

***CODE OF CONDUCT TO ACCESS GENETIC RESOURCES AND
COMMUNITY KNOWLEDGE AND BENEFIT SHARING
IN ETHIOPIA***

Genetic Resources Transfer and Regulation Directorate
Institute of Biodiversity Conservation

November 2012

	<i>Pages</i>
Contents	<i>1</i>
1 Chapter I Introduction	<i>3</i>
2 Chapter II Objectives and Definitions	<i>4</i>
Article 1: Objectives	<i>4</i>
Article 2: Definitions	<i>5</i>
3 Chapter III Nature, Scope, and Basic Principles of the Code	<i>6</i>
Article 3: Nature of the Code	<i>6</i>
Article 4: Scope	<i>7</i>
Article 5: Relationship with other legal instruments	<i>7</i>
Article 6: Basic principles	<i>7</i>
4 Chapter IV Conditions of Access	<i>9</i>
Article 7: Authority for issuing permits	<i>9</i>
Article 8: Requesting of permits	<i>9</i>
Article 9: Granting of permits	<i>10</i>
Article 10: Conditions for denial of access	<i>11</i>
Article 11: Basic conditions of access	<i>11</i>
Article 12: Pre-access	<i>12</i>
Article 13: During access	<i>12</i>
Article 14: Post-access	<i>13</i>
Article 15: Responsibilities of users	<i>13</i>

5	Chapter V Reporting, Monitoring and Evaluating the Observance of the Code	15
	Article 16: Reporting by the state	15
	Article 17: Monitoring and evaluation	16
6	Chapter VI Responsibilities of Stakeholders, Local Communities and Designated Persons	16
	Article 18: Responsibilities of local communities	16
	Article 19: Responsibilities of stakeholders	17
	Article 20: Responsibility of designated persons	17

Chapter I

Introduction

Whereas, it is necessary to have Code of Conduct which facilitates appropriate access to genetic resources and community knowledge, and sharing of benefits arising from their utilization in Ethiopia, which in turn contributes for the conservation and sustainable utilization of biodiversity at the interest of the State;

Whereas, it is important to determine ethical responsibilities of the provider, user, national focal point, designated persons, local communities and other stakeholders in access to genetic resources and community knowledge and sharing of benefits arising from their utilization;

Whereas, Ethiopia is a party to the Convention on Biological Diversity (CBD) and Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention, which encourages the development of voluntary code of conducts in relation to access and benefit sharing;

Whereas, the Institute of Biodiversity Conservation (IBC) is designated as a national focal point or competent national authority and empowered to initiate and develop the necessary code of conduct so long as it contributes to biodiversity conservation, sustainable utilization and sharing of benefits arising from their utilization;

Now, therefore, the Code of Conduct to access the genetic resources and Community knowledge and sharing of benefits arising from their utilization in Ethiopia is developed by the Institute.

Chapter II

Objectives and Definitions

Article 1: Objectives

This Code has the following objectives:

1. To promote the conservation, collection and use of genetic resources from their natural habitats or surroundings, in a friendly manner to the environment and the local traditions and cultures;
2. To avoid genetic erosion and permanent loss of resources caused by excessive or uncontrolled access of genetic resources;
3. To promote the safe exchange of genetic resources, as well as the exchange of associated community knowledge and technologies;
4. To ensure that any access to genetic resources and community knowledge is undertaken in full respect of national laws, local customs, rules and regulations;
5. To provide appropriate standards of conduct and to define obligations of providers and users;
6. To promote the sharing of benefits derived from the use of genetic resources between the providers and the users of genetic resources, associated community knowledge and technologies by suggesting ways in which the users may fairly share of the benefits to providers, taking into account the costs of conserving and developing genetic resources;
7. To bring recognition to the rights and needs of local communities and farmers, and those who manage genetic resources and in particular to promote mechanisms to;
 - a) facilitate compensation of local communities and farmers for their contribution to the conservation and development of genetic resources;and

- b) avoid situations whereby benefits currently derived from genetic resources by these local communities and farmers are undermined by the transfer or use by others of the resources.

Article 2: Definitions

1. Access - the collection, acquisition, transfer or use of genetic resources and /or community knowledge;
2. Biodiversity - 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. Community knowledge - knowledge, practices, innovations or technologies created or developed over generations by local communities on the conservation and use of genetic resources;
4. Community rights - the rights arising from the past, present and future contributions of communities in conserving, improving, and making genetic resources and community knowledge available;
5. *Ex situ* conservation - the conservation of genetic resources outside their natural habitat;
6. Genetic erosion - loss of genetic diversity;
7. Genetic resources - any genetic material of biological resource containing genetic information having actual or potential value for humanity and including its derivatives;
8. *In situ* conservation - the conservation of genetic resources in its natural habitat or ecosystem;
9. “Institute” means the Institute of Biodiversity Conservation established by proclamation no.120/1998 (as amended) ;
10. “person” means a natural or juridical person;

11. Prior informed consent - the consent given by the Institute and 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. Provider - the country or an individual or groups of individuals that make genetic resources and community knowledge available for access;
13. Relevant institution - a state organ responsible for administering or having special technical expertise on a specific genetic resource or community knowledge;
14. “State” means the government of the Federal Democratic Republic of Ethiopia or its Regional States, as applicable;
15. User - any person that accesses genetic resources and/or community knowledge;

Chapter III

Nature, Scope, and Basic Principles of the Code

Article 3: Nature of the Code

1. The Code is voluntary.
2. The Code recognizes that the state have sovereign rights over its genetic resources and associated community knowledge in its territories, and it is based on the principle according to which the conservation and continued availability of genetic resources is a common concern of humankind. In executing these rights, access to genetic resources and community knowledge shall not be unduly restricted.
3. The Code addresses primarily the providers and users. All persons, the local communities and other stakeholders are also required to observe the code.

4. The Institute and other relevant institutions and persons are required to promote observance of the Code.

Article 4: Scope

1. The Code describes the shared responsibilities of providers and users of genetic resources and community knowledge so as to ensure that the collection, transfer and use of genetic resources is carried out with the maximum benefit to the state and Ethiopian community, and with minimal adverse effects on the evolution of diversity and the ecosystem.
2. The Code enables the Institute to permit accessing activities within its territories expeditiously. It recognizes that the state is entitled to set specific requirements for access to genetic resources and community knowledge and the fair and equitable sharing of benefits arising from their utilization.

Article 5: Relationship with other legal instruments

1. The Code is to be implemented in harmony with:
 - a) the Convention on Biological Diversity, the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from the utilization to the convention on biological diversity, other legal instruments protecting biological diversity and the national laws of the provider; and
 - b) any agreements between the provider and the user.

Article 6: Basic principles

1. Integrity and good faith

All the actors of access to genetic resources and community knowledge shall integrate and act in good faith.

2. Confidentiality

Any confidential information in relation to access to genetic resources and associated community knowledge and fair and equitable sharing of benefits arising from their utilization shall be kept confidential among the actors.

3. Conservation and sustainable use

Access to genetic resources and community knowledge shall be performed in a manner ensuring conservation and sustainability of the genetic resources and community knowledge.

4. Obtaining consent

Access to genetic resources and community knowledge shall be subject to prior informed consent of the Institute and concerned local community.

5. Mutually Agreed Terms / Access and Benefit Sharing Agreement

Access to genetic resources and community knowledge shall be undertaken in establishing access and benefit sharing agreement through mutually agreed terms and performed accordingly.

6. Benefit sharing

The state and concerned local community shall share benefits arising from the utilization of the genetic resources and community knowledge in a fair and equitable manner. The benefits may be monetary such as license fee, upfront payment, milestone payments, loyalty and research fund and/or non-monetary such as joint ownership of intellectual property rights, employment opportunity, support of infrastructure development and transfer of technologies and other appropriate benefits.

Chapter IV

Conditions of Access

Article 7: Authority for issuing permits

The Institute is entitled to grant access permit.

Article 8: Requesting of permits

To enable the Institute to arrive at a decision to grant or to refuse a permit, persons requiring access should address an application to the Institute to which they:

- 1) undertake to respect the relevant national laws;
- 2) demonstrate knowledge of, and familiarity with, the genetic resources to be accessed, their distribution and methods of access;
- 3) provide indicative plans for estimated timing of expedition, the types of genetic resources to be accessed, species and quantities - and their plans for evaluation, storage and use of the resource accessed; where possible, the sort of benefits the provider may expect to derive from the access of the genetic resource should be indicated;
- 4) notify the provider of the kind of assistance, that may be required to facilitate the success of the access;
- 5) indicate, if the provider so desires, plans for cooperation with national scholars, scientists, students, non-governmental organizations and others who may assist or benefit from access activities;
- 6) supply such personal information as the provider may require.

Article 9: Granting of permits

The Institute should expeditiously:

- 1) acknowledge the application, indicating the estimated time needed to examine it;
- 2) introduce the Code to persons requiring access before mutually agreed terms are made. If it decides to prohibit or restrict the access, whenever possible, the reasons should be given, and where appropriate, an opportunity should be given to modify the application.
- 3) indicate what categories and quantities of genetic resources may or may not be collected or exported, and those which are required for deposit within the country; indicate areas and species which are governed by special regulation;
- 4) inform the applicant of any restrictions on access or any modification of plans desired by the state;
- 5) state any special arrangement or restriction placed on the distribution or use of the genetic resource, or improved materials derived from it;
- 6) if it so desired, designate a national counterpart for the access, and/or for subsequent collaboration;
- 7) define any financial obligation to be met by the applicant including possible national participation in the accessing activities, and other services to be provided; and
- 8) provide the applicant with the relevant information regarding the state, its genetic resources policy and management system, quarantine procedures, and all relevant laws and regulations. Particular attention should be drawn to the culture and the society of the specific local areas where access is to be made.

Article 10: Conditions for denial of access

The Institute may deny access to genetic resources, where the:

1. access requested is to do with the genetic resource of an endangered species;
2. access may have adverse effects upon human health or the cultural values of the local communities;
3. access may cause undesirable impact on the environment;
4. access may cause danger of loss of ecosystem;
5. access is intended to use genetic resources for purposes contrary to the national laws of Ethiopia or the international treaties to which Ethiopia is a party;
6. applicant has violated hitherto access conditions or access agreements.

Article 11: Basic 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 of the applicant.
5. In cases of access by foreigners, collection of genetic resources and community knowledge shall be accompanied by the personnel of the Institute or the personnel of 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 based 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 indicating that the institution shall observe the access obligations attached thereto.

Article 12: Pre-access

1. Upon their arrival, persons requiring access should acquaint themselves with all research results, or work in progress in the country, that might have a bearing on the access.
2. Access is subject to mutually agreed terms. The agreement shall contain practical arrangements among other things including:
 - a) access priorities, methodologies and strategies;
 - b) information to be gathered during access;
 - c) processing and conservation arrangements for genetic resources and community knowledge; and
 - d) financial arrangements or benefit sharing conditions;

Article 13: During access

1. Persons making access should respect local customs, traditions, and values, and property rights and should demonstrate a sense of gratitude towards local communities, especially if use is made of local knowledge on the characteristics and value of genetic resource. They should respond to their requests for information, genetic resource or assistance, to the extent feasible.
2. In order not to increase the risk of genetic erosion, the acquisition of genetic resource should pass threshold level of the genetic resource in the area.

3. When collecting cultivated or wild genetic resources, it is desirable that the local communities and farmers concerned be informed about the purpose of the access, and how and where they could request and obtain samples of the collected genetic resource. If requested, duplicate samples should be also left with them.

Article 14: Post-access

Any person who has affected access to genetic resources and traditional knowledge in Ethiopia shall:

- 1) comply to obligations under mutually agreed terms.
- 2) not disclose any confidential information acquired during access.

Article 15: Responsibilities of users

Users of genetic resources and community knowledge should:-

1. facilitate access to new, improved varieties and other products on mutually agreed terms;
2. support for research of relevance to conservation and utilization of genetic resources, including community-based, conventional and new technologies, as well as conservation strategies, for both *ex situ* and *in situ* conservation;
3. train, at both the institutional and farm levels, to enhance community skills in genetic resources conservation, evaluation, development, and use;
4. facilitate the transfer of appropriate technology for the conservation and use of genetic resources;
5. support for programs to evaluate and enhance local landraces and other indigenous genetic resource, so as to encourage the optimal use of genetic resources at federal, regional, and farm and community levels and to encourage conservation;

6. encourage any other appropriate support for farmers and communities for conservation of indigenous genetic resources and traditional knowledge.
7. transfer scientific and technical information obtained in relation to the genetic resource;
8. 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 upon request;
9. not deplete population of farmers planting stock or wild species or remove significant genetic variation from local gene pool during collection; observe the rules and regulations of the administration of the protected area where the genetic resource is to be collected from protected areas;
10. deposit the sample of the genetic resources collected and the corresponding data and the description of community knowledge accessed within the Institute or the relevant institution the Institute may designate;
11. observe the type and quantitative limits of the genetic resources permitted to access: supply to the Institute a sample from the genetic resources and copy of the associated community knowledge accessed upon request;
12. submit to the Institute regular reports of the research, if any and where genetic resource is collected repeatedly, follow upon the environmental and socio-economic impact of the access and submit a report thereon;
13. inform the Institute in writing of all the findings of the research and development based on the genetic resources and community knowledge accessed, if any;
14. not transfer the genetic resources and community knowledge accessed to any other third party or use same for any purpose other than that originally intended without first notifying to and obtaining written authorization from the Institute;

15. return any unused genetic material at the end of the planned research or upon termination of the access agreement;
16. not transfer to third parties the access permit or the rights and obligations there under without obtaining the consent of the Institute to that effect; where the user seeks to acquire intellectual property right over genetic resources accessed or parts thereof, negotiate new agreement with the Institute based on the relevant laws of Ethiopia;
17. not apply for patent or any other intellectual property protection over the community knowledge accessed without first obtaining explicit written consent from the Institute;
18. 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;
19. 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;
20. respect the laws of the state, particularly those relating to sanitary control, bio-safety and protection of the environment;
21. respect the cultural practices, traditional values and customs of local communities;
22. observe the terms and conditions of access agreement.

Chapter V

Reporting, Monitoring & Evaluating the Observance of the Code

Article 16: Reporting by the state

1. The Ethiopian state may inform the access and benefit sharing clearing house permissions and prohibition of any genetic resources or community knowledge with the reason and access agreements, if any.

2. In cases of non-observance by the user, the rules and regulations of the provider or principles of this code the state may wish to inform the access and benefit sharing clearing house so that it may take the necessary steps and other member states may cooperate within the context of Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity.

Article 17: Monitoring and evaluation

1. Appropriate national authorities and the Institute should periodically review the relevance and effectiveness of this Code. The Code should be considered a dynamic text that may be brought up-to-date as required, to take into account technical, economic, social, ethical, ecological and legal developments and constraints.
2. The Institute may establish peer review ethics committee to ensure the observance of the Code.
3. It may be desirable to develop procedures for monitoring and evaluating the observance of the principles embodied in this Code, under the auspices of the Institute which, where invited to do so by the parties concerned, may settle differences that may arise between provider and user.

Chapter VI

Responsibilities of Stakeholders, Local Communities and Designated Persons

Article 18: 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. enquire any person, who does not belong to their communities and who is collecting or taking genetic resources from their localities, to show his/her access permit, and immediately notify or present him/her to the nearest “kebele” or “woreda” administration if he/she is without permit.

Article 19: Responsibilities of stakeholders

Regional bodies, custom officers, mail service and quarantine institutions shall have the responsibilities stated under access to genetic resources and community knowledge, and community rights proclamation no. 482/2006.

Article 20: Responsibility of designated persons

Any person designated by the Institute to perform a certain activity in relation to access to genetic resources and traditional knowledge and sharing of benefits arising from their utilization shall perform all activities with great diligence and shall not commit any fraudulent act that adversely affects the interests of the state and/or the community.