Council of Ministers Regulation No. 169/2009
COUNCIL OF MINISTERS REGULATION TO PROVIDE FOR ACCESS TO GENETIC RESOURCES AND COMMUNITY KNOWLEDGE, AND COMMUNITY RIGHTS

This Regulation is issued by the Council of Ministers pursuant to Article 5 of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 471/2005 and Article 37 of the Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006.

PART ONE
General Provisions

1. Short Title
This Regulation may be cited as the “Access to Genetic Resources and Community Knowledge, and Community Rights Council of Ministers Regulation No. 169/2009”.

2. Definition
In this Regulation, unless the context requires otherwise:
1. “access agreement” means an agreement, signed in accordance with Article 14(2) of the Proclamation, on the access to, and sharing the benefits arising from the utilization of, genetic resources and/or community knowledge;
1. "access applicant" means a person who has lodged an access application to the Institute pursuant to Article 14 (1) of the Proclamation;

2. "access application," means a written request presented to the Institute, in accordance with Article 14(1) of the Proclamation, to access genetic resources and/or community knowledge;

3. "access money" means the money obtained from access agreements by way of sharing the benefits arising from the utilization of genetic resources and/or community knowledge;

4. "competent authority" means a government organ of the country of the access applicant that is empowered to ensure the implementation of access agreements;

5. "community consent" means the prior informed consent given by local communities, in accordance with Article 7(1) (a) of the Proclamation, to allow access to their community knowledge;

6. "community knowledge" means the prior informed consent given by local communities to the Institute to allow access to their community knowledge;

7. "competent authority" means a government organ of the country of the access applicant that is empowered to ensure the implementation of access agreements;

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the terms “access”, “genetic resource”, “community knowledge”, “local community”, “person”, “relevant institution” and “state” shall have the meaning given to them in the Proclamation;  

14. any expression in the masculine gender includes the feminine.

PART TWO
PROCEDURE OF ACCESS
SECTION ONE
PROCEDURE FOR COMMERCIAL ACCESS

3. Submission of Access Application
The access application to be submitted pursuant to Article 14 (1) of the Proclamation to access genetic resources and/or community knowledge shall be presented in accordance with the form specified in Annex-1 of this Regulation.

4. Admission of Access Application
Upon submission of an access application, the Institute shall:

1. admit the access application and register it in the access register, if it ascertains that the access application contains all the information required in Annex-1 of this Regulation; or

2. return the access application to the applicant to be completed, stating the information missing, if it ascertains that the access application does not contain all the information required in Annex-1 of this Regulation.

5. Examination of Access Application
1. The Institute shall, based on the provisions of the Proclamation and access agreements concluded hitherto, examine the access application admitted under Article 4 of this Regulation and determine whether it may be granted or should be denied.

2. Having examined the access application, the Institute shall:

(a) if it ascertains that there is sufficient ground to deny the proposed access, deny the proposed access and communicate the same to the applicant in writing stating the reasons for the denial; or

(b) if it ascertains that there is no ground sufficient to deny the intended access, give public notice of the access application.
3. **Publication of Access Application**

1. Public notice of the access application shall be given, at the expense of the access applicant, in a national newspaper having wider distribution and, as appropriate, in the local newspaper of the locality where the access is intended to take place.

2. The public notice referred to in sub-article (1) of this Article shall contain the following particulars:

   (a) the identity and other necessary particulars of the applicant;

   (b) the description of the proposed genetic resource and/or the community knowledge; and

   (c) the proposed use of the genetic resource and/or the community knowledge.

3. Any person may lodge objection against, or give comment on, the access application within 30 days from the date of its publication.

4. The Institute may, as appropriate, also ask for the opinion of relevant institutions on the access application.

5. **Publicity of Access Information**

   Any information communicated to the Institute in the course of access application or in the course of monitoring access shall be public and may be consulted by any interested person.

6. **Confidential Information**

   1. Notwithstanding the provisions of Article 7 of this Regulation, the Institute may, upon acceptable justification, grant confidential treatment, for a period of not more than 10 years, to the information which shall be communicated to it in the course of access application or monitoring access and which has not been divulged and could be used for disloyal commercial purposes by third parties.

   2. Notwithstanding the provisions of sub-article (1) of this Article, confidentiality may not be granted to information on the identification of the applicant, the genetic resource to be accessed, the locality where the genetic resource is found, the supplier of the genetic resource or the relevant institution accompanying and monitoring the access.
1. Confidential information may not be communicated to third parties except upon court order, expiry of the period of confidentiality, or mutual agreement of the parties.

2. Notwithstanding the provisions of sub-article (1) of this Article, the Institute may disclose confidential information to its employees or consultants for purpose of evaluation; provided however, that it shall make its employees and consultants aware of the confidentiality of the information.

9. Disclosure of Confidential Information

1. Upon the expiry of the time limit set for submission of objection and opinion, and having examined the public objections and opinions submitted, if any, the Institute shall:

   (a) if it ascertains that there exists a sufficient ground to deny the proposed access, deny the access and inform the applicant indicating the reason for the denial; or

   (b) if it ascertains that there exists no ground sufficient to deny access, it shall determine that the access may be granted and call upon the access applicant to negotiate an access and benefit agreement.

2. Where the access application which has been determined under sub-article (1) (b) of this Article that the access could be granted includes access to community knowledge, the Institute shall cause that community consent be given thereon in accordance with Part Three of this Regulation.
The access application with Ethiopian higher learning or research institutions as well as inter-governamental institutions based in Ethiopia shall not be granted unless the applicants present to access genetic resources out of Ethiopia in accordance with Article 11 of this Regulation. The government institution based in Ethiopia shall have determined the obligation upon signing of access agreement to this effect.

Upon receipt of access application by Ethiopian higher learning and research institutions based in Ethiopia, it may state in the access agreement that an access agreement be concluded that the foreign institution where the access takes place and follow up the observance of such agreement.

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SECTION TWO

PROCEDURE FOR NON-COMMERCIAL ACCESS

Grantee of Permit

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Submissions of Access Application

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SECTION THREE
PROCEDURE FOR MULTILATERAL SYSTEM OF ACCESS

14. Conditions of Multilateral System of Access
Access to genetic resources in accordance with the multilateral system of access shall be granted only if:

1. the type of the genetic resource requested is listed in Annex-I of the International Treaty and the intended use of the genetic resource is solely for food or feed industrial uses;
2. the access applicant is a citizen of a country that is party to the International Treaty; and
3. the requested genetic resource is under the ex situ or in situ management and control of the Ethiopian government organs or the possessor thereof has consented to conducting the multilateral system of access.

15. Access Application
A person who wants to access genetic resources under the multilateral system of access shall present to the Institute an access application in the form stated in Annex-III of this Regulation.

16. Decision on Multilateral Access
Having examined the access application under the multilateral system, the Institute shall:
1. if the conditions of multilateral system of access stipulated under Article 14 of this Regulation are met, grant to the applicant access under the multilateral system of access; or
2. if the access application does not meet the conditions of multilateral system of access stipulated under Article 14 of this Regulation, deny the access and notify the same to the applicant.

17. Access Fee
An access applicant, who is granted access under the multilateral system of access, shall pay for the cost for maintaining and for providing him the genetic resource. Such costs shall include the cost for maintaining the sample, multiplication, collection, packaging, postage, phytosanitary certification and the like.
II.

18. **Provision of Facilitated Access**

Where the Institute grants access under the multilateral system of access, it shall provide the requested genetic resource together with the passport data and other non-confidential descriptive data to the applicant without any other requirement, upon signing of the standard material transfer agreement and payment of the access fee.

19. **Follow up and Monitoring**

The Institute shall follow up and monitor whether the utilization of the genetic resource provided is in compliance with the standard material transfer agreement and take the necessary measure in accordance with applicable laws.

20. **Claims**

Claims arising in relation to the implementation of the standard material transfer agreements may be presented to the Federal High Court.

**PART THREE**

**COMMUNITY CONSENT PROCEDURE**

21. **The Community Giving Consent**

1. The community which is the custodian of the community knowledge shall give consent to the access application thereto.

2. Upon receipt of an access application to access community knowledge, the Institute shall, based on the survey it has undertaken on the distribution of genetic resources and/or community knowledge and in consultation with the relevant regional bodies, cause that the community which is the custodian of the community knowledge be identified and community consent given thereon.

22. **Community Consent How Given**

Community consent shall be given:

1. where the community giving consent resides only in one Woreda, by the Woreda Council;

2. where the community giving consent resides in different Woredas or Zones of one region, by the provisional committee of the regional council consisting members represented from such Woredas or Zones;
23. Submission of Access Application for Community Consent

Upon identification of the community which shall give community consent for the access application in accordance with Article 21(2) of this Regulation, the Institute shall:

1. where the community consent shall be given by the provisional committee of the House of Peoples’ Representatives, submit to the House of Peoples’ Representatives, the access application together with decision proposal thereon; or

2. where the community consent shall be given by the Wereda Council or the provisional committee of the Regional Council, submit the access application to the relevant regional body so that it shall submit to the Wereda Council or the Regional Council the access application together with decision proposal thereon.

24. Procedure of Giving Community Consent

1. The Wereda Council or the provisional committees of the Regional Council or the House of Peoples’ Representatives shall give community consent in accordance with the procedure of their respected councils.

2. The copy of the community consent given by the Wereda Council or the provisional committee of the Regional Council or the House of Peoples’ Representatives shall be sent to the Institute and filed with the access register.

25. Cost

The access applicant shall cover the cost required for obtaining community consent.

PART FOUR

ADMINISTRATION AND UTILIZATION OF ACCESS MONEY

26. Administration of Access Money

1. All the money obtained from access to genetic resources and/or community knowledge shall be deposited in a special account called “access fund”.
The money to be obtained from each access agreement shall be deposited in a separate account in the access fund.

2. The Institute shall, upon the expiry of each access agreement, or, as necessary, at any time before such period, cause that the access money shall be put to use pursuant to the provisions of Articles 27 and 28 of this Regulation.

27. Utilization of Access Money for Biodiversity Conservation

1. The access money allocated for biodiversity conservation and promotion of community knowledge pursuant to Article 18(1) of the Proclamation shall be used to finance projects designed for the conservation and promote the sustainable utilization of the biodiversity resources and the associated community knowledge.

2. The biodiversity conservation projects shall be selected from project proposals submitted by the relevant regional and federal bodies upon invitation by the Institute.

3. Upon the expiry of each access agreement, or as necessary, at any time before such period, the Institute shall invite the relevant regional and federal bodies to submit project proposals specifying the criterion for the submission and selection of project proposals.

4. Upon selection of the winning project, the project money shall be paid from the access money to the project implementer.

28. Utilization of Access Money by Communities

The access money allocated to the benefit of communities pursuant to Article 9(1) and (2) of the Proclamation shall be used to finance development projects designed to benefit the community which is the custodian of the genetic resources and/or the community knowledge accessed.
1. Submission of Project Proposals

Upon the signing of each access agreement, the beneficiary community shall designate a member of its representatives for the House of Peoples' Representatives for communication to the relevant Regional Body the amount of access money available so that it shall prepare project proposals designed to benefit the community and submit to the Regional Council or the Regional Body which shall determine the utilization of such money.

2. Determining Utilization of Access Money

The development projects designed to benefit the community shall be determined by the Woerda Council or the Woerda Council of the Regional Body which falls in different Woerda, Zones or Regions:

(a) Woerda by the Woerda Council, Woerda by the Woerda Council of the Regional Body which falls in different Woerda or Zones of one Region, by the members represented from the area where the community resides.

(b) Woerda or Zones of one Region, by the Woerda Council of the Regional Council consisting of the members represented from the area where the community resides. Woerda or Zones of one Region.

(c) Regions, the Regional Council, Woerda Council, Woerda Council of the Regional Body which falls in different Regions, Zones or Woerda, by the Woerda Council of the Regional Body which falls in different Zones or Regions and other Woerda and Woerda of one Region.

3. Where the community resides only in one Woerda or Zone of one Region.

Where the community resides only in one Woerda or Zone of one Region, by the Woerda Council of the Regional Body which falls in one Region, Woerda or Zones of one Region.

4. Where the beneficiary community resides in one Woerda or Zone.

Where the beneficiary community resides in one Woerda or Zone of one Region, by the Woerda Council of the Regional Body which falls in one Region, Woerda or Zones of one Region.
32 Decision Making Procedure

The Wereda Council, the provisional committees of Regional Councils and the provisional committees of the House of Peoples’ Representatives shall determine the utilization of access money in accordance with the procedure of their respected councils.

33. Cost

Where cost is involved to get determined the development projects to benefit communities, it shall be covered from the community’s share of the access money.

PART FIVE
MISCELLANEOUS PROVISIONS

34. Access Register

1. The Institute shall keep a register of access which shall be open to public.

2. The access register shall include:
   (a) access application;
   (b) dismissal of access application;
   (c) public notice of access application;
   (d) objections and opinions on access application;
   (e) access agreements;
   (f) standard material transfer agreements signed;
   (g) access permit;
   (h) access follow-up and monitoring reports;
   (i) amendments, suspension and termination of access agreements; and
   (j) court decisions related to access agreements, and standard material transfer agreements signed.

35. Powers and Responsibility of the Institute

The Institute shall have the following powers and responsibilities:

1/ to issue directives necessary for the implementation of this Regulation;

2/ by coordinating the relevant institutions, to provide the necessary technical support to regions;
3/ to encourage any person in the country who is in possession of a genetic resource under the multilateral system of access to include the same into the multilateral system of access.

36. Responsibility of Regions

Each regional state shall have the following powers and responsibilities:

1/ enact detailed regulations necessary to implement this Regulation in their respective regions; and

2/ designate and strengthen institutions at all levels that shall implement this Regulation.

37. Inapplicable Laws

No regulations, directives or practices shall, in so far as they are inconsistent with this Regulation, be applicable with respect to matters provided for by this Regulation.

38. Effective Date

This Regulation, shall enter into force on the date of publication in the Federal Negarit Gazeta,

Done at Addis Ababa, on this 9th day of November, 2009

MELES ZENAWI
PRIME MINISTER OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FORM OF COMMERCIAL ACCESS APPLICATION

1. General Information

1.1 Information to be supplied by an access applicant who is a natural person:

(a) name of applicant;
(b) address;
(c) qualifications (curriculum vitae to be attached).

1.2 Information to be supplied by an access applicant who is a legal person:

(a) name of organization;
(b) registered address;
(c) establishment document (copy of the document to be attached);
(d) names and qualification of individuals participating in the proposed project (curriculum vitae to be attached);
(e) details of the organization:
   (i) holding or subsidiary companies;
   (ii) individuals connected with the project;
   (iii) name and address of the contact person in regard to the application and the position held in the organization.

2. Detailed Access Information

2.1 Financial details:
(a) the budget for the project;
(b) details of institution or individual that sponsored the project, if any.

2.2 Technical Particulars:
(a) Details of the genetic resource to be accessed:
   (i) scientific tax;
   (ii) the actual and potential uses of the genetic resource and its derivatives;
   (iii) the specific locality where the collection is intended to be undertaken, if known;
   (iv) other possible locations of the genetic resource, if known;
(v) the parts of the genetic resource to be accessed (tissues, seeds, leaves ...etc.);
(vi) quantity to be collected;
(vii) any community knowledge associated with the genetic resource;
(viii) in case the genetic resource is held in ex-situ, details of the institution holding it.

(b) Details of planned collection mission:

(i) identification of the provider of the genetic resource for which access is sought;
(ii) the collection method to be used if the genetic resource is intended to collected;
(iii) the names and particulars of Ethiopian nationals and institutions, if any, intended to participate in the collection mission;
(iv) expected date of start and completion of the collection mission;
(v) give details, if applicant requires assistance to identify and collect the genetic resource.

(c) Details of the proposed use of the genetic resource:

(i) the type of use to which the genetic resource will be put;
(ii) the type and extent of the research as well as the expertise and equipment to be used;
(iii) the expected research result and the estimated time of completion;
(iv) the places where each element of the research and development program will take place;
(v) the manner and extent of participation of Ethiopian nationals in the research, if any;
(vi) national institutions which will participate in the research and be in charge of monitoring the process if known;
(vii) the primary and the probable subsequent destinations of the genetic resource;
(viii) where the access applicant is a foreigner, confirm that he can present a letter from competent authority of his national state or that of his domestic assuring that it shall uphold and enforce the access obligations if the applicant is granted access.

(d) Benefit sharing information:

(i) details of the proposed mechanisms and arrangements for benefit sharing;

(ii) the economic, social, technical, biotechnological, scientific, environmental or any other benefits that are intended, or may be likely, to accrue to the country or the concerned local communities;

(iii) any other information which the access applicant think might be useful to make an informed decision on the access application.

3. Sworn Statement

I, the undersigned access applicant, hereby confirm by a sworn statement that the information contained in this access application is correct and truthful.

4. Signature

Name of signatory ..........................................................

Position (in the case of representing a legal person) ..................................................

Signature ..................................................................

Date ..........................................................................

ANNEX-II
FORM OF NON-COMMERCIAL ACCESS APPLICATION

1. General Information

1.1. Name of the applicant Institution;

1.2. Address of the applicant Institution;

1.3. Establishment document of the institution (copies of the establishment legislation, or registration certificate, and, if the institution is an inter-governmental institution, the agreement concluded with Ethiopian Government to operate in Ethiopia).

2. Technical Information

2.1. specific taxa of the genetic resource;
2.2 the specific locality of the genetic resource;
2.3 details of the proposed use of the genetic resource;
2.4 the type and extent of the research and the professionals and equipments to be used;
2.5 the estimated time of completion and the results expected of the research;
2.6 the places where each element of the research program will take place;
2.7 the primary and the probable subsequent destinations of the genetic resource;
2.8 if the research or part of it takes place outside of Ethiopia, the reason why it cannot be undertaken in Ethiopia.

3. Sworn Statement
1. the undersigned access applicant, hereby confirm by a sworn statement that the information contained in this access application is correct and truthful.

4. Signature
Name of the signatory ..................................................
Position ........................................................................
Signature: ......................................................................
Date: ..............................................................................

ANNEX-III
FORM OF ACCESS APPLICATION UNDER
THE MULTILATERAL SYSTEM

1. General Information
1.1 Information to be supplied by an access applicant who is natural person:
(a) name;
(b) address.
1.2 Information to be supplied by and access applicant who is legal person:
(a) name of organization;
(b) registered address;
(c) establishment or registration document (copy of the document to be attached).
2. Details of the genetic resource to be accessed
   2.1 specific taxa;
   2.2 intended purpose of use;
   2.3 the institution holding, or the provider of, the genetic resource.

3. Sworn Statement

I, the undersigned access applicant, hereby confirm by a sworn statement that the information contained in this access application is correct and truthful and hereby confirm that I shall abide all the terms and conditions of the standard material transfer agreement.

4. Signature

Name of applicant ...........................................

Position (in the case of representing legal person) ..........................................

Signature ..............................................

Date ..............................................