



Addis Ababa University
College of Law and Governance Studies
School of Law
Graduate Program

**BENEFITING LOCAL COMMUNITIES UNDER ETHIOPIAN ACCESS
TO GENETIC RESOURCES AND BENEFITSHARING (ABS) LAWS**
**A thesis Submitted in Partial Fulfillment of the Requirements of the Degree of
Master of Laws (LL.M in Business Law) to the School of Law, Addis Ababa
University**

By: Demissie Girma Abbiche
Advisor: Biruk Haile (PhD)

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Addis Ababa,
Ethiopia

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Approved by Board of Examiners

Biruk Haile (PhD)	_____
Advisor's Name	Signature and Date
Mellese Damtie (PhD)	_____
Examiner's Name	Signature and Date
Mr. Mekete Bekele	_____
Examiner's Name	Signature and Date

Declaration

I, **Demissie Girma Abbiche**, hereby declare that this thesis is my original work and has not been submitted for a degree in any other academic and research institution. And all sources used in this thesis have been duly acknowledged and cited.

Name: Demissie Girma Abbiche

Signature: _____

Date: _____

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Acronyms

ABS	Access and Benefit Sharing
ATK	Associated Traditional Knowledge
BGL	Bon Guideline
CBD	Convention on Biological Diversity
CK	Community Knowledge
COP	Conference Of Parties
DCs	Developing Countries
EARO	Ethiopian Agricultural Research Organization
EBI	Ethiopian Biodiversity Institute
GRs	Genetic Resources
GH	Genetic Heritage
IAC	Inter Agency Committee
IP	Intellectual Property
IPR	Intellectual Property Right
IPLCs	Indigenous People and Local Communities
ITPGRF	International Treaty on Plant Genetic Resources for Food and Agriculture
MATs	Mutually Agreed Terms
NP	Nagoya Protocol
PBR	Plant Breeders Right
PIC	Prior Informed Consent
PVP	Plant Variety Protection
TK	Traditional Knowledge

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Abstracts

ABS laws are meant among other things to ensure that communities benefit from the use of their genetic resources and traditional knowledge. Communities can benefit in a number of ways, both monetary and non-monetary. One of the key elements of ABS in this regard is that access to genetic resources and to the associated traditional knowledge is subject to Prior Informed Consent (PIC) of a nation home to the resources and of the local communities who are the custodians of the genetic resources. This thesis is intended to assess mechanisms, procedures and practices by which ABS is implemented in Ethiopia with a view to benefiting local communities. In the case of Ethiopia, Proclamation No. 482/ 2006 and Regulation No. 169/2009 were enacted to regulate ways by which genetic resources and community knowledge is accessed and community rights are protected. These legal provisions recognize the contributions made by Ethiopian local Communities' toward the conservation, development and sustainable use of genetic resources. However, identification of specific local communities for the purpose of benefit sharing, the mechanisms to secure local communities consent in formation of ABS Agreements, Access fund administration and Distribution of Monetary Benefits among the concerned local communities are among the challenging areas in implementation of ABS laws in Ethiopia. Qualitative method was employed to collect data from ABS agreements concluded in Ethiopia and evaluation of national ABS laws was made in light of benefiting Ethiopian local communities. The results of this paper prevailed that the challenges in relation to benefiting local communities under Ethiopian ABS laws related with less involvement of stakeholders, limitations in formulation and contents of ABS agreements, and absence of clear procedure to ensure local community participation in decision making under Ethiopian ABS laws.

Key words: *Access and benefit sharing, GR, Ethiopian ABS laws, Local Communities.*

CHAPTER ONE

INTRODUCTION

1.1. Background of the study

Ethiopia is a center of origin and diversity for a number of cultivated major agricultural crops¹. There is also enormous wealth of plants of aromatic and medicinal values on which local communities extensively depend as sources of medicine and other values². This vast wealth Ethiopia is endowed with qualifies Ethiopia as one of the eight world's centers of origin and diversity for plant genetic resources.³ For many years Ethiopia has been sharing these resources with different nations and global communities with free access and without demand for sharing of benefits accrued to the resources.⁴ After the coming into force of the Convention on Biological Diversity (CBD) however, the notion of fair and equitable sharing from access to and use of genetic resources received attention of all nations including Ethiopia.⁵

ABS laws are meant among other things to ensure that communities benefit from the use of their genetic resources and traditional knowledge. Communities can benefit in a number of ways, both monetary and non-monetary. Non-monetary benefits may include participation in research and analysis, access to technical skills and experiences, contribution to local economies and livelihoods, and building of capacity of local institutions. In this regard, there are countries that are successful in implementing ABS those that face challenges. Some success stories show that

¹ . Vavilov, N.I. The Origin, Variation, Immunity and Breeding of Cultivated Plants. Selected Writings. Translated from the Russian by Chester, S. K. The Ronald Company (1951)., New York

² .Abebe. D., Hagos. E. . Plants as Primary Sources of Drugs in the Traditional Health Practices of Ethiopia. In: J.M.M. Emgles, J.G. Hawkes and Worede. Melaku. eds. Plant Genetic Resources of Ethiopia (1991). Cambridge University Press..

³ . Ibid

⁴ . GetachewMengiste Bioprospecting in Ethiopia: Enhancing Scientific and Technological Capacity. Ethiopian Science and Technology Commission. (2001) See also [National Biodiversity Strategy and Action Plan \(NBSAP\)](#) (2005). National Biodiversity Strategy and Action Plan, EBI

⁵ . The Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD)

ABS implementation contributes to meeting local communities' needs and to the national government development programs⁶.

As a signatory to the CBD therefore, Ethiopia committed itself to achieve the three objectives of the CBD, the third one being fair and equitable sharing of the benefits deriving from the utilization of genetic resources. Consequently, Ethiopia signed the Nagoya Protocol set as an instrument for smooth implementation of the provision of Article 15 of the CBD. Article 15 of the Convention stipulates that access to genetic resources and the associated traditional knowledge is subject to Prior Informed Consent (PIC) of the nations that hold the resources, and of their local communities who are the custodians of the genetic resources and the associated community knowledge. As one of the commitments for the implementation of the provisions of this Article, countries designate National Focal Points and Competent Authorities for smooth facilitation of access and benefit-sharing⁷.

Accordingly, Ethiopia designated the Ethiopian Biodiversity Institute (EBI) as both a Focal Point and a Competent Authority to facilitate ABS in Ethiopia. Since its designation, EBI has entered into a number of agreements for facilitating request for access to genetic resources from abroad and within the country. Access and benefit sharing agreement on teff (*Eragrostis tef* (Zucc.), *Vernonia galamentis*, *Dichrostachys cinerea*, *Osyris quadripartitum* and *Withania somnifera*, species used for the production of essential oils, cosmetics and herbal medicine are the major ones⁸. In all cases, agreements stipulate that benefits accrued from ABS are fairly shared between the parties (*entities granted with access to genetic resources and community knowledge and the local communities/the government of Ethiopia*). According to records, Ethiopia gained an upfront payment from some of the agreements while some of them have not fruited as was expected. Thus, seems quite useful to clearly understand the status quo of the situation of ABS implementation in Ethiopia in order to learn from the success stories and failures.

⁶. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), Art. 9.

⁷. The 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 (adopted 29 October 2010, entered into force on 12 October 2014) 3009 UNTS

⁸ .GemedoDalle „Access and Benefit Sharing Agreement on Teff(*Eragrostistef*) and its implementation and challenges.In:Teff: The Storyof Ethiopia's Biodiversity. Occasional Report 5.Forum for Environment. Central Printing Press(2010) . Addis Ababa, Ethiopia : 19-37

1.2. Problem statement

In the case of Ethiopia, ABS Proclamation⁹ and Regulation¹⁰ were enacted to regulate ways by which genetic resources and community knowledge is accessed and community rights are protected. These legal provisions recognize the enormous contributions made by Ethiopian farming and indigenous communities' toward the conservation, development and sustainable use of genetic resources. Communities' ownership rights over the resources and the rights to equitably share benefits arising from the use of the resources are all recognized. In this regard, the Ethiopian ABS laws recognize both monetary and non-monetary benefits for local communities. But the problem comes in implementation in that some genetic resources grow all most all over the country and every local community from all corner of the country may claim benefits from ABS agreements made up on such genetic resources. Benefit sharing among local communities may become difficult in relation to some of ABS agreements in that the locality where the genetic resource is accessed is not clearly indicated in the agreements. Local community for the purpose of benefit sharing defined as "A human population residing in a distinct geographical area in Ethiopia as a custodian of a given genetic resource."¹¹ It is not clear whether the provision is referring a human population residing in kebele, woreda or zonal or other level of administrative structure. Of course, distinct geographic area for the purpose of ABS and other administrative purposes are different but as we will see latter the administrative structure is important in that it has some implication in connection to the procedure of community consent giving and benefits sharing. According to article 29(1) of ABS proclamation EBI is given the authority to identify the concerned community.¹² The law assumes smooth collection of GRs before formation of ABS agreements. Which local community should use benefits in ABS agreements where the locality was not specified is not addressed by law. If there are local communities living in various woreda, zones, or regions, their relative share will

⁹. Access to Genetic Resource and Community Knowledge, and Community Rights Proclamation No. 482/2006, Fed. Neg. Gaz., Year 13, No. 13.

¹⁰ . Council of Ministers Regulation to Provide for Access to Genetic Resources and Community Knowledge and Community Rights, Regulation No. 169/2009, Fed. Neg.Gaz., 15th Year No.67

¹¹ . Art 2(9) of ABS proclamation

¹² . ABS proclamation, Article 29(1)

be calculated depending on how much they have contributed to GR conservation.¹³ Identifying the distribution of some GRs and the contribution of concerned local community sometimes may be difficult specially after access is made. Moreover, the Ethiopian ABS law does not expressly stipulate that the local community must first give its prior, informed agreement before any genetic resources can be accessed. According to article 11(1) of the ABS proclamation, EBI is the one who must provide PIC for access to genetic resources. The law also does not indicate whether the EBI gives consent based on the consent of community or not. The problem of identifying local community for the purpose of benefit sharing is evidenced in case of Teff ABS agreement which was signed on April 5, 2005 between the Institute of Biodiversity Conservation (now Ethiopian Biodiversity Institute, EBI), Ethiopian Agricultural Research Organization (now Ethiopian Institute of Agricultural Research, EIAR) and Health and Performance Food International B.V (HPFI) where the locality where the resource is accessed is not stated in the agreement. The other murky area of Ethiopian ABS law concerns the terms and methods under which local communities assent as well as who would represent the concerned local community in the ABS process. The ABS regulations' Articles 21 and 26 to 27 outline the community consent process for CK access but not for GR access. The role of local communities in decision making is not reflected in access fund administration and distribution process. In this regard the access fund administration directive enacted by Ethiopian Biodiversity Institute seems not participatory to local communities since no role is given to them under the directive. The laws also have limitations in clearly stating potential ways of benefiting local communities particularly with regard to non-monetary benefits. .Thus, this study therefore is to examine how the ABS practices are applied across diverse local communities in Ethiopia under the Ethiopian ABS laws, and what the key challenges and possible options are there to support effective implementation of ABS to the interest of local communities in Ethiopia.

1.3. Research Questions

Based on the above stated problems, the following research questions will be addressed:

- What is the procedure and criteria to identify a certain local community for the purpose of benefit sharing from utilization of genetic resources under Ethiopian ABS laws?

¹³ . Ibid, Art 29(2)

- Is it only Ethiopian Biodiversity Institute or local community as well which is entitled to give prior informed consent for access to genetic resources under Ethiopian ABS law?
- What types of benefits (Monetary or Non-Monetary) are more accrued to local communities under ABS agreements Signed so far?
- What is the role of local community in determining the amount and type of benefits, access fund administration and distribution of Monetary Benefits among the concerned local community?
- Is there any lesson taken from Teff agreement in view of solving the problem of identifying specific local community under recent ABS agreements?

1.4. Significance of the study

The point of interest of this study is looking into how the processes of access agreement and facilitation of transfer of genetic materials and benefits sharing is conducted. This involves procedures by which PIC processes are conducted, processes in which farming and indigenous communities have their shares of benefits and are provided with supports they are entitled to for the role they play in the conservation and development of genetic resources consistent with relevant international ABS instruments. It is also to look into the implementation of the procedures and rules that govern the process of the realization which may indicate policy direction for further implementation of ABS in Ethiopia.

1.5. General objective

To assess mechanisms, procedures and practices by which ABS is implemented in Ethiopia as a nation; and across diverse local communities as regulated under the Ethiopian ABS laws.

1.5.1. Specific objectives:

- To assess the level of performance in implementing ABS and the level of benefits accrued and should be accrued to Ethiopian local communities;
- To enhance local community participation in decision making process in ABS implementation;
- To review ABS laws to see whether there are gaps and inconsistencies that hamper the process of ABS;

- To review the existing institutional arrangements and linkages of entities that are entitled to and are engaged in the process of facilitation of ABS;
- To identify key challenges and possible options and opportunities for effective implementation of ABS to the interest of local communities in Ethiopia.

1.6. Methodology

Both doctrinal and empirical approaches would be followed in the research. The study would employ both primary and secondary sources of data. Qualitative method would be used to collect data from ABS agreements concluded in Ethiopia and evaluation of national ABS laws in light of benefiting Ethiopian local communities. The relevant international ABS instruments ratified by Ethiopia such as CBD (Convention on Biological Diversity) and NP (Nagoya Protocol) would be analyzed as a primary source of data to understand the concepts of ABS and benefits of local communities under international arena. In the same manner, the relevant national laws such as, Access to Genetic Resources and Community Knowledge and Community Rights Proclamation, Access to Genetic Resources and Community Knowledge and Community Rights regulation and access fund administration directives related with ABS implementation would be analyzed as a primary source of data to explore mechanisms and benefits to local communities under Ethiopian ABS laws. Secondary sources such as Books, journal article, commentaries on laws, working and study papers, reports, thesis, and relevant web sources are also employed as sources of data. Moreover, since it is Ethiopian Biodiversity Institute which is mandated to enforce ABS agreements respondents from the Institute such as access and benefit sharing directorate director, lawyers and other officials and experts participated in the processes of formation of ABS agreements and access fund administration would be purposefully interviewed. Finally, ABS agreements, so far, made by the country and benefits obtained under each agreements would be Critically evaluated and analyzed to associate the practice of benefiting local communities in implementation of ABS laws in Ethiopia.

1.7. Scope of the study

This thesis is intended to assess how basic issues related with access to genetic resources and benefits sharing in light of benefiting local communities are addressed under Ethiopian ABS laws. Although the Ethiopian ABS law deals with both access to genetic resources and access to Community knowledge together by single law this thesis is mainly to assess mechanisms,

procedures and practices by which ABS in relation to utilization of genetic resources in line with benefiting local communities. It also focuses on mechanisms put in place by ABS implementing Institution that is Ethiopian Biodiversity Institute and whether the procedures and benefits endowed to local communities are manifested under update ABS agreements.

1.8. Limitations of the study

Since ABS in general and benefiting local communities are recent developments to our legal system one of the major limitations to this work is lack of adequate literature and research works done on the area. The other limitation is the researcher unable to identify any specific local community this is because there were no specific projects implemented solely designed to benefit local communities except biodiversity conservation projects which were beneficial to whole Ethiopian people. The other related limitation is that since the research was done while the researcher was working his regular judge work at federal first instance court unable to consult and interview community members stated under ABS agreements who are found far from Addis Ababa because of constraint of time and cost. Moreover, due to the limited scope of the paper and time constraint only the experience of Brazil and Philippines was discussed.

1.9. Organization of the Paper

This paper has five chapters. The first chapter constitutes introduction which shows the proposal of this thesis. The second chapter deals with understanding the very concept of ABS, international legal frame works regulating ABS and the justifications triggering regulation of ABS. The concepts of bio piracy and bio prospecting are also dealt as ABS triggering issues under this chapter. The third chapter deals with the ABS experiences of Brazil and Philippines to the extent relevant to us with regard to consent giving, Community participation and benefit sharing. The fourth chapter which is the heart of the paper is devoted to Ethiopian ABS laws in light of benefiting local communities. Finally, conclusion and recommendations are forwarded under chapter five of the paper.

CHAPTER TWO

UNDERSTANDING THE CONCEPT OF ABS

2.1. Introduction.

The issue of ABS comes when there is utilization of GRs taken place. To comprehend the spectrum of application of ABS regimes, it is crucial to define the terms of genetic resources and utilization of genetic resources. Accordingly, "genetic material of actual or potential value" is the definition of "genetic resources."^{14.} Any material of plant, animal, microbial, or other origin having functional units of heredity is referred to as genetic material.¹⁵ GRs are described as "...any genetic material of biological resources holding genetic information having actual or potential worth for humanity and it includes derivatives" in the Ethiopian ABS Proclamation.¹⁶ Derivatives, according to the Proclamation, are goods created from biological resources, which can include things like plant types, oils, resins, gums, chemicals, and proteins.¹⁷ While the Ethiopian ABS law includes derivatives, the CBD's definition of genetic resources excludes them.

Utilization of genetic resources refers to carrying out research and development on their genetic and/or biochemical makeup, especially by applying biotechnology.¹⁸ Any technological application that produces or modifies goods or procedures for a particular use by utilizing biological systems, living things, or their derivatives is referred to as biotechnology.¹⁹ The notion of "utilization of genetic resources" contributes to the legal clarity of what actions are considered "utilization of genetic resources" and when "sharing of benefits" is required.²⁰ The definition of utilization was deemed thorough enough to cover all potential uses of genetic resources, and no ABS instruments list the precise uses of genetic resources.²¹ This is due to the fact that the

¹⁴ .CBD, Art 2

¹⁵ Ibid

¹⁶ . ABS Proclamation,Art.2(6)

¹⁷ Ibid

¹⁸ . Nagoya Protocol, Art.2

¹⁹ . CBD, Art. 2

²⁰ . Nagoya protocol Explanatory guide line,P .167

²¹ . Ibid

definition of genetic resources and genetic material are interrelated, and as a result, they encompass any biologically derived material with functional units of heredity that has or may have value as a result of them.²² . The word "utilization" is not specifically defined in the Ethiopian ABS law. However, it identifies two circumstances in which the ABS laws do not apply. First, there is the customary use and sharing of genetic resources and local knowledge by and among Ethiopian local communities. Second, there is the selling of biological resource-produced goods for immediate use that do not include the usage of the genetic resource thereof.²³

As we'll see later, Ethiopian law takes a very vague and dubious position to encompass every usage of biological resources because the word "utilization of genetic resources" isn't defined. In any case, it is important to remember that genetic resources utilized as bulk commodities are not subject to the ABS system.

2.2. International Legal Instruments Regulating ABS

Before the Convention on Biological Diversity (CBD), there was no international legal framework to control how biodiversity was used.²⁴ .Genetic resource was considered as a common heritage of mankind before the adoption of CBD.²⁵ The United Nations Conference on Environment and Development (UNCED), which took place in 1992 in Rio de Janeiro, adopted the Convention on Biological Diversity.²⁶ Over 194 states were Parties when it came into effect in December 1993, making it a nearly widely regarded international pact. Ethiopia ratified the convention in 1994.²⁷ The conservation of biological diversity, the sustainable use of its constituent parts, and the fair distribution of the benefits resulting from the use of GRs are the three express goals of CBD.²⁸ The treaty specifically recognizes sovereign rights of states over their biological resources in order to accomplish these goals, as opposed to the belief that these

²² . Ibid

²³ . ABS Proclamation, Art. 4

²⁴ Getechew,(n4)123

²⁵ .Ibid

²⁶ . Convention on Biological Diversity (1992).Text of the CBD. Retrieved from website <http://www.cbd.int/doc/legal/cbd-en>. Rio de Janeiro, Brazil. United Nations.

²⁷ . Biodiversity Convention Ratification Proclamation, Proclamation No. 98/2004,Fed Neg. Gaz, year 53, No. 88

²⁸ . CBD, Art.1

resources should be treated as the common heritage of humanity and be freely accessible to all. As a result, the state has the power to decide who has access to genetic resources, and this power is governed by national law. What's more, CBD states that access to genetic resources is contingent on the supplier nation's informed consent in advance, mutually acceptable terms, and fair and equitable benefit sharing. Since the CBD is very generic and merely establishes a general framework, the parties are allowed to decide how it will be implemented specifically. The Council of the Parties makes several advances, agreements, and procedures in order to realize the ABS element of the CBD. At its sixth meeting in April 2002, the COP adopted the Bonn Guideline.²⁹ The Guideline aims to provide a thorough and precise implementation of some CBD regulations (Articles 8(j), 10c, 15, 16, & 19) related to benefit sharing and access to genetic resources. A voluntary framework for legislative, administrative, or policy actions on ABS as well as ABS contracts and agreements is established by the Bonn Guidelines.³⁰ Bonn Guidelines further harmonized the steps for adequate ABS and clarified and complemented existing obligations under the CBD.³¹ As a result, among other things, the Bonn Guidelines mandate that countries that provide genetic resources be encouraged to make the appropriate financial contributions in order to support the CBD's goals (Article 11(h), 2002 Bonn Guidelines, and Article 20(2), 1992 CBD).³² Another important instrument that is the Nagoya Protocol was agreed during the ninth Conference of the Parties to the Convention on Biological Diversity (COP 10) held in Nagoya, Japan from 18–29 October 2010 on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization.³³ The protocol's primary

²⁹ . Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization, UNEP/CBD/COP/6/20 (2002), CBD COP Decision VI24.A

³⁰ . Mariam Dross and Franziska Wolff, *New Elements of the International Regime on Access and Benefit Sharing of Genetic Resources_- the Role of Certificate of Origin*, 2005, available at: www.dnl-online.de; accessed on 5 December 2020.

³¹ . Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization, Secretariat of the Convention on Biological Diversity adopted, by the Conference of the Parties to the Convention at its sixth meeting, held in The Hague in April 2002

³² . The bonnguideline art.11(h)

³³ . The 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 (adopted 29 October 2010, entered into force on 12 October 2014) 3009 UNTS

goal is to guarantee the fair and equitable distribution of benefits resulting from the use of genetic resources, hence promoting biodiversity conservation and sustainable usage.³⁴ According to the protocol, access to genetic resources for their utilization is subject to prior informed consent of the providing party.³⁵ Another necessary prerequisite for granting access to genetic resources is mutually agreed-upon terms, which may include, but are not limited to, clauses on dispute resolution, benefit sharing, and terms on intellectual property rights, subsequent third-party use, changes of intent, and sharing information on the implementation of the same.³⁶ More intriguingly, the legal safeguards and ABS criteria outlined in the agreement deal with indigenous and local populations' knowledge of genetic resources as well as access to those resources.³⁷ As a result, the local and indigenous groups concerned must participate in the ABS talks and benefit from having access to genetic resources and/or related traditional knowledge.

2.3. ABS, Bio piracy, and Bio prospecting

Bio prospecting is the methodical study of biodiversity and creation of new biological resources with economic and societal value.³⁸ It uses biological and genetic resources of any organism, mineral or other organic substance for scientific research or commercial development³⁹. According to Christoffersen and Mathur (2005), bio prospecting should result in the protection of wild lands and wildlife, through funding of conservation activities. Numerous well-established sectors, including manufacturing, agriculture, aquaculture, bioremediation, bio mining, biomimetic engineering, nanotechnology, construction, etc., engage in it (Beattie et al., 2011). It includes field research to find and record indigenous or traditional medical knowledge, as well as any associated biodiversity, and the development of such information into a marketable good (Soejarto et al., 2005).

³⁴ . Ibid

³⁵ . Nagoya protocol, Article 6.1

³⁶ . Nagoya protocol, Articles 6.3(g) (i) - (iv)

³⁷ . Chege E. K. et al, "The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What is New and what are the Implications for Provider and User Countries and the Scientific Community?", *Law, Environment and Development Journal* , vol. 6/3, (2010)

³⁸ . Jeffery, M.I.Q.C. Bioprospecting: Access to Genetic Resources and Benefit Sharing under the Convention on Biodiversity and the Bonn Guidelines. *Singapore Journal of International & Comparative Law* **6**: 747–808

³⁹ .Ibid

Bio piracy, as opposed to bio prospecting, is the unlicensed and unreimbursed taking or stealing of genetic or biological resources. It occurs when bio prospecting is conducted without the owners of the bio resources' awareness, free prior consent, and benefit sharing (Pan, 2006). Because they believe that any economic exploitation of nature is wrong and should be made illegal, detractors and opponents of bio prospecting frequently refer to it as "bio piracy" (Christoffersen and Mathur, 2005). In the context of bio prospecting, the word generally refers to the failure to appropriately acknowledge the origin of biological resources and indigenous knowledge. It especially refers to the willful and intentional exploitation of biological resources for economic gain and/or patent protection, without consideration for the place of origin of indigenous knowledge and, most critically, without the holders' permission.

Since a long time ago, outside researchers, private businesses, and local people have used biodiversity in both developing and developed countries for a variety of purposes, with little to no benefit to conservation efforts. Pharmaceutical bio prospecting, for instance, has been sharply criticized for 'bio piracy' (Mgbeoji, 2006); in which large international pharmaceutical corporations make use of local medicinal knowledge without acknowledging that it is indigenous intellectual property. The pharmaceutical industry has profited exclusively, while indigenous peoples have gotten little to no compensation (Laird, 2002). There are so many known practical cases of biopiracy. The *Neem*, or *Azadirachta indica*, case of India provided by dagnechew as follows .:

Due to its ability to repel insects and other pests, neem has been used in India for more than 2000 years as an air cleaner and a treatment for practically all human and animal disorders. Robert Larson, a US lumber importer, saw how valuable the tree was in India and started bringing neem seeds to his company's headquarters in Wisconsin in 1971. He conducted safety and effectiveness testing on Margosan-O, a pesticidal neem extracts, through out the ensuing ten years. And in 1985, the US Environmental Protection Agency gave the product its approval. He sold the product's patent to the international chemical corporation W.R. Grace three years later. Since 1985, US and Japanese companies have filed more than a dozen US patent applications including formulas for stable neem-based solutions, emulsions, and even toothpaste. As a result, the neem is no longer a "free tree" and is now covered by more than 90 patents,

*including those filed by American, Japanese, and German businesses. It currently belongs to Western scientists and corporations as intellectual property.*⁴⁰

This is why some scholars argued that patent is unjust to indigenous people and contrary to the interests of everybody except those who profit from exploiting traditional knowledge unfairly.⁴¹ Hence, due to the rising trends in bio proselytizing and bio piracy, ABS control was therefore necessary. Conventional wisdom holds that a clear ABS procedure is necessary to ensure that access to genetic resources and subsequent benefit sharing are on mutually agreeable terms based on prior informed consent of resource providers. This procedure is necessary to ensure that conservation and sustainable use of biodiversity.⁴² This is because local communities are believed as the guardian and custodians of the genetic resources.⁴³ Therefore, local communities have a right to compensation for using their expertise, inventiveness, and traditions related to genetic resources.⁴⁴

⁴⁰ . Dagnachew Melese, 'Boipiracy: International Perspective and the Case of Ethiopia (Legal and Institutional Regime),'(2013), A Thesis for the Partial Fulfillment of LL.M., Addis Ababa University

⁴¹ . Dutfield, G. "The Public and Private Domains: Intellectual Property Rights in Traditional Knowledge." *Science Communication* 21(3): 274-295, p76

⁴² . Afreen Sh., et al, Bio-prospecting: Promoting and Regulating Access to Genetic Resources and Benefit Sharing, (2008), kalkota india, Indian Institute of Management Calcutta Working Paper Series WPS No. 631,

⁴³ .Ibid

⁴⁴ . Ibid

CHAPTER THREE

THE ABS EXPERIENCES OF OTHER COUNTRIES IN LIGHT OF BENEFITING LOCAL COMMUNITIES: BRAZIL AND PHILIPPINES.

3.1. The Brazilian experience on ABS

3.1.1. Introduction

Brazil, like Ethiopia, is a mega-diverse nation with a high socio-diversity and is home to TK that is crucial for the preservation of biodiversity (IBPES, 2019).⁴⁵ More than 300 indigenous ethnic groups call Brazil home, and millions of additional Brazilians, including, for example, rubber tappers and herbal healers, are formally recognized as members of local communities.⁴⁶ In addition, Brazil has more than 30 years of legal expertise in ABS issues. Brazil, a nation with a federal system of government, has given the national government the responsibility of inspecting or supervising organizations that work with and research genetic material.⁴⁷ This is the reason why the ABS experience in Brazil is discussed.

3.1.2. Legal structure of ABS

Brazil had the first ABS measure, the Provisional Act n°2.186, which was amended 16 times, and was in force for almost 15 years. In 2015, the Act was revoked by Law No. 13,123, which is the current ABS law, known as the Biodiversity Law.⁴⁸ In 2016, Decree No. 8,772 regulated the Biodiversity Law.⁴⁹ Thus, the Brazilian ABS laws comprise of the Biodiversity Law (no 13.123) dated as of 20th May 2015, its implementing Decree no. 8772 dated as of 11th May 2016, and all subsequent implementing norms, such as Ministerial Normative Instructions, as well as Resolutions and Technical Orientations approved by Genetic Heritage Management Council (CGen).⁵⁰ The **CGen** is the Competent National Authority, but was redesigned to also

⁴⁵ . Henry Novion, Jorge Cabrera Medaglia. Access and Benefit Sharing and Biodiversity Conservation in Brazil: An Assessment of Impacts of the Current Regulatory Framework .<https://abihpec.org.br/site,CISDL> Pdf accessed 23 April,2023

⁴⁶ Ibid

⁴⁷ . Ibid

⁴⁸ . Brazilian Biodiversity Law (no 13.123) dated as of 20th May 2015, here after called as Biodiversity law.

⁴⁹ . Brazilian Decree no. 8772 dated as of 11th May 2016

⁵⁰ . Henry Novion, Jorge Cabrera Medaglia,(n67)12

implement an electronic permitting system called the SisGen in short which will be dealt hereafter.⁵¹

3.1.3. The National System for Genetic Heritage & Associated Traditional Knowledge

In order to trace, measure, and monitor access to genetic resources and associated traditional knowledge activities, the Brazilian ABS law creates the National System for Genetic Heritage & Associated Traditional Knowledge, an online registration system that is operational as of November 6, 2017.⁵² To access SisGen, users must first create a login (online registering account/profile) via which they can submit the necessary institutional and legal data.⁵³ Keep in mind that registration is only necessary before using GH for activities like shipping, requesting intellectual property rights, publishing results, and marketing.⁵⁴ It is not necessary to register any activities that do not lead to any of the aforementioned utilization activities. When simply genetic resources are used, without access to traditional knowledge, registration is not required prior to access (research and development) itself. Therefore, using GH/ATK implies that GH/ATK has conducted research and developed technology by definition.⁵⁵ As a result of SisGen, the National Fund for Benefit-Sharing's ABS activities fall under the purview of the CGen, this is council within the Ministry of the Environment.⁵⁶ The council is made up of a minimum of 40% of representatives from the business sector, the academic sector, and indigenous peoples, traditional communities, and traditional farmers, as well as a maximum of 60% of representatives from various federal public administration entities and bodies.⁵⁷ To provide support for decisions made by the plenary, the CGen will establish Thematic and Sectoral Chambers with equal participation from the government, civil society participants from the business and academic sectors, and representatives of the indigenous population, traditional communities, and traditional farmers.⁵⁸

⁵¹ . Article 6 of Biodiversity Act

⁵².ABIHPEC,GuidebookonAccesstotheBrazilianBiodiversity.[https://abihpec.org.br/site2019/wpcontent/uploads/2018/04/Guidebook_biodiversity\(2019\)](https://abihpec.org.br/site2019/wpcontent/uploads/2018/04/Guidebook_biodiversity(2019).). -ABIHPEC.pdf accessed on 4March,2023

⁵³ .Ibid

⁵⁴ . Article 11 paragrah 2 of Biodiversity Act

⁵⁵ . Article 2(VIII&IV) of Biodiversity Act

⁵⁶ . Article 6 of Biodiversity Act

⁵⁷ . Ibid

⁵⁸ . Article 6 paragraph 3 of Biodiversity Act

3.1.4. Consent Giving and Community Participation

The Brazilian people own the GH, as was the situation in Ethiopia, and the federal government is responsible for managing, controlling, and inspecting ABS activities.⁵⁹ The Biodiversity Law established PIC as a requirement for access to genetic resources.⁶⁰ PIC is required for access to TK and must be obtained directly from indigenous and local communities or through their Community Protocols.⁶¹ Additionally, there are instances where a particular body's consent is required. For instance, in a key area of national security, access to GH or ATK may only take place with the National Defense Council's express authorization.⁶² Similar to national waters, the continental shelf, and the exclusive economic zone, access to GH or ATK is only permitted with the explicit approval of the maritime authority.⁶³ Due to technical difficulties and concerns about national security, special consent is justified in the interest of the general public. The creation of a National Benefit-Sharing Fund is another instance of community involvement.⁶⁴ A collegial committee that includes representation from the Brazilian Society for the Progress of Science, seven representatives from public administration institutions or entities, seven representatives from groups that represent indigenous peoples, traditional communities, and traditional farmers manages the Benefit-Sharing Fund.⁶⁵ As a result, a management committee established the National Benefit-Sharing Fund for the centralization and subsequent utilization of benefits resulting from the use of genetic resources and associated TK.

3.1.5. Benefit Sharing and Types of Benefits

The Benefit sharing provisions are highly specific and predetermined in the Brazilian ABS Law. The law also creates the National Program for Benefit-Sharing, whose objectives include aiding IPLCs and small farmers in their efforts to manage and conserve genetic resources sustainably, encouraging the development and transfer of technologies that will enhance their ability to do so, and fostering the creation of effective systems for ex situ and in situ conservation.⁶⁶ More

⁵⁹ . Article 3 sole paragraph of Biodiversity Act

⁶⁰ . Ibid

⁶¹ . Henery,(n51) p9

⁶² . Article 13(I) of Biodiversity Act

⁶³ .Article 13(II) of Biodiversity Act

⁶⁴ . Article 30 of Biodiversity Act

⁶⁵ . Ibid

⁶⁶ . Article 33 of Biodiversity Act

intriguingly, the user can decide whether to share monetary or non-monetary benefits with the provider; the percentage of monetary benefit is predetermined.⁶⁷ The agreed-upon percentage of financial benefit-sharing from sales of goods or reproductive material produced from the usage of genetic resources is set at 1% of net sales proceeds.⁶⁸ This gives investors the consistency and legal security they need to fund the creation of bio-based goods. Since they are founded on fiscal and accounting principles and regulations, compliance monitoring is made possible by the clearly defined point of incidence combined with a defined percentage of benefit-sharing to be valued under a particular concept, such as "net revenue". Users can deposit the financial benefits directly to the National Benefit sharing Fund through an electronic voucher given by SisGen once registration and notification procedures have been met. Users will only be required to sign the MAT when they choose the non-monetary modality or when they access ATK. Benefit-sharing is comparable to 75% of the anticipated value for the monetary modality when the user chooses to share the benefits through non-monetary means, such as a conservation or social project.⁶⁹ Users who choose this option are given a 25% "discount," but it can only be used for social projects, capacity-building initiatives related to accomplishing legal goals, and conservation and sustainable usage projects. The type of non-monetary benefit-sharing in the context of access to genetic heritage will be governed by an Executive Branch Act.⁷⁰ The Ministry of Environment (MMA) was appointed by the Biodiversity Law to represent the Federal Union on the signing of ABS agreement, on behalf of the Brazilian people. There is also a standardized model for users to submit projects and other non-monetary benefit-sharing proposals. Note that regardless of who has previously carried out access operations, only the manufacturer of the finished product, even if made outside of the country, must share benefits. To recognize a finished product, three factors are crucial. A finished product is one that: (1) requires no more processing, (2) has the GH or ATK component as a major part of its value addition, and (3) is prepared for consumption by the consumer.⁷¹ Benefit sharing responsibilities are not always triggered by commercial access or use. Therefore, benefit-sharing obligations do

⁶⁷ . Article 19 paragraph 1 of Biodiversity Act

⁶⁸ . Article 20 of Biodiversity Act

⁶⁹ . Article 22 of Biodiversity Act

⁷⁰ . Article 19 paragraph 2 of Biodiversity Act

⁷¹ . Article 2(XVI) of Biodiversity Act

not apply to microbusinesses, small businesses, micro entrepreneurs, traditional farmers, or their cooperatives.⁷² Users and public servants will be guided by comprehensive guidelines that have been devised, and a Board made up of a 50/50 mix of IPLCs and government members will provide oversight. There are two approaches of talking to TK. If the TK has a known origin, no predetermined benefit percentages apply, and the TK holders are free to negotiate a deal during the PIC and MAT processes.⁷³ If TK is determined to be of an unidentified origin, 1% of yearly profits from its commercial usage will be put into the fund; PIC and MAT are not necessary. The fund will give IPLCs benefits in both situations. According to the MMA, Monetary Benefit-sharing amounts to close to \$1 million US dollars, as recorded by users in their SisGen registry within the first four years of operation (although without the need for MAT).⁷⁴ On the other hand, SisGen users reported non-financial benefit-sharing of \$3,3 million, which will be invested directly in conservation efforts.⁷⁵

In conclusion, the Brazilian ABS experience recognized that ABS governance, including customary institutions, management systems, and co-management regimes involving IPLCs, can be an effective way to protect the environment and the benefits it provides for people by incorporating locally appropriate management systems and indigenous and local knowledge.

3.2. The ABS Experience of Philippines

3.2.1. Introduction

Philippines are one of the richest souths East Asian countries in terms of Biodiversity.⁷⁶ The Philippines hosts approximately 4.5 million indigenous people representing more than 70% ethno linguistic groups.⁷⁷ Indigenous people can be distinguished not only by their various cultural ways of life but also by their propensity to use and manage natural resources in a way

⁷² . Article 17 paragraph 5 of Biodiversity Act

⁷³ . Article 9 of Biodiversity Act

⁷⁴ . Henery, p 15

⁷⁵ . Ibid

⁷⁶ . SMAGADI, Aphrodite, *National measures on access to genetic resources and benefit sharing: the case of the Philippines*, LEAD journal, 2005, 1, 1 - <https://hdl.handle.net/1814/17513>

⁷⁷ . Ibid

that prioritizes sustainability and is based on an all-encompassing understanding of the land.⁷⁸ The Philippines is one of the earliest countries in legislating national ABS law in responding to the call of CBD.⁷⁹

3.2.2. Legal Structure

The Philippines' ABS System does not contain a single law, but consists of different Acts. In May 1995, Executive Order No. 247 adopted.⁸⁰ Prospecting for all publicly available biological and genetic resources is covered by Executive Order No. 247. Administrative Order No. 96-20 (A.O. 96-20) was subsequently issued by the Department of Environment and Natural Resources (DENR) to carry out Executive Order No. 247, which combined provided a framework for access to genetic resources and benefit-sharing.⁸¹ In order to preserve local and indigenous cultural communities' intellectual property rights with regard to the creation of genetic resources and the preservation of the nation's biological diversity, the Indigenous Peoples Rights Act was introduced in 1997. The Philippines also has a separate wildlife law that was passed in 2001. It regulates wildlife prospecting and creates criminal penalties for anyone who violates the laws prohibiting the exploitation of any form of wildlife resources.⁸² Hence, Philippines ABS laws constitute different sorts of laws of which some of them will be discussed here after.

3.2.3. Consent Giving and Community Participation

Article XII of the Philippine Constitution specifies that the Philippine government owns and has complete authority and supervision over the animals, flora, and fauna within its jurisdiction.⁸³

⁷⁸ . Ibid

⁷⁹ . Kuei-Jung Ni, Legal Aspects of Prior Informed Consent on Access to Genetic Resources, 42 Vanderbilt Law Review 227 (2021) Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol42/iss1/5>

⁸⁰ . Exec. Ord. No. 247 (May 18, 1995) (Phil.), *available* at http://www.lawphil.net/executive/execord/eo1995/eo_247_1995.html

⁸¹ . Implementing Rules and Regulations on the Prospecting of Genetic and Biological Resources, Dep't Admin. Ord. No. 96-20, § 10, (July 9, 1996) (Phil.), *available* at http://www.grain.org/fbrl_files/philippines-bioprospectingeo247-1996-en.pdf

⁸² . An Act Providing for the Conservation and Protection of Wildlife Resources and Their Habitats, Appropriating Funds Therefore and for Other Purposes, Rep. Act No. 9147, § 14, (July 30, 2001) (Phil.), *available* at http://www.lawphil.net/statutes/repacts/ra2001/ra_9147_2001.html.

⁸³ . SMAGADI, (n82) p50

This is relevant when addressing the ownership right of GRs. However, the Indigenous Peoples Rights Act, which was introduced in 1997, ensures the protection of local and indigenous cultural communities' intellectual rights with regard to the development of genetic resources and the preservation of the nation's biological diversity.⁸⁴ The act states that Indigenous people have the right to take special steps to maintain and develop their cultural manifestations, including genetic resources, seed, and derivatives of these resources, traditional medicines, medicinal plants, animals, and minerals, indigenous knowledge systems and practices, knowledge of the characteristics of flora and fauna, oral traditions, literature, designs, and visual and performing arts.⁸⁵ The IPLPR statute is recognized by Executive Order No. 247, the Bio respecting law. Thus, in the case of the Philippines, the ownership right over GRs is highly contentious and not adequately addressed. For this reason, a multi-stakeholder strategy to obtaining consent was implemented in order to guarantee the involvement of the pertinent agencies and concerned social groups. Who must be requested for PIC is determined by the location and legal status of the collection area, in accordance with the Executive order's implementing rule. The Philippine Executive Order, in contrast to the Brazilian Biodiversity Law, only permits bio prospecting with the concerned indigenous and local groups' prior informed consent (PIC).⁸⁶ Local governmental unit is represented by the head of the indigenous and/or people or local community concerned.⁸⁷ Thus, PIC of different organs may be needed for different GRs depending on the areas to be collected. For instance, when wetlands, turtle species, and plant and animal species are concerned, the Department of Environment and Natural Resources (DENR) must provide access license for bio prospecting on shore. Each and every designated essential habitat for aquatic life as well as all aquatic resources falls within the purview of the Department of Agriculture (DA).⁸⁸ The Palawan Council for Sustainable Development (PCSD) is qualified to award permissions in the province of Palawan. Within the ancestral lands and domains of indigenous cultural communities, the prospecting of biological and genetic resources shall only be permitted with the prior informed

⁸⁴ .Philippines Indigenous Peoples Rights Act of 1997

⁸⁵ . Ibid, section 7

⁸⁶ . EO,section 2

⁸⁷ . SMAGADI,(n82)p61

⁸⁸ . Dross M and Wolff F, 'New Elements of the International Regime on Access and Benefit Sharing of Genetic Resources- the Role of Certificates of Origin-' (2005) Federal Agency for Nature Conservation, study paper <<https://www.oeko.de/oekodoc/233/2005-001-en.pdf>> accessed 3 December 2023

consent of such communities, obtained in accordance with the customary laws of the concerned community.⁸⁹ As a result, a PIC certificate can only be granted after a 60 day period has passed and the concerned groups have been informed and consulted. A multidisciplinary Inter Agency Committee (IAC) made up of representatives from the departments of the environment, health, science, and technology, as well as foreign affairs and NGOs, is also created under the executive order. IAC acts as the national focal point for all ABS procedures as a result.⁹⁰

In essence, the Philippines' PIC procedure is based on sector consultation with affected local or indigenous cultural communities and public notification, which really satisfies the requirements of CBD's article 8(j) & 15(3). However, it is observed in practice that obtaining PIC is a fairly difficult task and deters users, who are required to work on-site with governmental bodies, non-governmental organizations, and people's organizations to identify the communities' representatives and, when necessary, to apply the pertinent customary law.

3.2.4. Benefit-Sharing and Types of Benefits

The Executive Order of the Philippines lays out fundamental concepts and key players in resolving the same challenges in terms of benefit sharing. As a result, the Philippines government, the concerned communities, and the researcher must all equally and fairly share any benefits that arise directly or indirectly from bio prospecting efforts.⁹¹ State, municipal, and indigenous communities, academic institutions, business sectors, and non-governmental organizations are potential participants in bio prospecting agreements. State representation in the Philippines is provided by the DENR and DA, respectively, which are responsible for terrestrial and marine biodiversity.⁹² ABS negotiations in the Philippines are not centralized in the sense that, for instance, members of IPLC and/or the Philippine Institute for traditional and alternative medicine sit on the committee where prospecting concerns ancestral domains, land or specimens for medicinal purposes.⁹³ The DENR/DA secretaries or the chairperson of the Palawan council are in charge of coordinating bio prospecting efforts there, where decentralized bio prospecting

⁸⁹ .Ibid

⁹⁰ . EO,section 7

⁹¹ . SMAGADI, (n82) 65

⁹² . Ibid

⁹³ . Ibid

regulations are more suited⁹⁴. Royalties, benefits, and technology shall be passed to the Philippine Government and the relevant local communities through a separate arrangement as far as benefit categories are concerned. Although the Philippines was the first country to pass legislation governing bio prospecting, Executive Order 247 of the Philippines has drawn criticism because it regulates academic and commercial research conducted abroad in a manner that tends to overregulate bio prospecting.⁹⁵ Furthermore, the Executive Order contains no specific guidelines regarding the subsequent distribution of benefits obtained between the local communities and the Philippine government. As a result, the sequence is modified, and a draft bio prospecting guideline is created.⁹⁶ The precise approach for benefit sharing and subsequent utilization get its own chapter in the draft bio prospecting guideline.⁹⁷ The draft guidelines place more emphasis on protecting the environment and conserving biodiversity.⁹⁸ It also pays proper attention to additional or alternative sources of income for community members. Last but not least, the researcher was unable to get empirical information regarding the number of agreements and benefits acquired and used thus far in the Philippines.

3.3. Conclusions

We can draw conclusions from Brazil and the Philippines' ABS experiences that prior informed consent regulations in cases of access to GRs are also not consistent internationally. This relates to the appropriate authorities, the process, and the issue of whose approval needs to be acquired. Not all nations demand the local communities' or indigenous peoples' prior informed permission. Furthermore, there are numerous rules governing benefit-sharing. Regarding who is partaking in the benefits, whether or not local communities are involved, and whether or not monies have been distributed, significant disparities can be noted. Additionally, non-financial benefits are crucial for the local community and biodiversity preservation. Overall, it can be said that for ABS to be implemented successfully, a wide range of stakeholders must be involved, and ongoing local and regional consultation is required.

⁹⁴ . Ibid

⁹⁵ . Dross M and Wolff F,(n94) 40

⁹⁶ . Draft Guidelines for Bioprospecting Activities in the Philippines Jan14,2005

⁹⁷ . Ibid

⁹⁸ . Ibid

CHAPTER FOUR

THE ETHIOPIAN ABS LAWS IN LIGHT OF BENEFITING LOCAL COMMUNITIES

4.1. Introduction

In the absence of a legal framework, Ethiopia's biological resources have been used for years. Most of the time, access has been unrestricted and free. This may be explained by the mentality that was prevalent before to the acceptance of CBD, not just in Ethiopia but also elsewhere. In approaching to assess the main legal frameworks, the FDRE Constitution⁹⁹ under article 89(1) provides that the government has duty to formulate policies that ensure that all Ethiopians can benefit from the countries legacy of intellectual and natural resources. Art. 43(3) of the same constitution states that the right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the state and in the peoples of Ethiopia. The aforementioned clauses denote the people's right to benefit from the exploitation of biological resources. Ethiopia has proclaimed specific ABS proclamation termed as "Access to Genetic Resources and Community Knowledge and Community Rights Proclamation in 2006"¹⁰⁰.

The Proclamation's goal is to guarantee that the nation and its people receive an equal share of the benefits from the use of genetic resources in order to advance the conservation and sustainable use of the nation's biological resources.¹⁰¹ The Proclamation will be applicable to community knowledge and access to genetic resources discovered under in situ or ex situ situations. The term "in-situ conservation" refers to the maintenance and recovery of healthy populations of species in their natural habitats as well as the preservation of ecosystems and natural habitats.¹⁰² While exsitu conservation refers to the conservation of components of biological diversity out-side their natural habitats.¹⁰³ Additionally, the customary use, trade, and direct consumption of genetic resources and local knowledge by and among Ethiopian local

⁹⁹ . Federal Democratic Republic of Ethiopia Constitution, Proclamation No.1/1995, Fed.Neg.Ge.,Year 1.No.1

¹⁰⁰ . ABS Proclamation(n15)

¹⁰¹ .Ibid

¹⁰² .Art.2(7), ABS proclamation

¹⁰³ .Art.2(4) of ABS Proclamation

people are not covered by this proclamation.¹⁰⁴ In order to implement the ABS Proclamation, Ethiopia also issued the Access to Genetic Resources and Community Knowledge and Community Rights Regulation (ABS Regulation).¹⁰⁵ Thus, basic ABS issues in light of benefiting local communities under Ethiopian ABS laws will be dealt in detail here after under.

4.2. Institutions and Stakeholders in ABS Management under Ethiopian ABS Laws

There is no comprehensive institutional and legal framework for the management of genetic resources and benefit-sharing across the nations.¹⁰⁶ The Ethiopian Biodiversity Institute is a government institute established to ensure Conservation and Sustainable Utilization of Biodiversity and access to genetic resource and benefit sharing in Ethiopia. More critically, Ethiopia lacks the Clearing-House mechanism needed by the Nagoya Protocol for ABS information. Thus, only seven institutions, namely the Ministry of Agriculture and Rural Development, Ethiopian Biodiversity Institute, Local Communities as one stakeholder customary institution, Regional Bodies, Customs Office, Mail Service Institutions, and Quarantine Control Institutions, are listed with their respective limited responsibilities in the Ethiopian ABS law, which is insufficient.¹⁰⁷

As we have seen above from the experiences of Brazil and Philippines, effective ABS governance requires not single government entities rather multi-disciplinary stakeholder's involvements. As in the case of Brazil ,the Genetic Heritage Management Council which is composed of in addition to public administrations representatives from members of society including business sector, academic sector and indigenous peoples, traditional communities and traditional farmers.¹⁰⁸ In the case of Philippines Inter Agency Committee which is composed of representatives from department of environment, health sector, science and technology, foreign affairs and NGOs. These interdisciplinary establishments are assigned to make decisions up on any ABS implementation issues including allocation of funds among the concerned beneficiaries.

¹⁰⁴ .Article 4 of ABS Proclamation

¹⁰⁵ . ABS Regulation(n16)

¹⁰⁶ . Afreen Sh,(n64)132

¹⁰⁷ .Arts 26&ff, ABS Proclamation.

¹⁰⁸ . Ibid

But this is not the case under Ethiopian ABS laws in that mainly EBI is the only government organ responsible to implementation of all ABS issues. The other stakeholders stated above are not given any significant role. Moreover, other significant institutions and stakeholders like the Intellectual Property Office, research funding or publishing organizations, and the Food, Medicine, and Health Care Administration and Control Authority are given no role and even not mentioned as stakeholders. .

4.3. Ownership and Community Rights over the GRS

In Ethiopia the ownership of genetic resources shall be vested in the state and the Ethiopian people.¹⁰⁹ The ownership of community knowledge shall be vested in the concerned local community.¹¹⁰The local communities shall have the right to regulate the access to their community knowledge, use their GR and CK, to share benefits arising out of utilization of GR and CK.¹¹¹ Giving informed consent in advance of using GR or CK is one aspect of the right to regulate access. However, as we will show in relation to access to genetic resources, Ethiopian ABS laws do not have a method to get community consent prior to access authorization.¹¹² According to article 14(3) of ABS proclamation EBI required to ensure PIC of local community if the access application involves to CK not for GR. Article 21 to 24 of the same proclamation states about the conditions where the already given consent is withdrawn or suspended for different reasons. Hence, local communities in relation to GRs can have the right to restrict or withdrew the consents given by EBI. ¹¹³In this regard the Ethiopian ABS laws deviated from the above stated international ABS agreements. Furthermore, administering land and other natural resources is state matter as per article 52(2) (d) of the FDRE constitution while giving consent and permit to access to GR is given to EBI which is a federal government organ. Thus, some may argue that giving consent and access permit is part of administration of natural resources and should goes to the state. On the other hand states are obliged to administer natural resources in accordance to the federal laws on our case as per ABS proclamation which is federal law and

¹⁰⁹ . Art.5, ABS Proclamation.

¹¹⁰ .Ibid

¹¹¹ .Art.6&ff,ABS Proclamation.

¹¹² . Haile B, 'Protection of Traditional Knowledge Related to Biological and Genetic Resources: Examining the Access and Benefit Sharing Regime in Ethiopia' [2015] WIPO-WTO Colloquium Papers.

¹¹³ .Ibid

the law intentionally limits state power over administration of natural resources in case of ABS. This is because ABS by its nature requires conclusion and application of different international laws which falls under federal matters. The Brazilian and the Ethiopian ABS laws are pretty clear enough as to ownership over GRs in that they declare that ownership over GRs vested up on government and people unlike the case of Philippines which is not clearly addressed. Hence, deciding ownership rights over GRs has some implications with regard to consent giving procedure and benefit sharing which are to be discussed here under sections dealing with consent giving and benefit sharing.

4.4. Defining Local Communities for the purpose of Benefit Sharing

It is already accepted that local communities have a right to take part in the formation, management, and benefit-sharing of ABS agreements. As a result, defining the local community connected to a particular genetic resource is crucial to the ABS implementation process. "A human population residing in a certain geographical area in Ethiopia as a custodian of a given genetic resource or developer of a given community knowledge," is the definition of the local community under Ethiopian ABS law.¹¹⁴ The authority to identify the concerned community for the purpose of benefit sharing is given to EBI.¹¹⁵ Note that EBI is required to identify local community in consultation with the relevant regional bodies. Of course, the relevant body of specific region depends on the administrative structure of concerned region. The two basic criteria to identify specific local community indicated in the above stated ABS law provision are the distribution of GRs and the relative contribution of the concerned local community to the conservation of the GR¹¹⁶. Here, someone can ask at what point EBI must do a GR survey. In this regard, EBI may use a previously completed survey if one is available or may conduct a survey after an access request is submitted but before the ABS agreement is signed. Thus, the law assumes smooth collection of GRs before formation of ABS agreements starting from access application as indicated under annex article 2(iii) of ABS regulation. As in the case of Teff ABS agreements, it might be quite challenging to pinpoint the locality where a genetic resource is exploited in practice. Different regions of Ethiopia have Teff genetic resources. A contract for an ABS was reached for the breeding and development of teff (*eragrostis teff*) between the Institute

¹¹⁴ .Art.2(9),ABS Proclamation.

¹¹⁵ . Art 29(1) of ABS proclamation

¹¹⁶ . Ibid

in Ethiopia and EARO and the small Netherlands based Soil and Crop Improvement Co. About 4,000USD monetary benefit obtained as upfront payment from the teff ABS agreement.¹¹⁷ The local community concerned is entitled to share half (50%) of the financial benefit, as stated in article 9(2) of Ethiopia's ABS proclamation, but the agreement failed to identify the locality where the Teff genetic resource is accessed, making it challenging to actually implement local community benefit sharing. The Ethiopian Biodiversity Institute chooses to use the entire access budget in such circumstances, as we will see later, by financing biodiversity conservation projects that are thought to benefit the entire Ethiopian population. In his interview, Mr. Fikremariam Ghion explained that it is very difficult to identify a specific community and that using the entire financial benefit for the implementation of biodiversity conservation projects may ease the problem. The lessons to be learned for the future are that each ABS agreement must clearly indicate the locality where GRs to be accessed.¹¹⁸ However, according to Dr. Mellese Mariyo, it is sometimes possible to link a particular variety of some genetic resources with a particular community, so even in the absence of a clear provision under a specific ABS agreement regarding the origin of a certain GR it is still possible to identify a particular community.¹¹⁹ The discussion made above shows us additional interdisciplinary research may be necessary to identify or associate specific GR varieties with particular local communities. What is, however, very obvious at this point is that, unless it is expressly addressed in each ABS agreement beginning with the access application, identifying specific communities entitled to benefit sharing is not an easy task. Identifying local community starting with access application may ease the problem in that it informs the locality where the GR is literally accessed subject to ABS agreement. In this regard, if any access to GH or ATK from unidentified origin is occurred in Brazil it will be solved through sectorial agreement. A sectorial agreement is contracts signed by public authority and users, considering the fair and equitable sharing of the benefits derived from

¹¹⁷ . The Agreement on Access to, and Benefit Sharing from Teff Genetic Resources, signed on April 5, 2005 (Teff agreement)

¹¹⁸ .Interview with Fikremariam Ghion, Lawyer and National focal Person Genetic Resource Access and Benefit Sharing Directorate, EBI (Addis Ababa, Ethiopia 26 July 2022)

¹¹⁹ . Interview with Melesse Mariyo (PhD), Director Ethiopian Biodiversity Institute, EBI (Addis Ababa, Ethiopia 26 July, 2022)

economic exploitation arising from access to genetic heritage or associated traditional knowledge of unidentifiable origin.¹²⁰ In Brazil there would be no problem as such because monetary benefit is already fixed by biodiversity law and going to national fund and the non-monetary benefits are to be implemented for biodiversity conservation as the choice of user. The Ethiopian law has no answer as to how any benefits obtained from unidentified origin of GR or CK is utilized. In this regard, the Ethiopian law should take less and should include detail provision as to consent giving and benefit sharing in cases of access to GR/or CK from unidentified origin.

4.5. The Requirements of Prior informed Consent and Mutually Agreed Terms.

As stated under different international ABS laws including the Nagoya Protocol PIC, MAT, and Benefit Sharing are among the core elements of ABS agreements.¹²¹ PIC in the context of Ethiopian law refers to the agreement between the Institute and the local community in question based on an access request containing complete and accurate access information to a person requesting access to a specific genetic resource or local knowledge.¹²² It should be noted that, with the exception of access to local knowledge, the Ethiopian ABS law does not expressly stipulate that the local community must first give its prior, informed agreement before any genetic resources can be accessed. According to article 11(1) of the ABS proclamation, EBI is the one who must provide PIC for access to genetic resources. The ownership of GR may be vested in the state and the Ethiopian people, and EBI is the national focal point in charge of implementing ABS in Ethiopia, which may be why the power to offer prior informed consent is granted to EBI. The Ethiopian ABS law's stance on obtaining community consent for the use of GR appears contradictory in that, on the one hand, it acknowledges local community involvement in ABS decision-making processes, including the right to share benefits from GR usage, but fails to demand PIC from the concerned community. Note that PIC in cases of access to GRs as per the relevant international laws are not mandatory. The PIC procedures for access to GRs are may be dependent and up on ownership over GRs and land tenure system and the experiences across countries in this regard are not uniform. In Brazil PIC for access to genetic resources was granted by the Biodiversity Law: there is no administrative procedure for access to genetic resources; PIC for access to TK is mandatory and should be obtained directly with

¹²⁰ . Article 2(XXI) Biodiversity Act

¹²¹ . Nagoya protocol Explanatory guide line,P .124

¹²² .Art 2(11), ABS proclamation.

indigenous and local communities, or through their Community Protocols. Unlike the Brazilian Biodiversity law the Executive Order of Philippines allows bio prospecting only with the PIC of the indigenous and local communities concerned. Note also that unlike the Ethiopian case where permission to all access to GR is given by EBI under Brazil and Philippines some specific organs consent may be required depending on the areas of collections in some cases. In relation to PIC of local Community for access to GRs in Ethiopian case two line of interpretation is possible. The first one is owner ship over GR is vested in the hands of Ethiopian people and government and EBI is clearly entitled to give PIC for access to GRs as well as per article 11(1) of ABS proclamation that no need of PIC of local community before access GRs. The other line of interpretation is that since Ethiopian ABS law recognizes the rights of local communities to share the benefits arising from utilization of GRs as well because of their contribution to conservation of the GRs the PIC procedure for CK would apply by analogy. The ABS regulations' Articles 21 and 26 to 27 outline the community consent process for CK access. Accordingly, where the community giving consent resides in a single woreda, the woreda council shall give the community's consent; where the community giving consent resides in various Woredas or Zones of a single region, the provisional committee of the regional council, consisting of members representing such Woredas or Zones; and where the community giving consent resides in an area that falls within multiple regions, the provisional committee of the regional council shall give the community's consent.¹²³ To ensure community engagement, it appears important to follow the access to CK procedure that is also applied in practice by analogy.¹²⁴ The other murky area of Ethiopian ABS law concerns the terms and methods under which local communities assent as well as who would represent the concerned local community in the ABS process which will be discussed under sections dealing with distribution of monetary benefits to local communities. Mutually Agreed Terms (MAT) are agreements that must be made between the person who provides genetic resources and the person who uses them in order for the user to have access to genetic resources and to share in the benefifits that result from using them. MAT is crucial for establishing standards that prevent the wrongful patenting of common knowledge and for assessing the benefits of using genetic resources. In terms of the MAT's negotiation process, it is the EBI's responsibility to negotiate with the users of both genetic resources and local

¹²³ . Art. 22 of ABS regulation

¹²⁴ . Interview with Fikremariam(n124)

knowledge.¹²⁵ Article 16 of the ABS proclamation lists the fundamental components that must be included in each agreement. The fundamental issue with MAT is that there is no declared specific monitoring method for enforcement. In this regard, as stated in article 16(1) (h) of the draft ABS proclamation, the draft ABS law mandates, among other things, the nomination of a responsible institution responsible for ensuring that the mutually agreed terms are implemented.¹²⁶ There is no specific provision in Ethiopian ABS law regarding local community involvement in MAT formation, but the director general of EBI explained during the interview that EBI consult the relevant local community before engaging in negotiations and reaching an agreement with GR users.¹²⁷ The procedure to consult concerned local community provided for CK is used by analogy for GR, explained the director general. Note that community knowledge forms part of genetic resources which have been domesticated, improved and conserved by farmers, and the two are used and transmitted together. In the holistic indigenous worldview, knowledge and bio-genetic resources are inextricably linked and cannot be separated. Hence, the EBI position following the same procedure to secure local community consent like CK seems justified because of the inextricably linked nature of both GR and CK.

4.6. Benefit Sharing and Types of Benefits

Each individual access agreement that needs to be signed will specify the sort and scope of the benefit that the state and local communities will share from access to genetic resources or local knowledge.¹²⁸ A license fee, an up-front payment, a milestone payment, a royalty, research funding, joint ownership of intellectual property, an employment opportunity, and other benefits as appropriate may be included in the benefit that will be shared from access to genetic resources and community knowledge. These benefits are divided into monetary and non-monetary categories, and the Ethiopian ABS law is not comprehensive in listing all possible benefits, as will be demonstrated in this subsection. Note that local communities have the rights not only to share the benefits but also to participate on the whole process of ABS. According to Nagoya

¹²⁵ . Art 14(2) of ABS Prclamation

¹²⁶ . See article 16(1)(h) of the draft ABS proclamation which reads as the relevant institution designated by the Institute to participate in the collection of or the research based on the genetic resource to be accessed and be in charge of monitoring the implementation of the mutually agreed terms;

¹²⁷ . Interview with Dr. Mellese(n125)

¹²⁸ . Art 18 of ABS proclamation

protocol the local and indigenous groups that are concerned must participate in the ABS decision making and benefit from having access to genetic resources and/or related traditional knowledge.

4.6.1. Monetary Vs. Non-Monetary Benefits

It is repeatedly stated that benefits arising from the utilization of genetic resources could be either monetary or non-monetary.¹²⁹ Both monetary and non-monetary benefits as appropriate may be included in the benefit to be shared from an access to genetic resources and community knowledge in Ethiopia.¹³⁰ Interestingly, in Brazil the percentage of monetary benefit is predetermined and It is up to the user to choose whether monetary or non-monetary benefits to share with the provider.¹³¹ When the user chooses to share the benefits through non-monetary means, such as a conservation or social project, benefit-sharing is equivalent to 75 percent of the predicted value for the monetary modality.¹³² A 25% “discount” is offered to users that pursue this option but is limited to conservation and sustainable use projects; capacity building linked to achieving the objectives of the law; and social projects. The Brazilian experience in this regard shows the importance of non-monetary benefits than monetary benefits to the interest of local community as well as conservation of biodiversity. Both monetary and non-monetary benefits in Brazil are feasible and effective in that monetary benefits are expected to be paid directly to the national fund through online system. In the same manner non- monetary benefits are also feasible in that the project proposals to the same effect are produced by users and evaluated before access takes place. But this is not the case in Ethiopia in that there is no way to produce and evaluate proposals of non-monetary benefits before access and provisions stated under some ABS agreements are only nominal. Moreover, Ethiopian law is restricted to financial gains and does not cover significant non-financial gains including collaboration, cooperation, and contributions to education and training, as well as building institutional, human, and material resource capacities... Thus, job development or employment prospects, which are crucial for local populations in Ethiopia as a growing nation, are not addressed in a realistic way. In this sense, the draft ABS proclamation provides a more comprehensive list of

¹²⁹ .Art.19,ABS Proclamation.

¹³⁰ .Art.19,ABS Proclamation.

¹³¹ . Article 19 paragraph 1 of Biodiversity Act

¹³² . Article 22 of Biodiversity Act

prospective financial and non-financial benefits.¹³³ The Philippines experience in relation to project proposals evaluation is over regulating and cumbersome in that a copy of intended use and proposed benefit sharing proposal is expected to be sent to local communities translated in their language which may be discouraging users. But, what is important from the experiences of the two country in relation to benefit sharing is that the involvement of interdisciplinary multi stake holders in the process of ABS procedure in general and evaluation of project proposals may maximize the feasibility of benefits but without forgetting the lengthy process for decisions especially in Philippines.

4.7. Some Basic ABS Requirements under Other Related Laws: Patent and Plant Breeders Right Laws

It should be acknowledged that sometimes the application of the aforementioned ABS standards goes beyond the purview of ABS laws. In this regard, there is a clear link between the application of ABS elements and the laws governing patents and plant breeder's rights. As specifying the locale in patent applications allows for demanding benefit sharing and the fulfillment of PIC and MAT obligations in ABS agreements, requiring access permit holders to disclose the origin of GRs is crucial. It is vital to require access permit holders to report the origin of GRs since doing so enables demanding benefit sharing and the fulfillment of PIC and MAT requirements in ABS agreements. Sadly, the requirements on innovations¹³⁴ does not clearly stipulate the fulfillment of DRs (source and/or origin of GRs, evidence of PIC and benefit sharing) by patent applicants in relations to inventions made based on GRs. According to the ABS Proclamation, a new agreement must be negotiated in order to attempt to gain IP over GRs accessed and inventions created using GRs.¹³⁵ Additionally, it is made very clear that any applicant for a patent or other IPR on goods made from accessed GRs must reveal the location of the GR's access.¹³⁶ To ensure that these regulations are followed in the execution of the ABS, it is crucial to include DRs in the Proclamation on Inventions.

¹³³ . Art.20 of draft ABS proclamation.

¹³⁴ Proclamation concerning Inventions, Minor Inventions and Industrial Design, 1995, Proc. No. 123, Transitional Government of Ethiopia. Neg.Gaz., year 54, no.25

¹³⁵ . Art 17(12) of ABS proclamation

¹³⁶ . Art 17(14) of ABS Proclamation

This is why some biodiversity rich countries are rightly proposing to inclusion of disclosure requirement to the WTO's TRIPS Agreement to include the requirements of prior informed consent for access and fair and equitable benefit-sharing of commercial uses in patent application.¹³⁷ In Brazil compliance with ABS requirements are prerequisite for¹³⁸ patent application. To deal with the implication of ABS laws over TRIPS agreement is beyond the scope of this paper.

PBR is a mechanism that functions like a patent and enables the plant breeder to forbid particular illicit uses of the variety.¹³⁹ The protectable subject matters in PBR are GRs which are also at the subject of ABS notions.¹⁴⁰ . Farmers are recognized as a local community in Ethiopia, which is defined as the human population that resides in a particular geographic area and is the custodian of a particular GR according to the ABS proclamation.¹⁴¹ Therefore, they are entitled to the benefits that the state received from the use of GRs. Because of this, the PBRs Proclamation says that PBRs will only be issued if the breeder can demonstrate that he received the genetic resource used to create the variety in conformity with the applicable rules on access to genetic resources.¹⁴² This shows us that there could be a possibility of misappropriation of GRs using plant breeders' rights laws if access is made without securing PIC and without any benefit sharing arrangement.¹⁴³ In short, incorporating DRs in the PBRs Law and ensuring compliance with ABS requirements are supportive to the ABS implementation.

¹³⁷ . Bucher, S., The protection of genetic resources and indigenous knowledge: disclosure of origin on the international and Latin-American agenda, *International Review of Intellectual Property and Competition Law*, 39(1), 35-50.

¹³⁸ . Article 47 Of Biodiversity Act

¹³⁹ . Nege mirete(103) p28

¹⁴⁰ , Ibid

¹⁴¹ . Ibid

¹⁴² Article 14(3) of the PBRs Proclamation

¹⁴³ .Ibid

4.8. Access-Fund Administration and Distribution of Monetary Benefits among the Local Communities vs. Community participation on Decision Making

One of the key concerns of this thesis is the mechanisms established by Ethiopian ABS law to administer the access fund and to disperse the financial benefits to the relevant local communities. Articles 26 to 33 of Part 4 of the ABS Regulation's relevant provisions address certain fundamental questions regarding the administration and utilization of access money in this regard.¹⁴⁴ As stated in the regulation all the money to be obtained from each access agreement shall be deposited in a separate special account called 'access fund account'.¹⁴⁵ Because there are concerns about how to divide the funds from each agreement between the government and the concerned communities, the law mandates a separate special account for each access agreement. However, in fact, the financial benefits from many ABS agreements are frequently combined into a single account since they are smaller and deemed unimportant, which can sometimes make it difficult to share or distribute the funds among the recipients.¹⁴⁶ In this regard, Mr. Tesfaye Bekele, the director of the EBI's ABS directorate, said that the access fund was placed in a single account, but that it had many subaccounts that were designated in accordance with each ABS agreement.¹⁴⁷ The same explanation is given by Dr. Mellese.¹⁴⁸ Because it can be used to support any projects targeted at biodiversity conservation and sustainable use to be executed anywhere in Ethiopia, the use of the government's portion of access money for biodiversity conservation is not particularly complicated.¹⁴⁹ The law requires projects of biodiversity conservation shall be selected by inviting relevant federal and regional bodies.¹⁵⁰ Project proposals designed to benefit local communities shall be prepared by EBI and brought for approval of the concerned council.¹⁵¹ But utilization of access money by communities

¹⁴⁴ .Arts 33&ff, ABS Regulation.

¹⁴⁵ . Art 26(1&2) of ABS regulation.

¹⁴⁶ . Interview with Tesfaye Bekele, Director of Genetic Resource Access and Benefit Sharing Directorate, EBI (Addis Ababa, Ethiopia 12 July 2022)

¹⁴⁷ .Ibid

¹⁴⁸ . Interview with Dr. Mellese(n125)

¹⁴⁹ . Art 27 of ABS regulation

¹⁵⁰ . Ibid

¹⁵¹ . Art 31 of ABS Regulation.

may be complicated and challenging in practice.¹⁵² In this regard the relevant provision of the regulation states that *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 protector of the genetic resources or owner the community knowledge accessed.*¹⁵³ The initial issue is the difficulty in identifying a particular local community that is eligible to share benefits. EBI is given the authority to identify the concerned community.¹⁵⁴ Based on a distribution of GR survey and in cooperation with pertinent regional bodies, EBI is obliged to determine. Here, someone can ask at what point EBI must do a GR survey. In this regard, EBI may use a previously completed survey if one is available or may conduct a survey after an access request is submitted but before the ABS agreement is signed. Determining the relative contribution of each local community to the protection of GRS is another challenging issue related to this one. If there are local communities living in various woreda, zones, or regions, their relative share will be calculated depending on how much they have contributed to GR conservation.¹⁵⁵ Be aware that it can be challenging to compare the amount of effort put forth by a local community living in one woreda or zone to that of another. In this regard, the specifics of each ABS agreement are crucial since they will specify how much GR will be obtained from which locality and how that would be calculated under each arrangement. EBI must submit project proposals intended to benefit local communities to HPR if those communities are located in different regions, to regional council if those communities are located in different zones, and to zonal or woreda council if those communities are located in different zones or woreda, as applicable.¹⁵⁶ The justification for submitting the project proposal to the relevant council is that it is believed that each council's members serve as representatives of the concerned local community at large. The members of the aforementioned councils are not necessarily the representatives of their specific communities, but rather the representatives of all the people in that region, zone, or woreda, hence this is not the proper method of local community representation. For instance, members of HPR are not representatives of the local

¹⁵² . Interview with Mr Tesfaye(n152)

¹⁵³ . Art 28 of ABS Proclamation

¹⁵⁴ Art. 29(1) of ABS Regulation

¹⁵⁵ . Art 29(2) of ABS Regulation

¹⁵⁶ .Ibid

community they come from rather the representatives of the whole Ethiopian people. EBI in exercising in its power to administer access fund and to realize utilization of the access fund enacted access fund administration and utilization directive.¹⁵⁷ This directive established an access fund administration committee, which is in charge of finding trustworthy projects, among other things. The project proposals must follow the directive and be chosen through a bid or auction with funding provided by the access fund. The directive is now being revised since, among other things, it does not guarantee local community involvement in the process of administering and using ABS funds.¹⁵⁸ For our purposes, the draft access fund administration directive's sections 6 to 8 contain crucial components of local community participation. Therefore, project proposals that are intended to benefit local communities should be based on their needs and be directed toward resolving their specific practical issues.¹⁵⁹ However, the issue with the draft access fund administration and use directive still needs to be clarified as to who will identify the needs and practical issues of the concerned local community in the absence of direct participation of the community representatives in the process. Aside from biodiversity protection initiatives chosen at the invitation of various federal and regional agencies, EBI has funded a variety of projects using access money, but no independent projects designed to benefit a specific local community have been implemented yet.¹⁶⁰ Hence, all the share of concerned local community of access money is there still in access fund account unused.¹⁶¹ One of the reasons for non- utilization of the access fund share of concerned community explained by Mr. Fikremariam is lack of clear and detailed regulation and directive as to the utilization of access money by community and both ABS regulation and access fund administration and utilization directive are under revision.¹⁶²

As we have seen above, in Brazil under the Genetic Heritage Management Council (CGen) is created within the Ministry of the Environment which responsible for ABS activities including establishing guidelines for the allocation of funds destined to the National Fund for Benefit-

¹⁵⁷ EBI enacted and use a directive without number which establishes among other things access fund administration committee annexed to the paper under annex 2.

¹⁵⁸ . Interview with Mr. Fikermariam

¹⁵⁹ .Arts6&ff of the draft access fund administration and utilization directive annexed to the paper under annex 3

¹⁶⁰ . Interview with Fikremariam(n124)

¹⁶¹ .Ibid

¹⁶² .Ibid

Sharing.¹⁶³ The council is composed by maximum of 60% representatives from different entities and bodies of the federal public administration and not less than 40% by representatives from members of society including business sector, academic sector and indigenous peoples, traditional communities and traditional farmers.¹⁶⁴ Detailed guidelines have been developed to guide users and public servants in the dissemination of funds, with oversight through a Board that comprises 50% IPLCs and 50% government representatives. Thus, the National Benefit-Sharing Fund was established for centralization and subsequent redistribution of benefits arising from the use of genetic resources and associated TK through a management committee. The Executive order of Philippines has no detail rules about subsequent utilization of benefits obtained between the Philippine government and among the local communities The Executive order establishes IAC which is composed of representatives from department of environment, health sector, science and technology, foreign affairs and NGOs. Hence, IAC serves as national focal point for all ABS procedures including the subsequent utilization of benefits.

4.9. Some ABS Agreements and Their Benefit Sharing Provisions in light of Benefiting local Communities

4.9.1. The ABS Agreement on Eragostis Teff

The first ABS Agreement was concluded for the breeding and development of teff (eragrostis teff) between the Institute in Ethiopia and EARO and the small Netherlands based Soil and Crop Improvement Co.¹⁶⁵ The aim of Teff agreement was to provide HPFI with access to specified Teff varieties to produce a wide range of specified food and beverage products which not traditional in Ethiopia.¹⁶⁶ Rightfully, both monetary and non-monetary benefits provisions are included in the agreement. A more intriguing component of the agreement is that the user firm must establish a Teff fund with the intention of improving Ethiopia's agricultural infrastructure, boosting Teff output, and supporting Teff research in Ethiopia.¹⁶⁷ The user under the agreement

¹⁶³ . Article 6 of Biodiversity Act

¹⁶⁴ . Ibid

¹⁶⁵ . Teff agreement(n123)

¹⁶⁶ . Ibid

¹⁶⁷ . Fikremariam Gihon, 'The Enforcement of Agreed Access and Benefit Sharing Terms Relating to Teff Genetic Resource with Particular Focus on Impending Legal Action by the Government of Ethiopia',(2021), A Thesis for the Partial Fulfillment of LL.M., Addis Ababa University

paid 4,000USD as up-front payment. The User Company also agreed to pay a royalty of 30% of net profit of the company per year. The other monetary benefit sharing provision of the agreement states that the company agreed to contribute 5% of net profit which shall not be less than 20,000EURO for financial resource support for Teff per year.¹⁶⁸ Regarding non-financial benefits, the agreement stipulates that technology transfer should take place between the user and provider and those Ethiopian experts must take part in any research done on the Teff genetic resources. In addition, the corporation accepts that access to teff genetic resources will help Ethiopia's local economy develop lucrative teff businesses including teff cultivation, milling, cleaning operations, bakeries, etc.¹⁶⁹. When we evaluate the Teff agreement's benefit-sharing clauses in the context of assisting local communities, they appear to be highly ambitious. However, the user company made a bankruptcy claim and didn't fulfill its benefit-sharing duties. Even worse, the user corporation unjustly patented various Ethiopian traditional knowledge associated with the utilization of Teff genetic resources.¹⁷⁰ The lack of a follow-up mechanism, less contact between the user and the provider, user poor faith, and a host of other issues all contributed to the Teff ABS agreements' lack of success in the past.¹⁷¹ The fact that the agreement doesn't specify the precise locality where access is made is where the difficulty first arises. The additional non-financial benefits were not realistic since there was no structure in place to achieve them. For instance, it is unclear what kinds of technologies will be transmitted and under what circumstances. Furthermore, it is evident that no local community participated in any way at any time during the Teff ABS deal.

4.9.2. The ABS Agreement on Vernonia (*vernonia galamensis*)

The other ABS agreement is made between the Institute and the Vernique Biotech Ltd on Vernonia.¹⁷² Vernonia grows in most parts of Ethiopia and traditionally considered it to be an

¹⁶⁸ . Art 8.2 of teff agreement

¹⁶⁹ . Art 8.9 of Teff agreement

¹⁷⁰ . Ibid

¹⁷¹ . Andersen R and Winge T, 'The Access and Benefit-Sharing Agreement on Teff Genetic Resources: Facts and Lessons' [2012] FNI

¹⁷² . Abeba Tadesse, Material Transfer Agreements on Teff and VernoniaEthiopian Plant Genetic Resources, 2 JournalofPoliticsandLaw4,(2009),availableat:[Http://www.doaj.org/doaj?func=openurl&genere=journal&issn=19139047&volume=2&date=2009](http://www.doaj.org/doaj?func=openurl&genere=journal&issn=19139047&volume=2&date=2009); accessed on 3 Decemberr 2020

indigenous.¹⁷³ Vernonia contains vernonic acid which is a useful raw material for the manufacture of adhesives, varnishes, paints and coatings. Vernique is allowed to access vernonia seed to export and use for developing and commercializing the vernonia seed oil products specified in the annex to the agreement.¹⁷⁴ In terms of benefit sharing, Vernique consented to an upfront payment of EUR 35,000 upon signing the contract as well as additional financial rewards of royalties based on the company's net profits. Regarding non-financial benefits, Vernique has pledged to train neighborhood communities. Additionally, research findings and technology, purchasing GR from neighborhood communities or contract farmers, and research outcomes are all listed as non-financial benefits. The two agreements cover both monetary and non-monetary rewards. However, the users under the two agreements did not fulfill their benefit-sharing duties for a variety of reasons. Additionally, like in the instance of Teff, there is no evidence of community participation or consent-giving during the agreement-making process. Because the locality where access is made is not expressly indicated in the agreement, it is also unclear, as in the instance of teff, which local community the agreement is meant to benefit. EBI is given the authority to identify the concerned community.¹⁷⁵

4.9.3. The ABS Agreement on *Dichrostachys cinerea*, *Osyris quadripartitum* and *Withania somnifera*

The Ethiopian Biodiversity Institute made ABS agreements on plant genetic resources of *Dichrostachys cinerea*, *Osyris quadripartitum* and *Withania somnifera* on June 15, 2012 with an American Company called *DOCOMO OILs PLC*.¹⁷⁶ The purpose of the agreement on the parts of the company is Developments of seed and pod products, developments of essential oil products, and developments of herbal medicinal products respectively from each plant genetic resources.¹⁷⁷ It is stated that the genetic resources of both *Dichrostachys cinerea*, and *Osyris quadripartitum* to be accessed from the areas of Oromia region Bale and Borana Zone from the districts of Yabelo, Bulehora, Arero, Dire, Gasera, Ginir , and Sewena. The genetic resources of *Withania somnifera* to be accessed from the areas of Sothern Nations Nationalities and peoples

¹⁷³ .Ibid

¹⁷⁴ .Ibid

¹⁷⁵ Art. 29(1) of ABS regulation

¹⁷⁶ .ABS agreement on *quadripartitum* made with *Docomo PLC June15,2012*

¹⁷⁷ .Ibid

region Hadiya Zone, Morsito and Gimbichu districts and From the same region Darwuro Zone loma and Wushaye districts. As far as the benefit sharing is concerned, the company paid 40,000, 50,000, and 50,000USD upfront payment in relation to each genetic resource, respectively.¹⁷⁸The company also agreed to pay royalty of 3.5 net profits per year which is not less than 2000USD in any case. But the problem of the agreement in relation to the promised financial benefits is no way to check the profit of the company though the monetary benefit depends on the net profit of the company. Moreover, no obligation is stated up on the user company to keep book of accounts. It would have been easier to control and to have book of account had it been the whole operation of the company be in Ethiopia. The other problem is that the company is not established just to produce products based on genetic resources accessed but also other products which not involve ABS agreements. Regarding non-financial benefits, the corporation has pledged to involve Ethiopian scientists in the research it does and to disseminate research findings, expertise, and technology. According to an interview with director general of EBI Docomo PLC built a factory in the aforementioned SNNPR region and kept making oil products for export.¹⁷⁹ It is also explained that the company not only creates job opportunity for community but also earning foreign currency by exporting oil products by using the above stated genetic resources.¹⁸⁰ The utilization of the GRs occurs within the nation, making the ABS deal with DOCOMO PLC more advantageous to the concerned community than other earlier ABS arrangements. The community can also directly benefit by providing the factory with the raw materials needed to run its operations, which opens up employment opportunities and generates cash for the neighborhood. Additionally, the agreements specify the localities where the GRs are to be accessed. This might make it simpler to identify the local community and share benefits with the government and concerned community. It may be argued that specifying localities in the ABS agreement may exclude other communities who contributed for the preservation of the stated variety .But this may not be longer a problem so long as benefit follows literal access which means the community identified before the ABS agreement and the stated community provide the variety for the whole duration of the agreement. Due to the aforementioned reason, as indicated by representatives of EBI, the portion of financial gain obtained from the

¹⁷⁸ . Ibid

¹⁷⁹ . Interview with Dr. Mellese(n125)

¹⁸⁰ . Ibid

agreements established with Docomo PLC is still underutilized. The justification offered by EBI officials and experts for not using the financial access fund for the implementation of projects benefiting the local community doesn't seem reasonable considering that there are no difficult provisions in the ABS agreement reached with DOCOMO PLC. Therefore, EBI should assess the community's needs and use the access money share of the community by sponsoring EBI-prepared projects, which only need the appropriate body's approval as indicated under article 31 of ABS regulation.

4.9.4. ABS agreement on Moringa Stenopetala and Other Genetic Resources

As records of EBI shows us the institute made nine ABS agreements on Moringa Stenopetala with different local users.¹⁸¹ For instance, the institute made ABS agreement with local user called Abebe Moringa PLC in July 3, 2013.¹⁸² The purpose of the agreement on the part of User Company is to produce food supply using moringa to the market.¹⁸³ As stated in the agreement the company is going to collect the GR from konsso areas of SNNPR region. No monetary benefits are stated in the agreements. The majority of the ABS agreements on moringa stenopetala list the exchange of information on any genetic resource-related activity, acknowledgment of the institute, and priority to local communities in the provision of moringa stenopetala leaves as raw materials as the non-financial benefits. On related resources and other genetic resources, analogous ABS agreements are signed in a similar manner. When we compare the majority of ABS agreements' contents to all of the agreements made up on Moringa, we find that some of them do not actually qualify as ABS agreements. This is due to the lack of GR utilization which goes against the intent of the ABS law because no GR-based research and development has been conducted. Note that utilization of genetic resources by its definition refers to carrying out research and development on their genetic and/or biochemical makeup, especially by applying biotechnology.¹⁸⁴ Hence, the selling of biological resource-produced goods for immediate use that do not include the usage of the genetic resource thereof like the

¹⁸¹ . Biniyam Goshu, Economist, Genetic Resource Access and Benefit Sharing Directorate, EBI (Addis Ababa, Ethiopia 30 July 2022)

¹⁸² .ABS agreement on Moringa stenopetala between EBI and Abebe Moringa PLC in July 3, 2013.

¹⁸³ .Ibid

¹⁸⁴ . Art. 2 of Nagoya protocol.

cases of ABS agreements of Moriniga are not actually ABS agreements.¹⁸⁵ In most circumstances, the agreements don't specify a GR's purpose or intended use. Additionally, some of the agreements only list upfront payments as financial benefits. As a result, the non-financial benefits stated under most ABS agreements except with the one made with the Company called DOCOMO PLC are not feasible. This is because for one thing there is no clear mechanism of execution of the provisions. For the other thing it is not clear whom (government or community) the non- financial provisions are intended to benefit. For instance, technology transfer as a non-financial benefit is simply stated under all the ABS agreements but who should participate is not stated. In this regard the ABS agreements made with DOCOMO PLC better benefited the local communities in that at list it creates job opportunities since the Company is partly operating in Ethiopia.

Ethiopia's experience as highlighted above mentioned has shown that initially ABS agreements were concluded without indicating the localities where the GRs to be accessed. But ABS law requires the localities to be specified even starting from access application if it is known as indicated under annex one article 2(2)(iii) of ABS regulation. Note that the authority to identify the beneficiary local community is vested in the hands of EBI as stated under article 29 of ABS regulation. The distribution of GRs and the contribution of the concerned local community to conservation of the resource are the two basic criteria of identification as stated under article 29(1) & (2) of ABS regulation. . In this regard, EBI may use a previously completed survey if one is available or may conduct a survey after an access request is submitted but before the ABS agreement is signed. Determining the relative contribution of each local community to the protection of GRS is another challenging issue related to this one. If there are local communities living in various woreda, zones, or regions, their relative share will be calculated depending on how much they have contributed to GR conservation.¹⁸⁶ . The other point can be noted that the majority of Ethiopian ABS agreements, especially those with domestic enterprises, do not meet the criteria for ABS agreements since no means are used to perform genetic resource research and development on the genetic and/or biochemical makeup of genetic resources. Hence, the selling of biological resource-produced goods for immediate use that do not include the usage of

¹⁸⁵ . Art. 4 of ABS Proclamation

¹⁸⁶ . Art 29(2) of ABS regulation

the genetic resource thereof like the cases of ABS agreements of Moriniga are not actually ABS agreements.¹⁸⁷ The Ethiopian ABS law does not differentiate between cross-border and national ABS agreements as to their content and application of the law. Obviously, international ABS related laws are applicable up on cross-border ABS agreements. Similarly, ABS agreements made with national enterprises are governed by national ABS laws .But note that the selling of biological resource-produced goods for immediate use that do not include the usage of the genetic resource is excluded from the application of ABS laws as indicated under article 4 of ABS proclamation. For example, collecting the moriniga leaf and chewing to make juice for sell does not involve utilization of GR. This is why it is said that some of the ABS agreements are not real ABS agreements. Furthermore, there is no indication of community involvement in the formation or administration of ABS agreements. Moreover, under all ABS agreements, only financial gains from upfront payments are feasible. The agreements are very limited and failed to forecast job opportunities and other social services which are crucial for local communities. The only non-financial benefit stated under all the agreements though not realized is technology transfer. Hence, non-financial benefits are not given much attention. Remember that the project proposals for non-monetary benefits are brought by users and evaluated before access permission in Brazil and Philippines which are not the case in Ethiopia.

4.10. Lessons Learned From ABS agreements of Teff and Vernonia as Reflected under the Recent ABS agreements made with DOCOMO OILS PLC

As we have seen above ABS agreements of Teff and Vernonia are the first and the second ABS agreements respectively in the Ethiopia's ABS experience.¹⁸⁸ Thus, these two ABS Agreements can teach us a number of things. Among other things, the Teff agreement omits to specify the location where the Teff genetic resource is accessible, making it difficult to identify the concerned local community for the purpose of benefit sharing. Note that identifying eligible local community is not an easy task especially after utilization occurs. This is because sometime it is very difficult to trace back the origin of some genetic resources unless identified during access .This why ABS law require identification of local community starting with access application. As repeatedly stated EBI is obliged to identify local community based on distribution of GRs and the contribution of the concerned local community to conservation of the resource as stated

¹⁸⁷ . Art. 4 of ABS Proclamation

¹⁸⁸ . Merso F, (n12)34

under article 29(1) & (2) of ABS regulation. Determining the relative contribution of each local community to the protection of GRS is another challenging issue related to this one. If there are local communities living in various woreda, zones, or regions, their relative share will be calculated depending on how much they have contributed to GR conservation.¹⁸⁹ In this regard, EBI may use a previously completed survey if one is available or may conduct a survey after an access request is submitted but before the ABS agreement is signed. Taking lesson from the previous ABS agreements, the recently made ABS agreements of *Dichrostachys cinerea*, *Osyris quadripartitum* and *Withania somnifera* clearly identify the localities where the GRs are accessed. Note that identifying locality is possible starting from access application depending on amount of GRs to be collected and duration of the contract period during the negotiation process before the formation of ABS agreement with the participation of local communities. The national ABS proclamation is mentioned in the aforementioned recent ABS agreement as the applicable law in cases of any disputes, EBI may follow up on it and check how the deal is being carried out, unlike with the Teff arrangement, which was completely outside of its purview. However, the monetary benefits specified in the most recent ABS agreements are still uncertain because they depend on the user company's profitability and only limited provisions of non-financial benefits are stated. Therefore, it is still necessary to strengthen current ABS agreements with regard to follow-up mechanisms and spreading non-financial benefits to local communities.

¹⁸⁹ . Art 29(2) of ABS regulation

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusion

Among other things, ABS rules are designed to guarantee that communities benefit from the utilization of their genetic resources and traditional knowledge. Numerous financial and non-financial benefits are possible. Non-financial benefits can include taking part in research and analysis, having access to technical knowledge and experiences, enhancing local livelihoods and economies, and strengthening the ability of local institutions. The Ethiopian ABS law lacks clear provisions for obtaining community consent for the use of genetic resources, and there are no apparent means for ensuring local community participation in decision making with regard to ABS. Lack of a definition for the term "utilization of genetic resources," the legal position in Ethiopia is quite broad and dubious in that it covers all biological resource uses. In this regard, some of ABS agreements failed to outline the locations where the genetic resources are accessed, as well as their intended use or method of exploitation. As it appears in the majority of ABS agreements, non-financial benefits, which are quite significant to local communities, are given less consideration. The share of monetary benefits accrued for the sake of local communities are not being utilized yet. Moreover, local communities have no meaning full say on access fund administration and distribution among themselves.

5.2. Recommendations

Limitations in terms of local community benefits under Ethiopian laws are related to gaps in the ABS laws themselves, less stakeholder involvement, practical operation of the national focal point (EBI), gaps in formulation and contents of ABS agreements, and absence of clear mechanisms to ensure local community participation and benefits, as correctly concluded above. Thus, in light of each limitation, the following recommendations are forwarded.

- ❖ The Ethiopian ABS proclamation should define the word "utilization of genetic resources" because it is fundamental to comprehending and restricting the legal issue. In this sense, carrying out research and development on their genetic and/or biochemical makeup an important element is advised to use the definition found under NP.

- ❖ If access to GRs from unidentifiable origin is carried out and if it is not possible to identify specific local community, the entire benefit should go to projects aimed at conservation and sustainable use of biodiversity in general like the case of Brazil.
- ❖ The Ethiopian ABS proclamation should outline the process for PIC of the local community in question prior to granting access permission to ensure actual community involvement in the ABS decision-making process in accordance with international ABS laws. In this way, it is advised to treat GRs using a similar technique to that used for CK.
- ❖ As required by article 29(1) of the ABS proclamation, the Ethiopian Biodiversity Institute, which serves as the country's focal point, by itself should assess the needs of the local community and prepare social projects that will benefit the concerned community. This would increase local community participation on decision making.
- ❖ Identifying local Community for the purpose of benefit sharing shall be done starting from access applications. In this regard the survey of distribution of GRs and Contribution of the concerned Communities shall be done by EBI at the time of negotiation process before the formation of ABS agreement in consultation with the regional bodies as indicated under art 29 of ABS regulation.
- ❖ Stakeholders and responsible institutions in Ethiopia include more than just those listed in ABS proclamation; they also include research and higher education institutions, the intellectual property office, and the Food, Medicine, and Health Care Administration and Control Authority and others. Thus, there should be national Committee or Council represented from all possible stakeholders to advise EBI and to decide on Major ABS issues especially subsequent utilization and allocation of funds among the local Communities for the future.
- ❖ ABS agreement should specify the locality where the genetic resources to be accessed based on user application and MATs to be identified during negotiation process.
- ❖ The focus should be given to non-monetary benefits to local communities like job opportunity creation and social services than immaterial monetary benefits.

- ❖ The ABS agreement should also contain follow up and monitoring mechanism and responsible person for implementation from the user's side.
- ❖ EBI should begin submitting project proposals to the specified organs for approval using already-accrued unused ABS funds as per article 31 of the ABS regulations.
- ❖ The ABS proclamation, regulation, and access fund administration directives should be revised to include the aforementioned points; however, EBI shouldn't wait for the revision of the aforementioned ABS laws to utilize community funds; instead, it should start doing so by using the existing ABS laws.

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Annex I
Sample ABS Agreement

**Agreement on Access to, and Benefit Sharing from
Eucalyptus globulus essential oil**

BETWEEN
THE ETHIOPIAN BIODIVERSITY INSTITUTE
AND
ARITI HERBAL PRODUCTS

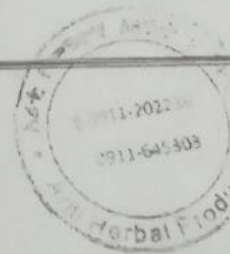
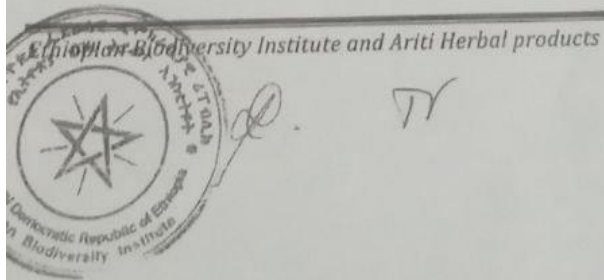
<p>Signed on behalf of the provider</p> <p>Signature <i>[Signature]</i></p> <p>Date <i>Oct 9/2015</i></p>	<p>Signed on behalf of the user</p> <p>Signature <i>Taddeleh Tadasse</i></p> <p>Date <i>Oct 9/2015</i></p>
 	
<p>Witnesses</p>	
<p>Signature <i>[Signature]</i></p> <p>Date <i>Oct 9/2015</i></p>	<p>Signature <i>[Signature]</i></p> <p>Date <i>Oct 9/2015</i></p>

Ethiopian Biodiversity Institute and Ariti Herbal products
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1. Parties

The agreement is signed between:

The Ethiopian Biodiversity Institute, Whose address is Yeka Sub city, Kebele 08 P.O. Box 30726; Telephone: +251116612244/+251116610675 Fax: 251116613722;
E-mail: info@ibc.gov.et, Addis Ababa, Ethiopia, hereafter referred to as the "Provider"

And

Ariti Herbal Products: Address; Addis Ababa, Bole sub-city, Woreda 04, House no. 560,
Tel. no. +251911202236

Hereafter referred to as the "User"

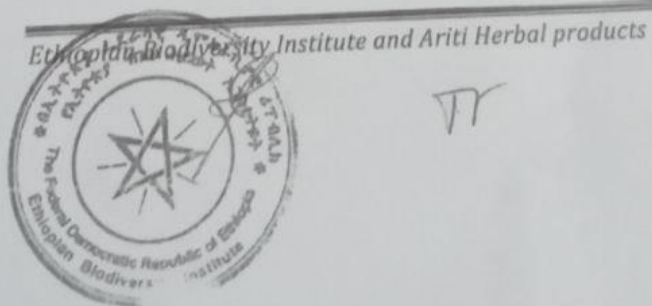
The provider and user shall hereinafter be jointly referred to as the "parties" and singularly or in the alternative be referred to as the 'party'

2. Preamble

Whereas, Ethiopia has immense biodiversity with actual or potential value and intends to share benefits arising out of the utilization of this resource by allowing access to the User;

Whereas *Eucalyptus globulus* (Myrtaceae) Nech Bahr-Zaf (Amh), Blue Gum (Eng) grows in central highlands of Ethiopia within altitudinal range of 1700 and 2800m. The tree is customarily used for fuel and construction. The steam from boiled leaves is inhaled to relieve the common cold/cough and other bronchial problems.

Whereas, the User intends to access and use *Eucalyptus globulus* for the purpose of extracting *Eucalyptus globulus* essential oil for sauna and diluted oil for relief from nasal congestion and symptoms of flu.



Page

Whereas, the **User** is engaged in trade activities of Retail Trade in Agricultural raw materials, Food, Beverages and Tobacco in Specialized stores and licensed under Addis Ababa City Administration Trade and Industrial Development Bureau Business license no. BL/AA/14/673/4024752/2007

The **Provider** is a national institution of Ethiopia with the authority to grant and regulate access to genetic resources.

The **Provider** hereby agrees to allow the **User** to access and use *Eucalyptus globulus* genetic/biological resource for extraction of essential oil.

Therefore, the parties have agreed as follows:

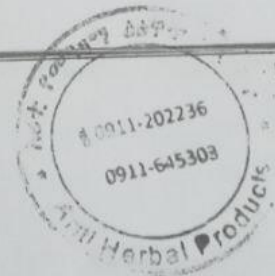
3. Terms and definitions

- a. "**Provider**" means Ethiopian Biodiversity Institute established by Council of Ministers Regulation No. 291/2013
- b. "**User**" means Ariti Herbal products.
- c. "**Use**" means the definition provided to utilization of genetic resource under "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".
- d. "**Essential oil**" means hydro distilled/formulated oil from *Eucalyptus globulus* genetic/biological resource.
- e. "**Force Majeure**" means the following occurrences:
 1. unforeseeable act of third party for whom the party invoking force majeure clause as a relief is not responsible or
 2. an official prohibition preventing the performance of the this agreement or
 3. a natural catastrophe such as earthquake, lightening, or floods or
 4. International or civil war.



Ethiopian Biodiversity Institute and Ariti Herbal products

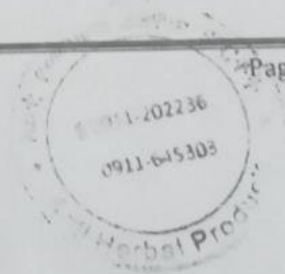
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4. Scope of the agreement and obligation of the parties

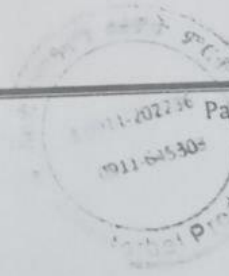
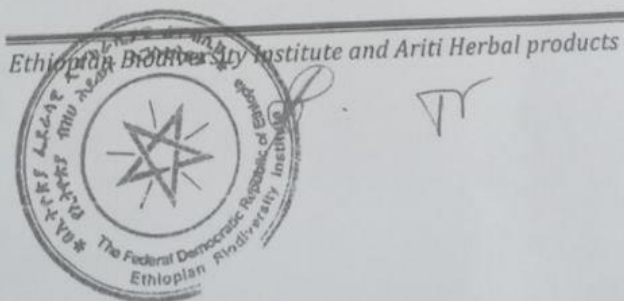
- 4.1 The **Provider** agrees that the **User** collect and use the *Eucalyptus globulus* genetic /biological resource from in and around Addis Ababa city administration to the amount not greater than the sustainable threshold.
- 4.2 Under this agreement, the **User** is permitted to collect and use leaves of *Eucalyptus globulus* genetic/biological resource only for the purpose of extraction of essential oil.
- 4.3 The **User** shall not use *Eucalyptus globulus* genetic/biological resource for any other purposes whatsoever unless explicitly written permit is given by the **Provider**.
- 4.4 The **User** shall not transfer *Eucalyptus globulus* genetic/biological resource to third parties the Access permit or the rights and obligations thereunder without obtaining explicit written consent from the **Provider** to that effect.
- 4.5 The **User** shall have the right to use *Eucalyptus globulus* genetic/biological resource in a sustainable manner to achieve the intended purpose. And it shall take *Eucalyptus globulus* necessary measures to ensure the sustainability and not to over exploit the genetic/biological resource.
- 4.6 The **User** shall assist the **Provider** in identifying and bringing infringers of Ethiopian right over *Eucalyptus globulus* genetic/biological resources and associated community knowledge to the court of law or law enforcement organ.
- 4.7 The **Provider** shall not be liable for any loss caused to the **User** if the above plant species is not available due to force majeure occurrences in the said area.
- 4.8 The **User** agrees to exchange any relevant information with the **Provider** and local community any activity which is prejudicial to *Eucalyptus globulus* genetic/biological resource and associated community knowledge.
- 4.9 The **Provider** shall issue all such documents, approvals, sanctions, and letters/permits as are required for the said purpose.



- 4.10 The **User** is not permitted to access the community knowledge associated with *Eucalyptus globulus* genetic/biological resource without obtaining prior informed consent (PIC) and establishing mutually agreed term (MAT).
- 4.11 The **User** shall neither claim any rights over, nor make commercial benefit out of such community knowledge unless explicitly written permit is given to it by the **Provider**.
- 4.12 The **User** shall respect the laws of the country, particularly those relating to sanitary control, biosafety and protection of the environment and respect the cultural practices, traditional values and customs of local communities from whose places *Eucalyptus globulus* genetic/biological resource are accessed.
- 4.13 The **User** shall submit to the **Provider** a regular status report of the undertaking; and where genetic/biological resource is collected, on the environmental and socio-economic impact of the access and submit a follow-up report.
- 4.14 Furthermore, the **User** has obligations stated under the Access to genetic resources and community knowledge, and community rights proclamation No.482/2006 and Regulation No169/2009.

5. Intellectual property ownership right

- 5.1 The **User** shall neither claim nor obtain intellectual property rights over *Eucalyptus globulus* genetic/biological resource or any parts of it and associated community knowledge.
- 5.2 The **User** shall acknowledge and declare Ethiopia as suitable geographic site of *Eucalyptus globulus* genetic/biological resource or product developed therefrom.
- 5.3 Any joint invention made by Parties based on *Eucalyptus globulus* genetic/biological resource or parts thereof shall be jointly owned by the Parties



6. Transfer to third parties

The **User** shall not transfer *Eucalyptus globulus* genetic /biological resource or any parts thereof to the third parties for any purpose without first having explicit written consent from the **Provider**.

7. Effect of the agreement

7.1. The agreement shall not affect the sovereign rights of Ethiopia over *Eucalyptus globulus* genetic/biological resource and the **Provider** shall always retain the authority to grant other parties access to *Eucalyptus globulus* genetic/biological resources over the same place as the case may be.

7.2. The agreement shall be implemented in conformity with similar agreements that the **Provider** may make in the future in a manner that does not substantially affect the interest of the **User**.

8. Benefit sharing

The **User** has agreed to share the following benefits that arise out of the utilization of *Eucalyptus globulus* essential oil:-

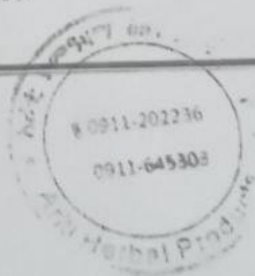
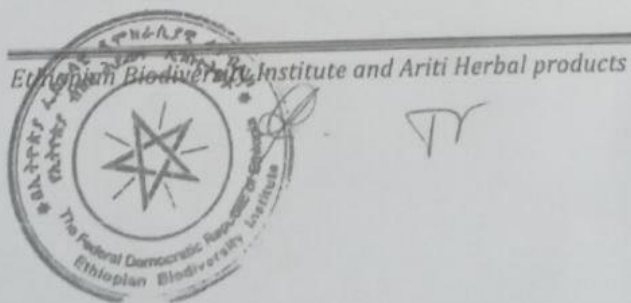
8.1 The **User** agrees to pay license fee of 1000 (one thousand) ETB.

8.2 The **User** agrees to pay the **Provider** 1000 (one thousand) ETB as upfront payment up on signing this agreement.

8.3 The **User** agrees to pay the **Provider** annually a royalty of 3.5% of the net profit.

8.4 The **User** shall give the community priority to supply the raw materials of *Eucalyptus globulus* genetic/biological resources required for the extraction of Essential oil.

8.5 The **User** shall give training to local communities to enhance skills in order to enhance their skills in conservation, development, propagation and sustainable use of *Eucalyptus globulus* genetic/biological resource.



9. Ownership and confidentiality

- 9.1. The ownership of *Eucalyptus globulus* genetic/biological resources shall be vested on the state and the Ethiopian people.
- 9.2. Results of any joint research conducted on *Eucalyptus globulus* genetic/biological resource shall be jointly owned. Information that is identified by either party as confidential shall be kept as such by both parties.
- 9.3. No party shall assign his rights, benefits, or obligations under this agreement to any third party without the written consent of the other party.
- 9.4. Each of the parties shall at all times respect the confidentiality under this agreement and any information related to the other that it comes across or is disclosed to it including the know-how and manufacturing processes. And none of the parties shall give or disclose any such information to any third party without the prior written approval of the party to whom such information belongs.

10 Amendment

- 10.1. This agreement may be amended at any time through mutual agreement expressed in writing.
- 10.2. The amendments made as per Art. 10.1 shall make the integral part of the agreement.

11. Duration of the agreement

The **agreement** shall remain in force for a period of 1 (one) year. The parties may renegotiate extension of the agreement at the end of this period.

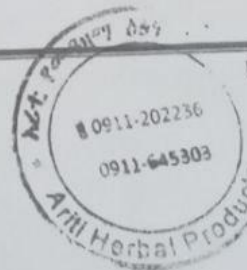
12. Language of communication

Any communication between the parties (including reports, minutes, records, instructions, notices, advice, correspondence or any other communication required under this agreement) shall be made in Amharic or English.

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13. Termination

- 13.1. If one of the parties repeatedly fails to fulfill or violates its obligations under this agreement, then the aggrieved party may terminate the agreement upon 30 days' notice given in writing to the other party.
- 13.2. The agreement shall also terminate upon court declaration of bankruptcy.
- 13.2. The agreement may be terminated upon mutual agreement of both parties.
- 13.3. The termination of this agreement shall not affect the rights and obligations that were due to either party prior to the effective date of termination.
- 13.4. Starting from the day of termination of the agreement, the user shall stop collecting and using *Eucalyptus globulus* genetic/biological resources.

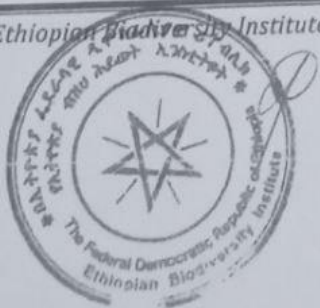
14. Dispute settlement

- 14.1 In the event of any dispute between the Parties in connection with interpretation or application of this agreement, both parties shall seek solution by negotiation.
- 14.2 If the Parties fail to resolve a dispute through negotiation, either parties or both may require that the dispute is referred for resolution through the courts in accordance with the applicable laws of Ethiopia.

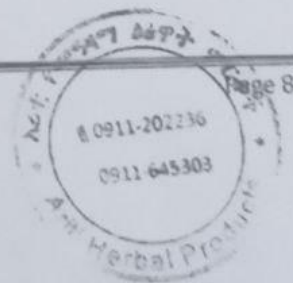
15. Applicable laws

Access to genetic resources and community knowledge, and community rights proclamation no.482/2006, regulation no. 169/2009 and other relevant laws of Ethiopia are applicable to this agreement.

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16. Monitoring and follow-up

16.1. The **Provider** shall have the right to ascertain the sustainability of *Eucalyptus globulus* genetic/biological resource at any time.

16.2. The **Provider** shall have the right to suspend or terminate the agreement where the permit holder violates or fails to comply with this agreement and relevant laws of the country.

16.3 The **User** shall submit to the **Provider** annual research and income statement report.

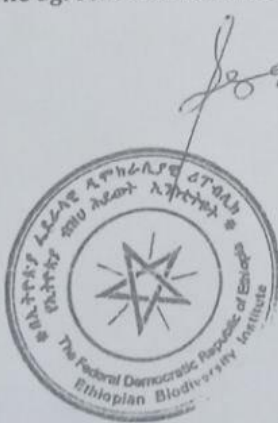
16.4 The **Provider** has the right to review at any moment, through an independent accountant if it so wishes, the bookkeeping as well as the relevant administrative details of the items covered by this agreement.

16.5 Meetings between the two parties will be held as required to exchange information.

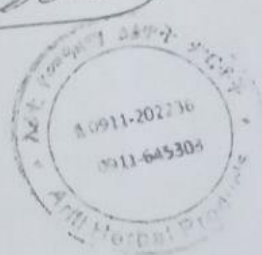
16.6 All expenses of monitoring activities shall be covered by the **User**.

17. Entry into force

The agreement shall enter into force on the date of signature by the contracting Parties.



Ed Tretul



Annex II

The Draft Access fund Administration and Utilization Directive



**በአርክቦት ውል የተገኘ ገንዘብ
አስተዳደርና አጠቃቀም መመሪያ**

መግቢያ

ኢትዮጵያ ያላት ከፍተኛ የብዙሀን ሕይወት ሀብት ፀጋ እና የማህበረሰብ ዕውቀት ለሕዝቦቿ ጥቅምና ብልጽግና እንዲወጡ በአግባቡ መጠበቅና በዘላቂነት ጥቅም ላይ መዋል ያለበት በመሆኑ፤

ከጀነቲክ ሀብትና ተያያዥ ማህበረሰብ ዕውቀት አርክቦት የሚገኘውን ገንዘብ በመርህ እና በሕግ መሠረት ለማስተዳደርና ለመጠቀም በማስፈለጉ፤

ጀነቲክ ሀብትን ለማህበረሰብ የማህበረሰብ ዕውቀትን ለማልማት የሚያስችሉ ፕሮጀክቶች ሚመረጡበትን መመዘኛ፣ አደረጃጀትና አፈጻጸምን ለመከታተልና ለመቆጣጠር በማስፈለጉ፤

ከጀነቲክ ሀብትና ተያያዥ የማህበረሰብ ዕውቀት አርክቦት ከሚገኘው ገንዘብ የጀነቲክ ሀብቱን ጠብቆ ያቀየውን ማህበረሰብ የልማት ተጠቃሚ ማድረግ በማስፈለጉ፤

የኢትዮጵያ ብዙሀን ሕይወት ኢንስቲትዩት በአዋጅ ቁጥር 482/1998 አንቀጽ 18(2)፣ 27(7) እና በደንብ ቁጥር 169/2001 አንቀጽ 35(1) መሠረት ይህንን መመሪያ አውጥቷል።

ክፍል አንድ

ጠቅላላ ድንጋጌዎች

አንቀጽ 1. አጭር ርዕስ

ይህ መመሪያ “በአርክቦት ውል የተገኘ ገንዘብ አስተዳደርና አጠቃቀምን ለመወሰን የወጣ መመሪያ ቁጥር/2014” ተብሎ ሊጠቀስ ይችላል

አንቀጽ 2. ትርጓሜ

የቃላት አገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር በዚህ መመሪያ ውስጥ፡

1. “ጀነቲክ ሀብትን መጠበቅ” ማለት የጀነቲክ ሀብቱ በዘቦታ እና በኢዘቦታ መጠበቅ ነው።
2. “የብዝሀ ሕይወት ጥበቃ ፕሮጀክት” ማለት ገንዘቡን ያስገኘውን የጀነቲክ ሀብት ለመጠበቅ ወይም ገንዘቡን ያስገኘው የጀነቲክ ሀብት ያልተመናመነ ከሆነ ሌሎች የጀነቲክ ሀብቶችን ለመጠበቅና በዘላቂነት ጥቅም ላይ ለማዋል እና ተያያዥ የማህበረሰብ ዕውቀትን ለማስፋፋት የሚቀረጽ ነው።
3. “የማህበረሰብ ልማት ፕሮጀክት” ማለት የጀነቲክ ሀብቱን ጠብቆ ያቆየው ማህበረሰብ የጀነቲክ ሀብቱ ጥቅም ላይ በመዋሉ ከሚገኘው የገንዘብ ድርሻ የልማት ፍላጎትን መሠረት አድርጎ የሚቀረጽ ነው።
4. “ኢንስቲትዩት” ማለት በሚንስትሮች ምክር ቤት ደንብ ቁጥር 291/2005 የተቋቋመው የኢትዮጵያ ብዙሀ ሕይወት ኢንስቲትዩት ነው።
5. “አዋጅ” ማለት የጀነቲክ ሀብትና የመህበረሰብ ዕውቀት አርክቦትና የማህበረሰብ መብቶች አዋጅ ቁጥር 482/1998 ነው።
6. “ደንብ” ማለት የጀነቲክ ሀብትና የመህበረሰብ ዕውቀት አርክቦትና የማህበረሰብ መብቶች ደንብ ቁጥር 169/2001 ነው።
7. “የአርክቦት ኮሚቴ” ማለት ከጀነቲክ ሀብት አርክቦት የሚገኝን ገንዘብ አስተዳደርና አጠቃቀምን ለማስፈጸም በዚህ መመሪያ አንቀጽ 9 መሠረት የተቋቋመ ኮሚቴ ነው።
8. “የአርክቦት ገንዘብ” ማለት በአርክቦት ውል መሠረት የጀነቲክ ሀብት እና/ወይም የማህበረሰብ ዕውቀት ጥቅም ላይ በመዋሉ የተገኘ ገቢ ነው።
9. “አርክቦት” ፣ “ጀነቲክ ሀብት” ፣ “የማህበረሰብ ዕውቀት” ፣ “አግባብነት ያለው ተቋም” ፣ “ሠው” ፣ “የአርክቦት ገንዘብ” እና “መንግሥት” የሚሉት ቃላቶች በአዋጅ እና ደንብ ውስጥ የተሰጣቸው ትርጉም ይኖራቸዋል።

አንቀጽ 3. ዓላማ

የዚህ መመሪያ ዓላማ የአርክቦት ገንዘብ አስተዳደርና አጠቃቀም አግባብ ባለው ሥርዓት እንዲመራ በማድረግ ውጤታማ የብዙሀን ሕይወት ጥበቃና የልማት ፕሮጀክቶችን ቀረጽ፣ ክትትልና ቁጥጥር ማረጋገጥ ነው።

ክፍል ሁለት

የብዙሀን ሕይወት ሀብት ጥበቃ እና ልማት ፕሮጀክቶች መረጫና ዝግጅት

አንቀጽ 4. የብዙሀን ሕይወት ሀብት ጥበቃ ፕሮጀክት ንድፈ ኃሳብ መምረጫ መመዘኛዎች

1. ጥቅም ላይ የዋለው የጀነቲክ ሀብት የመመናመን አደጋ የተጋረጠበት ሲሆን

- ሀ.** የአካባቢ ማህበረሰብን ተሳትፎ ማበረታታት የሚያስችል፣
- ለ.** ጀነቲክ ሀብቱ በስፋት የሚገኝበትን ሥርዓተ-ምህዳር ማስጠበቅ የሚያስችል፣
- ሐ.** የጀነቲክ ሀብቱ ዘላቂነት አጠቃቀም ልማድ እንዲበረታታ የሚያስችል፣
- መ.** ጥቅም ላይ የዋለው የጀነቲክ ሀብትን እንዲያገግም የሚያስችል፣
- ሠ.** ጥቅም ላይ የዋለው የጀነቲክ ሀብትን ለማበልጸግ የሚያስችል፣

2. ጥቅም ላይ የዋለው ጀነቲክ ሀብት ያልተመናመነ ሲሆን

- ሀ.** አብዛኛው የማህበረሰብ ክፍልን ተሳትፎ ለማበረታታት የሚያስችል፣
- ለ.** ኢኮኖሚያዊ ጠቀሜታ ያላቸው፣ የተመናመነ ወይም የመጥፋት አደጋ የተጋረጠባቸው እና ብርቅዬ የብዙሀን ሕይወት ሀብቶችን ለመጠበቅ የሚያስችል፣
- ሐ.** ጥቅም ላይ የዋለው የጀነቲክ ሀብት በሚገኝበት አካባቢ ያለ ሌላ የተጎዳ ሥርዓተ-ምህዳር መልሶ እንዲያገግም ለማድረግ የሚያስችል፣
- መ.** ባህላዊ፣ ታሪካዊና ከአካባቢያዊ ዕውቀት ጋር ትስስር ያለው የብዙሀን ሕይወት ሀብት ባለበት ሁኔታ እንዲጠበቅ የሚያደርግ፣
- ሠ.** የዘቦታ ጥበቃ ዘዴን ሊያበረታታ የሚያስችል

3. ጥቅም ላይ ከዋለው የጀነቲክ ሀብት ጋር ተያያዥ የሆነ የማህበረሰብ ዕውቀትን

የሚመለከት ሲሆን፡

ሀ. የማህበረሰብ ዕውቀት ማጥናትና መመዝገብ የሚያስችል

ለ. ዕውቀቱ እንዲጠበቅ፣ ጥቅም ላይ እንዲውልና እንዲበለጽግ የሚያስችል

አንቀጽ 5. የፕሮጀክት ኃሳቦች የሚያቀርቡ አካላት መመዘኛ መስፈርት

1. መንግሥታዊ ለሆኑ አካላት

ሀ. ከብዙሀ ሕይወት ሀብትና የማህበረሰብ ዕውቀት ጥበቃ እናምዝገባ ጋር ተዛማጅ የሆነ ሥልጣንና ተግባር ያለው

ለ. የጥበቃ ፕሮጀክቶች ተግባራዊ ሊደረጉ የታሰቡበት አካባቢ የሚገኙ ተቋማት

ሐ. በቂ የዘርፉ ባለሙያና የተሟላ አደረጃጀት ያለው

2. መንግሥታዊ ላልሆኑ አካላት

ሀ. ከብዙሀ ሕይወት ሀብትና የማህበረሰብ ዕውቀት ጥበቃ ጋር ተዛማጅ በሆነ የሥራ መስክ ላይ አግባብነት ካለው ተቋም የተሰጠ የምዝገባ ምስክር ወረቀት ያለው፣

ለ. በቂ የባለሙያ ስብጥር ያለው ስለመሆኑ ማስረጃ የሚያቀርብ

ሐ. ከብዙሀ ሕይወት ሀብትና የማህበረሰብ ዕውቀት ጥበቃ ጋር ተዛማጅ በሆነ የሥራ መስክ መልካም አፈጻጸም እና ተሞክሮ ያለው

3. ለትርፍ የተቋቋሙ አካላት

ሀ. ከብዙሀ ሕይወት ሀብትና የማህበረሰብ ዕውቀት ጥበቃ ጋር ተዛማጅ በሆነ የሥራ መስክ ላይ አግባብነት ካለው ተቋም የተሰጠ የምዝገባ ምስክር ወረቀት ያለው፣

ለ. ከብዙሀ ሕይወት ሀብትና የማህበረሰብ ዕውቀት ጥበቃ ጋር ተዛማጅ በሆነ ሙያ መስክ አግባብነት ካለው ተቋም የተሰጠ ፈቀድ ያለው

አንቀጽ 6. የማህበረሰብ ልማት ፕሮጀክቶች ንድፈ ኃሳብ አመራረጥ መመዘኛ

1. ለማህበረሰብ ጥቅም የሚነደፍ የልማት ፕሮጀክት አግባብነት ያለውን የአካባቢ ማህበረሰብ ፍላጎት መሠረት ባደረገ መልኩ ይቀረጻል፡

2. ከአርክቦት የተገኘው ገንዘብ ራሱን የቻለ ፕሮጀክት ተግባራዊ ለማድረግ የማያስችል ሆኖ ሲገኝ በተጠቃሚው ማህበረሰብ ፍላጎት መሠረት ለተመሳሳይ ዓላማ ለሚውል ሌሎች ፕሮጀክት ድጋፍ ሊውል ይችላል።

3. ተጨማሪ መመዘኛዎች ተግባራዊ መደረጋቸው እንደተጠበቀ ሆኖ ለማህበረሰቡ ጥቅም የሚነደፍ የልማት ፕሮጀክት የሚከተሉትን መመዘኛዎች ሊያሟላ ይገባል፡-

ሀ. የአካባቢው ማህበረሰብ ፍላጎትን መሠረት ያደረገ፤

ለ. የተለየውን የማህበረሰብ ችግርን ሊፈታ የሚችል፤

ሐ. ሴቶችንና ወጣቶችን በፕሮጀክት ሒደት ላይ ተሳታፊ የሚያደርግ፤

መ. በአርክቦት ገንዘብ መጠን ሊተገበር የሚችል፤

ሠ. አግባብነት ያላቸው ባለድርሻ አካላትን አሳታፊ የሚያደርግ።

አንቀጽ 7. የፕሮጀክት ኃሳቦች እንዲቀርቡ ጥሪ የሚደረግበት ሁኔታ

በኢንስቲትዩቱ የሚወሰኑ ተጨማሪ አማራጮች እንደተጠበቁ ሆነው ከዚህ በታች በተዘረዘሩት መንገዶች የፕሮጀክት ኃሳቦች ጥሪ ሊቀርብ ይችላል፡

1. በኢንስቲትዩቱ ድረገጽ እና ማህበራዊ መገናኛ ዘዴዎች፤

2. በኢንስቲትዩቱ የማስታወቂያ ሰሌዳ፤

3. እንደ አስፈላጊነቱ ሰፊ ሽፋን ባለው ጋዜጣ፣ እና/ወይም

4. እንደ አስፈላጊነቱ በሬዲዮ ወይም በቴሌቪዥን

አንቀጽ 8. የተጠቃሚው ማህበረሰብ እና ባለድርሻ አካላትን ስለማሳተፍ

1. የአርክቦት ገንዘብ ተጠቃሚ ከሚሆነው ማህበረሰብ እንደ አስፈላጊነቱ እና አግባብነቱ የአርክቦት ኮሚቴው ሥራዎች ላይ እንዲሳተፍ ሊገበዙ ይችላሉ።
2. ኮሚቴው ለሚሰራው ሥራ አስተዋጻኝ ሊያበረክቱ ይችላሉ ብሎ ያመነባቸውን ባለድርሻ አካላት እንደ አግባብነቱ እንዲሳተፍ በማንኛውም ጊዜ ሊገበዙ ይችላሉ።
3. ከላይ የተገለጹት ድንጋጌዎች እንደተጠበቁ ሆነው ተጠቃሚው ማህበረሰብ እና ባለድርሻ አካላት ኮሚቴው በሚያስተላልፋቸው ማናቸውም ውሳኔዎች ላይ ድምጽ የመስጠት መብት አይኖራቸውም።

ክፍል ሦስት

የአርክቦት ገንዘብ አስተዳደር

አንቀጽ 9. የአርክቦት ኮሚቴ ስለማቋቋም

የአርክቦት ገንዘብ አስተዳደርና አጠቃቀም ኮሚቴ ከዚህ በኋላ “የአርክቦት ኮሚቴ” እየተባለ የሚጠራ በዚህ መመሪያ ተቋቁሟል።

አንቀጽ 10. የአርክቦት ኮሚቴ አባላት

ኮሚቴው ከጀነቲክ ሀብት አርክቦትና ጥቅም ተጋሪነት ሥራ ሒደት ባለሙያዎች መካከል በዋና ዳይሬክተሩ በሚወከሉ ስድስት ባለሙያዎች የሚዋቀር ሲሆን ዝርዝሩም ከዚህ በታች እንደተመለከተው ይሆናል፡-

1. የኢንስቲትዩቱ ምክትል ዋና ዳይሬክተር (ሠብሳቢ)
2. የሥራ ሒደት ዳይሬክተር (ጸሐፊ)
3. የሕግ ባለሙያ (አባል)
4. የዕጽዋት ባለሙያ (አባል)
5. የእንግሊዝኛ ባለሙያ (አባል)

- 6. የደቂቅ አካላት ባለሙያ (አባል)
- 7. የኢኮኖሚክስ ባለሙያ (አባል)

አንቀጽ 11. የአርክቦት ኮሚቴ ሥልጣንና ተግባር

- 1. የአርክቦት ገንዘቡን ያስገኘው የጀነቲክ ሀብት የተመናመነ ወይም የመመናመን አደጋ የተጋረጠበት ስለመሆኑ በጥናት ያረጋግጣል ወይም አግባብነት ባለው አካል የተጠና ጥናት ካለ አስፈላጊውን ማጣራት በማድረግ ለኢንስቲትዩቱ ዋና ዳይሬክተር የውሳኔ ኃሳብ ያቀርባል፤
- 2. ጥቅም ያስገኘው የጀነቲክ ሀብት ያልተመናመነ መሆኑ ከተረጋገጠ ሌሎች የመመናመን አደጋ የተጋረጠባቸውን የጀነቲክ ሀብቶች ወይም ሊጠበቁ የሚችሉ የማህበረሰብ ዕውቀቶችን በጥናት ለይቶ የውሳኔ ኃሳብ ለኢንስቲትዩቱ ዋና ዳይሬክተር ያቀርባል
- 3. የአርክቦት ገንዘብ የጀነቲክ ሀብትን እና የማህበረሰብ ዕውቀትን ለመጠበቅና ለማስፋፋት/ለማበልጸግ ተግባር እንዲውል በዚህ መመሪያ አንቀጽ 6 በተዘረዘሩት መስፈርቶች መሠረት የፕሮጀክት ኃሳቦች እንዲቀርቡ አግባብነት ላላቸው ለፌደራልና ለክልል አካላት ጥሪ እንዲደረግ ያደርጋል፤
- 4. በዚህ መመሪያ አንቀጽ 6 በተዘረዘሩት መምረጫ መስፈርቶች መሠረት የፕሮጀክት ኃሳቦችን አወዳድሮ የተሻለ ውጤት ያስመዘገበውን ይመርጣል
- 5. እንደ አስፈላጊነቱ ሌሎች አግባብነት ያላቸው ሕጎች ወይም የሕግ ክፍሎች ተግባራዊ እንዲሆኑ የውሳኔ ኃሳብ ያቀርባል፤ በዚህ መመሪያ አንቀጽ 6 ላይ የተደነገገው እንደተጠበቀ ሆኖ አስፈላጊነቱን ካመነበት ተጨማሪ የፕሮጀክት መመዘኛዎችን በማውጣት የውሳኔ ኃሳብ ለዋና ዳይሬክተር ያቀርባል፤
- 6. የተመረጠውን የፕሮጀክት ኃሳብ ላቀረበው አካል አሸናፊነቱ እንዲገለጽ ያደርጋል
- 7. የፕሮጀክት የውል ስምምነት ሊይዝ የሚገባውን መሠረታዊ ጉዳዮችን በመለየት የውል ስምምነት ሰነድ ያዘጋጃል
- 8. ለተመረጠው ፕሮጀክት ገንዘብ ወጭ የሚደረግበትን ሁኔታ የውሳኔ ኃሳብ ለኢንስቲትዩቱ ዋና ዳይሬክተር ያቀርባል፤
- 9. ለተመረጠው ፕሮጀክት እንደ አግባቡ የክትትል ጊዜ ሰሌዳ ያዘጋጃል

10. የተመረጠው ፕሮጀክት ዕቅድ፣ ክትትል፣ ግምገማና ሪፖርት ለኢንስቲትዩቱ እና ለሚመለከተው የፌደራል፣ የክልል፣ ወይም የወረዳ ምክር ቤት ያቀርባል፤ ለማህበረሰብ ጥቅም የሚውለውን የአርክቦት ገንዘብ ተግባራዊ ለማድረግ ጥቅም ላይ የዋለውን የጀነትክ ሀብትና የማህበረሰብ ዕውቀት ሥርጭት ላይ አግባብነት ካላቸው አካላት ጋር በመመካከር ቅኝት በማድረግ ተጠቃሚ የሚሆነውን ማህበረሰብ ይለያል፤
11. የማህበረሰብ ልማት ፕሮጀክቶችን ለመቅረጽ ከተለየው ተጠቃሚ ማህበረሰብ እና አግባብነት ካላቸው አካላት ጋር በመመካከር የልማት ፕሮጀክት ፍላጎት ይለያል
12. በተጠቃሚው ማህበረሰብ ፍላጎት ላይ በመመሥረት ለማህበረሰብ ጥቅም የሚውሉ የልማት ፕሮጀክት ኃሳቦችን ያማዘጋጀት ፤
13. የአርክቦት ኮሚቴ የውስጥ አሠራር እና የሚተገበረው ፕሮጀክት የውል ስምምነት እንደተጠበቀ ሆኖ ስለ አጠቃላይ የአርክቦት ገንዘብ አስተዳደርና አጠቃቀም እንዲሁም ስለተገኙ ውጤቶች ቢያንስ በየሦስት ወሩ ሪፖርት ያቀርባል
14. ተጠቃሚው ማህበረሰብና ሌሎች አግባብነት ያላቸው አካላትን ለይቶ በሥራው ላይ እንዲሳተፉ ምክረ ኃሳብ ያቀርባል
15. የአርክቦት ፈንድ ገንዘብን ጥቅም ላይ ለማዋል ሚረዱ አግባብነት ያላቸውን ሌሎች አስፈላጊ ተግባራትን ያከናውናል።

አንቀጽ 12. የአርክቦት ኮሚቴው ሰብሳቢ ስልጣንና ተግባር

የአርክቦት ኮሚቴ ሰብሳቢ የሚከተሉት ስልጣንና ተግባራት ይኖሩታል

1. የአርክቦት ኮሚቴን ሥራ በበላይነት ይመራል፤
2. የአርክቦት ኮሚቴን ለስብሰባ ይጠራል፤
3. የአርክቦት ኮሚቴ የሚወያይበትን አጀንዳ ይቀርጻል
4. በአርክቦት ኮሚቴ ሥራዎች ላይ መገኘት በማይችልበት ጊዜ ከኮሚቴው አባላት መካከል ለአንዱ በጽሁፍ ውክልና ይሰጣል፤
5. የአርክቦት ኮሚቴ ውሳኔዎች ተግባራዊ እንዲሆኑ ያደርጋል፤

6. የአርክቦት ገንዘብ ፍሰትና የፕሮጀክቱን ሥራ እንቅስቃሴ አፈጻጸም ሪፖርት ለኢንስቲትዩቱ ዋና ዳይሬክተር በየሩብ ዓመቱ ያቀርባል፤

አንቀጽ 13. የአርክቦት ኮሚቴ ፀሐፊ ስልጣንና ተግባር

1. ከአርክቦት ኮሚቴ ሥራ ጋር የተያያዙ ማናቸውም የፕሮጀክት ፕሮፖዛሎችና ሌሎች ሰነዶችን ያደራጃል፤
2. የአርክቦት ኮሚቴን የስብሰባ አጀንዳ ከሰብሰቢው ጋር በመመካከር ያዘጋጃል፤
3. የአርክቦት ኮሚቴን ስብሰባዎች ቃለ-ጉባኤ ይይዛል፤
4. በአርክቦት ኮሚቴ ሥራዎች ላይ መገኘት በማይችልበት ጊዜ ከኮሚቴው አባላት መካከል ለአንዱ በጽሁፍ ውክልና ይሰጣል፤
5. ከሰብሰቢው በጋራ በመሆን በአንቀጽ 12 ንዑስ አንቀጽ 6 የተመለከተውን ሪፖርት ያዘጋጃል።

አንቀጽ 14. የአርክቦት ኮሚቴ አሠራር ሥርዓት

1. የአርክቦት ኮሚቴ በየሩብ ዓመቱ ይሰበሰባል። ሆኖም ግን አስቸኳይ ጉዳዮች ሲያጋጥሙ በማንኛውም ጊዜ ሊሰበሰብ ይችላል፤
2. ከግማሽ በላይ አባላት ከተገኙ ምልዓተ-ጉባኤ እንደተሟላ ተቆጥሮ ስብሰባው ይከናወናል፤
3. የአርክቦት ኮሚቴ ውሳኔዎች በድምጽ ብልጫ ይወሰናሉ፤
4. የአርክቦት ኮሚቴ የስብሰባ እና ሌሎች የውስጥ አሠራር ሥርዓቱን የሚመለከቱ ጉዳዮች ላይ ውሳኔ ያስተላልፋል።

አንቀጽ 15. የአርክቦት ኮሚቴ የሥራ ዘመን

1. የአርክቦት ኮሚቴ አባላት የሥራ ዘመን ሦስት ዓመት ይሆናል፤
2. የአርክቦት ኮሚቴ አባላት እንደ አስፈላጊነቱ የሙያ፣ የሥራ ልምድ እና የመደበኛ ሥራ ጫና እየታየ ለተጨማሪ የሥራ ዘመን የኮሚቴ አባል እንዲሆኑ ይደረጋል።

አንቀጽ 16. የአርክቦት ኮሚቴ ተጠሪነት

የአርክቦት ኮሚቴ ተጠሪነቱ ለኢንስቲትዩቱ ዋና ዳይሬክተር ይሆናል።

አንቀጽ 17. የአርክቦት ኮሚቴ እና አባላት ተጠያቂነት

1. የአርክቦት ኮሚቴ የሚያከናውናቸው ማናቸውም ተግባራት የጀነቲክ ሀብትና የማህበረሰብ ዕውቀት አርክቦት እና የማህበረሰብ መብቶችን ለመወሰን የወጣውን አዋጅ ቁጥር 482/1998 እና ይህንኑ አዋጅ ለማስፈጸም የወጣውን የሚኒስቴሮች ምክርቤት ደንብ ቁጥር 169/2001 እና ሌሎች አግባብነት ያላቸውን ሕጎችን መሠረት ማድረግ ይኖርበታል፤
2. የአርክቦት ኮሚቴ አባላቱ ሆን ብለው ወይም በቸልተኝነት ሕጋዊ አሠራርን ባለመከተል ለሚፈጽሙት ጥፋት ወይም ድርጊት አግባብነት ባለው ሕግ መሠረት ተጠያቂ ይሆናሉ።

አንቀጽ 18. የኢንስቲትዩቱ ዋና ዳይሬክተር ሥልጣንና ተግባር

1. በአርክቦት ኮሚቴ የሚቀርቡለትን ማናቸውም የውሳኔ ኃሳቦች ላይ ተገቢ የሚለውን ውሳኔ ይሰጣል፤
2. የብዝሃ ሕይወት ሀብት ጥበቃና የማህበረሰብን ዕውቀትን ለመጠበቅ ለሚቀርቡ የፕሮጀክት ኃሳቦች ጥሪ ያቀርባል
3. ኢንስቲትዩቱን በመወከል ከፕሮጀክት አሸናፊው አካል ጋር የውል ስምምነት ይፈራረማል
4. አግባብነት ካላቸው አካላት ጋር በመመካከር ለማህበረሰብ ጥቅም የሚነደፉ የልማት ፕሮጀክት ተጠቃሚ ማህበረሰብን ይወስናል።
5. ለማህበረሰብ ጥቅም የተነደፈ የልማት ፕሮጀክት ኃሳብ እና የአርክቦት ገንዘብ መጠንን ጨምሮ በደንቡ አንቀጽ 31 መሠረት እንደ አግባብነቱ ለፌደራል፣ ለክልል፣ ወይም ለወረዳ ምክር ቤት ያሳውቃል፤
6. ተጠቃሚው ማህበረሰብና ሌሎች አግባብነት ያላቸው አካላት ተሳትፎን በተመለከተ በኮሚቴው የቀረበለትን ምክረ ኃሳብ ያጸድቃል
7. የአርክቦት ኮሚቴ አባላት ሲጓደሉ እንደ ጉዳዩ አግባብነት ተተኪ አባላትን ይሰይማል፤

ክፍል አራት

የአርክቦት ኮሚቴ ወጪዎች

አንቀጽ 19. ለጀነቲክ ሀብት ማንበርና ለማህበረሰብ ዕውቀት ጥበቃ የሚነደፉ ፕሮጀክቶች

ለጀነቲክ ሀብት ማንበርና ለማህበረሰብ ዕውቀት ጥበቃ የሚነደፉ ፕሮጀክቶች አፈጻጸም ክትትል ለማድረግ ወጪ የሚጠይቅ ከሆነ ከመንግሥት መደበኛ በጀት የሚሸፈን ይሆናል።

አንቀጽ 20. ለማህበረሰብ ጥቅም የሚነደፉ የልማት ፕሮጀክቶች

1. ለማህበረሰብ ጥቅም የሚነደፉ የልማት ፕሮጀክቶችን ለማስወሰን ወጪ የማይጠይቅ ከሆነ ወጪው ከሚመለከተው የማህበረሰብ አርክቦት ገንዘብ ድርሻ የሚሸፈን ይሆናል።
2. የወጪ አከፋፈል ሥርዓቱ መንግሥት ባወጣው አግባብነት ባለው የፕሮጀክቶች አበል አከፋፈል መመሪያ መሠረት ይሆናል።

አንቀጽ 21. የአርክቦት ገንዘብ ክፍያ አፈጻጸም

1. የአርክቦት ገንዘብ ወጪ ሊደረግ የሚችለው የአርክቦት ፈንድ ለተቋቋመለት ዓላማ ብቻ ነው።
2. ማንኛውም የአርክቦት ገንዘብ ወጪ የሚታዘዘው በአርክቦት ኮሚቴ የውሳኔ ኃሳብ መሠረት ይሆናል፤
3. የፕሮጀክቱ ውል ስምምነት እንደተጠበቀ ሆኖ የአርክቦት ገንዘብ ለአሸናፊው ፕሮጀክት የሚከፈልበት ጊዜና መጠን እንደ ፕሮጀክቱ ስፋትና ባሕርይ እየታየ በኮሚቴው ይወሰናል።
4. አሸናፊው የጥበቃ ፕሮጀክት ቀጣይ ክፍያ ከመጠየቁ በፊት ያለፈውን የፕሮጀክት አፈጻጸም፣ ያለበትን ደረጃ ወይም የተገኘውን ውጤት ሪፖርት ለኢንስቲትዩቱ ማቅረብ አለበት።
5. ኮሚቴው ለአሸናፊ ፕሮጀክት ቀጣዩን ክፍያ እንዲፈጸም የውሳኔ ኃሳብ ከማቀረቡ በፊት ያለፈውን አፈጻጸም መገምገምና ግብረመልስ መስጠት አለበት።

አንቀጽ 22. የብዝሃ ሕይወት ጥበቃ ፕሮጀክት ውል ይዘት

ሌሎች አግባብነት ያላቸው ሕጎች ተፈጻሚነት እንደተጠበቀ ሆኖ የአርክቦት ኮሚቴ ማናቸውንም ክፍያ ከመፈጸሙ በፊት አሸናፊ ፕሮጀክት ፣ የአርክቦት ገንዘብ አከፋፈል መጠንና ጊዜ፣ የፕሮጀክቱ ግዴታዎችና ስለሚጠበቁ ውጤቶች፣ ዋስትና እና ሌሎች ዝርዝር ሁኔታዎችን ያካተተ ሕጋዊ ውል ከኢንስቲትዩቱ ጋር እንዲፈጽም ይደረጋል።

ክፍል አምስት

ልዩ ልዩ ድንጋጌዎች

አንቀጽ 23. ቅሬታ አቀራረብ

1. የአሸናፊ ፕሮጀክቱን ልዩታ አስመልክቶ ኢንስቲትዩቱ በሚሰጠው ውሳኔ ላይ ቅሬታ ያለው ማንኛውም አካል ለቅሬታው መነሻ የሆነው ውሳኔ በተሰጠ በአስር የስራ ቀናት ውስጥ ለኢንስቲትዩቱ በጽሁፍ ማቅረብ ይችላል።
2. ኢንስቲትዩቱ ቅሬታውን በአስር የሥራ ቀናት ውስጥ አይቶ ውሳኔ ውሳኔውን ለቅሬታ አቅራቢው ያሳውቃል።
3. በቀረበው ቅሬታ ላይ የኢንስቲትዩቱ የበላይ ኃላፊ የሚሰጠው ውሳኔ የመጨረሻ ይሆናል።

አንቀጽ 24. ሌሎች አግባብነት ያላቸው ሕጎች አፈጻጸም

ለዚህ መመሪያ አፈጻጸም አስፈላጊ ሆኖ ሲገኝ ሌሎች አግባብነት ያላቸው መመሪያዎች ተግባራዊ ይደረጋሉ።

አንቀጽ 25. የመተባበር ግዴታ

ለዚህ መመሪያ አፈጻጸም ማናቸውም ሰው የመተባበር ግዴታ አለበት።

አንቀጽ 26. መመሪያውን ስለማሻሻል

ይህ መመሪያ አስፈላጊ ሆኖ ሲገኝ በማንኛውም ጊዜ ሊሻሻል ይችላል።

አንቀጽ 27. ተፈጻሚነት የሌላቸው መመሪያዎችና አሠራሮች

ማናቸውም መመሪያ፣ አሠራር ወይም ልማድ በዚህ መመሪያ በተሸፈኑ ጉዳዮች ላይ ተፈጻሚ አይሆንም።

አንቀጽ 28፡ መመሪያው የሚጻፍበት ጊዜ

ይህ መመሪያ ከ----- ዓ.ም ጀምሮ የፀና ይሆናል።

መለሰ ማሪዮ (ዶ/ር)

የኢትዮጵያ ብዙሀን ሕይወት ኢንስቲትዩት ዋና ዳይሬክተር

