Institute a sample from the genetic resource and copy of the description of the community knowledge accessed;
- 7/ submit to the Institute regular status reports of the research; and where genetic resource is to be collected repeatedly, follow up the environmental and socio-economic impact of the access and submit a report thereon;

- 8/ inform the Institute in writing of all the findings of the research and development based on the genetic resource and community knowledge accessed;
- 9/ not to transfer the genetic resource and the community knowledge accessed to any other third party or to use same for any purpose other than that originally intended, without first notifying to and obtaining written authorization from the Institute;
- 10/ return any unused genetic material at the end of the planned research or upon termination of the access agreement;
- 11/ not to transfer to third parties the access permit or the rights and obligations there under without obtaining the consent of the Institute to that effect;
- 12/ where he seeks to acquire intellectual property right over the genetic resources accessed or parts thereof, negotiate new agreement with the Institute based on the relevant laws of Ethiopia;
- 13/ not apply for a patent or any other intellectual property protection over the community knowledge accessed without first obtaining explicit written consent from the Institute;
- 14/ recognize the locality where the genetic resource or community knowledge accessed from as origin in the application for commercial property protection of the product developed there from;
- 15/ share the benefit that may be obtained from the utilization of the genetic resource or community knowledge accessed to the state and the concerned local communities;
- 16/ respect the laws of the country, particularly those regarding sanitary control, biosafety and protection of the environment;
- 17/ respect the cultural practices, traditional values and customs of local communities;
- 18/ observe the terms and conditions of the access agreement.

18. Benefit Sharing

- 1/ The kind and the amount of the benefit to be shared by the state and local communities from access to genetic resources or community knowledge shall be determined case by case in each specific access agreements to be signed.
- 2/ The remaining portion of the monetary benefit from access to genetic resources, after deducting the share of the local community as determined pursuant to Article 9 (1) of this Proclamation, shall be allocated for conservation of biodiversity and the promotion of community knowledge. The conditions how the money shall be put to such use shall be determined by regulation.
- 3/ The sharing of non-monetary benefits from access to genetic resources among the state and the concerned local community shall be specified in each specific access agreement taking into account the kinds of benefits agreed to be shared with the access permit holder.

19. Types of Benefit

The benefit to be shared from an access to genetic resources and community knowledge may include the following modes:

- 1/ License fee;
- 2/ Upfront payment;
- 3/ Milestone payment;
- 4/ Royalty;
- 5/ Research funding;
- 6/ Joint ownership of intellectual property;
- 7/ Employment opportunity;
- 8/ Participation of Ethiopian nationals from the Institute or the relevant institutions in the research based on the genetic resources or community knowledge accessed;
- 9/ Priority to supply the raw material of genetic resource required for producing products there from;
- 10/ Access to products and technologies developed from the use of genetic resource or community knowledge accessed;
- 11/ Training, both at institutional and local communities levels, to enhance local skills in genetic resources conservation, evaluation, development, propagation and use;

- 12/ Provision of equipment, infrastructure and technology support;
and
- 13/ Any other benefit as appropriate

PART FOUR **FOLLOW UP AND COMPLIANCE MEASURE**

20. Follow-up

- 1/ The Institute shall follow-up the execution of access agreements through the following mechanisms:
 - a) inspection;
 - b) periodic progress and status report by access permit holders and the relevant institutions designated to accompany the collection, participate in the research and monitor the implementation of access agreement;
 - c) a report by any other person or individual; and
 - d) any other mechanism deemed appropriate
- 2/ The access permit holder and the relevant institutions designated to take part in the collection of and research the based on genetic resources and to monitor the implementation of access agreements shall give periodic reports to the Institute on the collection conducted, the progress of the research and the findings there from.
- 3/ The Institute shall inform the concerned local communities of the progress of the research and the findings thereof, the utilization of community knowledge and the benefit shared there from.

21. Compliance Measure

- 1/ The Institute may alter an access agreement and limit the size of the genetic resource to access or put any other limitation, as appropriate, where it is recognized that the access has posed

threat of genetic erosion, degradation of the environment or violation of the cultural values of communities which can not be easily averted.

- 2/ Where the access permit holder have violated or failed to comply with the provisions of this Proclamation or the terms and conditions of the access agreement or where the access causes risk of damage to genetic resources or the environment or affects overriding public interest, the Institute shall suspend or terminate an access agreement and prohibit the access to genetic resources or community knowledge.
- 3/ Where the Institute decides to alter, suspend or terminate an access agreement, it shall communicate same to the concerned local community and the access permit holder.

PART FIVE **EXPLORATION OF GENETIC RESOURCES**

22. Prohibition

- 1/ Without prejudice to the provisions of Article 4(2) of this Proclamation, no person may conduct exploration of genetic resources unless in possession of exploration permit from the Institute.
- 2/ Notwithstanding the provisions of Sub-Article (1) of this Article, organs of the state which are empowered by law to conserve genetic resources are not required to obtain exploration permit to conduct exploration of genetic resources in the discharge of their duties.

23. Application

- 1/ Any person who wants to obtain exploration permit shall present written application to the Institute.
- 2/ The application shall specify the purpose of the exploration, the types of the genetic resources to be explored, the locality where the exploration shall be conducted and the time schedule for the exploration.

24. Granting Exploration Permit

- 1/ Upon receiving a complete exploration application, the Institute shall, in consultation with the relevant institution where appropriate, grant an exploration permit to the applicant.
- 2/ The exploration permit shall specify the types of the genetic resources to be explored, the locality where the exploration shall take place, the time schedule of the exploration and any other condition the Institute deems necessary.
- 3/ Where the Institute grants exploration permit to a foreigner; it shall assign its scientific personnel or designate other relevant institution to accompany the exploration mission.

25. Obligations of Explorers

Any holder of an exploration permit shall have the following obligations:

- 1/ deposit a copy of the exploration permit with the relevant institution in the district of the locality where the exploration will be conducted;
- 2/ strictly observe the terms and conditions specified in the permit;
- 3/ present to the Institute a detailed and complete report of the exploration mission upon its completion;
- 4/ show, upon on requested, the exploration permit issued to him;
- 5/ respect local customs, traditions, values, property rights in the locality where the exploration shall be conducted and the laws of the country.

PART SIX
ADMINISTRATION OF ACCESS

26. Powers of Ministry of Agriculture and Rural Development

The implementation of the provisions of this proclamation that deal with genetic resources of wild animals shall be the responsibility of the Ministry of Agriculture and Rural Development.

27. Powers and Duties of the Institute

Without prejudice to the powers and duties entrusted to it in other provisions of this Proclamation, the Institute shall have the powers and duties to:

- 1/ follow-up and ensure that access is carried out in accordance with this Proclamation as well as regulations and directives issued hereunder;
- 2/ collect the benefits to be obtained from access agreements and pass over to beneficiaries;
- 3/ prepare model access agreements;
- 4/ sensitize contents of this Proclamation;
- 5/ collect, analyze and as necessary disseminate to users information on access to genetic resources and community knowledge;
- 6/ cause that legal actions be taken against offences committed in violations of this Proclamation;
- 7/ issue directives and perform such other activities necessary for the implementation of this Proclamation;
- 8/ delegate its powers and duties to other legally established bodies where deemed necessary and convenient to carry out its duties in a better way;

28. Responsibilities of Local Communities

Local communities shall have the responsibility to:

- 1/ prohibit any person, who does not belong to their communities, from collecting or taking genetic resources from their localities without having the necessary permit; and
- 2/ require any person, who does not belong to their communities and who is collecting or taking genetic resource from their localities, to show his access permit, and if he is without permit immediately notify or present him to the nearest kebele or wereda administration;

29. Responsibilities of Regional Bodies

Kebele administration and regional bodies at all levels responsible for the conservation of genetic resources shall:

- 1/ regulate that genetic resources is not accessed from their respective jurisdiction without permit by any person who does not belong to the communities thereof; and
- 2/ require access permit from any person, who does not belong to the communities thereof and who is collecting or taking genetic resources from their respective jurisdiction, and if he is without permit, seize the genetic resource and present him to the law and notify the Institute the detailed particulars of the genetic resource and the person found in possession of same;

30. Responsibilities of Customs Offices

In accordance with directives to be given to them by the Institute, customs officers shall have the responsibilities to:

- 1/ inspect that any genetic resources being taken out of the country has been accompanied with an export permit given by the Institute;
- 2/ require any person leaving the country who is transporting or is in possession of genetic resource to produce the necessary permit to this effect from the Institute;

- 3/ seize genetic resource being transported out of the country and the person transporting same without permit from the Institute and immediately report same to the nearby relevant body and the Institute;
- 4/ ensure that a statement is written on the package of a biological resource product to be exported indicating that the use of the genetic material contained in the product is prohibited and doing so would constitute a penal offence.

31. Responsibilities of Mail Service Institutions

Postal and other courier service institutions shall, before receiving and transporting genetic resources out of the country as mail, require their clients to produce permit from the Institute to export the genetic resources out of the country.

32. Responsibilities of Quarantine Control Institutions

Quarantine control Institution shall, ensure that the quarantine certificate they issue to biological resource products, contain a statement indicating that the certificate does not constitute a permit to use the product as genetic resource and that doing so is prohibited and would constitute an offence.

PART SEVEN **MISCELLANEOUS PROVISIONS**

33. Transitory Provisions

- 1/ Access agreements made prior to the coming into force of this Proclamation shall be revised and harmonized with the provisions of this Proclamation.
- 2/ The access to genetic resources under agreements concluded prior to the coming into force of this Proclamation shall be suspended until they are revised and harmonized with the provisions of this Proclamation.

34. Duty to Cooperate

Any person shall have the duty to cooperate with the Institute, the relevant institutions, and local communities in the implementation of this Proclamation as well as regulations and directives issued hereunder.

35. Penalty

1/ Any person who:

- a) Accesses genetic resources or community knowledge without obtaining an access permit from the Institute;
- b) Provides false information in the access application or in the course of subsequent monitoring of access agreement;
- c) Subsequently changes the purpose of access specified in the access agreement without obtaining permit from the Institute to the effect.
- d) Explores genetic resources without obtaining exploration permit from the Institute or provides false information in the application for exploration permit;

Shall, with out prejudice to the confiscation of the genetic resource accessed, the cancellation of the access permit granted, and the civil liability arising thereof, be punished, depending on the gravity of the circumstance, with rigorous imprisonment of not less than three years and a fine of not less than ten-thousand and not exceeding thirty-thousand birr.

2/ Where the offence committed is in relation to genetic resources endemic to Ethiopia:-

The punishment shall be, depending of the circumstance, rigorous imprisonment of not less than five years and not exceeding twelve-years and a fine ranging from fifty thousand birr to hundred-thousand birr.

3/ Where the offences under this Article are committed in negligence, the penalty shall be a fine of not less than five thousand birr or, depending on the circumstance and the gravity of the offence, simple imprisonment of not less than three months.

36. Inapplicable Laws

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

37. Power to Issue Regulations

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

38. 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**