

Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management



Part 4b: A detailed review of the national instruments on genetic resources relevant to this project

Law on Genetic Resources

A supplementary search was conducted on WIPOLEX for national legislation relating to genetic resources to identify any additional relevant instruments not captured in the traditional knowledge search.

Quite a few relevant instruments were identified but in many instances there was no English language text available for analysis. Amongst the legislation that was provided in English there was a number of instances where the relevant text did not relate to the common provisions identified for this project and often related to patenting rules with respect to genetic materials or environmental law. The results presented here relate to those instruments that appeared relevant to the common provisions. Instances of legislation that was already dealt with in the traditional knowledge search were excluded from this report.

As a result there is legislation from 14 countries presented here. These countries are:

1. Afghanistan
2. Angola
3. Argentina
4. Chile
5. China
6. Ecuador
7. Hong Kong
8. India
9. Kenya
10. Malaysia
11. Peru
12. Philippines
13. South Africa
14. Vanuatu

On detailed review of the legislation it was noted that some instruments provided limited content relevant to the common provisions. This was the case for Afghanistan, Chile, China,

Ecuador, Hong Kong, Peru and the Philippines. In some instances this was because the relevant instrument was for a particular limited purpose.

Detailed analysis against the common provisions was carried out for the legislation from the remaining countries:

2. Angola

3. Argentina

8. India

9. Kenya

10. Malaysia

13. South Africa

14. Vanuatu

Of this legislation the legislation from the following countries dealt with only a limited number of the common provisions:

2. Angola

3. Argentina

10. Malaysia

14. Vanuatu

As a result the legislation from the remaining countries represents legislation that is of more significant potential use in relation to this project:

8. India

9. Kenya

13. South Africa

It should be noted that the treatment of traditional knowledge in these instruments is variable since their focus is on genetic resources. The South African legislation does address traditional knowledge/ In some instances there is still considerable content unrelated to the subject matter of the common provisions reflecting the overarching purpose of the relevant legislation.

Table of contents

Country	Page
1. Afghanistan	5
2. Angola	6
3. Argentina	11
4. Chile	24
5. China	24
6. Ecuador	24
7. Hong Kong	26
8. India	26
9. Kenya	46
10. Malaysia	58
11. Peru	87
12. Philippines	90
13. South Africa	102
14. Vanuatu	160

Legislation analysed

1. Afghanistan

There are relevant provisions as noted below but they do not address key items in the common provisions.

Environment Law 2007

[Enforcement of IP and Related Laws, Genetic Resources, Plant Variety Protection, Traditional Cultural Expressions

Provisions concerning the protection of genetic resources and plant variety protection: Chapter Six on biodiversity and natural resource conservation and management. Provisions concerning the protection of cultural heritage: article 38(1).]

Chapter 6 Biodiversity and natural resource conservation and management

National biodiversity strategy

Article 36: National biodiversity strategy

1. The National Environmental Protection Agency shall ensure that measures identified in the national biodiversity strategy and action plan are included in national development planning and the national biodiversity strategy and action plan is updated not less than every five years.

Article 37: Planning

1. Natural resources whether inside or outside protected areas shall be managed to ensure their sustainable use and conservation.

2. The National Environmental Protection Agency in coordination with relevant ministries shall develop rehabilitation plans for degraded ecosystems identified through the planning process established by this chapter which plans shall be incorporated into natural resource management plans and protected area management plans.

3. activities which may result in unsustainable use of natural resources must not be undertaken without the prior written authorisation of the National Environmental Protection Agency, relevant ministries or Provincial Councils and District and Village Councils as appropriate.

Protected area management

Article 38: National protect-ed areas system

The national protected areas system of the Islamic Republic of Afghanistan is hereby established for the following objectives:

- (1) conserve natural and cultural heritage;
- (2) preserve present and future sustainable development options by conserving and where necessary restoring representative ecosystems, habitats and natural and cultural features and integrating their management into local and national land use plans;
- (3) ensure sustainable use of natural resources by involving local communities in all activities related to protected areas, including designating and delimiting areas, developing integrated management plans, and managing protected areas.

39: Planning

1. The National Environmental Protection Agency shall develop a comprehensive plan for the national protected areas system which shall at a minimum include:

- (1) the objectives of the system plan
- (2) the contribution of each existing protected area to

2. Angola

Analysed against the common provisions

Order No. 59/96 of June 14, 1996

MINISTRY FOR AGRICULTURE AND RURAL DEVELOPMENT

Courtesy translation provided by WIPO, © 2012

The Republic of Angola is a signatory to the Convention on Biodiversity and the International Treaty on Plant Genetic Resources for Food and Agriculture, which recognize the sovereign right of States to conserve and use their biological resources;

In recent years this valuable national heritage has been exported without any benefits to either national institutions or local communities from such activity;

Noting the absence of specific protective legislation in the area of national biodiversity conservation and given the extreme need and urgency to regulate the collection, transfer and export of plant germplasm;

In the exercise of the powers conferred on me by Article 114(3) of the Constitutional Law, I state that:

1. In the Republic of Angola, collections and exports of phytogenetic resources may only be carried out, either by nationals or by foreigners or by national or foreign entities, following authorization from the National Committee for Phytogenetic Resources, (CNRF).

2. The collectors or their sponsors interested in phytogenetic exploitation in Angola shall address their requests to CNRF mentioning:

- (a) their commitment to respect the relevant legislation of the Republic of Angola;
- (b) the demonstration of knowledge of the species to be collected, their geographic distribution and collection methods;

- (c) present indicative plans for field missions and provisional itineraries;
- (d) a request for the type of assistance necessary for the successful outcome of the mission;
- (e) presentation of a list of national and/or international entities to which the phylogenetic resources will be distributed (Mission Report) once the mission has been undertaken.

3. CNRF shall communicate, within a period of 30 days, its decision to the collectors and sponsors requesting the license.

3.1 In the event of a favorable decision, CNRF shall, before the mission, establish the collaboration conditions including:

- (a) indication of the types and quantities of germplasm which may be collected and exported;
- (b) disclosure of any particular provision or restriction related to the distribution or use of germplasm or of improved materials derived from them;
- (c) nomination of a national counterpart to accompany the field mission and/or to collaborate thereafter;
- (d) determination of any financial obligation to be met by the applicant, including potential national participation in the collection team and other services which could be provided;
- (e) provision of relevant information to the applicant, about the country and its policies related to phylogenetic resources.

4. Once authorization has been obtained, the collectors shall, in the exercise of their activities, respect the customs, local traditional values and property rights.

4.1. In order not to aggravate the risks of genetic erosion, when obtaining the germplasm, the material populations, either in farmers' plantations or of wild species, must not be exhausted.

4.2. Wherever the germplasm is collected, the collector shall systematically register the collection data, in order to allow the entities and users of germplasm to become familiar with the original context.

5. Once collection in the field has been concluded, the collectors and their sponsors shall:

- (a) deposit duplicates of all the collections and associated materials and the corresponding information registers with the institution(s) previously agreed upon for example, the National Genetic Bank, National Herbarium or the Institute for Agronomic Research;
- (b) carry out the official administrative procedures for quarantine and treatment of samples so that they are transferred as fast as possible and with optimum viability indicators;
- (c) obtain the phytosanitary and authorization certificates necessary for exploitation;
- (d) deliver a report of the samples collected to CNRF and/or another relevant official entity.

6. The sponsors and curators shall adopt measures of a practical nature on the transfer of material including the sharing of the benefits derived from the germplasm collected, with local communities, farmers and national institutions.

7. The germplasm users shall, for the benefit of local communities, farmers and national institutions offer some form of compensation for the profits made from the use of the material collected, for example:

- (a) facilitate access to new and better varieties and other products on mutually agreed terms;
- (b) support the research of interest for the conservation and use of phylogenetic resources;
- (c) training of national teams for conservation, assessment and use of phylogenetic resources;

- (d) support national programs to assess and improve local varieties and other local germplasm, with the aim of encouraging the best possible utilization of phylogenetic resources at the national and regional levels for farmers and communities and encourage the conservation thereof;
- (e) any other appropriate support for farmers in the conservation of local germplasm.

8. The following definitions shall apply:

Phylogenetic resources and plant germplasm; reproductive or propagated plant material, cultivated or wild;

Genetic erosion - the loss of genetic diversity;

Curator – the natural or legal person who conserves and manages phylogenetic resources and the corresponding information;

Sponsor – the natural or legal person who sponsors financially or in another way, the task of collecting phylogenetic resources.

9. This Order shall not cover all commercial exports, both normal and day to day, of coffee and other foods normally exported in the form of grain.

10. Equally exempt from the application of this Order shall be the following categories of plants and material exported from the country on an individual basis and for personal use, for example:

- (a) bunches of ornamental flowers;
- (b) roasted or cooked foods;
- (c) dried medicinal plants for therapeutic purposes and in quantities appropriate for personal use;
- (d) dried flowers, without seeds;
- (e) up to three specimens of herborized, dried plants (without seeds, if exported under the system of trade between national herbaria).

11. This Order shall enter into force immediately.

Comparison of Angolan legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

Only a limited number of the common provisions are addressed

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources		
2. definition of terms- key terms used in the draft	8. The following definitions shall apply: Phylogenetic resources and plant germplasm; reproductive or	

	<p>propagated plant material, cultivated or wild;</p> <p>Genetic erosion - the loss of genetic diversity;</p> <p>Curator – the natural or legal person who conserves and manages phytogetic resources and the corresponding information;</p> <p>Sponsor – the natural or legal person who sponsors financially or in another way, the task of collecting phytogetic resources.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights		
4. beneficiaries- who should benefit		
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>	<p>1.In the Republic of Angola, collections and exports of phytogetic resources may only be carried out, either by nationals or by foreigners or by national or foreign entities, following authorization from the National Committee for Phytogetic Resources, (CNRF).</p> <p>2.The collectors or their sponsors interested in phytogetic exploitation in Angola shall address their requests to CNRF mentioning:</p> <p>(a) their commitment to respect the relevant legislation of the Republic of Angola;</p> <p>(b) the demonstration of knowledge of the species to be collected, their geographic distribution and collection methods;</p> <p>(c) present indicative plans for field missions and provisional itineraries;</p> <p>(d) a request for the type of assistance necessary for the successful outcome of the mission;</p> <p>(e) presentation of a list of national and/or international entities to which the phytogetic resources will be distributed (Mission Report) once the mission has been undertaken.</p> <p>3.CNRF shall communicate, within a period of 30 days, its decision to the collectors and sponsors requesting the license.</p> <p>3.1 In the event of a favorable decision, CNRF shall, before the mission, establish the collaboration conditions including:</p> <p>(a) indication of the types and quantities of germplasm which may be collected and exported;</p> <p>(b) disclosure of any particular provision or restriction related to the distribution or use of germplasm or of improved materials derived from them;</p> <p>(c) nomination of a national counterpart to accompany the field mission and/or to collaborate thereafter;</p> <p>(d) determination of any financial obligation to be met by the applicant, including potential national participation in the collection team and other services which could be provided;</p> <p>(e) provision of relevant information to the applicant, about the country and its policies related to phytogetic resources.</p> <p>4.Once authorization has been obtained, the collectors shall, in the exercise of their activities, respect the customs, local traditional values and property rights.</p> <p>4.1. In order not to aggravate the risks of genetic erosion, when obtaining the germplasm, the material populations, either in farmers' plantations or of wild species, must not be exhausted.</p> <p>4.2. Wherever the germplasm is collected, the collector shall systematically register the collection data, in order to allow the entities and users of germplasm to become familiar with the original context.</p>	

	<p>5.Once collection in the field has been concluded, the collectors and their sponsors shall:</p> <p>(a) deposit duplicates of all the collections and associated materials and the corresponding information registers with the institution(s) previously agreed upon for example, the National Genetic Bank, National Herbarium or the Institute for Agronomic Research;</p> <p>(b) carry out the official administrative procedures for quarantine and treatment of samples so that they are transferred as fast as possible and with optimum viability indicators;</p> <p>(c) obtain the phytosanitary and authorization certificates necessary for exploitation;</p> <p>(d) deliver a report of the samples collected to CNRF and/or another relevant official entity.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>6.The sponsors and curators shall adopt measures of a practical nature on the transfer of material including the sharing of the benefits derived from the germplasm collected, with local communities, farmers and national institutions.</p> <p>7.The germplasm users shall, for the benefit of local communities, farmers and national institutions offer some form of compensation for the profits made from the use of the material collected, for example:</p> <p>(a) facilitate access to new and better varieties and other products on mutually agreed terms;</p> <p>(b) support the research of interest for the conservation and use of phylogenetic resources;</p> <p>(c) training of national teams for conservation, assessment and use of phylogenetic resources;</p> <p>(d) support national programs to assess and improve local varieties and other local germplasm, with the aim of encouraging the best possible utilization of phylogenetic resources at the national and regional levels for farmers and communities and encourage the conservation thereof;</p> <p>(e) any other appropriate support for farmers in the conservation of local germplasm.</p>	
7. Sanctions and remedies- dealing with breaches		
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases		
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one		

group		
10. exceptions – emergencies, traditional use, conservation	<p>9. This Order shall not cover all commercial exports, both normal and day to day, of coffee and other foods normally exported in the form of grain.</p> <p>10. Equally exempt from the application of this Order shall be the following categories of plants and material exported from the country on an individual basis and for personal use, for example:</p> <ul style="list-style-type: none"> (a) bunches of ornamental flowers; (b) roasted or cooked foods; (c) dried medicinal plants for therapeutic purposes and in quantities appropriate for personal use; (d) dried flowers, without seeds; (e) up to three specimens of herborized, dried plants (without seeds, if exported under the system of trade between national herbaria). 	
11. disclosure- permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws- avoiding conflict with other laws		
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

3. Argentina

Analysed against the common provisions

LAW ON ACCESS TO GENETIC AND BIOCHEMICAL RESOURCES

Courtesy translation provided by WIPO, © 2011

CHAPTER I GENERAL CONSIDERATIONS

Article 1 Purpose. The purpose of the present Law is to establish a legal regime for access to genetic and biochemical resources located in the Province that are under the Province's original control and jurisdiction.

This Law shall not apply to access to biochemical or genetic material of human origin.

Article 2 Public interest. The knowledge, conservation, scientific and technological development and utilization of and research on genetic and biochemical resources are hereby declared to be matters of provincial public interest.

CHAPTER II IMPLEMENTING AUTHORITY

Article 3 Implementing authority. The Ministry of Production and Tourism or any agency that succeeds it as an institution shall be the implementing authority for the present Law.

Article 4 Functions. The implementing authority shall have the following functions:

- (a) to promote conservation, research, scientific and technological development, and interprovincial, national and international cooperation with regard to genetic and biochemical resources located in the Province;
- (b) to advise the Executive on matters relating to the conservation and sustainable utilization of genetic and biochemical resources;
- (c) to propose to the Executive access agreements and contracts relating to genetic and biochemical resources, in accordance with the principle of sustainability of resources;
- (d) to coordinate, with other competent agencies in the Province, the carrying-out of inventories for the purpose of identifying and monitoring the components of genetic and biochemical resources;
- (e) to maintain the Provincial Register of Genetic and Biochemical Resources;
- (f) to apply for and obtain all documentation from studies carried out and the results thereof;
- (g) to control and monitor all activities connected with access to and conservation of the genetic and biochemical resources covered by this Law.

Article 5 Agreements. The Executive shall have the authority to conclude agreements with the national Government, national universities, public scientific research institutes and other provinces for the purpose of developing programs for the conservation of genetic and biochemical resources, the sustainable use of their components, the fair and equitable sharing of the benefits arising out of their utilization and the implementation of access and control mechanisms, in accordance with the restrictions set out in Article 101, paragraph 2, of the Provincial Constitution.

CHAPTER III PROCEDURE FOR ACCESS TO GENETIC AND BIOCHEMICAL RESOURCES

Article 6 Access permit. The implementing authority may, by means of an access permit, authorize natural or legal persons, whether Argentine or foreign, to take research samples of genetic and biochemical resources for scientific purposes, in accordance with the provisions of this Law and the regulations thereunder.

Article 7 Access contract. Where a genetic or biochemical resource is accessed for the purpose of commercial or industrial utilization of that resource, an access contract shall be concluded

between the applicant and the Executive, in accordance with the provisions of this Law and the regulations thereunder.

Article 8 Involvement of other agencies. For the issuance of access permits or the conclusion of access contracts, the implementing authority shall seek the prior approval of the agency that is competent in the use or utilization of the natural resource in question.

Article 9 Written consent. For the issuance of access permits or the conclusion of access contracts for the purpose of collecting samples on private property, the prior written authorization of the owner of the property shall be an essential requirement.

Article 10 Renewal rate. The activities referred to in Articles 6 and 7 of the present Law may not, under any circumstances, exceed the renewal rate of the natural resources under analysis, on the basis of the precautionary principle and the in dubio pro natura principle.

Article 11 Fee and royalties. For all access permits and contracts issued under the present Law, the provincial government shall be paid, in the case of access permits, a fee in the amount established in the regulations and, in the case of access contracts, a royalty of at least twenty per cent (20%) of the gross income tax base, in accordance with the criterion of fair and equitable sharing in the benefits derived from such permits and contracts.

Article 12 Guarantee. Prior to the issuance of access permits or conclusion of access contracts, the interested party shall furnish the provincial government with sufficient guarantees, which shall be set out in the regulations, with a view to ensuring faithful compliance with the obligations entered into.

Article 13 Affidavit. Any information provided to the implementing authority shall have the character of an affidavit.

Article 14 Information. Any access permit or access contract shall establish the obligation to inform the implementing authority of the results and conclusions of the research for which access is granted.

Article 15 Confidentiality The implementing authority shall treat as confidential information that could be of commercial use to third parties, unless public knowledge of it is necessary in order to protect the interests of society or the environment. To that end the applicant shall state the grounds for requesting confidentiality together with a non confidential summary which shall form part of the public record. The confidential aspects shall be contained in a classified record in the custody of the implementing authority and may not be disclosed to third parties unless a court order is made to the contrary.

CHAPTER IV PENALTY REGIME

Article 16 Referral. Any natural or legal person who or which carries out activities provided for in the present Law shall be subject to the control and penalty regime set out in Law No. 1875 (TO Resolution No. 592), title III: Penalty regime.

CHAPTER V PROVINCIAL REGISTER OF GENETIC AND BIOCHEMICAL RESOURCES

Article 17 Establishment. The Provincial Public Register of Genetic and Biochemical Resources is hereby established; its operation shall fall within the sphere of competence of the implementing authority. Access permits, access contracts, and programs and agreements that are granted or concluded in respect of genetic and/or biochemical resources shall be entered in the Register. Studies and work carried out in relation to the purpose of this Law shall also be recorded in the Register.

The data contained in the Register may be designated for public access in the cases provided for in Article 15 of the present Law.

CHAPTER VI SUPPLEMENTARY PROVISIONS

Article 18 Annex-Glossary. The glossary set out in annex I shall be an integral part of the present Law.

Article 19 Regulations. The Executive shall issue regulations for the implementation of the present Law within ONE HUNDRED AND EIGHTY (180) days of its promulgation.

Article 20 Transitional provision. Any person who or which, at the time of enactment of the present Law, is engaged in activities covered by this regime shall be obliged to report these activities within SIXTY (60) days of the Law's entry into force and to comply with the regulations established by the implementing authority.

Article 21 The present Law shall be transmitted to the Executive

Comparison of Argentinian genetic access law with common provisions under the Nagoya Protocol and WIPO draft agreements

There is a number of the common provisions that are not addressed here.

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	CHAPTER I GENERAL CONSIDERATIONS Article 1 Purpose. The purpose of the present Law is to establish a legal regime for access to genetic and biochemical resources located in the Province that are under the Province's original control and jurisdiction. This Law shall not apply to access to biochemical or genetic material of human origin.	
2. definition of terms- key terms used in the draft		
3. scope- what is covered, respect for traditional ownership, respect	Article 2 Public interest. The knowledge, conservation, scientific and technological development and utilization of and research on genetic and biochemical resources are hereby declared to be matters of provincial public interest.	

for sovereignty over genetic resources, moral rights		
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>Article 6 Access permit. The implementing authority may, by means of an access permit, authorize natural or legal persons, whether Argentine or foreign, to take research samples of genetic and biochemical resources for scientific purposes, in accordance with the provisions of this Law and the regulations thereunder.</p> <p>Article 7 Access contract. Where a genetic or biochemical resource is accessed for the purpose of commercial or industrial utilization of that resource, an access contract shall be concluded between the applicant and the Executive, in accordance with the provisions of this Law and the regulations thereunder.</p> <p>Article 8 Involvement of other agencies. For the issuance of access permits or the conclusion of access contracts, the implementing authority shall seek the prior approval of the agency that is competent in the use or utilization of the natural resource in question.</p> <p>Article 9 Written consent. For the issuance of access permits or the conclusion of access contracts for the purpose of collecting samples on private property, the prior written authorization of the owner of the property shall be an essential requirement.</p> <p>Article 10 Renewal rate. The activities referred to in Articles 6 and 7 of the present Law may not, under any circumstances, exceed the renewal rate of the natural resources under analysis, on the basis of the precautionary principle and the in dubio pro natura principle.</p> <p>Article 12 Guarantee. Prior to the issuance of access permits or conclusion of access contracts, the interested party shall furnish the provincial government with sufficient guarantees, which shall be set out in the regulations, with a view to ensuring faithful compliance with the obligations entered into.</p> <p>Article 13 Affidavit. Any information provided to the implementing authority shall have the character of an affidavit.</p> <p>Article 14 Information. Any access permit or access contract shall establish the obligation to inform the implementing authority of the results and conclusions of the research for which access is granted.</p> <p>Article 15 Confidentiality. The implementing authority shall treat as confidential information that could be of commercial use to third parties, unless public knowledge of it is necessary in order to protect the interests of society or the environment. To that end the applicant shall state the grounds for requesting confidentiality together with a non confidential summary which shall form part of the public record. The confidential aspects shall be contained in a classified record in the custody of the implementing authority and may not be disclosed to third parties unless a court order is made to the contrary.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	Article 11 Fee and royalties. For all access permits and contracts issued under the present Law, the provincial government shall be paid, in the case of access permits, a fee in the amount established in the regulations and, in the case of access contracts, a royalty of at least twenty per cent (20%) of the gross income tax base, in accordance with the criterion of fair and equitable sharing in the benefits derived from such permits and contracts.	
7. Sanctions and remedies- dealing with breaches	Article 16 Referral. Any natural or legal person who or which carries out activities provided for in the present Law shall be subject to the control and penalty regime set out in Law No. 1875 (TO Resolution No. 592), title III: Penalty regime.	
8. competent authority- establishment of a body to administer the legislation, deal	<p>Article 3 Implementing authority. The Ministry of Production and Tourism or any agency that succeeds it as an institution shall be the implementing authority for the present Law.</p> <p>Article 4 Functions. The implementing authority shall have the following functions: (a) to promote conservation, research, scientific and technological development,</p>	

with education, model clauses, codes of conduct, databases	<p>and interprovincial, national and international cooperation with regard to genetic and biochemical resources located in the Province;</p> <p>(b) to advise the Executive on matters relating to the conservation and sustainable utilization of genetic and biochemical resources;</p> <p>(c) to propose to the Executive access agreements and contracts relating to genetic and biochemical resources, in accordance with the principle of sustainability of resources;</p> <p>(d) to coordinate, with other competent agencies in the Province, the carrying-out of inventories for the purpose of identifying and monitoring the components of genetic and biochemical resources;</p> <p>(e) to maintain the Provincial Register of Genetic and Biochemical Resources;</p> <p>(f) to apply for and obtain all documentation from studies carried out and the results thereof;</p> <p>(g) to control and monitor all activities connected with access to and conservation of the genetic and biochemical resources covered by this Law.</p> <p>Article 5 Agreements. The Executive shall have the authority to conclude agreements with the national Government, national universities, public scientific research institutes and other provinces for the purpose of developing programs for the conservation of genetic and biochemical resources, the sustainable use of their components, the fair and equitable sharing of the benefits arising out of their utilization and the implementation of access and control mechanisms, in accordance with the restrictions set out in Article 101, paragraph 2, of the Provincial Constitution.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in intellectual property applications	<p>Article 17 Establishment. The Provincial Public Register of Genetic and Biochemical Resources is hereby established; its operation shall fall within the sphere of competence of the implementing authority. Access permits, access contracts, and programs and agreements that are granted or concluded in respect of genetic and/or biochemical resources shall be entered in the Register. Studies and work carried out in relation to the purpose of this Law shall also be recorded in the Register.</p> <p>The data contained in the Register may be designated for public access in the cases provided for in Article 15 of the present Law.</p>	
12. interaction with existing laws-avoiding conflict with other laws		
13. recognition of requirements of other nations-mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing	Article 20 Transitional provision. Any person who or which, at the time of enactment of the present Law, is engaged in activities covered by this regime shall	

uses	be obliged to report these activities within SIXTY (60) days of the Law's entry into force and to comply with the regulations established by the implementing authority.	
------	--	--

LAW ON THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY AND ITS COMPONENTS

Courtesy translation provided by WIPO, © 2011

SINGLE TITLE

CHAPTER I OBJECTIVES

ARTICLE 1 – The objectives of the present Law are as follows:

- (a) The conservation of biological diversity;
- (b) The sustainable use of its components;
- (c) The adoption of appropriate measures to achieve a fair and equitable sharing of the benefits arising out of the utilization of biological resources;
- (d) Regulation of the utilization of biological resources and their components;
- (e) Support for access to biotechnology and appropriate funding;
- (f) The development, implementation and execution of a program of work and research aimed at achieving the objectives set out above;
- (g) Provision of a framework instrument for other regulations that are in force or that may be implemented in the future with regard to the conservation and use of resources: flora, fauna, soil, water, air and others.

CHAPTER II NEW RIGHTS AND GUARANTEES UNDER THE NATIONAL CONSTITUTION AND THE CONVENTION ON BIOLOGICAL DIVERSITY OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, RÍO DE JANEIRO, 1992

ARTICLE 2 – The Provincial Executive shall have the authority to administer:

- (a) With the National Executive, the support provided for in Article 41 of the National Constitution and the implementation, with respect to the biological diversity of our Province, of National Law No. 24.375 approving the Convention on Biological Diversity, which was adopted in the city of Río de Janeiro, Federative Republic of Brazil, on June 5, 1992, in particular Articles 6, 7, 8, 11, 12 and 13, which are entitled, respectively, "General measures for conservation and sustainable use", "Identification and monitoring", "In-situ conservation", "Incentive measures", "Research and training" and "Public education and awareness";
- (b) Externally, the benefits or cooperative measures that are made possible by the aforementioned international convention, directly where appropriate or through the national Ministry of Foreign Affairs and Worship.

CHAPTER III CONVENTIONS AND AGREEMENTS

ARTICLE 3 – The implementing authority for the present Law may enter into national or international cooperation conventions or agreements, through the Ministry of Foreign Affairs and Worship or directly where appropriate, with government agencies, non-governmental organizations and State or private universities, whether national or international, with a view to achieving the objectives of the present Law.

CHAPTER IV PROVINCIAL SYSTEM OF PROTECTED AREAS OF BIOLOGICAL DIVERSITY

ARTICLE 4 – The Provincial Executive shall have the authority to develop a program of work and research on the conservation and sustainable use of biological diversity and its components, particularly in protected natural areas of the Province, which could also include guidelines and agreements on the selection, establishment and management of new areas that are important from the point of view of diversity.

CHAPTER V BIOLOGICAL RESOURCES

ARTICLE 5 – The Provincial Executive shall have the authority to regulate, through the regulations that are established, access to biological resources within the Province, in accordance with the national and provincial legislation in force.

CHAPTER VI DEFINITIONS

ARTICLE 6 – For the purposes of the present Law, the following definitions shall be established:

"Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial and aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"Biological resources" means genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"Biotechnology" means any technological application that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for specific uses.

"Domesticated or cultivated species" means species in which the evolutionary process has been influenced by humans to meet their needs.

"Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity.

"Genetic resources" means genetic material of actual or potential value.

"Habitat" means the place or type of site where an organism or population naturally occurs.

"In-situ conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in

the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"Protected area" means a geographically and legally defined area which is intended to achieve specific previously established conservation objectives.

"Sustainable use" means the use of components of biological diversity in a way and at a pace that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

"Technology" includes biotechnology.

CHAPTER VII IMPLEMENTING AUTHORITY

ARTICLE 7 – The Provincial Executive shall determine the implementing authority for the present Law.

CHAPTER VIII INFRINGEMENTS AND PENALTIES

ARTICLE 8 – Any act or omission that constitutes an infringement of the present Law and/or its regulations or that actually or potentially harms or diminishes biodiversity and/or undermines the proper conservation thereof shall be punishable in accordance with the provisions of the present Law.

ARTICLE 9 – Infringements that may have been committed with respect to the provisions of the present Law and its regulations and the provisions which the implementing authority has adopted by means of a decision shall be punishable with the penalties set out below:

- (a) A fine of up to TWO HUNDRED (200) times the minimum wage of the Provincial Public Administration, adjustable depending on the seriousness of the punishable act and/or whether or not the person or persons involved are repeat infringers. In the event of a repeat infringement, the fine may be increased by up to ONE HUNDRED (100) per cent of the aforementioned amount;
- (b) Confiscation of the infringing products, movable property, livestock and any item used in the course of the punishable act;
- (c) Disqualification or temporary or permanent closure.

ARTICLE 10 – Irrespective of the provisions of the previous article, the penalties already established by the laws in force with respect to the resource in question shall be applied.

ARTICLE 11 – The penalties provided for shall be ordered by the implementing authority, subject to legal proceedings, which shall be conducted in accordance with the regulations.

ARTICLE 12 – For the purposes of classifying the infringer's conduct and adjusting the penalties, the following shall be taken into account:

- (a) The fraudulent or culpable nature of the infringement;
- (b) The extent of the damage caused;
- (c) Whether the infringement is a repeat infringement.

ARTICLE 13 – Money collected as a result of the implementation of the present Law and contributions or bequests received shall be placed in the Fund for the Promotion of Protected Natural Areas established by Law No. 2932.

ARTICLE 14 – For the purposes of the previous article, the implementing authority shall be authorized to determine the charges for authorizations, licences and permits, concessions and bond notes, and the fines for infringements or other appropriate charges for the utilization of biological resources.

CHAPTER IX PROCEDURE

ARTICLE 15 – The implementing authority shall be authorized to carry out inspections, make the necessary decisions and record infringements of the present Law or its regulations, anywhere in the Province, with a view to verifying compliance with the Law.

It may request the cooperation of other official agencies or the assistance of the police for this purpose.

ARTICLE 16 – In court cases for infringements of the present Law, the general procedures established by Law No. 2970 and the special procedures established by the regulations shall be applied, without prejudice to criminal prosecutions that may be instituted.

ARTICLE 17 – The use or utilization of biological resources which are to be regulated in the future shall be carried out in accordance with the provisions of the present Law.

ARTICLE 18 – The present Law shall be transmitted to the Executive.

Comparison of Argentinian Biodiversity law with common provisions under the Nagoya Protocol and WIPO draft agreements

There is a number of the common provisions that are not addressed here.

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	ARTICLE 1 – The objectives of the present Law are as follows: (a) The conservation of biological diversity; (b) The sustainable use of its components; (c) The adoption of appropriate measures to achieve a fair and equitable sharing of the benefits arising out of the utilization of biological resources; (d) Regulation of the utilization of biological resources and their components; (e) Support for access to biotechnology and appropriate funding; (f) The development, implementation and execution of a program of work and research aimed at achieving the objectives set out above; (g) Provision of a framework instrument for other regulations that are in force or that may be implemented in the future with regard to the conservation and use of resources: flora, fauna, soil, water, air and others.	
2. definition of terms- key terms used in the draft	ARTICLE 6 – For the purposes of the present Law, the following definitions shall be established: "Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial and aquatic ecosystems and the	

	<p>ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.</p> <p>"Biological resources" means genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.</p> <p>"Biotechnology" means any technological application that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for specific uses.</p> <p>"Domesticated or cultivated species" means species in which the evolutionary process has been influenced by humans to meet their needs.</p> <p>"Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.</p> <p>"Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity.</p> <p>"Genetic resources" means genetic material of actual or potential value.</p> <p>"Habitat" means the place or type of site where an organism or population naturally occurs.</p> <p>"In-situ conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.</p> <p>"Protected area" means a geographically and legally defined area which is intended to achieve specific previously established conservation objectives.</p> <p>"Sustainable use" means the use of components of biological diversity in a way and at a pace that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.</p> <p>"Technology" includes biotechnology.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights		
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually	<p>ARTICLE 5 – The Provincial Executive shall have the authority to regulate, through the regulations that are established, access to biological resources within the Province, in accordance with the national and provincial legislation in force.</p> <p>ARTICLE 17 – The use or utilization of biological resources which are to be regulated in the future shall be carried out in accordance with the provisions of the present Law.</p>	

agreed terms-ensuring the bargaining process is fair and equitable		
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>ARTICLE 13 – Money collected as a result of the implementation of the present Law and contributions or bequests received shall be placed in the Fund for the Promotion of Protected Natural Areas established by Law No. 2932.</p> <p>ARTICLE 14 – For the purposes of the previous article, the implementing authority shall be authorized to determine the charges for authorizations, licences and permits, concessions and bond notes, and the fines for infringements or other appropriate charges for the utilization of biological resources.</p>	
7. Sanctions and remedies-dealing with breaches	<p>ARTICLE 8 – Any act or omission that constitutes an infringement of the present Law and/or its regulations or that actually or potentially harms or diminishes biodiversity and/or undermines the proper conservation thereof shall be punishable in accordance with the provisions of the present Law.</p> <p>ARTICLE 9 – Infringements that may have been committed with respect to the provisions of the present Law and its regulations and the provisions which the implementing authority has adopted by means of a decision shall be punishable with the penalties set out below:</p> <p>(a) A fine of up to TWO HUNDRED (200) times the minimum wage of the Provincial Public Administration, adjustable depending on the seriousness of the punishable act and/or whether or not the person or persons involved are repeat infringers. In the event of a repeat infringement, the fine may be increased by up to ONE HUNDRED (100) per cent of the aforementioned amount;</p> <p>(b) Confiscation of the infringing products, movable property, livestock and any item used in the course of the punishable act;</p> <p>(c) Disqualification or temporary or permanent closure.</p> <p>ARTICLE 10 – Irrespective of the provisions of the previous article, the penalties already established by the laws in force with respect to the resource in question shall be applied.</p> <p>ARTICLE 11 – The penalties provided for shall be ordered by the implementing authority, subject to legal proceedings, which shall be conducted in accordance with the regulations.</p> <p>ARTICLE 12 – For the purposes of classifying the infringer's conduct and adjusting the penalties, the following shall be taken into account:</p> <p>(a) The fraudulent or culpable nature of the infringement;</p> <p>(b) The extent of the damage caused;</p> <p>(c) Whether the infringement is a repeat infringement.</p>	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>ARTICLE 2 – The Provincial Executive shall have the authority to administer:</p> <p>(a) With the National Executive, the support provided for in Article 41 of the National Constitution and the implementation, with respect to the biological diversity of our Province, of National Law No. 24.375 approving the Convention on Biological Diversity, which was adopted in the city of Río de Janeiro, Federative Republic of Brazil, on June 5, 1992, in particular Articles 6, 7, 8, 11, 12 and 13, which are entitled, respectively, "General measures for conservation and sustainable use", "Identification and monitoring", "In-situ conservation", "Incentive measures", "Research and training" and "Public education and awareness";</p> <p>(b) Externally, the benefits or cooperative measures that are made possible by the aforementioned international convention, directly where appropriate or through the national Ministry of Foreign Affairs and Worship.</p>	

	<p>ARTICLE 4 – The Provincial Executive shall have the authority to develop a program of work and research on the conservation and sustainable use of biological diversity and its components, particularly in protected natural areas of the Province, which could also include guidelines and agreements on the selection, establishment and management of new areas that are important from the point of view of diversity.</p> <p>ARTICLE 7 – The Provincial Executive shall determine the implementing authority for the present Law.</p> <p>ARTICLE 15 – The implementing authority shall be authorized to carry out inspections, make the necessary decisions and record infringements of the present Law or its regulations, anywhere in the Province, with a view to verifying compliance with the Law. It may request the cooperation of other official agencies or the assistance of the police for this purpose.</p> <p>ARTICLE 16 – In court cases for infringements of the present Law, the general procedures established by Law No. 2970 and the special procedures established by the regulations shall be applied, without prejudice to criminal prosecutions that may be instituted.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws- avoiding conflict with other laws		
13. recognition of requirements of other nations-mutual recognition of rights and ensuring they	<p>ARTICLE 3 – The implementing authority for the present Law may enter into national or international cooperation conventions or agreements, through the Ministry of Foreign Affairs and Worship or directly where appropriate, with government agencies, non-governmental organizations and State or private universities, whether national or international, with a view to achieving the objectives of the present Law.</p>	

are complied with		
14. transitional provisions-existing uses		

4. Chile

This law has a single provision dealing with relevant issues

REVISED, COORDINATED AND SYSTEMATIZED TEXT OF THE INDUSTRIAL PROPERTY LAW 2006

Article 3.– The processing of applications, the grant of titles and other services relating to industrial property shall be the responsibility of the Department of Industrial Property, hereinafter referred to as “the Department”, under the Ministry of Economy, Development and Reconstruction. Applications may be submitted in person or through an agent. This Law shall guarantee that the protection afforded by the industrial property rights regulated therein shall duly safeguard and ensure respect for both the biological and genetic heritage and national traditional knowledge. The grant of industrial property rights involving protectable elements, which have been developed from the material obtained from said heritage or such knowledge, shall be subject to the condition that such material was acquired according to the legal system in force.

5. China

This law has limited content dealing with relevant issues

Patent Law of the People's Republic of China 2008

Article 5 Patent rights shall not be granted for invention-creations that violate the law or social ethics, or harm public interests.

Patent rights shall not be granted for inventions that are accomplished by relying on genetic resources which are obtained or used in violation of the provisions of laws and administrative regulations.

Article 26 When a person intends to apply for an invention or utility model patent, he shall submit the relevant documents, such as a written request, a written description and its abstract, and a written claim.

In the written request shall be specified the name of the invention or utility model, the name of the inventor or designer, the name or title and the address of the applicant and other related matters.

The written description shall contain a clear and comprehensive description of the invention or utility model so that a technician in the field of the relevant technology can carry it out; when

necessary, pictures shall be attached to it. The abstract shall contain a brief introduction to the main technical points of the invention or utility model.

The written claim shall, based on the written description, contain a clear and concise definition of the proposed scope of patent protection.

With regard to an invention-creation accomplished by relying on genetic resources, the applicant shall, in the patent application documents, indicate the direct and original source of the genetic resources. If the applicant cannot indicate the original source, he shall state the reasons.

6. Ecuador

This law provides limited coverage of relevant issues

INTELLECTUAL PROPERTY LAW 2006

Art. 120. – Inventions in all fields of technology shall be protected by the granting of patents for inventions and utility models.

All industrial property protection shall guarantee the protection of the country's biological and genetic heritage; as such, the granting of patents for inventions or processes that relate to elements of said heritage shall be conditional on those elements having been acquired lawfully.

Art. 248. – All cultivated plant genera and species that involve the genetic improvement of plants shall be protected through the granting of breeders' certificates, provided that such cultivation and improvement are not prohibited for reasons of human, animal or plant health.

No protection shall be granted for wild species that have not been improved by humans.

The provisions relating to protection of the country's biological and genetic heritage set out in the second paragraph of Article 120 of this Law shall be observed for the purpose of protecting plant varieties.

Art. 278. – The State shall recognize farmers' rights arising from past, present and future contributions in conserving, improving and making available plant genetic resources. These rights shall include the right to maintain their traditional practices, to save, improve and exchange seeds, to access technology, credit and the market, and to be rewarded for the use of seeds that they have developed.

To that end, a special law shall govern cases in which this principle is to be applied.

Art. 376. – In order to ensure the protection of the country's biological and genetic heritage, as provided for in the Constitution and in this Law, acquisition shall be considered lawful where it meets the requirements for access to biological and genetic resources set out in the Constitution and this Law, decisions of the Andean Community, and international treaties and conventions.

7. Hong Kong

This law provides limited coverage of relevant issues

NEW ZEALAND – HONG KONG, CHINA CLOSER ECONOMIC PARTNERSHIP AGREEMENT

Article 8

Genetic Resources, Traditional Knowledge and Folklore

Subject to the international obligations that are applicable to each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

8. India

Analysed against the common provisions

MINISTRY OF ENVIRONMENT AND FORESTS NOTIFICATION

New Delhi, the 15th April 2004

G.S.R. 261(E) - In exercise of the powers conferred by Section 62 of the Biological Diversity Act, 2002, and in super session of the National Biodiversity Authority (salary, allowances and conditions of service of Chairperson and other Members) Rules, 2003, except as respect to things done or omitted to be done before super session, the Central Government hereby makes the following rules namely: -

1. Short title and commencement

- (1) These rules may be called the Biological Diversity Rules, 2004.
- (2) Thus shall come into force on 15th April, 2004.

2. Definitions

In these rules, unless the context otherwise requires,

- (a) "Act" means the Biological Diversity Act 2002 (18 of 2003);
- (b) "Authority" means the National Biodiversity Authority established under sub-section (1) of Section 8;
- (c) "Biodiversity Management Committee" means a Biodiversity Management Committee established by a local body under subsection (1) of Section 41;
- (d) "Chairperson" means the chairperson of the National Biodiversity Authority or as the case maybe, of the State Biodiversity Board;
- (e) "fee" means any fee stipulated in the schedule;
- (f) "Form" means from annexed to these rules;
- (g) "Member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the chairperson as the case may be;
- (h) "section" means a section of the Act;
- (i) "Secretary" means the full time Secretary of the Authority;
- (j) words and expressions used but not defined in these rules and defined in the Act shall have the meaning respectively assigned to them in the Act;

3. Manner of selection and appointment of the Chairperson

- (1) The Chairperson of the Authority shall be appointed by the Central Government.
- (2) Every appointment of Chairperson under sub-section (1) shall be made either on deputation basis or by selection from outside the Central Government. In case the appointment is through

deputation, the applicant should not be below the rank of Additional Secretary to the Government of India.

4. Term of Office of the Chairperson

- (1) The chairperson of the Authority shall hold the office for a term of three years' and shall be eligible for re-appointment.
- (2) Provided that no Chairperson shall hold office as such after he attains the age of sixty-five years or his term of office expires which is earlier.
- (3) The Chairperson may resign from his office by giving at least one month notice in writing to the Central Government.

5. Pay and Allowances of Chairperson

- (1) A chairperson shall be entitled to a fixed pay of Rs. 26000/- per month. In case of retired person is appointed as Chairperson, his pay shall be fixed in accordance with the orders of the Central Government as applicable to such persons.
- (2) A Chairperson shall be entitled to such allowances, leave, pension, provident fund, house and other perquisites, etc. to be decided by the Central Government from time to time.

6. Term of Office and Allowances of non-official Members

- (1) Every non-official member of the Authority shall hold his office for a term not exceeding three years at a time from the date of publication of his appointment in the Official Gazette.
- (2) Every non-official member attending the meeting of the Authority shall be entitled to sitting allowance, traveling expenses, daily allowance and such other allowances as are applicable to non-official member of commissions and committees of the Central Government attending the meeting(s) of such Commissions or Committees.

7. Filling up vacancies of non-official members

- (1) A non-official member of the Authority may resign his office at any time by giving in writing under his hand addressed to the Central government and the seat of that member in the Authority shall become vacant.
- (2) A casual vacancy of a non-official member in the Authority shall be filled up by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term of the member in whose place he was nominated.

8. Removal of the members of the Authority

No member of the Authority shall be removed from his office on any ground specified in section 11, without a due and proper enquiry by an officer not below the rank of a Secretary to the Government of India appointed by the Central government and without giving such member a reasonable opportunity of being heard.

9. Secretary of the Authority

- (1) The Authority shall appoint a Secretary to it.
- (2) The terms and conditions of the appointment of the Secretary shall be determined by the Authority by regulation.
- (3) The Secretary shall be responsible for coordinating and convening the meetings of the Authority, maintenance of the records of the proceedings of the Authority and such other matters as may be assigned to him by the Authority.

10. Meetings of the Authority

- (1) The Authority shall meet at least four times in a year normally after a period of three months at the Head quarters of the Authority or at such place as may be decided by the Chairperson.
- (2) The Chairperson shall, upon a written request from not less than five Members of the Authority or upon a direction of the Central Government, call a special meeting of the Authority.

- (3) The members shall be given at least fifteen days' notice for holding an ordinary meeting and at least three days' notice for holding a special meeting specifying the purpose, the time and the place at which such meeting is to be held.
- (4) Every meeting shall be presided over by the Chairperson and in his absence, by a presiding officer to be elected by the members present from amongst themselves.
- (5) The decision of the Authority at a meeting shall, if necessary, be taken by a simple majority of the Members present and voting and the Chairperson or in his absence, the Member presiding shall have a second or casting vote.
- (6) Each member shall have one vote.
- (7) The quorum at every meeting of the Authority shall be five.
- (8) No Member shall be entitled to bring forward for the consideration of a meeting any matter of which he has not given ten days' notice unless the Chairperson in his discretion permits him to do so.
- (9) Notice of the meeting or sending it by registered post to his last known place of residence or business or in such other manner as the Secretary of the Authority may, in the circumstances of the case, think fit.

11. Appointment of Expert Committee by the Authority and their entitlements

- (1) the Authority may constitute any number of Committees for such purposes as it may deem fit consisting wholly of members or wholly of other persons or partly of members or partly of other persons.
- (2) The members of the Committee other than the members of the Authority shall be paid such fees and allowances for attending the meetings as the Authority may deem fit.

12. General functions of the Authority

The Authority may perform the following functions, namely :

- (i) lay down the procedure and guidelines to govern the activities provided under sections 3, 4, and 6;
- (ii) advise the Central Government on any matter concerning conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;
- (iii) coordinate the activities of the State Bio-diversity Boards;
- (iv) provide technical assistance and guidance to the State bio-diversity Boards;
- (v) commission studies and sponsor investigation and research;
- (vi) engage consultants, for a specific period, not exceeding three years, for providing technical assistance to the Authority in the effective discharge of its functions;
Provided that if it is necessary and expedient to engage any consultant beyond the period of three years, the Authority shall seek prior approval of the Central Government for such an engagement;
- (vii) collect, compile and publish technical and statistical data, manuals, codes or guides relating to conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;
- (viii) organize through mass media a comprehensive programme regarding conservation of bio-diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resource and knowledge;
- (ix) plan and organize training or personnel engaged or likely to be engaged in programmes for the conservation of bio-diversity and sustainable use of its components;

- (x) prepare the annual Budget of the Authority incorporating its own receipts as also the devaluation from the Central Government provided that the allocation by the Central government shall be operated in accordance with the budget provisions approved by the Central Government;
- (xi) recommend creation of posts to the Central Government, for effective discharge of the functions by the Authority and to create such posts, provided that no such post whether permanent/temporary or of any nature, would be created without prior approval of the Central Government;
- (xii) approve the method of recruitment to the officers and servants of the Authority;
- (xiii) take steps to build up data base and to create information and documentation system for biological resources and associated traditional knowledge through bio-diversity registers and electronics databases to ensure effective management, promotion and sustainable uses;
- (xiv) give directions to State Bio-diversity Boards and the Bio-diversity Management Committees in writing for effective implementation of the Act;
- (xv) report to the Central Government about the functioning of the Authority and implementation of the Act;
- (xvi) recommend, modify, collection of benefit sharing fee under sub section (1) of Section 6 or Changes of royalties under sub-section (2) of section 19 in respect of biological resources from time to time;
- (xvii) sanction grants-in-aid and grants to the State Bio-diversity Board and Biodiversity Management Committees for specific purposes;
- (xviii) undertake physical inspection of any area in connection with the implementation of the Act;
- (xix) take necessary measures including appointment of legal experts to oppose grant of intellectual property right in any country outside India on any biological resource and associated knowledge obtained from India in an illegal manner;
- (xx) do such other functions as may be assigned or directed by the Central Government from time to time.

13. Powers and duties of Chairperson

- (1) The Chairperson shall have the overall control of the day-to-day activities of the Authority.
- (2) Subject to the provisions of Section 10, the Chairperson shall have the powers of general superintendence over the officers and staff of the Authority and he may issue necessary directions for the conduct and management of the affairs of the Authority.
- (3) The Chairperson shall be in charge of all the confidential papers and records of the Authority and shall be responsible for their safe custody.
- (4) All orders and instructions to be issued by the Authority shall be under the signature of the Chairperson or of any other officer authorized by the Chairperson in this behalf.
- (5) The Chairperson, either himself or through an officer of the authority authorized for the purpose, may sanction and disburse all payments against the approved budget.
- (6) The Chairperson shall have full powers for granting administrative and technical sanction to all estimates.
- (7) The Chairperson shall convene and preside over all the meetings of the Authority and shall ensure that all decisions taken by the Authority are implemented in proper manner.
- (8) The Chairperson shall exercise such other powers and perform such other functions as may be delegated to him from time to time by the Authority or the Central Government.

14. Procedure for access to biological resources and associated traditional knowledge

- (1) Any person seeking approval of the Authority for access to biological resources and associated knowledge for research or for commercial utilization shall make an application in Form 1.
- (2) Every application under sub-rule (1) shall be accompanied by a fee of ten thousand rupees in the form of a cheque or demand draft drawn in favour of the Authority.
- (3) The Authority shall after consultation with the concerned local bodies and collecting such additional information from the applicant and other sources, as it may deem necessary, dispose of the application, as far as possible, within a period of six months from the date of its receipts.
- (4) On being satisfied with the merit of the application, the Authority may grant the approval for access to biological resources and associated knowledge subject to such term and conditions as it may deem fit to impose.
- (5) The approval to access shall be in the form of a written agreement duly signed by the authorized officer of the Authority and the applicant.
- (6) The form of the agreement referred to in sub-rule (5) shall be laid down by the Authority and shall include the following; namely:
- (i) general objectives and purpose of the application for seeking approval;
 - (ii) description of the biological resources and traditional knowledge including accompanying information;
 - (iii) intended uses of the biological resources (research, breeding, commercial utilization etc.);
 - (iv) conditions under which the applicant may seek intellectual property rights;
 - (v) quantum of monetary and other incidental benefits. If need be, a commitment to enter into a fresh agreement particularly in case if the biological material is taken for research purposes, and also in case of any other change in use thereof subsequently;
 - (vi) restriction to transfer the accessed biological resources and the traditional knowledge to any third party without prior approval of Authority;
 - (vii) to adhere to a limit set by the Authority on the quantity and specification of the quality of the biological resources for which the applicant is seeking access;
 - (viii) guarantee to deposit a reference sample of the biological material sought to be accessed with the repositories identified in Section 39;
 - (ix) submitting to the Authority a regular status report of research and other developments;
 - (x) commitment to abide with the provisions of Act and rules and other related legislations in force in the country;
 - (xi) commitment to facilitate measures for conservation and sustainable use of biological resources accessed;
 - (xii) commitment to minimize environmental impacts of collecting activities;
 - (xiii) legal provisions such as duration of the agreement, notice to terminated the agreement, independent enforceability of individual clauses, provision to the extent that obligations in benefit sharing clauses survive the termination of the agreement, events limiting liability (natural calamities), arbitration, any confidentiality clause.
- (7) The conditions for access may specifically provide measures for conservation and protection of biological resources to which the access is being granted.
- (8) The Authority may for reasons to be recorded in writing reject as application it considers that the request cannot be acceded to.
- (9) No application shall be rejected unless the applicant is given a reasonable opportunity of being heard.

(10) The Authority shall take steps to widely publicize the approvals granted, through print or electronic media and shall periodically monitor compliance of conditions on which the approval was accorded.

15. Revocation of access or approval

(1) The Authority may either on the basis of any complaint or *suo moto* withdraw the approval granted for access under rule 15 and revoke the written agreement under the following conditions, namely:

- (i) on the basis of reasonable belief that the person to whom the approval was granted has violated any of the provisions of the Act or the condition on which the approval was granted;
- (ii) when the person who has been granted approval has failed to comply with the terms of the agreement;
- (iii) on failure to comply with any of the conditions of access granted;
- (iv) on account of overriding public interest or for protection of environment and conservation of biological diversity.

(2) The Authority shall send a copy of every order of revocation issued by it to the concerned State Biodiversity Board and the Biodiversity Management Committees for prohibiting the access and also to assess the damage, if any caused and take steps to recover the damage.

16. Restriction on activities related to access to biological resources

(1) The Authority if it deems necessary and appropriate shall take the steps to restrict or prohibit the request for access to biological resources for the following reasons; namely:

- (i) the request for access is for any endangered taxa;
- (ii) the request for access is for any endemic and rare species;
- (iii) the request for access may likely to result in adverse effect on the livelihoods of the local people;
- (iv) the request to access may result in adverse environmental impact which may be difficult to control and mitigate;
- (v) the request for access may cause genetic erosion or affecting the ecosystem function;
- (vi) use of resources for purposes contrary to national interest and other related international agreements entered into by India.

17. Procedure for seeking approval for transferring results of research

(1) Any person desirous of transferring results of research relating to biological resources obtained from India for monetary consideration to foreign nationals, companies and Non Resident Indians (NRIs), shall make an application to the Authority in the Form II.

(2) Every application under sub-rule (i) shall be accompanied by a fee of five thousand rupees in the form of a Bank draft or Cheque drawn in favour of the Authority.

(3) Every application under sub-rule (i) shall be decided upon by the Authority as far as [possible within a period of three months from the receipt of the same.

(4) On being satisfied that the applicant has fulfilled all the requirements, the Authority may grant the approval for transferring the results of research subject to such terms and conditions as it may deem fit to impose in each case.

(5) The approval for transfer shall be granted in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement shall be such as may be decided by the Authority.

(6) The Authority may for reasons to be recorded in writing reject an application if it considers that the application cannot be allowed;

Provided that the application shall be rejected unless the applicant has been given a reasonable opportunity of being heard.

18. Procedure for seeking prior approval before applying for intellectual property protection

(1) Any person desirous of applying for a patent or any other intellectual property based on research on biological material and knowledge obtained from India shall make an application Form III.

(2) Every application under sub-rule (1) shall be accompanied by paying a fee of five hundred rupees.

(3) The Authority after due appraisal of the application and after collecting any additional information, on the basis of merit shall decide on the application, as far as possible within a period of three months or receipt of the same.

(4) On being satisfied that the applicant has fulfilled all the necessary requirements, the Authority may grant approval for applying for a patent or any other IPR subject to such terms and conditions as it may deem fit to impose in each case.

(5) The approval shall be granted in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement may be decided by the Authority.

(6) The Authority may reject the application if it considers that the request cannot be acceded to after recording the reasons. Before passing order of rejection, the applicant shall be given an opportunity of hearing.

19. Procedure for third party transfer under sub-section (2) of Section 20

(1) The persons who have been granted approval for access to biological resources and associated knowledge, intend to transfer the accessed biological resource or knowledge to any other person or organization shall make an application to the Authority in Form IV.

(2) Every application under sub-rule (1) shall be accompanied by a fee of ten thousand rupees in the form of Bank draft or cheque drawn in favour of the Authority.

(3) The Authority shall after collecting any additional information, decide upon the application as far as possible within a period of six months of receipt of the same.

(4) On being satisfied that the applicant has fulfilled all the necessary requirements, the Authority may grant approval for third party transfer subject to such terms and conditions it may deem fit to impose in each case.

(5) The approval as may be granted under sub-rule (4) in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement shall be such as may be decided by the Authority.

(6) The Authority may for reasons to be recorded in writing reject the application if it considers that the request cannot be acceded to, provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

20. Criteria for equitable benefit sharing (Section 21)

(1) The Authority shall by notification in the Official Gazette formulate the guidelines and describe the benefit sharing formula.

(2) The guidelines shall provide for monetary and other benefits such as royalty, joint ventures, technology transfer, product development, education and awareness raising activities, institutional capacity building and venture capital fund.

(3) The formula for benefit sharing shall be determined on a case-by-case basis.

(4) The Authority while granting approval to any person for access or for transfer of results of research or applying for patent and IPR or for third party transfer of the accessed biological

resource and associated knowledge may impose terms and conditions for ensuring equitable sharing of the benefits arising out of the use of accessed biological material and associated knowledge.

(5) The quantum of benefits shall be mutually agreed upon between the persons applying for such approval and the Authority in consultation with the local bodies and benefit claimers and may be decided in due regard to the defined parameters of access, the extent of use, the sustainability aspect, impact and expected outcome levels, including measures ensuring conservation and

sustainable use of biological diversity.

(6) Depending upon each case, the Authority shall stipulate the time frame for assessing benefit sharing on short, medium, and long term benefits.

(7) The Authority shall stipulate that benefits shall ensure conservation and sustainable use of biological diversity.

(8) Where biological resources or knowledge is accessed from a specific individual or a group of individuals or organizations, the Authority may take steps to ensure that the agreed amount is paid directly to them through the district administration. Where such individuals or group of individuals or organizations cannot be identified, the monetary benefits shall be deposited in the National Biodiversity Fund.

(9) Five percent of the assessed benefits shall be earmarked for the Authority or Board as the case may be, towards the administrative and service charges.

(10) The Authority shall monitor the flow of benefits as determined under sub rule (4) in a manner determined by it.

21. Application of National Biodiversity Fund

(1) The National Biodiversity Fund shall be operated by the Chairperson or by such other officer of the Authority as may be authorized in this regard.

(2) The National Biodiversity Fund shall have two separate heads of accounts, one relating to the receipts from the Central Government and the other concerning the fee, license fee, royalty and other receipts of the Authority.

22. Constitution of Biodiversity Management Committees

(1) Every local body shall constitute a Biodiversity Management Committee (BMC) within its area of jurisdiction.

(2) The Biodiversity Management Committee as constituted under sub-rule (1) shall consist of a Chairperson and not more than six persons nominated by the local body, of whom not less than one third should be women and not less than 18% should belong to the Scheduled Castes/Scheduled Tribes.

(3) The Chairperson of the Biodiversity Management Committee shall be elected from amongst the members of the committee in a meeting to be chaired by the Chairperson of the local body. The Chairperson of the local body shall have the casting votes in case of a tie.

(4) The Chairperson of the Biodiversity Management Committee shall have a tenure of three years.

(5) The local Member of Legislative Assembly/Member of Legislative Council and Member of Parliament would be special invitees to the meetings of the Committee.

(6) The main function of the BMC is to prepare People's Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.

- (7) The other functions of the BMC are to advise on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local vairs and practitioners using the biological resources.
- (8) The Authority shall take steps to specify the form of the People's Biodiversity Registers, and the particulars it shall contain and the format for electronic database.
- (9) The Authority and the State Biodiversity Boards shall provide guidance and technical support to the Biodiversity Management Committees for preparing People's Biodiversity Registers.
- (10) The People's Biodiversity Registers shall be maintained and validated by the Biodiversity Management Committee.
- (11) The Committee shall also maintain a Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing.

23. Appeal for settlement of disputes under Section 50

- (1) If a dispute arises between the Authority or a State Biodiversity Board or between one Board and other Board(s) on account of implementation of any order or direction or on any issue of policy decision, either of the aggrieved parties i.e, Authority or that Board, as the case may be, prefer an appeal to the Central Government under section 50, in Form V to the Secretary, Ministry of Environment and Forests, Government of India.
- (2) In case the dispute arises between a State Biodiversity Board and another state Biodiversity Board or Boards, the aggrieved Board or Boards, shall prefer the point or points of dispute to the Central Government which shall refer the same to the Authority.
- (3) The memorandum of appeal shall state the facts of the case, the grounds relied upon by the appellant, for preferring the appeal and the relief sought for.
- (4) The memorandum of appeal shall be accompanied by an authenticated copy of the order, direction or policy decision, as the case may be, by which the appellant is aggrieved and shall be duly signed by the authorized representative of the appellant.
- (5) The memorandum of appeal shall be submitted in quadruplicate, either in person or through a registered post with Acknowledgement due, within 30 days from the date of the orders, direction or policy decision, impugned provided that if the Central Government is satisfied that there was good and sufficient reason for the delay in preferring the appeal, it may, for reason to be recorded in writing, allow the appeal to be preferred after the expiry of the aforesaid period of 30 days but before the expiry of 45 days from the date of the orders impugned, direction or policy decision, as the case may be.
- (6) The notice for hearing of the appeal shall be given in Form VI by a registered post with an acknowledgement due.
- (7) The Central Government shall, after hearing the appellant and the other parties, dispose of the appeal.
- (8) In disposing of an appeal, it may vary or modify or cancel impugned order, direction or policy, as the case may be.
- (9) In adjudicating a dispute, the Authority shall be guided by the principles of natural justice and as far as practicable, follow the same procedures which the Central Government is required to follow under this rule.

24. Manner of giving notice under Section 61

- (1) The manner of giving notice, under clause (b) of section 61, shall be as follows namely:
 - (i) The notice shall be in writing in Form VII.
 - (ii) The person giving the notice may send it to:

- (a) If the alleged offense has taken place in a Union territory, to the Chairperson of the National Biodiversity Authority; and
- (b) If the alleged offence has been taken place in a State, to the Chairperson of the State Biodiversity Board.
- (2) The notice referred to in sub-rule (1) shall be sent by registered post acknowledgement due; and
- (3) The period of thirty days mentioned in clause (b) of section 61 shall be reckoned from the date, the notice is received by the Authorities mentioned in sub-rule (1)

FORM I

(See rule 14)

Application form for access to Biological resources and associated traditional knowledge

Part A

- (i) Full particulars of the applicant
- (ii) Name
- (iii) Permanent address
- (iv) Address of the contact person/agent, if any, in India
- (v) Profile of the organization (personal profile in case the applicant is an individual). Please attach relevant documents of authentication):
- (vi) Nature of business
- (vii) Turnover of the organization in US\$
- 2. Details and specific information about nature of access sought and biological material and associated knowledge to be accessed
 - a) Identification (scientific name) of biological resources and its traditional:
 - b) Geographical location of proposed collection:
 - c) Description / nature of traditional knowledge:
 - d) Any identified individual/community holding the traditional knowledge:
 - e) Quantity of biological resources to be collected (give the schedule):
 - f) Time span in which the biological resources is proposed to be collected:
 - g) Name and number of persons authorized by the company for making the selection:
 - h) The purpose for which the access is requested including the type and extent of research, commercial use being derived and expected to be derived from it:
 - i) Whether any collection of the resource endangers any component of biological diversity and the risks which may arise from the access:
- 3. Details of any national institution which will participate in the Research and Development activities.
- 4. Primary destination of accessed resource and identity of the location where the R&D will be carried out.
- 5. The economic and other benefits including those arriving out of any IPR, patent obtained out of accessed biological resources and knowledge that are intended, or may accrue to the applicant or to the country that he/she belongs.
- 6. The biotechnological, scientific, social or any other benefits obtained out of accessed biological resources and knowledge that are intended, or may accrue to the applicant or to the country that he/she belongs.
- 7. Estimation of benefits that would flow to India/communities arising out of the use of accessed bio-resources and traditional knowledge.
- 8. Proposed mechanism and arrangements for benefit sharing.

9. Any other information considered relevant.

PART B

Declaration

I/We declare that:

- Collection of proposed biological resources shall not adversely affect the sustainability of the resources;
- Collection of proposed biological resources shall not entail any environmental impact;
- Collection of proposed biological resources shall not pose any risk to ecosystems;
- Collection of proposed biological resources shall not adversely affect the local communities;

I/We further declare the Information provided in the application form is true and correct and I/we shall be responsible for any incorrect/wrong information.

Signed

Name

Title

Place

Date

FORM II

(See rule 17)

Application for seeking prior approval of National Biodiversity Authority for transferring the results or research to foreign nationals, companies. NRI's, for commercial purposes.

1. Full particulars of the applicant

i) Name

ii) Address

iii) Professional Profile

iv) Organizational affiliation (Please attach relevant documents of authentication

2. Details of the results of research conducted

3. Details of the Biological resources and/or associated knowledge used in the research

4. Geographical location from where the biological resources used in the research are collected.

5. Details of any traditional knowledge used in the research and any identified individual/community holding the traditional knowledge.

6. Details of institution where R&D activities carried out.

7. Details of the individual/organization to whom the research results are intend to transfer.

8. Details of economic, biotechnological, scientific or any other benefits that are intended, or may accrue to the individual/ organization due to commercialization of transferred research results.

9. Details of economic, biotechnological, scientific or any other benefits that are intended, or may accrue to the applicant seeking approval for transfer of results or research.

10. Details of any agreement or MOU between by the proposed recipient and applicant seeking approval for transfer of results of research.

Declaration

I/We declare the Information provided in the application form is true and correct and I/we shall be responsible for any incorrect/wrong information.

Signed

Name

Title

Place

Date

FROM III

(See rule 18)

Application for seeking prior approval of National Biodiversity Authority for applying for Intellectual Property Right

1. Full particulars of the applicant

i) Name

ii) Address

iii) Professional profile

iv) Organizational affiliation (Please attach relevant documents of authentication)

2. Details of the invention on which IPRs sought

3. Details of the Biological resources and/or associated knowledge used in the invention

4. Geographical location from where the biological resources used in the invention are collected

5. Details of any traditional knowledge used in the invention and any identified individual/community holding the traditional knowledge

6. Details of institution where Research and Development activities carried out.

7. Details of economic, biotechnological, scientific or any other benefits that are intended, or may accrue to the applicant due commercialization of the invention.

Declaration

I/We declare the Information provided in the application form is true and correct and I/we shall be responsible for any incorrect/wrong information.

Signed

Name

Title

Place

Date

FORM IV

(See rule 19)

Application form for seeking approval of National Biodiversity Authority for third party transfer of the accessed Biological resources and associated traditional knowledge.

1. Full particulars of the applicant

(i) Name

(ii) Address

(iii) Professional profile

(iv) Organizational affiliation (Please attach relevant documents of authentication)

2. Details of the biological material and traditional knowledge accessed.

3. Details of the access contract entered (Copy to be enclosed).

4. Details of benefits and mechanism/arrangements for benefit sharing already implemented.

5. Full particulars of the third party to whom the accessed material/knowledge is intended to transfer.

6. The purpose of the intended third party transfer.

7. Details of economic, social, biotechnological, scientific or any other benefits that are intended, or may accrue to the third party due to transfer of accessed biological material and knowledge.

8. Details of any agreement to be entered between the applicant and the third party.

9. Estimation of benefits that would flow to India/communities arising out of the third party transfer of accessed biological resources and traditional knowledge.
10. Proposed mechanism and arrangements for benefit sharing arising out of the proposed third party transfer.
11. Any other relevant information.

Declaration

I/We declare the Information provided in the application form is true and correct and I/we shall be responsible for any incorrect/wrong information.

Signed

Name

Title

Place

Date

FORM V

(See rule-23(1))

Form of Memorandum of Appeal

**BEFORE THE _____ MINISTRY OF ENVIRONMENT AND FORESTS, NEW DELHI
OR NATIONAL BIODIVERSITY AUTHORITY** (as the case may be)

(Memorandum of appeal under Section 50 of the Biological Diversity Act, 2002)

Appeal No. _____ of 200

_____Appellant(s)

Vs.

_____Respondent(s)

(here mention the designation of the Authority/Board, as the case may be)

The appellant begs to prefer this Memorandum of Appeal against the order dated _____ passed by the Respondent on the following facts and grounds.

1. FACTS:

(Here briefly mention the facts of the case):

2. GROUND:

(Here mention the grounds on which the appeal is made):

i.)

ii.)

iii.)

3. RELIEF SOUGHT:

i.)

ii.)

iii.)

4. PRAYER:

(a) In the light of what is stated above, the appellant respectfully prays that the order/decision of the respondent be quashed/set-aside

(b) The policy/guidelines/regulation framed by the Respondent be quashed/modified/annulled to the extent _____

(c) _____

Signature of the appellant with Seal

Place: _____ Address: _____

Dated: _____

VERIFICATION

I, the appellant do hereby declare that what is stated above is true to the best of my information and belief.

Verified on _____ day of _____

Signature of the appellant with Seal

Address

Signature of the Authorized representative of the appellant

Enclosures: 1. Authenticated copy of the order/direction/policy decision against which the the appeal has been preferred.

FORM VI

(See rule 28)

BEFORE THE _____ MINISTRY OF ENVIRONMENT AND FORESTS, NEW DELHI OR NATIONAL BIODIVERSITY AUTHORITY (as the case may be)

Appeal No. _____ of 200

Between:

_____Appellant(s)

Vs.

_____Respondent(s)

NOTICE

Please take note that the above appeal filed by the appellant, against the order/direction/policy decision (give details) is fixed for hearing on _____

at _____.

The copies of the appeal memorandum and other annexure filed along with the appeal are sent herewith for your reference.

Please note that if you fails to appear on the said date or other subsequent date of hearing of the appeal, the appeal would be disposed of finally by placing you ex-parte.

Authorized signatory on behalf of the Appellate Authority (Seal)

Date: _____

Place: _____

FORM VII**FORM OF NOTICE**

(See rule 24(1))

By Registered Post/Acknowledgement due

From,

Sri _____

To,

Sub: NOTICE UNDER SECTION 61(b) OF THE BIOLOGICAL DIVERSITY ACT. 2002.

1. Whereas an offence under the Biological Diversity Act, 2002 has been committed/is being committed by _____.

2. I/We hereby give notice of 30 days under Section 61(b) of the Biological Diversity Act, 2002 of my/our intention to file a complaint in the Court against _____
For violation of the provisions of the Biological Diversity Act, 2002.

3. In support of my/our notice, I am/we are enclosing herewith the following documents as evidence of proof.

Place: _____

Dated: _____

Signature

EXPLANATION:

- 1) In case the notice to be given in the name of a company, documentary evidence authorizing the person to sign the notice on behalf of the company shall be enclosed to the notice.
- 2) Give the name and address of the alleged offender. In case of using biological resource/knowledge/research/bio-survey and bio utilization the intellectual property right/patent, without the approval of the Authority, the details thereof and the commercial utilization if any, may be furnished.
- 3) Documentary evidence shall include photograph, technical report, etc. for enabling enquiry into the alleged violation/offence.

Comparison of Indian Biodiversity regulations with common provisions under the Nagoya Protocol and WIPO draft agreements

This law provides omits coverage of a number of the common provisions

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources		
2. definition of terms- key terms used in the draft	2. Definitions In these rules, unless the context otherwise requires, (a) "Act" means the Biological Diversity Act 2002 (18 of 2003); (b) "Authority" means the National Biodiversity Authority established under sub-section (1) of Section 8; (c) "Biodiversity Management Committee" means a Biodiversity Management Committee established by a local body under subsection (1) of Section 41; (d) "Chairperson" means the chairperson of the National Biodiversity Authority or as the case maybe, of the State Biodiversity Board; (e) "fee" means any fee stipulated in the schedule; (f) "Form" means from annexed to these rules; (g) "Member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the chairperson as the case may be; (h) "section" means a section of the Act; (i) "Secretary" means the full time Secretary of the Authority; (j) words and expressions used but not defined in these rules and defined in the Act shall have the meaning respectively assigned to them in the Act;	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources,		

moral rights		
4. beneficiaries- who should benefit		
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>	<p>14. Procedure for access to biological resources and associated traditional knowledge</p> <p>(1) Any person seeking approval of the Authority for access to biological resources and associated knowledge for research or for commercial utilization shall make an application in Form 1.</p> <p>(2) Every application under sub-rule (1) shall be accompanied by a fee of ten thousand rupees in the form of a cheque or demand draft drawn in favour of the Authority.</p> <p>(3) The Authority shall after consultation with the concerned local bodies and collecting such additional information from the applicant and other sources, as it may deem necessary, dispose of the application, as far as possible, within a period of six months from the date of its receipts.</p> <p>(4) On being satisfied with the merit of the application, the Authority may grant the approval for access to biological resources and associated knowledge subject to such term and conditions as it may deem fit to impose.</p> <p>(5) The approval to access shall be in the form of a written agreement duly signed by the authorized officer of the Authority and the applicant.</p> <p>(6) The form of the agreement referred to in sub-rule (5) shall be laid down by the Authority and shall include the following; namely:</p> <ul style="list-style-type: none"> (i) general objectives and purpose of the application for seeking approval; (ii) description of the biological resources and traditional knowledge including accompanying information; (iii) intended uses of the biological resources (research, breeding, commercial utilization etc.); (iv) conditions under which the applicant may seek intellectual property rights; (v) quantum of monetary and other incidental benefits. If need be, a commitment to enter into a fresh agreement particularly in case if the biological material is taken for research purposes, and also in case of any other change in use thereof subsequently; (vi) restriction to transfer the accessed biological resources and the traditional knowledge to any third party without prior approval of Authority; (vii) to adhere to a limit set by the Authority on the quantity and specification of the quality of the biological resources for which the applicant is seeking access; (viii) guarantee to deposit a reference sample of the biological material sought to be accessed with the repositories identified in Section 39; (ix) submitting to the Authority a regular status report of research and other developments; (x) commitment to abide with the provisions of Act and rules and other related legislations in force in the country; (xi) commitment to facilitate measures for conservation and sustainable use of biological resources accessed; (xii) commitment to minimize environmental impacts of collecting activities; (xiii) legal provisions such as duration of the agreement, notice to terminated the agreement, independent enforceability of individual clauses, provision to the extent that obligations in benefit sharing clauses survive the termination of the agreement, events limiting liability (natural calamities), arbitration, any confidentiality clause. <p>(7) The conditions for access may specifically provide measures for conservation and protection of biological resources to which the access is being granted.</p> <p>(8) The Authority may for reasons to be recorded in writing reject as application it considers that the request cannot be acceded to.</p> <p>(9) No application shall be rejected unless the applicant is given a reasonable opportunity of being heard.</p> <p>(10) The Authority shall take steps to widely publicize the approvals granted, through print or electronic media and shall periodically monitor compliance of conditions on which the approval was accorded.</p> <p>16. Restriction on activities related to access to biological resources</p>	

	<p>(1) The Authority if it deems necessary and appropriate shall take the steps to restrict or prohibit the request for access to biological resources for the following reasons; namely:</p> <p>(i) the request for access is for any endangered taxa;</p> <p>(ii) the request for access is for any endemic and rare species;</p> <p>(iii) the request for access may likely to result in adverse effect on the livelihoods of the local people;</p> <p>(iv) the request to access may result in adverse environmental impact which may be difficult to control and mitigate;</p> <p>(v) the request for access may cause genetic erosion or affecting the ecosystem function;</p> <p>(vi) use of resources for purposes contrary to national interest and other related international agreements entered into by India.</p> <p>17. Procedure for seeking approval for transferring results of research</p> <p>(1) Any person desirous of transferring results of research relating to biological resources obtained from India for monetary consideration to foreign nationals, companies and Non Resident Indians (NRIs), shall make an application to the Authority in the Form II.</p> <p>(2) Every application under sub-rule (i) shall be accompanied by a fee of five thousand rupees in the form of a Bank draft or Cheque drawn in favour of the Authority.</p> <p>(3) Every application under sub-rule (i) shall be decided upon by the Authority as far as [possible within a period of three months from the receipt of the same.</p> <p>(4) On being satisfied that the applicant has fulfilled all the requirements, the Authority may grant the approval for transferring the results of research subject to such terms and conditions as it may deem fit to impose in each case.</p> <p>(5) The approval for transfer shall be granted in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement shall be such as may be decided by the Authority.</p> <p>(6) The Authority may for reasons to be recorded in writing reject an application if it considers that the application cannot be allowed; Provided that the application shall be rejected unless the applicant has been given a reasonable opportunity of being heard.</p> <p>18. Procedure for seeking prior approval before applying for intellectual property protection</p> <p>(1) Any person desirous of applying for a patent or any other intellectual property based on research on biological material and knowledge obtained from India shall make an application Form III.</p> <p>(2) Every application under sub-rule (1) shall be accompanied by paying a fee of five hundred rupees.</p> <p>(3) The Authority after due appraisal of the application and after collecting any additional information, on the basis of merit shall decide on the application, as far as possible within a period of three months or receipt of the same.</p> <p>(4) On being satisfied that the applicant has fulfilled all the necessary requirements, the Authority may grant approval for applying for a patent or any other IPR subject to such terms and conditions as it may deem fit to impose in each case.</p> <p>(5) The approval shall be granted in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement may be decided by the Authority.</p> <p>(6) The Authority may reject the application if it considers that the request cannot be acceded to after recording the reasons. Before passing order of rejection, the applicant shall be given an opportunity of hearing.</p> <p>19. Procedure for third party transfer under sub-section (2) of Section 20</p> <p>(1) The persons who have been granted approval for access to biological resources and associated knowledge, intend to transfer the accessed biological resource or knowledge to any other person or organization shall make an application to the Authority in Form IV.</p> <p>(2) Every application under sub-rule (1) shall be accompanied by a fee of ten thousand rupees in the form of Bank draft or cheque drawn in favour of the Authority.</p> <p>(3) The Authority shall after collecting any additional information, decide upon</p>	
--	---	--

	<p>the application as far as possible within a period of six months of receipt of the same.</p> <p>(4) On being satisfied that the applicant has fulfilled all the necessary requirements, the Authority may grant approval for third party transfer subject to such terms and conditions it may deem fit to impose in each case.</p> <p>(5) The approval as may be granted under sub-rule (4) in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement shall be such as may be decided by the Authority.</p> <p>(6) The Authority may for reasons to be recorded in writing reject the application if it considers that the request cannot be acceded to, provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>20. Criteria for equitable benefit sharing (Section 21)</p> <p>(1) The Authority shall by notification in the Official Gazette formulate the guidelines and describe the benefit sharing formula.</p> <p>(2) The guidelines shall provide for monetary and other benefits such as royalty, joint ventures, technology transfer, product development, education and awareness raising activities, institutional capacity building and venture capital fund.</p> <p>(3) The formula for benefit sharing shall be determined on a case-by-case basis.</p> <p>(4) The Authority while granting approval to any person for access or for transfer of results of research or applying for patent and IPR or for third party transfer of the accessed biological resource and associated knowledge may impose terms and conditions for ensuring equitable sharing of the benefits arising out of the use of accessed biological material and associated knowledge.</p> <p>(5) The quantum of benefits shall be mutually agreed upon between the persons applying for such approval and the Authority in consultation with the local bodies and benefit claimers and may be decided in due regard to the defined parameters of access, the extent of use, the sustainability aspect, impact and expected outcome levels, including measures ensuring conservation and sustainable use of biological diversity.</p> <p>(6) Depending upon each case, the Authority shall stipulate the time frame for assessing benefit sharing on short, medium, and long term benefits.</p> <p>(7) The Authority shall stipulate that benefits shall ensure conservation and sustainable use of biological diversity.</p> <p>(8) Where biological resources or knowledge is accessed from a specific individual or a group of individuals or organizations, the Authority may take steps to ensure that the agreed amount is paid directly to them through the district administration. Where such individuals or group of individuals or organizations cannot be identified, the monetary benefits shall be deposited in the National Biodiversity Fund.</p> <p>(9) Five percent of the assessed benefits shall be earmarked for the Authority or Board as the case may be, towards the administrative and service charges.</p> <p>(10) The Authority shall monitor the flow of benefits as determined under sub rule (4) in a manner determined by it.</p>	
7. Sanctions and remedies- dealing with breaches	<p>15. Revocation of access or approval</p> <p>(1) The Authority may either on the basis of any complaint or <i>suo moto</i> withdraw the approval granted for access under rule 15 and revoke the written agreement under the following conditions, namely:</p> <p>(i) on the basis of reasonable belief that the person to whom the approval was granted has violated any of the provisions of the Act or the condition on which the approval was granted;</p> <p>(ii) when the person who has been granted approval has failed to comply with the terms of the agreement;</p> <p>(iii) on failure to comply with any of the conditions of access granted;</p> <p>(iv) on account of overriding public interest or for protection of environment and conservation of biological diversity.</p> <p>(2) The Authority shall send a copy of every order of revocation issued by it to</p>	

	<p>the concerned State Biodiversity Board and the Biodiversity Management Committees for prohibiting the access and also to assess the damage, if any caused and take steps to recover the damage.</p> <p>23. Appeal for settlement of disputes under Section 50</p> <p>(1) If a dispute arises between the Authority or a State Biodiversity Board or between one Board and other Board(s) on account of implementation of any order or direction or on any issue of policy decision, either of the aggrieved parties i.e, Authority or that Board, as the case may be, prefer an appeal to the Central Government under section 50, in Form V to the Secretary, Ministry of Environment and Forests, Government of India.</p> <p>(2) In case the dispute arises between a State Biodiversity Board and another state Biodiversity Board or Boards, the aggrieved Board or Boards, shall prefer the point or points of dispute to the Central Government which shall refer the same to the Authority.</p> <p>(3) The memorandum of appeal shall state the facts of the case, the grounds relied upon by the appellant, for preferring the appeal and the relief sought for.</p> <p>(4) The memorandum of appeal shall be accompanied by an authenticated copy of the order, direction or policy decision, as the case may be, by which the appellant is aggrieved and shall be duly signed by the authorized representative of the appellant.</p> <p>(5) The memorandum of appeal shall be submitted in quadruplicate, either in person or through a registered post with Acknowledgement due, within 30 days from the date of the orders, direction or policy decision, impugned provided that if the Central Government is satisfied that there was good and sufficient reason for the delay in preferring the appeal, it may, for reason to be recorded in writing, allow the appeal to be preferred after the expiry of the aforesaid period of 30 days but before the expiry of 45 days from the date of the orders impugned, direction or policy decision, as the case may be.</p> <p>(6) The notice for hearing of the appeal shall be given in Form VI by a registered post with an acknowledgement due.</p> <p>(7) The Central Government shall, after hearing the appellant and the other parties, dispose of the appeal.</p> <p>(8) In disposing of an appeal, it may vary or modify or cancel impugned order, direction or policy, as the case may be.</p> <p>(9) In adjudicating a dispute, the Authority shall be guided by the principles or natural justice and as far as practicable, follow the same procedures which the Central Government is required to follow under this rule.</p> <p>24. Manner of giving notice under Section 61</p> <p>(1) The manner of giving notice, under clause (b) of section 61, shall be as follows namely:</p> <p>(i) The notice shall be in writing in Form VII.</p> <p>(ii) The person giving the notice may send it to:</p> <p>(a) If the alleged offense has taken place in a Union territory, to the Chairperson of the National Biodiversity Authority; and</p> <p>(b) If the alleged offence has been taken place in a State, to the Chairperson of the State Biodiversity Board.</p> <p>(2) The notice referred to in sub-rule (1) shall be sent by registered post acknowledgement due; and</p> <p>(3) The period of thirty days mentioned in clause (b) of section 61 shall be reckoned from the date, the notice is received by the Authorities mentioned in sub-rule (1)</p>	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct,	<p>21. Application of National Biodiversity Fund</p> <p>(1) The National Biodiversity Fund shall be operated by the Chairperson or by such other officer of the Authority as may be authorized in this regard.</p> <p>(2) The National Biodiversity Fund shall have two separate heads of accounts, one relating to the receipts from the Central Government and the other concerning the fee, license fee, royalty and other receipts of the Authority.</p> <p>22. Constitution of Biodiversity Management Committees</p> <p>(1) Every local body shall constitute a Biodiversity Management Committee</p>	

databases	<p>(BMC's within its area of jurisdiction.</p> <p>(2) The Biodiversity Management Committee as constituted under sub-rule (1) shall consist of a Chairperson and not more than six persons nominated by the local body, of whom not less than one third should be women and not less than 18% should belong to the Scheduled Castes/Scheduled Tribes.</p> <p>(3) The Chairperson of the Biodiversity Management Committee shall be elected from amongst the members of the committee in a meeting to be chaired by the Chairperson of the local body. The Chairperson of the local body shall have the casting votes in case of a tie.</p> <p>(4) The Chairperson of the Biodiversity Management Committee shall have a tenure of three years.</p> <p>(5) The local Member of Legislative Assembly/Member of Legislative Council and Member of Parliament would be special invitees to the meetings of the Committee.</p> <p>(6) The main function of the BMC is to prepare People's Biodiversity Register in consultation with local people. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.</p> <p>(7) The other functions of the BMC are to advise on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local vairs and practitioners using the biological resources.</p> <p>(8) The Authority shall take steps to specify the form of the People's Biodiversity Registers, and the particulars it shall contain and the format for electronic database.</p> <p>(9) The Authority and the State Biodiversity Boards shall provide guidance and technical support to the Biodiversity Management Committees for preparing People's Biodiversity Registers.</p> <p>(10) The People's Biodiversity Registers shall be maintained and validated by the Biodiversity Management Committee.</p> <p>(11) The Committee shall also maintain a Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws-avoiding conflict with other laws		

13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

9. Kenya

Analysed against the common provisions

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (CONSERVATION OF BIOLOGICAL DIVERSITY AND RESOURCES, ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING) REGULATIONS, 2006

PART I -PRELIMINARY

1. These Regulations may be cited as the Environmental Management and Co-ordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006.

2. In these Regulations, unless the context otherwise requires -

“access” means obtaining, possessing and using genetic resources conserved, whether derived products and, where applicable, intangible components, for purposes of research, bioprospecting, conservation, industrial application or commercial use;

“access permit” means a permit that allows a person to access genetic resources issued under regulation 4;

“benefit sharing” means the sharing of benefits that accrue from the utilization of genetic resources;

“endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range (due to man-made or natural changes in the environment);

“genetic material” means any genetic material of plant, animal, microbial or other origin containing functional units of heredity;

“habitat” means the place or type of site where an organism or population naturally occurs and includes areas colonized by introduced organisms;

“holotype” means the single specimen chosen for designation of a new species;

“intangible components” means any information held by persons that is associated with or regarding genetic resources within the jurisdiction of Kenya;

“inventory” means a detailed list, report or record of resources, or the process of making such a list, report or record;

“Material Transfer Agreement” means an agreement negotiated between the holder of an access permit and a relevant lead agency or community on access to genetic resources and benefit sharing;

“natural environment system” means relatively intact ecosystems of unique value, such as perennial and seasonal wetlands, highly diverse aquatic ecosystems, or ecosystems promoting a high concentration of rare and unusual species;

“Prior Informed Consent” means an international operation procedure for exchanging, receiving and handling notification and information by a competent authority; and

“threatened species” means any species of plant or animal which is likely to become an endangered species within the foreseeable future throughout all or significant portion of its range.

3. These Regulations shall not apply to

- (a) the exchange of genetic resources, their derivative products, or the intangible components associated with them, carried out by members of any local Kenyan community amongst themselves and for their own consumption;
- (b) access to genetic resources derived from plant breeders in accordance with the Seeds and Plant Varieties Act;
- (c) human genetic resources; and
- (d) approved research activities intended for educational purposes within recognized Kenyan academic and research institutions, which are governed by relevant intellectual property laws.

PART II – CONSERVATION OF BIOLOGICAL DIVERSITY

4. (1) A person shall not engage in any activity that may

- (a) have an adverse impact on any ecosystem;
 - (b) lead to the introduction of any exotic species;
 - (c) lead to unsustainable use of natural resources,
- without an Environmental Impact Assessment Licence issued by the Authority under the Act.

(2) In this regulation, “exotic species” means any species of plant or animal or microorganism (life form) whose natural range does not, or did not in the past, exist in a specific part of, or the whole of, Kenya and which out-competes all other life forms.

5. (1) The Authority shall, in consultation with the relevant lead agencies, impose bans, restrictions or similar measures on the access and use of any threatened species in order to ensure its regeneration and maximum sustainable yield.

(2) Without prejudice to the generality of the foregoing, the Authority shall, in consultation with the relevant lead agencies

(a) issue licenses for the establishment and maintenance of facilities for the recovery and rehabilitation of threatened species.

(b) determine full recovery and rehabilitation measures of threatened species to ensure its restoration into its natural habitat.

6. (1) Within twenty-four months from commencement of these Regulations, the Authority shall, in consultation with the relevant lead agencies, identify and prepare an inventory of biological diversity of Kenya.

(2) The inventory shall include threatened, endangered, or rare species.

(3) The inventory shall be maintained and updated every year thereafter by the Authority.

(4) The inventory shall be a public record of the Authority and shall be accessible, in a prescribed manner, to any person on application to the Authority, and upon payment of such fees as may be prescribed by the Authority.

7. The Authority shall, in consultation with the relevant lead agencies, monitor the status and the components of biological diversity in Kenya and take necessary measures to prevent and control their depletion.

8. This Part shall apply to any area of land, sea, lake or river which the Minister has, by notice in the Gazette, declared to be a protected natural environment system for purposes of promoting and preserving biological diversity in accordance with section 54 of the Act.

PART III – ACCESS TO GENETIC RESOURCES

9. (1) Any person who intends to access genetic resources in Kenya shall apply to the Authority for an access permit in the form set out in the First Schedule, and such application shall be accompanied by the fees prescribed in the Second Schedule to these Regulations.

(2) The application shall be accompanied by evidence of Prior Informed Consent from interested persons and relevant lead agencies, and a research clearance certificate from the National Council for Science and Technology.

10. The Authority shall, upon receipt of the application, give notice thereof by publication in the Gazette and at least one newspaper with nationwide circulation, or in such other manner as the Authority may consider appropriate, specifying

(a) the name and other particulars of the applicant;

(b) the activity to be undertaken for which the access permit is required; and

(c) the time within which representations or objections in respect of the proposed access permit may be made to the Authority.

11. (1) The Authority shall, on receipt of representations or objections to the proposed access permit from the public, review the application and if satisfied that the activity to be carried out shall facilitate the sustainable management and utilization of genetic resources for the benefit of the people of Kenya, issue an access permit to the applicant.

(2) Where the Authority has reasonable grounds for refusing to issue an access permit it shall inform the applicant of the reasons for such refusal in writing.

(3) A person aggrieved by refusal of the Authority to grant to a licence may appeal to the Tribunal in accordance with section 129 of the Act.

12. The form set out in the Third Schedule is prescribed as the form of access permit.

13. The Authority shall, within sixty days of receipt of an application for an access permit, determine the application and communicate its decision in writing to the applicant.

14. (1) An access permit shall be valid for a period of one year from the date of issue and shall not be transferable.

(2) Upon expiry, an access permit may be renewed for a further period of one year upon payment of the fee prescribed in the Second Schedule and upon such terms and conditions as the Authority may deem necessary to impose.

15. (1) An access permit shall contain such terms and conditions as the Authority may deem necessary to impose.

(2) In addition to such terms and conditions as may be contained in an access permit, the following conditions shall be implied in every access permit

(a) Duplicates and holotypes of all genetic resources collected shall be deposited with the relevant lead agency.

(b) Records of all intangible components of plant genetic material collected shall be deposited with the Authority.

(c) Reasonable access to all genetic resources collected shall be guaranteed to all Kenyan citizens whether such genetic resources and intangible components are held locally or abroad.

(d) All agreements entered into with respect to access of genetic resources shall be strictly for the purposes for which they were entered into.

(e) The furnishing of quarterly reports to the Authority on the status of research, including all discoveries from research involving genetic resources and/or intangible components thereof.

(f) The holder of an access permit shall inform the Authority of all discoveries made during the exercise of the right of access granted under the access permit.

(g) The holder of an access permit shall provide the following reports

(i) a semi-annual status report on the environmental impacts of any ongoing collection of genetic resources or intangible components thereof;

(ii) a final status report on the environmental impacts of collection of genetic resources or intangible components thereof, in the event that the collection is of a duration of three months or less.

(h) The holder of an access permit shall abide by the laws of the country.

(3) The Authority may, on its own volition or on the application by an access permit holder, vary the conditions of an access permit.

16. (1) The Authority may suspend, cancel or revoke any access permit issued under these Regulations where the holder thereof is in contravention of any of the conditions imposed on the access permit or those implied under these Regulations, or of the agreements concluded pursuant to its grant.

(2) The Authority shall, before suspending, canceling or revoking an access permit, give a written notice of its intention to suspend, cancel or revoke the permit to the holder thereof, and shall accordingly invite the holder to make representations within thirty days from the date of such notice.

(3) Where the Authority suspends, cancels or revokes a permit, it shall publish the order suspending, canceling or revoking the permit in the Gazette and in at least one newspaper with nationwide circulation.

(4) The provisions of regulation 14 shall apply *mutatis mutandis* to the suspension, cancellation or revocation of an access permit.

17. The Authority shall keep, manage and update as appropriate a register of all access permits which it has granted, and the register shall be a public record of the Authority and shall be accessible, in a prescribed manner, to any person on application to the Authority, and upon payment of the fees prescribed in the Second Schedule.

18. Notwithstanding any provisions contained in these Regulations, no person shall transfer any genetic resources outside Kenya unless such person has executed a Material Transfer Agreement.

PART IV – BENEFIT SHARING

19. This Part shall apply subject to the laws in force relating to intellectual property rights.

20. (1) Without prejudice to the generality of the foregoing, the holder of an access permit shall facilitate an active involvement of Kenyan citizens and institutions in the execution of the activities under the permit.

(2) The facilitation by the holder of an access permit shall include enjoyment of both monetary and non-monetary benefits arising from the right of access granted and the use of genetic resources.

(3) Monetary benefits include

- (a) access fees or fee per sample collected or acquired;
- (b) up-front payments;
- (c) milestone payments;
- (d) payment of royalties;
- (e) license fees in case genetic resources are to be utilised for commercial purposes;
- (f) fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
- (g) salaries and preferential terms where mutually agreed;
- (h) research funding;
- (i) joint ventures;
- (j) joint ownership of relevant intellectual property rights.

(4) Non-monetary benefits include

- (a) sharing of research and development results;
- (b) collaboration, co-operation and contribution in scientific research and development programmes, particularly biotechnological research activities;
- (c) participation in product development;
- (d) admittance to *ex situ* facilities of genetic resources and to databases by participating institutions;
- (e) transfer to Kenya of genetic resources of knowledge and technology under fair and most favourable terms, including concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
- (f) strengthening capacities for technology transfer to Kenya;
- (g) institutional capacity building;
- (h) human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
- (i) training related to genetic resources with the full participation of Kenya and where possible, in Kenya;
- (j) access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- (k) institutional and professional relationships that can arise from access and benefit sharing agreements and subsequent collaborative activities;
- (l) joint ownership of relevant intellectual property rights.

PART V –MISCELLANEOUS

21. (1) On the request of an applicant of an access permit, the Authority may hold some information relating to access to genetic resources the subject of the application as confidential.

(2) Where an access permit is granted, information held as confidential under paragraph (1), with respect to the relevant applicant, shall not be accessible to a person inspecting the register of access permits in accordance with regulation 17.

22. A person carrying out any activities involving access to genetic resources immediately before the coming into force of these Regulations shall, within six months from the coming into force thereof, take all necessary measures to ensure full compliance with these Regulations.

23. A contravention or failure to comply with any of the matters provided in these Regulations shall constitute an offence.

24. Any person convicted of an offence under these Regulations shall be liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding three hundred and fifty thousand shillings, or both.

Comparison of Kenyan legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

A number of common provisions are omitted but there is detailed coverage of some key provisions

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources		
2. definition of terms- key terms used in the draft	<p>2. In these Regulations, unless the context otherwise requires -</p> <p>“access” means obtaining, possessing and using genetic resources conserved, whether derived products and, where applicable, intangible components, for purposes of research, bioprospecting, conservation, industrial application or commercial use;</p> <p>“access permit” means a permit that allows a person to access genetic resources issued under regulation 4;</p> <p>“benefit sharing” means the sharing of benefits that accrue from the utilization of genetic resources;</p> <p>“endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range (due to man-made or natural changes in the environment);</p> <p>“genetic material” means any genetic material of plant, animal, microbial or other origin containing functional units of heredity;</p> <p>“habitat” means the place or type of site where an organism or population naturally occurs and includes areas colonized by introduced organisms;</p> <p>“holotype” means the single specimen chosen for designation of a new</p>	

	<p>species;</p> <p>“intangible components” means any information held by persons that is associated with or regarding genetic resources within the jurisdiction of Kenya;</p> <p>“inventory” means a detailed list, report or record of resources, or the process of making such a list, report or record;</p> <p>“Material Transfer Agreement” means an agreement negotiated between the holder of an access permit and a relevant lead agency or community on access to genetic resources and benefit sharing;</p> <p>“natural environment system” means relatively intact ecosystems of unique value, such as perennial and seasonal wetlands, highly diverse aquatic ecosystems, or ecosystems promoting a high concentration of rare and unusual species;</p> <p>“Prior Informed Consent” means an international operation procedure for exchanging, receiving and handling notification and information by a competent authority; and</p> <p>“threatened species” means any species of plant or animal which is likely to become an endangered species within the foreseeable future throughout all or significant portion of its range.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>4. (1) A person shall not engage in any activity that may</p> <p>(a) have an adverse impact on any ecosystem;</p> <p>(b) lead to the introduction of any exotic species;</p> <p>(c) lead to unsustainable use of natural resources, without an Environmental Impact Assessment Licence issued by the Authority under the Act.</p> <p>(2) In this regulation, “exotic species” means any species of plant or animal or microorganism (life form) whose natural range does not, or did not in the past, exist in a specific part of, or the whole of, Kenya and which out-competes all other life forms.</p> <p>5. (1) The Authority shall, in consultation with the relevant lead agencies, impose bans, restrictions or similar measures on the access and use of any threatened species in order to ensure its regeneration and maximum sustainable yield.</p> <p>(2) Without prejudice to the generality of the foregoing, the Authority shall, in consultation with the relevant lead agencies</p> <p>(a) issue licenses for the establishment and maintenance of facilities for the recovery and rehabilitation of threatened species.</p> <p>(b) determine full recovery and rehabilitation measures of threatened species to ensure its restoration into its natural habitat.</p>	
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including	<p>PART III – ACCESS TO GENETIC RESOURCES</p> <p>9. (1) Any person who intends to access genetic resources in Kenya shall apply to the Authority for an access permit in the form set out in the First Schedule, and such application shall be accompanied by the fees prescribed in the</p>	

<p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>	<p>Second Schedule to these Regulations.</p> <p>(2) The application shall be accompanied by evidence of Prior Informed Consent from interested persons and relevant lead agencies, and a research clearance certificate from the National Council for Science and Technology.</p> <p>10. The Authority shall, upon receipt of the application, give notice thereof by publication in the Gazette and at least one newspaper with nationwide circulation, or in such other manner as the Authority may consider appropriate, specifying</p> <p>(a) the name and other particulars of the applicant;</p> <p>(b) the activity to be undertaken for which the access permit is required; and</p> <p>(c) the time within which representations or objections in respect of the proposed access permit may be made to the Authority.</p> <p>11. (1) The Authority shall, on receipt of representations or objections to the proposed access permit from the public, review the application and if satisfied that the activity to be carried out shall facilitate the sustainable management and utilization of genetic resources for the benefit of the people of Kenya, issue an access permit to the applicant.</p> <p>(2) Where the Authority has reasonable grounds for refusing to issue an access permit it shall inform the applicant of the reasons for such refusal in writing.</p> <p>(3) A person aggrieved by refusal of the Authority to grant to a licence may appeal to the Tribunal in accordance with section 129 of the Act.</p> <p>12. The form set out in the Third Schedule is prescribed as the form of access permit.</p> <p>13. The Authority shall, within sixty days of receipt of an application for an access permit, determine the application and communicate its decision in writing to the applicant.</p> <p>14. (1) An access permit shall be valid for a period of one year from the date of issue and shall not be transferable.</p> <p>(2) Upon expiry, an access permit may be renewed for a further period of one year upon payment of the fee prescribed in the Second Schedule and upon such terms and conditions as the Authority may deem necessary to impose.</p> <p>15. (1) An access permit shall contain such terms and conditions as the Authority may deem necessary to impose.</p> <p>(2) In addition to such terms and conditions as may be contained in an access permit, the following conditions shall be implied in every access permit</p> <p>(a) Duplicates and holotypes of all genetic resources collected shall be deposited with the relevant lead agency.</p> <p>(b) Records of all intangible components of plant genetic material collected shall be deposited with the Authority.</p> <p>(c) Reasonable access to all genetic resources collected shall be guaranteed to all Kenyan citizens whether such genetic resources and intangible components are held locally or abroad.</p>	
---	---	--

	<p>(d) All agreements entered into with respect to access of genetic resources shall be strictly for the purposes for which they were entered into.</p> <p>(e) The furnishing of quarterly reports to the Authority on the status of research, including all discoveries from research involving genetic resources and/or intangible components thereof.</p> <p>(f) The holder of an access permit shall inform the Authority of all discoveries made during the exercise of the right of access granted under the access permit.</p> <p>(g) The holder of an access permit shall provide the following reports</p> <p>(i) a semi-annual status report on the environmental impacts of any ongoing collection of genetic resources or intangible components thereof;</p> <p>(ii) a final status report on the environmental impacts of collection of genetic resources or intangible components thereof, in the event that the collection is of a duration of three months or less.</p> <p>(h) The holder of an access permit shall abide by the laws of the country.</p> <p>(3) The Authority may, on its own volition or on the application by an access permit holder, vary the conditions of an access permit.</p> <p>16. (1) The Authority may suspend, cancel or revoke any access permit issued under these Regulations where the holder thereof is in contravention of any of the conditions imposed on the access permit or those implied under these Regulations, or of the agreements concluded pursuant to its grant.</p> <p>(2) The Authority shall, before suspending, canceling or revoking an access permit, give a written notice of its intention to suspend, cancel or revoke the permit to the holder thereof, and shall accordingly invite the holder to make representations within thirty days from the date of such notice.</p> <p>(3) Where the Authority suspends, cancels or revokes a permit, it shall publish the order suspending, canceling or revoking the permit in the Gazette and in at least one newspaper with nationwide circulation.</p> <p>(4) The provisions of regulation 14 shall apply <i>mutatis mutandis</i> to the suspension, cancellation or revocation of an access permit.</p> <p>17. The Authority shall keep, manage and update as appropriate a register of all access permits which it has granted, and the register shall be a public record of the Authority and shall be accessible, in a prescribed manner, to any person on application to the Authority, and upon payment of the fees prescribed in the Second Schedule.</p> <p>18. Notwithstanding any provisions contained in these Regulations, no person shall transfer any genetic resources outside Kenya unless such person has executed a Material Transfer Agreement.</p> <p>21. (1) On the request of an applicant of an access permit, the Authority may hold some information relating to access to genetic resources the subject of the application as confidential.</p> <p>(2) Where an access permit is granted, information held as confidential under paragraph (1), with respect to the relevant applicant, shall not be accessible to a person inspecting the register of access permits in accordance with regulation 17.</p>	
--	---	--

<p>6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building</p>	<p>PART IV – BENEFIT SHARING</p> <p>19. This Part shall apply subject to the laws in force relating to intellectual property rights.</p> <p>20. (1) Without prejudice to the generality of the foregoing, the holder of an access permit shall facilitate an active involvement of Kenyan citizens and institutions in the execution of the activities under the permit.</p> <p>(2) The facilitation by the holder of an access permit shall include enjoyment of both monetary and non-monetary benefits arising from the right of access granted and the use of genetic resources.</p> <p>(3) Monetary benefits include</p> <ul style="list-style-type: none"> (a) access fees or fee per sample collected or acquired; (b) up-front payments; (c) milestone payments; (d) payment of royalties; (e) license fees in case genetic resources are to be utilised for commercial purposes; (f) fees to be paid to trust funds supporting conservation and sustainable use of biodiversity; (g) salaries and preferential terms where mutually agreed; (h) research funding; (i) joint ventures; (j) joint ownership of relevant intellectual property rights. <p>(4) Non-monetary benefits include</p> <ul style="list-style-type: none"> (a) sharing of research and development results; (b) collaboration, co-operation and contribution in scientific research and development programmes, particularly biotechnological research activities; (c) participation in product development; (d) admittance to <i>ex situ</i> facilities of genetic resources and to databases by participating institutions; (e) transfer to Kenya of genetic resources of knowledge and technology under fair and most favourable terms, including concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity; (f) strengthening capacities for technology transfer to Kenya; (g) institutional capacity building; (h) human and material resources to strengthen the capacities for the administration and enforcement of access regulations; (i) training related to genetic resources with the full participation of Kenya and where possible, in Kenya; (j) access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies; (k) institutional and professional relationships that can arise from access and benefit sharing agreements and subsequent collaborative activities; (l) joint ownership of relevant intellectual property rights. 	
<p>7. Sanctions and remedies- dealing with breaches</p>	<p>23. A contravention or failure to comply with any of the matters provided in these Regulations shall constitute an offence.</p> <p>24. Any person convicted of an offence under these Regulations shall be liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding three hundred and fifty thousand shillings, or both.</p>	

8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>7. The Authority shall, in consultation with the relevant lead agencies, monitor the status and the components of biological diversity in Kenya and take necessary measures to prevent and control their depletion.</p> <p>8. This Part shall apply to any area of land, sea, lake or river which the Minister has, by notice in the Gazette, declared to be a protected natural environment system for purposes of promoting and preserving biological diversity in accordance with section 54 of the Act.</p>	
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p>3. These Regulations shall not apply to</p> <p>(a) the exchange of genetic resources, their derivative products, or the intangible components associated with them, carried out by members of any local Kenyan community amongst themselves and for their own consumption;</p> <p>(b) access to genetic resources derived from plant breeders in accordance with the Seeds and Plant Varieties Act;</p> <p>(c) human genetic resources; and</p> <p>(d) approved research activities intended for educational purposes within recognized Kenyan academic and research institutions, which are governed by relevant intellectual property laws.</p>	
11. disclosure- permits, databases, disclosure in intellectual property applications	<p>6. (1) Within twenty-four months from commencement of these Regulations, the Authority shall, in consultation with the relevant lead agencies, identify and prepare an inventory of biological diversity of Kenya.</p> <p>(2) The inventory shall include threatened, endangered, or rare species.</p> <p>(3) The inventory shall be maintained and updated every year thereafter by the Authority.</p> <p>(4) The inventory shall be a public record of the Authority and shall be accessible, in a prescribed manner, to any person on application to the Authority, and upon payment of such fees as may be prescribed by the Authority.</p>	
12. interaction with existing laws- avoiding conflict with other laws		
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses	<p>22. A person carrying out any activities involving access to genetic resources immediately before the coming into force of these Regulations shall, within six months from the coming into force thereof, take all necessary measures to ensure full compliance with these Regulations.</p>	

10. Malaysia

Analysed against the common provisions

An Enactment to establish the Sabah Biodiversity Council and the Sabah Biodiversity Centre and for purposes incidental thereto.

PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the Sabah Biodiversity Enactment 2000, and shall come into force on such date as the Minister may, by notification in the Gazette, appoint. [01-05-2002]

Interpretation.

2. In this Enactment, unless the context otherwise requires –

"access" means all activities relating to the prospecting, collection, commercial utilisation and research and development of biological resources or associated relevant knowledge;

"access licence" means a licence granted by the Council to any Collector for access to biological resources;

"associated relevant knowledge" means any innovation or individual or collective practice with actual or potential value associated with biological resources contained therein;

"biodiversity" means biological diversity, being the variability among living organisms from all sources, including plants materials, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part of, and the diversity within species, between species and ecosystems, and includes biological resources;

"Biodiversity Centre" means the Sabah Biodiversity Centre established under section 9;

“biological resources” include genetic resources or materials of plant, animal or microbial origin or any other biotic components of the ecosystem, with actual or potential use or value for humanity;

“biotechnology” means any technological application that uses biological resources or derivatives thereof, to make modify products or processes for specific use;

“Collector” means any individual, a group of individuals, educational and research institution or corporate entity seeking access to biological resources or the associated relevant knowledge and where the context so requires, the aforementioned to whom the access licence is granted;

“Council” means the Sabah Biodiversity Council established under section 3;

“ex situ collection” includes biological resources that are housed, planted, stored, kept or found outside their natural habitats such as in herbariums, research institutions, universities, botanical gardens, private collections and any other similar conservation centres;

“Government” means the Government of the State of Sabah;

“indigenous or local community” means any group of natives as define under section 2 of the Interpretation (Definition of Native) Ordinance who share a knowledge tradition and have common interest in the utilisation and conservation of biodiversity;

“Minister” means the Minister for the time being responsible for matters relating to natural resources;

“premises” includes any building, store, shed, vehicle, vessel or structure, whether enclosed or otherwise;

“Secretary” means the Secretary of the Council who is to be appointed by the Minister.

ESTABLISHMENT OF SABAH BIODIVERSITY COUNCIL

3. (1) There shall be established for the purpose of this Enactment a body by the name of the Sabah Biodiversity Council (hereinafter called “the Council”) whose functions shall be:

- (a)** generally to advise the State Government on matters relating to the conservation and sustainable use of biological resources;
- (b)** to promote the establishment and strengthening of the management of biological resources of the State;
- (c)** to consider, formulate and review State policy with regards to biotechnology and application of biotechnology;
- (d)** to co-ordinate local, state and national activities relating to conservation research and sustainable use of biological resources and biodiversity;
- (e)** to co-ordinate preparations for regional and international activities relating to the conservation, research and sus-

- tainable use of biological resources and biodiversity;
 - (f) to undertake all activities which appear to the Council to be necessary for, or in connection with the discharge of its duties; and
 - (g) to perform any other functions as the Minister may require for the implementation and administration of this Enactment.
- (2) The Council shall consist of the following members:
- (a) a Chairman who shall be the Minister;
 - (b) the Attorney-General or his authorised representative;
 - (c) the Secretary of Natural Resources or his authorised representative;
 - (d) the Director of Forestry Department or his authorised representative;
 - (e) the Director of Sabah Parks or his authorised representative;

- (f) the Director of Wildlife Department or his authorised representative;
- (g) the Director of Environmental Conservation Department or his authorised representative;
- (h) the Director of Water Resources or his authorised representative; and
- (i) not more than 7 other members who shall be persons having extensive experience and expertise in biodiversity, conservation and management and all of whom shall be appointed by the Minister.

(3) The Minister shall appoint a Secretary to the Council who shall be a member of the State Public Service and the Secretary shall be entitled to attend all meetings of the Council but has no right to vote at such meeting.

(4) The Minister may in respect of each member appointed under paragraph (i) of subsection (2) appoint one person to be an alter-

nate member to attend in place of the member at meetings of the Council if the member is for any reason unable to attend.

(5) When attending meetings of the Council, an alternate member shall for all purposes to be deemed to be a member of the Council.

(6) An alternate member shall, unless he sooner resigns or his appointment is sooner revoked, cease to be an alternate member when the member in respect whom he is an alternate member ceases to be a member of the Council.

4. Every appointed member of the Council shall unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years and shall be eligible for reappointment.

5. (1) The following persons shall be disqualified from being appointed as, or if appointed, remaining a member -

(a) a person who is of unsound mind or otherwise incapable of performing his duties;

- (b) a person who is prohibited from being a director of a company under the provisions of any written law relating to companies;
- (c) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude; or
- (d) a person who is a bankrupt or who has made an arrangement with his creditors.

(2) An appointed member of the Council shall be deemed to have vacated the office:

- (a) upon his death;
- (b) upon his resignation;
- (c) upon his failure to attend three consecutive meetings of the Council without the permission from the Minister;
or
- (d) if he becomes disqualified under subsection (1),

and a new member shall be appointed in his place for the unexpired period of his terms in accordance with the provision of this Enactment.

6. (1) The Council shall meet once during every four months of the year and shall, in addition, meet as and when convened by the Chairman.

(2) Ten members shall be a quorum at any meeting of the Council.

(3) Decisions of the Council shall be taken by the votes of the majority of the members present and voting thereon.

(4) If on any question to be determined by the Council there is an equality of votes, the Chairman or if the Chairman is absent the presiding member shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Enactment, the Council shall determine its own procedure.

(6) Minutes shall be kept of all proceedings of the Council.

(7) The Minister may invite or request a person, who is not a member of the Council, to attend any meeting of the Council for the purpose of advising it on a matter under discussion but the person so attending has no right to vote at the meeting.

^{at}
^{of} 7. (1) The Chairman of the Council shall preside at all meetings of the Council.

(2) If, owing to absence or inability to act due to illness or any other cause, the Chairman of the Council is unable to preside at any meeting the members present shall elect one of their number to preside at that meeting.

(3) No business shall be transacted at any meeting of the Council in the absence of the Chairman until a member has been elected to preside over that meeting.

^r
^{sil.} 8. The Council shall have the following powers for the discharge of its functions and duties under this Enactment:

(1) to approve and issue access licence which shall be

prescribed by the Council;

(2) to regulate the access to the biological resources of the State including the removal of any biodiversity from the State;

(3) to manage the Biodiversity Centre or to appoint any person or body to manage the same on its behalf;

(4) to receive donations, grants, gifts of movable or immovable property from any source or to raise funds by any lawful means; and

(5) any other powers as may be assigned to the Council by the Minister.

9. (1) There shall be established for the purpose of this Enactment a centre by the name of the Sabah Biodiversity Centre (hereinafter called “the Centre”) to be managed and maintained by the Council for the purpose of:

- (a) providing the Government and other institutions approved by the Government with accurate information or data on the status, magnitude, distribution, usage and value of the biodiversity in the State;
- (b) managing and sustaining utilisation of the biodiversity of the State, including determining policies and guidelines for scientific research or experiment related to the access to and use of biological resources of the State for pharmaceutical, medicinal and other specific purposes;
- (c) carrying such activities in association or collaboration or in joint venture with other bodies or persons including the departments or agencies of the Government or the Federal Government for the improvement and enhancement of conservation and management of biological resources of the State;
- (d) formulating programmes for systematic surveys of biodiversity and the collection and analysis of data thereto;
- (e) identifying the priorities for research on biodiversity in order to enhance undertaking, conservation and sustainable utilisation of biodiversity and biological resources, including ethnobotany, taxonomy and traditional uses;
- (f) promoting the identification of new natural and biotechnological products derived from the biodiversity and biological resources of the State;
- (g) planning and initiating programmes for the utilisation, conservation, protection and sustainable development of biological resources;

- (h) establishing a database system of all exhibits, published and written records regarding the use, cultivation and management of biological resources of the State;
- (i) establishing a network of researchers in institutions of higher learning, research institutes, libraries and documentation centres to assist in building or be part of the system of recording such knowledge;
- (j) establishing or caused to be established a system for the protection of biological resources so that the indigenous and local communities shall, at all times and in perpetuity, be the legitimate creators, users and custodian of such knowledge, and shall collectively benefit from the use of such knowledge;
- (k) establishing linkages with other institution or bodies, within or outside the State, with a view to enhancing the management, protection, preservation, research and utilisation of the biodiversity and traditional knowledge of the indigenous or local community of the State;

- (l) carrying on of all activities of which appears to the Council to be necessary, advantages or convenient for or in connection with the discharge of its duties; and
- (m) generally to promote education and knowledge of the biodiversity of the State.

(2) There shall be such number of other officers as may be necessary and expedient for the due administration of this Enactment who shall be appointed by the Minister from amongst the members of the State Public Service.

10. (1) The Minister may give the Council such directions, not inconsistent with the provisions of this Enactment, as he thinks fit, as to the exercise and performance by the Council of its powers, duties and functions under this Enactment, and the Council shall give effect to any direction so given.

(2) The Council shall furnish the Minister with such information with respect to its property and activities as he may from time to time require.

11. (1) The Council may, at its discretion appoint from among its own members or other persons who are not members of the Council one or more committees consisting of persons who may or may not be members of the Council for purpose which in the opinion of the Council, would be better regulated and managed by means of such committees.

(2) The Council may appoint any person with the requisite experience, expertise and knowledge in biological resources, as adviser or consultant for the Council, and may form a Panel of Advisers or Consultants to advise the Council on the discharge of its functions or duties.

12. (1) The Council may, subject to such conditions or restrictions as it thinks fit, delegate to any committee referred to in section 11(1) or the Chairman of the Council thereof or the secretary all or any of the powers, functions and duties vested in the Council by this Enactment, (other than the power to delegate con-

ferred by this section) and any power, function or duty so delegate may be exercised or performed by the committee or the Chairman thereof or the secretary in the name and on behalf of the Council;

Provided that nothing in this section shall authorise delegation of any power to make subsidiary legislation.

(2) The Council may continue to exercise any power conferred upon it, or perform any function or duty under this Enactment, notwithstanding the delegation of that power, function or duty under this section.

13. No action, suit, prosecution or proceeding shall be brought or instituted against any member of the Council in respect of any act done *bona fide* in pursuance or execution or intended execution of this Enactment.

ESTABLISHMENT OF THE FUND

ity **14.** (1) For the purpose of this Enactment, there shall be established a fund known as “the Biodiversity Centre Fund”.

(2) The Fund shall consist of-

- (a) such sums as may be provided by the State Legislative Assembly from time to time;
- (b) grants from the Federal Government;
- (c) donations and contributions paid into the Fund by any statutory body, body corporate, associated or individual person; and
- (d) collections from the public.

(3) The Fund shall be operated in accordance with the Financial Procedure Act 1957 and any subsidiary legislation made thereunder.

(4) The Fund shall be expended for the purpose of-

- (a) the payment of the expenses of, or connected with, the administration of the Council;

- (b) the administration, management and operation of the Biodiversity Centre; and
- (c) the payment of all expenses necessary for carrying out the purpose of this Enactment.

ACCESS APPLICATION

15. (1) Any Collector who intends to obtain access to biological resources shall apply in writing to the Council for an access licence.

(2) Provided that this section shall not apply to public officers obtaining access to biological resources as part of their prescribed duties and responsibilities in their respective organisation and as provided for in their respective Ordinance or Enactment which do not involve any collaboration with the second and third party.

(3) Without prejudice to the provisions of this Enactment, the Council upon application may exempt individual, academic and research institution from the access application seeking to undertake any pure academic and non-profit oriented research.

16. An application for an access licence shall be in respect of access to biological resources found on:

- (a) State lands;
- (b) any reserves, natives customary lands or any other sites over which indigenous and local communities exercise community-based or customary rights; or
- (c) any other areas, including rivers, tributaries, waterways or areas covered by water, marine parks or territorial waters of the State, and shall also include any *ex situ* collections maintained by the State.

17. The application for an access licence shall include the following information:

- (a) the identity of the Collector and the documents which testify to his legal capacity to contract;

- (b) the details of the Collector's proposed access activity, which shall include:
- (i) the biological resources to which access is sought, including the intended uses;
 - (ii) the purpose for which access is requested, including the intention to commercialise any information resulting from the access activity, and the type and extent of such commercial use;
 - (iii) where appropriate, the name of the Malaysian institution that will collaborate in the collection, research and development and other activities in relation to the resource concerned, as the local collaborator;
 - (iv) where appropriate, the name of the foreign institution that will act as the sponsor organisation to be responsible for the action of Collector with regard to the access activity;
 - (v) the precise sites where the access activity is to be undertaken or where the resource is located, including where relevant the status of the land according to the categorisation as specified in section 16, as well as, the places where the proposed research and development activities will be carried out;
 - (vi) the time when the access activity is proposed to be carried out;
 - (vii) the primary destination of resource and its probable subsequent destinations;
 - (viii) the benefits, whether economic, technical, scientific, environmental, social or otherwise, that may derive to the state and the concerned communities and proposed mechanisms or arrangements for benefit sharing;
 - (ix) description of any biological resources; and

- . arrangements for benefit sharing;
- (ix) description of any biological resources; and
- (x) environmental and socio-economic impact assessment covering the likely long term impacts, where appropriate;

18. The application shall be submitted to the Council together with an application fee, the amount of which shall be prescribed by the Council.

19. The Collector shall bear the following costs and expenses incurred:

- (a) in making an application for the access licence;
- (b) in complying with the conditions imposed by the Council; and
- (c) in meeting or fulfilling any other requirements or conditions as may be imposed by the provision of this Enactment.

20. The Council shall evaluate the application for the access licence, taking into account, *inter alia*, the following matters:

- (a) the contribution of the access activity to the conservation and sustainable use of biological resources;
- (b) the impact of the access activity on biological diversity and the environment, including any adverse impacts, risks and dangers to any component of biological diversity and its sustainable use; and
- (c) the impact of the access activity on indigenous and local communities, their lifestyles and livelihoods.

21. (1) Upon evaluation of the application, the Council shall inform the Collector in writing of its decision that the application for access licence has been:

- (a) approved, with or without such conditions as it may specify; or
- (b) rejected.

(2) The Council may request for further information as it may deem necessary before making its decision.

22. Any person aggrieved by any decision of the Council may, at any time within the period of three (3) months beginning from the date of receipt of the decision, appeal to the State Cabinet.

23. (1) The Council shall, as a condition for approval of an access licence, require the Collector to:

- (a) identify a Malaysian institution or body of Sabah origin, as the local collaborator that will collaborate and participate in the collection, research and development and other activities in relation to the biological resources concerned, where appropriate; and
- (b) identify the foreign institution that will act as the sponsor organisation, responsible for the actions of the Collector with regard to the access activity, where appropriate.

(2) The Government may impose or attach any other conditions to the approval of the application as it deems fit.

24. In approving an application for an access licence, the Council shall issue an access licence which shall be in the prescribed form and shall be subject to such terms and conditions as may be specified therein or as may be prescribed by the Council.

25. (1) Any approval given may be subjected to further conditions in addition to those originally imposed, or restrictions on, access activities, including in case of:

- (a) adverse effects on the conservation of biological diversity, including where the access activity affects endangered taxa, endemism or rarity;
- (b) adverse effects upon the quality of life or the cultural values of the indigenous and local communities;
- (c) environmental impacts which are undesirable or difficult to control;

(d) danger of genetic erosion or loss of ecosystem, their

resources or their components because of undue or uncontrolled collection of biological resources;

- (e) adverse effects upon human, animal and plant health; and
- (f) use or potential use of resource for purposes contrary to the interest of the State.

(2) The Council may withdraw its consent and terminate the access licence and further use of the biological resources where it is apparent that the Collector has violated any of the provision of this Enactment or the regulations thereto, or any other agreed terms under the access licence if public interest so demands.

(3) In the event of any revocation of the access licence, the Council shall not be subject to any claim for any loss, damage or compensation arising from the revocation of the access licence.

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

26. Any person who:

- (a) in contravention of the provisions of this Enactment engages in, carries out, or undertakes any access activity without having an access licence;
- (b) fails to provide or wilfully withholds any information required under the provisions of this Enactment; and
- (c) removes any biological resources out of the State without the prior written authorisation of the Council,

shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years, or to both.

27. Any person who by any act or by neglect, takes away, removes from or makes use of any biological resources, exhibit, data, material or information kept, stored or maintained in the Biodiversity Centre shall be guilty of an offence and shall, on conviction, be liable to a fine of thirty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

imprisonment for a term not exceeding three years or to both.

28. No export for research purposes of any biological resources collected from alienated land, conservation area, forest reserve, parks area, protected areas, State land, water protection areas or water conservation areas, wildlife area, rivers, tributaries, waterways, marine parks or territorial waters under the State, without a licence issued by the Council.

29. The Secretary, any police officer or customs officer or any other officer authorised in writing in that behalf by the Secretary may without warrant enter any land or premises upon which any access activity is being carried out on biological resources of the State with a view to ascertaining whether the provisions of this Enactment are being complied with, and may make such investigation and inspection of the land or premises or the activities describes above, and call any person to produce such materials, books, records, reports or other documents or things and to furnish any information as the Secretary or such officer authorised by him or a police officer or customs officer may consider necessary for the purpose of conducting such investigation:

29. The Secretary, any police officer or customs officer or any other officer authorised in writing in that behalf by the Secretary may without warrant enter any land or premises upon which any access activity is being carried out on biological resources of the State with a view to ascertaining whether the provisions of this Enactment are being complied with, and may make such investigation and inspection of the land or premises or the activities describes above, and call any person to produce such materials, books, records, reports or other documents or things and to furnish any information as the Secretary or such officer authorised by him or a police officer or customs officer may consider necessary for the purpose of conducting such investigation:

Provided that any person not in uniform purporting to exercise any powers under this section shall on demand produce his written authority to the owner or occupier of premises demanding the same.

30. The Secretary, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may, without warrant and with or without assistance, enter any land or premises if he considers it to be necessary if he has reason to believe that an offence under this Enactment has been committed and may search any place and any person whom he reasonably believes to be concerned in the control or management or use of such land or premises, or to be an employee, servant or agent of the owner or occupier thereof.

31. (1) The Secretary, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may seize, remove and detain any goods, tool, equipment, document, material or any other thing which is used or employed in relation to any collection, study, research or

experiment being carried out on biological resources of the State, which he reasonably believes to be or has been used, in the commission of an offence or to contain evidence relating to such an offence under this Enactment.

(2) No claim or action shall lie against the Secretary, police officer, customs officer or any other officer authorised in writing by the Secretary in that behalf in respect of the entry, investigation, seizure, removal or detention of any such goods, tool, equipment, document, material or other thing under subsection (1).

(3) Any goods, tool, equipment, document, material or other thing seized, removed or detained under subsection (1) may be sold by the Secretary by public auction or otherwise, disposed of as the court may order, and the proceed thereof shall, after being applied to cover the costs of such seizure, removal or detention and sale, be returned to the rightful owner.

32. (1) The Secretary, any police officer or customs officer^p or other officer authorised to exercise the powers of entry or^a investigation under section 29 may arrest without warrant any person whom he reasonably suspects of committing or attempting to commit or aiding any person to commit any offence under this Enactment and –

- (a) who refuses to furnish his name and address;
- (b) who furnishes a name or address reasonably suspected of being false or who furnishes an address outside Malaysia; or
- (c) who is reasonably suspected of being likely to abscond.

(2) Every person so arrested shall as soon as practicable be delivered into the custody of a police officer to be dealt with according to law.

33. Any person who obstructs the Secretary, any police officer or customs officer or any other authorised officers lawfully exercising any powers conferred on him by or under this

Enactment shall be guilty of an offence and shall, on conviction, be liable to a fine of ten thousand ringgit or to imprisonment for a term not exceeding one year, or to both.

34. Where an offence under this Enactment has been committed by a body of persons, corporate or unincorporate, any person who at the time of the commission of such offence was a director, manager, secretary or other similar officer of the body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent his commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

35. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code may conduct prosecuting for offences under this Enactment or the rules made thereunder.

36. The Secretary or any authorised person in writing in that behalf, may in his discretion compound any offence under this Enactment by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding half of the fine stipulated for the offence, as the Secretary or authorised person may determine.

MISCELLANEOUS

37. The Yang di-Pertua Negeri may, after consulting the Council, by order published in the *Gazette* make rules generally for the purpose of carrying out the provision of this Enactment and, in particular, such regulations may provide for –

- (a) the payment of fees, honorarium, allowances and benefits to members of the Council, or adviser or consultants appointed under section 11;
- (b) the management and control of the Biodiversity Centre;

- (c) the terms and conditions for access to and use of the biological resources of the State or such resources, data, exhibit, information or materials kept, stored or maintained in the Biodiversity Centre;
- (d) prescribing the terms and conditions including fees for the access licence to be issued under this Enactment;
- (e) prescribing the amount of security deposit for the access licence;
- (f) the exercise of the Council's powers and functions under the provisions of this Enactment;
- (g) prescribing rewards to persons or body of persons for giving relevant information for the illegal activities that is being carried out;
- (h) prescribing incentives to persons or body of persons for carrying out measures which are necessary to protect and conserve natural resources for the protection and enhancement of the biodiversity;

- (i) prescribing the offence which may be compounded, the person who may compound, the limit of the sum of money to be collected for compounding such offences and the procedure and forms to be complied with in compounding;
- (j) prescribing rate of compensation that the Council may require any person to pay for damages caused to the biodiversity by the act, omission, neglect or default of that person;
- (k) prescribing the mode and manner of benefit sharing for access to biological resources or the associated knowledge;
- (l) prescribing the terms and conditions for the licence to export the biological resources; and
- (m) such other purposes which may be considered to be necessary for carrying out the provisions of this Enactment.

Comparison of Malaysian legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

Only a few of the common provisions are addressed

Due to difficulties with reproducing this legislation reference in the table below is by article number

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources		
2. definition of terms- key terms used in the draft	Article 2	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights		
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements	Articles 15-25	

made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable		
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	Article 14	
7. Sanctions and remedies- dealing with breaches	Articles 26-36	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	Articles 3-13	
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws- avoiding conflict with other laws		
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

11. Peru

This legislation is essentially about setting up the relevant government authority and defining its functions

ACT ON THE PROTECTION OF ACCESS TO PERUVIAN BIOLOGICAL DIVERSITY AND THE COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES

Article 1.- Purpose of the Act

The purpose of the present Act is to provide protection for access to Peruvian biological diversity and to the collective knowledge of indigenous peoples.

Article 2.- Creation of a National Commission

The National Commission for the Protection of Access to Peruvian Biological Diversity and to the Collective Knowledge of Indigenous Peoples relating thereto is hereby established in the Office of the President of the Council of Ministers.

Article 3.- Composition

The National Commission for the Protection of Access to Peruvian Biological Diversity and to the Collective Knowledge of Indigenous Peoples is made up of:

a representative of the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOP), as Chair.

a representative of the Ministry of Foreign Relations.

a representative of the Ministry of Foreign Trade and Tourism.

a representative of the National Environmental Council (CONAM).

a representative of the Commission for the Promotion of Exports (PROMPEX).

a representative of the National Institute for Natural Resources (INRENA).

a representative of the National Institute for Agricultural Research and Extension (INIEA).

a representative of the International Potato Institute (CIP).

a representative of the National Center for Intercultural Health (CENSI).

a representative of the Universities of the country concerned with the subject of the present Act, appointed by the National Assembly of Governors (ANR).

two representatives of civil society (one from NGOs and the other from business associations) concerned with the subject of the present Act.

a representative of the National Commission of Andean, Amazonian and Afro-Peruvian Peoples (CONAPA).

Within eleven (11) days of the present Act coming into force, the members of the Commission shall be appointed by Ministerial Resolution of the President of the Council of Ministers, in the case of public institutions; and through accreditation of the organization or body which they represent, in the case of the private sector. Alternate representatives shall also be appointed. The Technical Secretary shall be appointed by the same Commission.

Article 4.- Functions of the Commission

The Commission shall have the following functions:

(a)

Establishing and maintaining a register of biological resources and collective knowledge of Indigenous Peoples of Peru.

(b)

Providing protection against acts of biopiracy.

(c)

Identifying and following up patent applications filed or patents granted abroad that relate to biological resources or the collective knowledge of indigenous peoples of Peru.

(d)

Carrying out technical evaluations of the above-mentioned patent applications filed and patents granted.

(e)

Issuing reports concerning cases studied, making recommendations for action in the competent State authorities.

- (f)
Lodging objections or instituting actions for annulment concerning patent applications filed and patents granted abroad that relate to biological or genetic resources, or the collective knowledge, of indigenous and native peoples of Peru.
- (g)
Establishing permanent information and dialog channels with the industrial property offices of other countries.
- (h)
Promoting links with State and civil society regional participatory bodies.
- (i)
Drawing up proposals for the defense of the position of the State and of indigenous and native peoples of Peru in different international fora with a view to preventing and avoiding acts of biopiracy.

Article 5.- Commission resources

The Commission shall have the following resources:

- (a)
those resources obtained by way of international cooperation.
- (b)
other resources obtained by donations.

Article 6.- Reporting to the President of the Council of Ministers

The Commission shall submit a report every six months to the President of the Council of Ministers on the activities carried out and the cases studied, including their recommendations.

SUPPLEMENTARY AND FINAL PROVISIONS

First.- By Resolution of the President of the Council of Ministers any supplementary measures shall be issued, which may be necessary to comply with the provisions of the present Act.

Second - Within ninety (90) days of publishing the present Act, the Regulations thereunder shall be issued by Supreme Decree.

Third.- For the purposes of implementing the present Act, “Biopiracy means unauthorized and non-remunerated access to and use of biological resources or collective knowledge of indigenous peoples by others, without the relevant authorization and in contravention of the principles established in the Convention on Biological Diversity and the rules in force on the matter. Such appropriation may occur by means of physical control, through ownership rights to products which incorporate such elements that were illicitly obtained or in some cases through invocation of such elements.”

Fourth.- Other technical terms employed in the present Act are defined in existing legislation.

12. Philippines

Although the organisation of this Act reflects to a certain extent the common provisions its focus is largely on the conservation of wildlife rather than genetic resources *per se*.

REPUBLIC ACT NO. 9147 AN ACT PROVIDING FOR THE CONSERVATION AND PROTECTION OF WILDLIFE RESOURCES AND THEIR HABITATS, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

CHAPTER I General Provisions

SECTION 1. Title. — This Act shall be known as the “Wildlife Resources Conservation and Protection Act.”

SECTION 2. Declaration of Policy. — It shall be the policy of the State to conserve the country’s wildlife resources and their habitats for sustainability. In the pursuit of this policy, this Act shall have the following objectives:

- (a) to conserve and protect wildlife species and their habitats to promote ecological balance and enhance biological diversity;
- (b) to regulate the collection and trade of wildlife;
- (c) to pursue, with due regard to the national interest, the Philippine commitment to international conventions, protection of wildlife and their habitats; and
- (d) to initiate or support scientific studies on the conservation of biological diversity.

SECTION 3. Scope of Application. — The provisions of this Act shall be enforceable for all wildlife species found in all areas of the country, including protected areas under Republic Act No. 7586, otherwise known as the National Integrated Protected Areas System (NIPAS) Act, and critical habitats. This Act shall also apply to exotic species which are subject to trade, are cultured, maintained and/or bred in captivity or propagated in the country.

SECTION 4. Jurisdiction of the Department of Environment and Natural Resources and the Department of Agriculture. — The Department of Environment and Natural Resources (DENR) shall have jurisdiction over all terrestrial plant and animal species, all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong. The Department of Agriculture (DA) shall have jurisdiction over all declared aquatic critical habitats, all aquatic resources, including but not limited to all fishes, aquatic plants, invertebrates and all marine mammals, except dugong. The secretaries of the DENR and the DA shall review, and, by joint administrative order, revise and regularly update the list of species under their respective jurisdiction. In the Province of Palawan, jurisdiction herein conferred is vested to the Palawan Council for Sustainable Development pursuant to Republic Act No. 7611.

CHAPTER II

Definition of Terms

SECTION 5. Definition of Terms. — As used in this Act, the term:

- (a) "Bioprospecting" means the research, collection and utilization of biological and genetic resources for purposes of applying the knowledge derived therefrom solely for commercial purposes;
- (b) "By-product or derivatives" means any part taken or substance extracted from wildlife, in raw or in processed form. This includes stuffed animals and herbarium specimens;
- (c) "Captive-breeding/culture or propagation" means the process of producing individuals under controlled conditions or with human interventions;
- (d) "Collection or collecting" means the act of gathering or harvesting wildlife, its by-products or derivatives;
- (e) "Conservation" means preservation and sustainable utilization of wildlife, and/or maintenance, restoration and enhancement of the habitat;
- (f) "Critically endangered species" refers to a species or subspecies that is facing extremely high risk of extinction in the wild in the immediate future;
- (g) "Economically important species" means species which have actual or potential value in trade or utilization for commercial purpose;
- (h) "Endangered species" refers to species or subspecies that is not critically endangered but whose survival in the wild is unlikely if the causal factors continue operating;
- (i) "Endemic species" means species or subspecies which is naturally occurring and found only within specific areas in the country;
- (j) "Exotic species" means species or subspecies which do not naturally occur in the country;
- (k) "Export permit" refers to a permit authorizing an individual to bring out wildlife from the Philippines to any other country;
- (l) "Gratuitous permit" means permit issued to any individual or entity engaged in noncommercial scientific or educational undertaking to collect wildlife;
- (m) "Habitat" means a place or environment where a species or subspecies naturally occur or has naturally established its population;
- (n) "Import permit" refers to a permit authorizing an individual to bring in wildlife from another country;
- (o) "Indigenous wildlife" means species or subspecies of wildlife naturally occurring or has naturally established population in the country;
- (p) "Introduction" means bringing species into the wild that is outside its natural habitat;
- (q) "Reexport permit" refers to a permit authorizing an individual to bring out of the country a previously imported wildlife;
- (r) "Secretary" means either or both the Secretary of the Department of Environment and Natural Resources and the Secretary of the Department of Agriculture;
- (s) "Threatened species" a general term to denote species or subspecies considered as critically endangered, endangered, vulnerable or other accepted categories of wildlife whose population is at risk of extinction;
- (t) "Trade" means the act of engaging in the exchange, exportation or importation, purchase or sale of wildlife, their derivatives or by-products, locally or internationally;

(u) “Traditional use” means utilization of wildlife by indigenous people in accordance with written or unwritten rules, usage, customs and practices traditionally observed, accepted and recognized by them;

(v) “Transport permit” means a permit issued authorizing an individual to bring wildlife from one place to another within the territorial jurisdiction of the Philippines;

(w) “Vulnerable species” refers to species or subspecies that is not critically endangered nor endangered but is under threat from adverse factors throughout their range and is likely to move to the endangered category in the near future;

(x) “Wildlife” means wild forms and varieties of flora and fauna, in all developmental stages, including those which are in captivity or are being bred or propagated;

(y) “Wildlife collector’s permit” means a permit to take or collect from the wild certain species and quantities of wildlife for commercial purpose; and

(z) “Wildlife farm/culture permit” means a permit to develop, operate and maintain a wildlife breeding farm for conservation, trade and/or scientific purposes.

CHAPTER III Conservation and Protection of Wildlife Resources

ARTICLE ONE General Provision

SECTION 6. Wildlife Information. — All activities, as subsequently manifested under this Chapter, shall be authorized by the Secretary upon proper evaluation of best available information or scientific data showing that the activity is, or for a purpose, not detrimental to the survival of the species or subspecies involved and/or their habitat. For this purpose, the Secretary shall regularly update wildlife information through research.

SECTION 7. Collection of Wildlife. — Collection of wildlife may be allowed in accordance with Section 6 of this Act: Provided, That in the collection of wildlife, appropriate and acceptable wildlife collection techniques with least or no detrimental effects to the existing wildlife populations and their habitats shall, likewise, be required: Provided, further, That collection of wildlife by indigenous people may be allowed for traditional use and not primarily for trade: Provided, furthermore, That collection and utilization for said purpose shall not cover threatened species: Provided, finally, That Section 23 of this Act shall govern the collection of threatened species.

SECTION 8. Possession of Wildlife. — No person or entity shall be allowed possession of wildlife unless such person or entity can prove financial and technical capability and facility to maintain said wildlife: Provided, That the source was not obtained in violation of this Act.

SECTION 9. Collection and/or Possession of By-Products and Derivatives. — By-products and derivatives may be collected and/or possessed: Provided, That the source was not obtained in violation of this Act.

SECTION 10. Local Transport of Wildlife, By-Products and Derivatives. — Local transport of wildlife, by-products and derivatives collected or possessed through any other means shall be authorized unless the same is prejudicial to the wildlife and public health.

SECTION 11. Exportation and/or Importation of Wildlife. — Wildlife species may be exported to or imported from another country as may be authorized by the Secretary or the designated - representative, subject to strict compliance with the provisions of this Act and rules and

regulations promulgated pursuant thereto: Provided, That the recipient of the wildlife is technically and financially capable to maintain it.

SECTION 12. Introduction, Reintroduction or Restocking of Endemic or Indigenous Wildlife. — The introduction, reintroduction or restocking of endemic and indigenous wildlife shall be allowed only for population enhancement or recovery purposes subject to prior clearance from the Secretary or the authorized representative pursuant to Section 6 of this Act.

Any proposed introduction shall be subject to a scientific study which shall focus on the bioecology. The proponent shall also conduct public consultations with concerned individuals or entities.

SECTION 13. Introduction of Exotic Wildlife. — No exotic species shall be introduced into the country, unless a clearance from the Secretary or the authorized representative is first obtained. In no case shall exotic species be introduced into protected areas covered by Republic Act No. 7586 and to critical habitats under Section 25 hereof.

In cases where introduction is allowed, it shall be subject to environmental impact study which shall focus on the bioecology, socioeconomic and related aspects of the area where the species will be introduced. The proponent shall also be required to secure the prior informed consent from the local stakeholders.

SECTION 14. Bioprospecting. — Bioprospecting shall be allowed upon execution of an undertaking by any proponent, stipulating therein its compliance with and commitment(s) to reasonable terms and conditions that may be imposed by the Secretary which are necessary to protect biological diversity.

The Secretary or the authorized representative, in consultation with the concerned agencies, before granting the necessary permit, shall require that prior informed consent be obtained by the applicant from the concerned indigenous cultural communities, local communities, management board under Republic Act No. 7586 or private individual or entity. The applicant shall disclose fully the intent and scope of the bioprospecting activity in a language and process understandable to the community. The prior informed consent from the indigenous peoples shall be obtained in accordance with existing laws. The action on the bioprospecting proposal by concerned bodies shall be made within a reasonable period.

Upon submission of the complete requirements, the Secretary shall act on the research proposal within a reasonable period.

If the applicant is a foreign entity or individual, a local institution should be actively involved in the research, collection and, whenever applicable and appropriate, in the technological development of the products derived from the biological and genetic resources.

SECTION 15. Scientific Researches on Wildlife. — Collection and utilization of biological resources for scientific research and not for commercial purposes shall be allowed upon execution of an undertaking/agreement with and issuance of a gratuitous permit by the Secretary or the authorized representative: Provided, That prior clearance from concerned bodies shall be secured before the issuance of the gratuitous permit: Provided, further, That the last paragraph of Section 14 shall likewise apply.

SECTION 16. Biosafety. — All activities dealing on genetic engineering and pathogenic organisms in the Philippines, as well as activities requiring the importation, introduction; field release and

breeding of organisms that are potentially harmful to man and the environment shall be reviewed in accordance with the biosafety guidelines ensuring public welfare and the protection and conservation of wildlife and their habitats.

SECTION 17. Commercial Breeding or Propagation of Wildlife Resources. — Breeding or propagation of wildlife for commercial purposes shall be allowed by the Secretary or the authorized representative pursuant to Section 6 through the issuance of wildlife farm/culture permit: Provided, That only progenies of wildlife raised, as well as unproductive parent stock shall be utilized for trade: Provided, further, That commercial breeding operations for wildlife, whenever appropriate, shall be subject to an environmental impact study.

SECTION 18. Economically Important Species. — The Secretary, within one (1) year after the effectivity of this Act, shall establish a list of economically-important species. A population assessment of such species shall be conducted within a reasonable period and shall be regularly reviewed and updated by the Secretary.

The collection of certain species shall only be allowed when the results of the assessment show that, despite certain extent of collection, the population of such species can still remain viable and capable of recovering its numbers. For this purpose, the Secretary shall establish a schedule and volume of allowable harvests.

Whenever an economically important species become threatened, any form of collection shall be prohibited except for scientific, educational or breeding/propagation purposes, pursuant to the provisions of this Act.

SECTION 19. Designation of Management and Scientific Authorities for International Trade in Endangered Species of Wild Fauna and Flora. — For the implementation of international agreement on international trade in endangered species of wild fauna and flora, the management authorities for terrestrial and aquatic resources shall be the Protected Areas and Wildlife Bureau (PAWB) of the DENR and the Bureau of Fisheries and Aquatic Resources (BFAR) of the DA, respectively and that in the Province of Palawan the implementation hereof is vested to the Palawan Council for Sustainable Development pursuant to Republic Act No. 7611.

To provide advice to the management authorities, there shall be designated scientific authorities for terrestrial and aquatic/marine species. For the terrestrial species, the scientific authorities shall be the Ecosystems Research and Development Bureau (ERDB) of the DENR, the U.P. Institute of Biological Sciences and the National Museum and other agencies as may be designated by the Secretary. For the marine and aquatic species, the scientific authorities shall be the BFAR, the U.P. Marine Science Institute, U.P. Visayas, Silliman University and the National Museum and other agencies as may be designated by the Secretary: Provided, That, in the case of terrestrial species, the ERDB shall chair the scientific authorities, and in the case of marine and aquatic species, the U.P. Marine Science Institute shall chair the scientific authorities.

SECTION 20. Authority of the Secretary to Issue Permits. — The Secretary or the duly authorized representative, in order to effectively implement this Act, shall issue permits/certifications/clearances with corresponding period of validity, whenever appropriate, which shall include but not limited to the following:

- (1) Wildlife farm or culture permit 3 to 5 years;
- (2) Wildlife collector's permit 1 to 3 years;
- (3) Gratuitous permit 1 year;

- (4) Local transport permit 1 to 3 months; and
- (5) Export/Import/Reexport permit 1 to 6 months.

These permits may be renewed subject to the guidelines issued by the appropriate agency and upon consultation with concerned groups.

SECTION 21. Fees and Charges. — Reasonable fees and charges as may be determined upon consultation with the concerned groups, and in the amount fixed by the Secretary shall be imposed for the issuance of permits enumerated in the preceding section.

For the export of wildlife species, an export permit fee of not greater than three percentum (3%) of the export value, excluding transport costs, shall be charged: Provided, however, That in the determination of aforesaid fee, the production costs shall be given due consideration. Cutflowers, leaves the like, produced from farms shall be exempted from the said export fee: Provided, further, that fees and charges shall be reviewed by the Secretary every two (2) years or as the need arises and revise the same accordingly, subject to consultation with concerned sectors.

ARTICLE TWO

Protection of Threatened Species

SECTION 22. Determination of Threatened Species. — The Secretary shall determine whether any wildlife species or subspecies is threatened, and classify the same as critically endangered, endangered, vulnerable or other accepted categories based on the best scientific data and with due regard to internationally accepted criteria, including but not limited to the following.

- (a) present or threatened destruction, modification or curtailment of its habitat or range;
- (b) over-utilization for commercial, recreational, scientific or educational purposes;
- (c) inadequacy of existing regulatory mechanisms; and
- (d) other natural or man-made factors affecting the existence of wildlife.

The Secretary shall review, revise and publish the list of categorized threatened wildlife within one (1) year after effectivity of this Act. Thereafter, the list shall be updated regularly or as the need arises: Provided, That a species listed as threatened shall not be removed therefrom within three (3) years following its initial listing.

Upon filing of a petition based on substantial scientific information of any person seeking for the addition or deletion of a species from the list, the Secretary shall evaluate in accordance with the relevant factors stated in the first paragraph of this section, the status of the species concerned and act on said petition within a reasonable period.

The Secretary shall also prepare and publish a list of wildlife which resembles so closely in appearance with listed threatened wildlife, which species shall likewise be categorized as threatened.

SECTION 23. Collection of Threatened Wildlife, By-Products and Derivatives. — The collection of threatened wildlife, as determined and listed pursuant to this Act, including its by-products and derivatives, shall be allowed only for scientific, or breeding or propagation purposes in accordance with Section 6 of this Act: Provided, That only the accredited individuals, business,

research, educational or scientific entities shall be allowed to collect for conservation breeding or propagation purposes.

SECTION 24. Conservation Breeding or Propagation of Threatened Species. — Conservation breeding or propagation of threatened species shall be encouraged in order to enhance its population in its natural habitat. It shall be done simultaneously with the rehabilitation and/or protection of the habitat where the captive-bred or propagated species shall be released, reintroduced or restocked.

Commercial breeding or propagation of threatened species may be allowed provided that the following minimum requirements are met by the applicant, to wit:

- (a) Proven effective breeding and captive management techniques of the species; and
- (b) Commitment to undertake commercial breeding in accordance with Section 17 of this Act, simultaneous with conservation breeding.

The Secretary shall prepare a list of threatened species for commercial breeding and shall regularly revise or update such list or as the need arises.

SECTION 25. Establishment of Critical Habitats. — Within two (2) years following the effectivity of this Act, the Secretary shall designate critical habitats outside protected areas under Republic Act No. 7586, where threatened species are found. Such designation shall be made on the basis of the best scientific data taking into consideration species endemism and/or richness, presence of man-made pressures/threats to the survival of wildlife living in the area, among others.

All designated critical habitats shall be protected, in coordination with the local government units and other concerned groups, from any form of exploitation or destruction which may be detrimental to the survival of the threatened species dependent therein. For such purpose, the Secretary may acquire, by purchase, donation or expropriation, lands, or interests therein, including the acquisition of usufruct, establishment of easements or other undertakings appropriate in protecting the critical habitat.

ARTICLE THREE

Registration of Threatened and Exotic Species

SECTION 26. Registration of Threatened and Exotic Wildlife in the Possession of Private Persons. — No person or entity shall be allowed possession of wildlife unless such person or entity can prove financial and technical capability and facility to maintain said wildlife. Twelve (12) months after the effectivity of this Act, the Secretary shall set a period, within which persons/entities shall register all threatened species collected and exotic species imported prior to the effectivity of this Act. However, when the threatened species is needed for breeding/propagation or research purposes, the State may acquire the wildlife through a mutually acceptable arrangement.

After the period set has elapsed, threatened wildlife possessed without certificate of registration shall be confiscated in favor of the government, subject to the penalties herein provided.

All Philippine wildlife which are not listed as threatened prior to the effectivity of this Act but which may later become so, shall likewise be registered during the period set after the publication of the updated list of threatened species.

CHAPTER IV

Illegal Acts

SECTION 27. Illegal Acts. — Unless otherwise allowed in accordance with this Act, it shall be unlawful for any person to willfully and knowingly exploit wildlife resources and their habitats, or undertake the following acts:

- (a) killing and destroying wildlife species, except in the following instances;
 - (i) when it is done as part of the religious rituals of established tribal groups or indigenous cultural communities;
 - (ii) when the wildlife is afflicted with an incurable communicable disease;
 - (iii) when it is deemed necessary to put an end to the misery suffered by the wildlife;
 - (iv) when it is done to prevent an imminent danger to the life or limb of a human being; and
 - (v) when the wildlife is killed or destroyed after it has been used in authorized research or experiments.
- (b) inflicting injury which cripples and/or impairs the reproductive system of wildlife species;
- (c) effecting any of the following acts in critical habitat(s):
 - (i) dumping of waste products detrimental to wildlife;
 - (ii) squatting or otherwise occupying any portion of the critical habitat;
 - (iii) mineral exploration and/or extraction;
 - (iv) burning;
 - (v) logging; and
 - (vi) quarrying
- (d) introduction, reintroduction or restocking of wildlife resources;
- (e) trading of wildlife;
- (f) collecting, hunting or possessing wildlife, their by-products and derivatives;
- (g) gathering or destroying of active nests, nest trees, host plants and the like;
- (h) maltreating and/or inflicting other injuries not covered by the preceding paragraph; and
- (i) transporting of wildlife.

CHAPTER V

Fines and Penalties

SECTION 28. Penalties for Violations of this Act. — For any person who undertakes illegal acts under paragraph (a) of the immediately preceding section to any species as may be categorized pursuant to this Act, the following penalties and/or fines shall be imposed:

- (a) imprisonment of a minimum of six (6) years and one (1) day to twelve (12) years and/or a fine of One hundred thousand pesos (100,000.00) to One million pesos (1,000,000.00), if inflicted or undertaken against species listed as critical;
- (b) imprisonment of four (4) years and one (1) day to six (6) years and/or a fine of Fifty thousand pesos (P50,000.00) to Five hundred thousand pesos (P500,000.00), if inflicted or undertaken against endangered species;

(c) imprisonment of two (2) years and one (1) day to four (4) years and/or a fine of Thirty thousand pesos (P30,000.00) to Three hundred thousand pesos (P300,000.00), if inflicted or undertaken against vulnerable species; ADEHTS

(d) imprisonment of one (1) year and one (1) day to two (2) years and/or a fine of Twenty thousand pesos (P20,000.00) to Two hundred thousand pesos (P200,000.00), if inflicted or undertaken against other threatened species; and

(e) imprisonment of six (6) months and one (1) day to one (1) year and/or a fine of Ten thousand pesos (P10,000.00) to One hundred thousand pesos (P100,000.00), if inflicted or undertaken against other wildlife species.

For illegal acts under paragraph (b) of the immediately preceding section, the following penalties and/or fines shall be imposed:

(a) imprisonment of a minimum of four (4) years and one (1) day to six (6) years and/or a fine of Fifty thousand pesos (P50,000.00) to Five hundred thousand pesos (P500,000.00), if inflicted or undertaken against species listed as critical;

(b) imprisonment of two (2) years and one (1) day to four (4) years and/or a fine of Thirty thousand pesos (P30,000.00) to Two hundred thousand pesos (P200,000.00), if inflicted or undertaken against endangered species;

(c) imprisonment of one (1) year and one (1) day to two (2) years and/or a fine of Twenty thousand pesos (P20,000.00) to Two hundred thousand pesos (P200,000.00), if inflicted or undertaken against vulnerable species;

(d) imprisonment of six (6) months and one (1) day to one (1) year and/or a fine of Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00), if inflicted or undertaken against other threatened species; and

(e) imprisonment of one (1) month to six (6) months and/or a fine of Five thousand pesos (P5,000.00) to Twenty thousand pesos (P20,000.00), if inflicted or undertaken against other wildlife species.

For illegal acts under paragraphs (c) and (d) of the immediately preceding section, an imprisonment of one (1) month to eight (8) years and/or a fine of Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00) shall be imposed.

For illegal acts under paragraph (e), the following penalties and/or fines shall be imposed:

(a) imprisonment of two (2) years and one (1) day to four (4) years and/or a fine of Five thousand pesos (P5,000.00) to Three hundred thousand pesos (P300,000.00), if inflicted or undertaken against species listed as critical;

(b) imprisonment of one (1) year and one (1) day to two (2) years and/or a fine of Two thousand pesos (P2,000.00) to Two hundred thousand pesos (P200,000.00) if inflicted or undertaken against endangered species;

(c) imprisonment of six (6) months and one (1) day to one (1) year and/or a fine of One thousand pesos (P1,000.00) to One hundred thousand pesos (P100,000.00), if inflicted or undertaken against vulnerable species;

(d) imprisonment of one (1) month and one (1) day to six (6) months and/or a fine of Five hundred pesos (P500.00) to Fifty thousand pesos (P50,000.00), if inflicted or undertaken against species listed as other threatened species; and

(e) imprisonment of ten (10) days to one (1) month and/or a fine of Two hundred pesos (P200.00) to Twenty thousand pesos (P20,000.00), if inflicted or undertaken against other wildlife species.

For illegal acts under paragraphs (f) and (g) of the immediately preceding section, the following penalties and/or fines shall be imposed:

(a) imprisonment of two (2) years and one (1) day to four (4) years and a fine of Thirty thousand pesos (P30,000.00) to Three hundred thousand pesos (P300,000.00), if inflicted or undertaken against species listed as critical;

(b) imprisonment of one (1) year and one (1) day to two (2) years and a fine of Twenty thousand pesos (P20,000.00) to Two hundred thousand pesos (P200,000.00), if inflicted or undertaken against endangered species;

(c) imprisonment of six (6) months and one (1) day to one (1) year and a fine of Ten thousand pesos (P10,000.00) to One hundred thousand pesos (P100,000.00), if inflicted or undertaken against vulnerable species;

(d) imprisonment of one (1) month and one (1) day to six (6) months and a fine of Five thousand pesos (P5,000.00) to Fifty thousand pesos (P50,000.00), if inflicted or undertaken against species listed as other threatened species; and

(e) imprisonment of ten (10) days to one (1) month and a fine of One thousand pesos (P1,000.00) to Five thousand pesos (P5,000.00), if inflicted or undertaken against other wildlife species: Provided, That in case of paragraph (f), where the acts were perpetuated through the means of inappropriate techniques and devices, the maximum penalty herein provided shall be imposed.

For illegal acts under paragraphs (h) and (i) of the immediately preceding section, the following penalties and/or fines shall be imposed:

(a) imprisonment of six (6) months and one (1) day to one (1) year and a fine of Fifty thousand pesos (P50,000.00) to One hundred thousand pesos (P100,000.00), if inflicted or undertaken against species listed as critical species;

(b) imprisonment of three (3) months and one (1) day to six (6) months and a fine of Twenty thousand pesos (P20,000.00) to Fifty thousand pesos (P50,000.00), if inflicted or undertaken against endangered species;

(c) imprisonment of one (1) month and one (1) day to three (3) months and a fine of Five thousand pesos (P5,000.00) to Twenty thousand pesos (P20,000.00), if inflicted or undertaken against vulnerable species;

(d) imprisonment of ten (10) days to one (1) month and a fine of One thousand pesos (P1,000.00) to Five thousand pesos (P5,000.00) if inflicted or undertaken against species listed as other threatened species;

(e) imprisonment of five (5) days to ten (10) days and a fine of Two hundred pesos (P200.00) to One thousand pesos (P1,000.00), if inflicted or undertaken against other wildlife species.

All wildlife, its derivatives or by-products, and all paraphernalia, tools and conveyances used in connection with violations of this Act, shall be ipso facto forfeited in favor of the government: Provided, That where the ownership of the aforesaid conveyances belong to third persons who has no participation in or knowledge of the illegal acts, the same may be released to said owner. The apprehending agency shall immediately cause the transfer of all wildlife that have been seized or recovered to the nearest Wildlife Rescue Center of the Department in the area.

If the offender is an alien, he shall be deported after service of sentence and payment of fines, without any further proceedings.

The fines herein prescribed shall be increased by at least ten percent (10%) every three (3) years to compensate for inflation and to maintain the deterrent function of such fines.

CHAPTER VI

Miscellaneous Provisions

SECTION 29. Wildlife Management Fund. — There is hereby established a Wildlife Management Fund to be administered by the Department as a special account in the National Treasury. It shall finance rehabilitation or restoration of habitats affected by acts committed in violation of this Act and support scientific research, enforcement and monitoring activities, as well as enhancement of capabilities of relevant agencies.

The Fund shall derive from fines imposed and damages awarded, fees, charges, donations, endowments, administrative fees or grants in the form of contributions. Contributions to the Fund shall be exempted from donor taxes and all other taxes, charges or fees imposed by the government. CDEaAI

SECTION 30. Deputation of Wildlife Enforcement Officers. — The Secretary shall deputize wildlife enforcement officers from nongovernment organizations, citizens groups, community organizations and other volunteers who have undergone the necessary training for this purpose. The Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI) and other law enforcement agencies shall designate wildlife enforcement officers. As such, the wildlife enforcement officers shall have the full authority to seize illegally traded wildlife and to arrest violators of this Act subject to existing laws, rules and regulations on arrest and detention.

SECTION 31. Establishment of National Wildlife Research Centers. — The Secretary shall establish national wildlife research centers for terrestrial and aquatic species to lead in the conduct of scientific researches on the proper strategies for the conservation and protection of wildlife, including captive breeding or propagation. In this regard, the Secretary shall encourage the participation of experts from academic/research institutions and wildlife industry.

SECTION 32. Wildlife Rescue Center. — The Secretary shall establish or designate wildlife rescue centers to take temporary custody and care of all confiscated, abandoned and/or donated wildlife to ensure their welfare and well-being. The Secretary shall formulate guidelines for the disposition of wildlife from the rescue centers.

SECTION 33. Creation of Wildlife Traffic Monitoring Units. — The Secretary shall create wildlife traffic monitoring units in strategic air and seaports all over the country to ensure the strict compliance and effective implementation of all existing wildlife laws, rules and regulations, including pertinent international agreements.

Customs officers and/or other authorized government representatives assigned at air or seaports who may have intercepted wildlife commodities in the discharge of their official functions shall, prior to further disposition thereof, secure a clearance from the wildlife traffic monitoring unit assigned in the area.

SECTION 34. Exemption from Taxes. — Any donation, contribution, bequest, subsidy or financial aid which may be made to the Department of Environment and Natural Resources or to the Department of Agriculture and to NGOs engaged in wildlife conservation duly registered with the Securities and Exchange Commission as certified by the local government unit, the Department of Environment and Natural Resources or the Department of Agriculture, for the conservation and protection of wildlife resources and their habitats shall constitute as an allowable deduction from the taxable income of the donor and shall be exempt from donor's tax.

SECTION 35. Flagship Species. — Local government units shall initiate conservation measures for endemic species in their areas. For this purpose, they may adopt flagship species such as the Cebu black shama (*copsychus cebuensis*), tamaraw (*bubalus mindorensis*) Philippine tarsier (*tarsius syrichta*), Philippine teak (*tectona philippinensis*), which shall serve as emblems of conservation for the local government concerned.

SECTION 36. Botanical Gardens, Zoological Parks and Other Similar Establishments. — The Secretary shall regulate the establishment, operation and maintenance of botanical gardens, zoological parks and other similar establishments for recreation, education and conservation.

SECTION 37. Implementing Rules and Regulations. — Within twelve (12) months following the effectivity of this Act, the secretaries of the Department of Environment and Natural Resources and the Department of Agriculture, in coordination with the Committees on Environment and Ecology of the Senate and the House of Representatives, respectively, shall promulgate respective rules and regulations for the effective implementation of this Act. Whenever appropriate, coordination in the preparation and implementation of rules and regulations on joint and inseparable issues shall be done by both Departments. The commitments of the State to international agreements and protocols shall likewise be a consideration in the implementation of this Act.

SECTION 38. Appropriations. — The amount necessary to initially implement the provisions of this Act shall be charged against the appropriations of the Department of Environment and Natural Resources in the current General Appropriations Act. Thereafter, such sums as may be necessary to fully implement the provisions of this Act shall be included in the annual General Appropriations Act.

SECTION 39. Separability Clause. — Should any provision of this Act be subsequently declared as unconstitutional, the same shall not affect the validity or the legality of the other provisions.

SECTION 40. Repealing Clause. — Act Nos. 2590 and 3983, Commonwealth Act No. 63, as amended, Presidential Decree No. 1219, as amended, Republic Act No. 6147, and other laws, orders and regulations inconsistent herewith are hereby repealed or amended accordingly.

SECTION 41. Effectivity. — This Act shall take effect fifteen (15) days after publication in the Official Gazette or two (2) newspapers of general circulation.

13. South Africa

Analysed against the common provisions

National Environmental Management: Biodiversity Act, 2004.

CHAPTER 1 INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise-

“alien species” means a species that is not an indigenous species; or an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

“benefit”, in relation to bioprospecting involving indigenous biological resources, means any benefit, whether commercial or not, arising from bioprospecting involving such resources, and includes both monetary and non-monetary returns;

“biological diversity” or **“biodiversity”** means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems;

“bioprospecting”, in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes-

(a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;

(b) the utilisation for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; or

(c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation;

“bioregion” means a geographic region which has in terms of section 40(1) been determined as a bioregion for the purposes of this Act;

“Board” means the board referred to in section 13;

“competent authority”, in relation to the control of an alien or invasive species, means-

(a) the Minister;

(b) an organ of state in the national, provincial or local sphere of government designated by regulation as a competent authority for the control of an alien species or a listed invasive species in terms of this Act; or

(c) any other organ of state;

“components”, in relation to biodiversity, includes species, ecological communities, genes, genomes, ecosystems, habitats and ecological processes;

“control”, in relation to an alien or invasive species, mean-

(a) to combat or eradicate an alien or invasive species; or

(b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;

“critically endangered ecosystem” means any ecosystem listed as a critically endangered ecosystem in terms of section 52(2);

“critically endangered species” means any indigenous species listed as a critically endangered species in terms of section 56;

“delegation”, in relation to a duty, includes an instruction to perform the duty;

“Department” means the national Department of Environmental Affairs and Tourism;

“derivative”, in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;

“Director-General” means the Director-General of the Department;

“ecological community” means an integrated group of species inhabiting a given area;

“ecosystem” means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

“endangered ecosystem” means any ecosystem listed as an endangered ecosystem in terms of section 52(2);

“endangered species” means any indigenous species listed as an endangered species in terms of section 56;

“environmental management inspector” means a person authorised in terms of the National Environmental Management Act to enforce the provisions of this Act;

“export”, in relation to the Republic, means to take out or transfer, or attempt to take out or transfer, from a place within the Republic to another country or to international waters;

‘Gazette’, when used-

(a) in relation to the Minister, means the *Government Gazette*; or

(b) in relation to the MEC for Environmental Affairs of a province, means the *Provincial Gazette* of that province;

“genetic material” means any material of animal, plant, microbial or other biological origin containing functional units of heredity;

“genetic” includes-

(a) any genetic material; or

(b) the genetic potential or characteristics of any species;

“habitat” means a place where a species or ecological community naturally occurs;

“import”, in relation to the Republic-

(a) means to land on, bring into or introduce into the Republic, or attempt to land on, bring into or introduce into the Republic; and

(b) includes to bring into the Republic for re-export to a place outside the Republic;

“indigenous biological resource” -

(a) when used in relation to bioprospecting, means any indigenous biological resource as defined in section 80(2); or

(b) when used in relation to any other matter, means any resource consisting of-

(i) any living or dead animal, plant or other organism of an indigenous species;

(ii) any derivative of such animal, plant or other organism; or

(iii) any genetic material of such animal, plant or other organism;

“indigenous species” means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;

“Institute” means the South African National Biodiversity Institute established in terms of section 10;

“introduction”, in relation to a species, means the introduction by humans, whether deliberately or accidentally, of a species to a place outside the natural range or natural dispersal potential of that species;

“introduction from the sea”, in relation to a specimen of any species, means the transportation into the Republic of a specimen taken from a marine environment not under the jurisdiction of any state;

“invasive species” means any species whose establishment and spread outside of its natural distribution range-

(a) threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species; and

(b) may result in economic or environmental harm or harm to human health;

“issuing authority”, in relation to permits regulating the matters mentioned in section 87, means-

(a) the Minister; or

(b) an organ of state in the national, provincial or local sphere of government designated by regulation in terms of section 97 as an issuing authority for permits of the kind in question;

“listed ecosystem” means any ecosystem listed in terms of section 52(1);

“listed invasive species” means any invasive species listed in terms of section 70(1);

“listed threatened or protected species” means any species listed in terms of section 56(1);

“local community” means any community of people living or having rights or interests in a distinct geographical area;

“management authority”, in relation to a protected area, means an authority to whom the management of a protected area has been assigned;

“MEC for Environmental Affairs” means a member of the Executive Council of a province who is responsible for the conservation of biodiversity in the province;

“migratory species” means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

“Minister” means the Cabinet member responsible for national environmental management;

“municipality” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“national botanical garden” means land declared or regarded as having been declared as a national botanical garden in terms of section 33, and includes any land declared in terms of section 33 as part of an existing botanical garden;

“National Environmental Management Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“national environmental management principles” means the principles referred to in section 7;

“non-detriment findings” means the determination of the non-detrimental impact of an action on the survival of a species in the wild;

“organ of state” has the meaning assigned to it in section 239 of the Constitution;

“permit” means a permit issued in terms of Chapter 7;

“prescribe” means prescribe by regulation in terms of section 97;

“protected area” means a protected area defined in the Protected Areas Act;

“Protected Areas Act” means the National Environmental Management: Protected Areas Act, 2003;

“protected ecosystem” means any ecosystem listed as a protected ecosystem in terms of section 52(2);

“protected species” means any species listed as a protected species in terms of section 56;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“restricted activity”:, (a) in relation to a specimen of a listed threatened or protected species, means-

(i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;

(ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;

(iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;

(iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;

(v) exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species;

(vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species;

(vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;

(viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species;

(ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or
(x) any other prescribed activity which involves a specimen of a listed threatened or protected species; and

(b) in relation to a specimen of an alien species or listed invasive species, means-

(i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;

(ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;

(iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;

(iv) conveying, moving or otherwise translocating any specimen of an alien invasive or listed species;

(v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or

(vi), any other prescribed activity which involves a specimen of an alien or listed invasive species;

“re-export”, in relation to a specimen of a listed threatened or protected species, means the export from the Republic of a specimen of a listed threatened or protected species previously imported into the Republic;

“species” means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

(a) any living or dead animal, plant or other organism;
(b) a seed, egg, gamete or propagule **or** part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;

“specimen” means-

(c) any derivative of any animal, plant or other organism; or
(d) any goods which- (i) contain a derivative of an animal, plant or other organism; or
(ii) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism;

“stakeholder” means-

(a) a person, an organ of state or a community contemplated in section 82(1)(a);
(b) an indigenous community contemplated in section 82(1)(b);

“subordinate legislation”, in relation to this Act, means-

(a) any regulation made in terms of section 97; or
(b) any notice published in terms of section 9, 33, 34, 40(1), 42(2), 43(3), 46(2), 52(1), 53(1), 55, 56(1), 57(2), 58, 66(1), 67(1), 68, 70(1), 72, 86(1) or 100(1)

“sustainable”, in relation to the use of a biological resource, means the use of such resource in a way and at a rate that-

(a) would not lead to its long term decline;
(b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and
(c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;

“this Act” includes any subordinate legislation issued in terms of a provision of this Act;

“threatening process” means a process which threatens, or may threaten-

(a) the survival, abundance or evolutionary development of an indigenous species or ecological community; or
(b) the ecological integrity of an ecosystem,

and includes any process identified in terms of section 53 as a threatening process;

“vulnerable ecosystem” means any ecosystem listed as a vulnerable ecosystem in terms of section 52(2);

“vulnerable species” means any indigenous species listed as a vulnerable species in terms of section 56.

(2) In this Act, words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates that another meaning is intended.

Objectives of Act

2. The objectives of this Act are-

(a) within the framework of the National Environmental Management Act, to provide for-
(i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;
(ii) the use of indigenous biological resources in a sustainable manner; and
(iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;
(b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;

(c) to provide for co-operative governance in biodiversity management and conservation; and
(d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.

State's trusteeship of biological diversity

3. In fulfilling the rights contained in section 24 of the Constitution, the state through its components its organs that implement legislation applicable to biodiversity, must
(a) manage, conserve and sustain South Africa's biodiversity and
(b) implement this Act to achieve the progressive realisation of those rights.

Application of Act

4. (1) This Act applies-

(a) in the Republic, including-

(i) its territorial waters, exclusive economic zone and continental shelf described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and

(ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and

(b) to human activity affecting South Africa's biological diversity and its components.

(2) This Act binds all organs of state

(a) in the national and local spheres of government; and

(b) in the provincial sphere of government, subject to section 146 of the Constitution.

Application of international agreements

5. This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.

Application of other biodiversity legislation

6. (1) This Act must be read with any applicable provisions of the National Environmental Management Act

(2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

National environmental management principles

7. The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

Conflicts with other legislation

8. (1) In the event of any conflict between a section of this Act and-

(a) other national legislation in force immediately prior to the date of commencement of this Act, the section of this Act prevails if the conflict specifically concerns the management of biodiversity or indigenous biological resources;

(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and

(c) a municipal by-law, the section of this Act prevails.

(2) In the event of any conflict between subordinate legislation issued in terms of this Act and-

(a) an Act of Parliament, the Act of Parliament prevails;

(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;

(c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails; and

(3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146 of the Constitution, submit all subordinate legislation issued in terms of this Act which affects provinces to the National Council of Provinces for approval.

Norms and standards

9. (1) The Minister may, by notice in the *Gazette*-

(a) issue norms and standards for the achievement of any of the objectives of this Act., including for the-

(i) management and conservation of South Africa's biological diversity and its components;

(ii) restriction of activities which impact on biodiversity and its components;

(b) set indicators to measure compliance with those norms and standards; and

(c) amend any notice issued in terms of paragraph (a) or (b).

(2) (a) Before publishing a notice in terms of subsection (1), the Minister must follow a consultative process in accordance with sections 99 and 100.

(b) A consultative process referred to in paragraph (a) need not apply to a non-substantial change to the notice.

(3) Norms and standards may apply

(a) nationwide;

(b) in a specific area only; or

(c) to a specific category of biodiversity only.

(4) Different norms and standards may be issued for-

(a) different areas; or

(b) different categories of biodiversity.

CHAPTER 2 SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE

Part 1 *Establishment, powers and duties of Institute*

Establishment

10. (1) The South African National Biodiversity Institute is established by this Act.

(2) The Institute is a juristic person.

Functions

11. (1) The Institute-

(a) must monitor and report regularly to the Minister on-

(i) the status of the Republic's biodiversity;

(ii) the conservation status of all listed threatened or protected species and

(iii) the status of all listed invasive species;

(b) must monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture;

(c) may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;

(d) must coordinate and promote the taxonomy of South Africa's biodiversity;

- (e) must manage, control and maintain all national botanical gardens;
 - (f) may establish, manage, control and maintain-
 - (i) herbaria; and
 - (ii) collections of dead animals that may exist;
 - (g) must establish facilities for horticulture display, environmental education, visitor amenities and research;
 - (h) must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;
 - (i) may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;
 - (j) must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;
 - (k) may allow, regulate or prohibit access by the public to national botanical gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;
 - (l) may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;
 - (m) may coordinate and implement programmes for-
 - (i) the rehabilitation of ecosystems; and
 - (ii) the prevention, control or eradication of listed invasive species;
 - (n) may coordinate programmes to involve civil society in-
 - (i) the conservation and sustainable use of indigenous biological resources;
 - (ii) the rehabilitation of ecosystems;
 - (o) on the Minister's request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;
 - (p) on the Minister's request, must advise him or her on any matter regulated in terms of this Act, including
 - (i) the implementation of this Act and any international agreements
 - (ii) the identification of bioregions and the contents of any bioregional plans;
 - (iii) other aspects of biodiversity planning;
 - (iv) the management and conservation of biological diversity; and
 - (v) the sustainable use of indigenous biological resources;
 - (q) on the Ministers advice must advised him or her on the declaration management of, and development in, national protected areas: and
 - *r) must perform any other duties
 - (i) assigned to it in terms of this Act; or
 - (ii) as may be prescribed.
- (2) When the Institute in terms of subsection (1) gives advice on a scientific matter, it may consult any appropriate organ of state or other institution which has expertise in that matter.

General powers

12. The Institute may for the purpose of performing its duties-

- (a) appoint its own staff, subject to section 29;

- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) establish a company which has as its object the production and supply of goods or the rendering of service⁹ on behalf of the Institute, subject to the Public Finance Management Act;
- (f) invest any of its money, subject to section 32;
- (g) borrow money, subject to section 66 of the Public Finance Management Act;
- (h) charge fees-
 - (i) for access to national botanical gardens, herbaria and other places under its control;
 - (ii) for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 11(l)(m), (n) or (p); or
 - (iii) for access to the results of, or to other information in connection with, any research performed by it;
- (i) collect royalties resulting from any discoveries, inventions or computer programmes;
- (j) insure itself against;
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (k) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and
- (l) institute or defend any legal action.

Part 2 Governing board, composition and membership

Composition

- 13.** (1) The Institute is governed by a Board consisting of-
- (a) not fewer than seven and not more than nine members appointed in terms of section 15;
 - (b) the Director-General or an official of the Department designated by the Director-General; and
 - (c) the Chief Executive Officer of the Institute.
- (2) The Minister-
- (a) must determine the number of members to be appointed in terms of subsection 40 (1)(a); and
 - (b) may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.
- (3) The Board takes all decisions in the performance of the duties and exercise of powers of the Institute, except-
- (a) those decisions taken in consequence of a delegation in terms of section 27; or
 - (b) where the Public Finance Management Act provides otherwise.

Qualifications

- 14.** (1) A member of the Board must-
- (a) be a fit and proper person to hold office as a member; and
 - (b) have appropriate qualifications and experience in the field of biodiversity.
- (2) The following persons are disqualified from becoming or remaining a member of the Board:
- (a) A person holding office as a member of Parliament, a provincial legislature or a municipal council¹; or

(b) a person who has been removed from office in terms of section 21.

Appointment procedure

15. (1) Whenever it is necessary to appoint members of the Board referred to in section 13(1)(a), the Minister must

(a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and

(b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by-

(a) the personal details of the nominee;

(b) nominee's qualifications or experience; and

(c) any other information that may be prescribed.

(3) The Minister must, subject to subsection (4), appoint-

(a) the required number of persons from the list compiled in terms of subsection 1(b); and

(b) if such list is inadequate, any suitable person.

(4) When making appointments the Minister must-

(a) consult the MECs for Environmental Affairs; and

(b) have regard to the need for appointing persons to promote representivity.

(5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise in the field of biodiversity.

Chairperson

16. (1) Whenever necessary the Minister must appoint a member of the Board as the Chairperson of the Board.

(2) The Chairperson is appointed for a period which is determined by the Minister which may, in the case of a member referred to in section 13(1)(a), not extend beyond the period of his or her term as a member.

(3) The Minister may appoint a member of the Board as acting chairperson of the Board if-

(a) the Chairperson is absent for a substantial period; or

(b) the appointment of a Chairperson is pending.

Term of office

17. Members of the Board referred to in section 13(1)(a)-

(a) are appointed for a period of three years or, if section 22(2) applies, for a term determined in terms of that section;

(b) on completion of that term, are eligible for reappointment for one additional term of three years; and

(c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.

Conditions of appointment

18. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 13(1)(a).

- (2) (a) The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of Government.
- (b) Their remuneration and allowances are paid by the Institute.
- (3) (a) Members who are in the employ of the Government are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by the Institute.
- (b) Such members are appointed on a part-time basis.

Conduct of members

19. (1) A member of the Board-

- (a) must perform the duties of office in good faith and without favour or prejudice;
- (b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that Board member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;
- (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Institute.
- (2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

20. (1) A member of the Board referred to in section 13(1)(a) ceases to be a member when that person-

- (a) is no longer eligible in terms of section 14 to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 21.
- (2) A member may resign only by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

21. (1) The Minister may remove a member of the Board referred to in section 13(1)(a) from office, but only on the ground of-

- (a) misconduct, incapacity or incompetence;
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on show of good cause;
- (c) insolvency; or
- (d) conviction of a criminal offence without the option of a fine.
- (2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.
- (3) The Minister may suspend a member under investigation in terms of this section.

Filling of vacancies

22. (l) A vacancy in the Board is filled-

(a) in the case of a vacating Chairperson, by appointing another member in terms of section 16(1) as the Chairperson; and

(b) in the case of a vacating member referred to in section 13(l)(a), by following the procedure set out in section 15.

(2)A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.

Part 3 Operating procedures of Board

Meetings

23. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a Board meeting at a time and in a place set out in the request.

(2) The Chairperson presides at meetings of the Board, but if the Chairperson is absent from a meeting the members present must elect another member to preside at the meeting.

Procedures

24. (1) The Board may determine its own procedures subject to the provisions of this Act.

(2) The Board must keep records of its proceedings and of decisions taken.

Quorum and decisions

25. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

Committees

26. (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.

(2) When appointing members to a committee, the Board is not restricted to members of the Board

(3) The Board

(a) must determine the duties of a committee;

(b) must appoint a chairperson and other members of the committee;

(c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and

(d) must determine a working procedure of a committee.

(4) The Board may dissolve a committee at any time.

(5) (a) Section 18 read with the necessary change as the context may require, applies to the terms and conditions of employment of committee members.

(b) A staff member of the Institute appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

Delegation of powers and duties

- 27.** (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or duties to-
- (a) a member of the Board;
 - (b) a committee referred to in section 26; or
 - (c) a staff member of the Institute.
- (2) The following powers and duties may not be delegated by the Board:
- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 28(1) or (2);
 - (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 28(3);
 - (c) the determination of an employment policy in terms of section 29(1); and
 - (d) the setting of financial limits in terms of section 29(2)(a) or (3).
- (3) A delegation in terms of subsection (1)-
- (a) is subject to any limitations, conditions and directions that the Board may impose;
 - (b) must be in writing;
 - (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
 - (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board.
- (4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Part 4 Administration of Institute

Appointment of Chief Executive Officer

- 28.** (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Institute.
- (2) The Chief Executive Officer--
- (a) is appointed for a term not exceeding five years; and
 - (b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years.
- (3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.
- (4) The Chief Executive Officer--
- (a) is responsible for the management of the Institute;
 - (b) must perform such duties and may exercise such powers as the Board may delegate to him or her; and
 - (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner, as the Board may determine.
- (5) (a) The Chairperson of the Board may appoint another employee of the Institute as acting Chief Executive Officer for a period not exceeding six months, whenever
- (i) the Chief Executive Officer is for any reason absent or unable to perform his or her duties; or
 - (ii) there is a vacancy in the office of the Chief Executive Officer.
- (b) Whilst acting as Chief Executive Officer, such employee-

- (i) has the powers and duties of the Chief Executive Officer; and
- (ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

29. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Institute.

(2) The Chief Executive Officer--

(a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Institute; and

(b) may appoint persons in posts on the staff establishment.

(3:) An employee of the Institute is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of, and within the financial limits set by, the Board.

(4) (a) A person in the service of another organ of state may be seconded to the Institute by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to the Institute perform their duties under the supervision of the Chief Executive Officer.

(5) A person in the service of the Institute may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Part 5 Financial matters

Financial accountability

30. The Institute is a public entity for the purposes of the Public Finance Management Act, and must comply with the provisions of that Act.

Funding

31. The funds of the Institute consist of-

(a) income derived by it from the performance of its duties and the exercise of its powers;

(b) money appropriated by Parliament;

(c) grants received from organs of state;

(d) voluntary contributions, donations and bequests;

(e) money borrowed in terms of section 12(g);

(f) income derived from investments referred to in sections 32; and

(g) money derived from any other source, subject to the Public Finance Management Act.

Investments

32. The Institute may invest any of its funds not immediately required-

(a) subject to any investment policy that may be prescribed in terms of section 7 of the Public Finance Management Act.

(b) in such a manner that the Minister may approve.

Part 6

National botanical gardens

Declaration

33. (1) The Minister, acting with the approval of the Cabinet member responsible for the administration of the land in question may, by notice in the *Gazette*, declare any state land described in the notice as a-

- (a) national botanical garden; or
- (b) part of an existing national botanical garden.

(2) The Minister, acting in accordance with an agreement with the owner of the land described in that agreement may, by notice in the *Gazette* declare that land as a-

- (a) national botanical garden; or
- (b) part of an existing national botanical garden.

(3) A notice in terms of subsection (1)(a) or (2)(a) must assign a name to the national botanical garden.

(4) The sites described in Schedule 1 to the Forest Act, 1984 (Act No.122 of 1984), must be regarded as having been declared as national botanical gardens in terms of this section.

Amendment or withdrawal of declarations

34. (1) The Minister may, by notice in the *Gazette*-

- (a) amend or withdraw a notice referred to in section 33, subject to subsection (2); or
- (b) amend the name assigned to a national botanical garden.

(2) The declaration of state land as a national botanical garden, or part of an existing national botanical garden, may not be withdrawn and a part of a national botanical garden on state land may not be excluded from it except by resolution of each House of Parliament.

Part 7 General

Minister's supervisory powers

35. (1) The Minister

- (a) must monitor the exercise and performance by the Institute of its powers and duties;
- (b) may set norms and standards for the exercise and performance by the Institute of its powers and duties;
- (c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
- (d) must determine limits on fees charged by the Institute in the exercise and performance of its powers and duties; and
- (e) may identify land for new botanical gardens and extensions to existing botanical gardens.

(2) The Institute must exercise its powers and perform its duties subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

Absence of functional Board

36. In the event of absence of a functional Board, the powers and duties of the Board revert to the Minister who in such a case, must exercise those powers and perform those duties until the Board is functional again

CHAPTER 3 BIODIVERSITY PLANNING AND MONITORING

Purpose of Chapter

37. The purpose of this Chapter is to-

- (a) provide for integrated and co-ordinated biodiversity planning;

- (b) provide for monitoring the conservation status of various components of South Africa's biodiversity; and
- (c) promote biodiversity research.

Part 1 Biodiversity planning

National biodiversity framework

38. (1) The Minister-

- (a) must prepare and adopt a national biodiversity framework within three years of the date on which this Act takes effect;
- (b) must monitor implementation of the framework;
- (e) must review the framework at least every five years; and
- (d) may, when necessary, amend the framework.

(2) The Minister must, by notice *in the Gazette*, publish the national biodiversity framework and each amendment of the framework.

Contents of national biodiversity framework

39. (1) The national biodiversity framework must-

- (a) provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, nongovernmental organisations, the private sector, local communities, other protected areas; and

(b) be consistent with-

- (i) this Act;
 - (ii) the national environmental management principles; and
 - (iii) any relevant international agreements binding on the Republic;
- (c) identify priority areas for conservation action and the establishment of provincial and municipal environmental conservation plans.
- (d) reflect regional co-operation on issues concerning biodiversity management in Southern Africa

(2) The national biodiversity framework may determine norms and standards for provincial and municipal environmental conservation plans.

Bioregions and bioregional plans

40. (1) The Minister or the MEC for environmental affairs in a province may, by notice in the *Gazette*

- (a) determine a geographic region as a bioregion for the purposes of this Act if that region contains whole or several nested ecosystems and is characterised by its landforms, vegetation cover, human culture and history; and

(b) publish a plan for the management of biodiversity and the components of biodiversity in such region.

(2) The Minister may determine a region as a bioregion and publish a bioregional plan for that region either-

- (a) on own initiative but after consulting the MEC for Environmental Affairs in the relevant province; or

(b) at the request of a province or municipality.

- (3) The MEC for environmental affairs may determine a region as a bioregion and publish a bioregional plan for that region only with the concurrence of the Minister.
- (4) Any person or organ of state may, on the request of the Minister or MEC for Environmental Affairs, assist in the preparation of a bioregional plan.
- (5) The Minister-
- (a) may enter into an agreement with a neighbouring country to secure the effective implementation of the plan; and
- (b) must submit to Parliament a copy of any agreement entered into in terms of paragraph (a).

Contents of bioregional plans

41. A bioregional plan must-

- (a) contain measures for the effective management of biodiversity and the components of biodiversity in the region;
- (b) provide for monitoring of the plan: and
- (c) be consistent with components of biodiversity in the region;
- (i) this Act;
- (ii) the national environmental management principles;
- (iii) the national biodiversity framework; and
- (iv) any relevant international agreements binding on the Republic.

Review and amendment of bioregional plans

- 42.** (1) The Minister or the MEC for Environmental Affairs in the relevant province, as may be appropriate, must review a bioregional plan published in terms of section 35 40(l)(b) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.
- (2) The Minister or MEC for Environmental Affairs may, when necessary, by notice in the Gazette, amend a bioregional plan or the boundaries of the bioregion.
- (3) The MEC for Environmental Affairs may amend a bioregional plan or the 40 boundaries of the bioregion only with the concurrence of the Minister.

Biodiversity management plans

43. (1) Any person, organisation or organ of state desiring to contribute to biodiversity management may submit to the Minister for his or her approval a draft management plan for-

- (a) an ecosystem-
- (i) listed in terms of section 52; or
- (ii) which is not listed in terms of section 52 but which does warrant special conservation attention;
- (b) an indigenous species-
- (i) listed in terms of section 56; or
- (ii) which is not listed in terms of section 56 but which does warrant special conservation attention; or
- (c) a migratory species to give effect to the Republic's obligations in terms of an international agreement binding on the Republic.

(2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan.

(3) The Minister must-

(a) publish by notice in the Gazette a biodiversity management plan approved in terms of subsection (1);

(b) determine the manner of implementation of the plan; and

(c) assign responsibility for the implementation of the plan to the person, organisation or organ of state identified in terms of subsection (2).

Biodiversity management agreements

44. The Minister may enter into a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it.

Contents of biodiversity management plans

45. A biodiversity management plan must-

(a) be aimed at ensuring the long-term survival in nature of the species or ecosystem to which the plan relates;

(b) provide for the responsible person, organisation or organ of state to monitor and report on progress with implementation of the plan; and

(c) be consistent with-

(i) this Act;

(ii) the national environmental management principles;

(iii) the national biodiversity framework;

(iv) any applicable bioregional plan;

(v) any plans issued in terms of Chapter 3 of the National Environmental Management Act;

(vi) any municipal integrated development plan;

(vii) any other plans prepared in terms of national or provincial legislation that is affected; and

(viii) any relevant international agreements binding on the Republic.

Review and amendment of biodiversity management plans

46. (1) The Minister must review a biodiversity management plan published in terms of section 43(3) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(2) The Minister, either on own initiative or on request by an interested person, organisation or organ of state, may by notice in the Gazette amend a biodiversity management plan published in terms of section 43(3).

(3) Before amending a biodiversity management plan, the Minister must consult-

(a) any person, organisation or organ of state implementing the plan; and

(b) any organ of state whose activities are affected by the implementation of the plan.

Consultation

47. (1) Before adopting or approving a national biodiversity framework, a bioregional plan or a biodiversity management plan, or any amendment to such a plan, the Minister

must follow a consultative process in accordance with sections 99 and 100.

(2) Before adopting a bioregional plan, or any amendment to such a plan, the MEC for Environmental Affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

Part 2 Co-ordination and alignment of plans, monitoring and research

Co-ordination and alignment of biodiversity plans

48. (1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of this Chapter may not be in conflict with

(a) any environmental implementation or environmental management plans prepared in terms of Chapter 3 of the National Environmental Management Act;

(b) any integrated development plans adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

(c) any spatial development frameworks in terms of legislation regulating land use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and

(d) any other plans prepared in terms of national or provincial legislation that are affected.

(2) An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000, must-

(a) align its plan with the national biodiversity framework and any applicable bioregional plan;

(b) incorporate into that plan those provisions of the national biodiversity framework or a bioregional plan that specifically apply to it; and

(c) demonstrate in its plan how the national biodiversity framework and any applicable bioregional plan may be implemented by that organ of state or municipality.

(3) The Institute may-

(a) assist the Minister and others involved in the preparation of the national biodiversity framework, a bioregional plan or a biodiversity management plan to comply with subsection (1); and

(b) make recommendations to organs of states or municipalities referred to in subsection (2) to align their plans referred to in that subsection with the national biodiversity framework and any applicable bioregional plan.

Monitoring

49. (1) The Minister must for the purposes of this Chapter designate monitoring mechanisms and set indicators to determine-

(a) the conservation status of various components of South Africa's biodiversity;

(b) any negative and positive trends affecting the conservation status of the predetermined indicators.

(2) The Minister may require any person, organisation or organ of state involved in terms of subsection (1) in monitoring the matters referred to in that subsection to report regularly to the Minister on the results of such monitoring measured against the predetermined indicators.

(3) The Minister must-

(a) annually report to Parliament on the information submitted to the Minister in terms of subsection (2); and

(b) make such information publicly available.

Research

50. (1) The Minister must promote research done by the Institute and other institutions on biodiversity conservation, including the sustainable use, protection and conservation of indigenous biological resources.

(2) Research on biodiversity conservation may include-

(a) the collection and analysis of information about-

(i) the conservation status of the various components of biodiversity;

(ii) negative and positive trends affecting the conservation status of various components; and

(iii) threatening processes or activities likely to impact on biodiversity conservation;

(b) the assessment of strategies and techniques for biodiversity conservation;

(c) the determination of biodiversity conservation needs and priorities; and

(d) the sustainable use, protection and conservation of indigenous biological resources.

CHAPTER 4 THREATENED OR PROTECTED ECOSYSTEMS AND SPECIES

Purpose of Chapter

51. The purpose of this Chapter is to-

(a) provide for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity;

(b) provide for the protection of species that are threatened or in need of protection to ensure their survival in the wild;

(c) give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and

(d) ensure that the utilisation of biodiversity is managed in an ecologically sustainable way.

Part 3 Protection of threatened or protected ecosystems

Ecosystems that are threatened or in need of protection

52. (1) (a) The Minister may, by notice in the Gazette, publish a national list of ecosystems that are threatened and in need of protection.

(b) An MEC for environmental affairs in a province may, by notice in *the Gazette*, publish a provincial list of ecosystems in the province that are threatened and in need of protection.

(2) The following categories of ecosystems may be listed in terms of subsection (1):

(a) critically endangered ecosystems, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation;

(b) endangered ecosystems, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;

(c) vulnerable ecosystems, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems or endangered ecosystems; and

(d) protected ecosystems, being ecosystems that are of high conservation value or of high national or provincial importance, although they are not listed in terms of paragraphs (a), (b) or (c).

(3) ,4 list referred to in subsection (1) must describe in sufficient detail the location of each ecosystem on the list.

(4) The Minister and the MEC for environmental affairs in a relevant province, respectively, must at least every five years review any national or provincial list published by the Minister or MEC in terms of subsection (1).

(5) An MEC may publish or amend a provincial list only with the concurrence of the Minister.

Threatening processes in listed ecosystems

53. (1) The Minister may, by notice in *the Gazette*, identify any process or activity in a listed ecosystem as a threatening process.

(2) A threatening process identified in terms of subsection (1) must be regarded as a specified activity contemplated in section 24(2)(b) of the National Environmental Management Act and a listed ecosystem must be regarded as an area identified for the purpose of that section.

Certain plans to take into account in protection of listed ecosystems

54. An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), must take into account the need for the protection of listed ecosystems.

Amendment of notices

55. The Minister or the MEC for Environmental Affairs in any relevant province may, by notice in *the Gazette*, amend or repeal any notice published by him or her in terms of section 52(1) or 53(1).

Part 2 Protection of threatened or protected species

Listing of species that are threatened or in need of national protection

56. (1) The Minister may, by notice in *the Gazette*, publish a list of-

(a) critically endangered species, being any indigenous species facing an extremely high risk of extinction in the wild in the immediate future;

(b) endangered species, being any indigenous species facing a high risk of extinction in the wild in the near future, although they are not a critically endangered species;

(c) vulnerable species, being any indigenous species facing an extremely high risk of extinction in the wild in the medium-term future, although they are not a critically endangered species or an endangered species; and

(d) protected species, being any species which are of such high conservation value or national importance that they require national protection, although they are not listed in terms of paragraph (a), (b) or (c). 5

(2) The Minister must review the lists published in terms of subsection (1) at least every five years.

Restricted activities involving listed threatened or protected species

57. (1) A person may not carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of Chapter 7.
(2) the Minister may by notice in the *Gazette*, prohibit the carrying out of any activity
(a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; and
(b) which is specified in the notice, is
or prohibit the carrying out of such activity without a permit issued in terms of Chapter 7.
(3) Subsection (1) does not apply in respect of a specimen of a listed threatened or protected species conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place under the control of an environmental management inspector.

Amendment of notices

58. The Minister may by notice in the *Gazette* amend or repeal any notice published in terms of section 55(1) or 56(2).

Part 3 Trade in listed threatened or protected species

Functions of Minister

59. The Minister must monitor-

- (i) compliance with section 57(1) insofar as trade in specimens of listed threatened or protected species is concerned; and
 - (ii) compliance in the Republic with an international agreement regulating international trade in specimens of endangered species which is binding on the Republic;
- must consult the scientific authority on issues relating to trade in specimens of endangered species regulated by such an international agreement;
must prepare and submit reports and documents in accordance with the Republic's obligations in terms of such an international agreement;
may provide administrative and technical support services and advice to organs of state to ensure the effective implementation and enforcement in the Republic of such an international agreement;
may make information and documentation relating to such an international agreement publicly available; and
may prescribe a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities.

Establishment of scientific authority

- 60.** (1) The Minister must establish a scientific authority for purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species.
2) The Institute must provide logistical, administrative and financial support for the proper functioning of the scientific authority.

Functions of scientific authority

61. The scientific authority must--

- (a) monitor in the Republic the legal and illegal trade in specimens of listed threatened or protected species;
- (b) advise the Minister and any other interested organs of state on the matters that it monitors;
- (c) make recommendations to an issuing authority on applications for permits referred to in section 57(1) or (2);
- (d) make. non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species:
- (e) advise the Minister on-
 - (i) the registration of ranching operations, nurseries, captive breeding
 - (ii) whether an operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated;
 - (iii) the choice of a rescue centre or other facility for the disposal of forfeited specimens;
 - (iv) any amendments to a notice published in terms of section 56(1) or 57(2);
 - (v) the nomenclature of species; or
 - (vi) any other matter of a specialised nature;
- (f) assist the Minister or an environmental management inspector in the identification of specimens for the purpose of enforcing the provisions of this Act;
- (g) issue certificates in which the identification of a specimen is verified as being taxonomically accurate;
- (h) perform any other function that may be-
 - (i) prescribed; or
 - (ii) delegated to it by the Minister in terms of section 47D of the National Environmental Management Act;
- (2) In performing its duties, the scientific authority must-
 - deal with any other matter necessary for, or reasonably incidental to, its powers and duties. operations and other facilities;
 - (*a*) base its findings, recommendations and advice on a scientific and professional review of available information; and
 - (*b j*) consult, when necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations or giving any advice.

Annual non-detriment findings

- 62.** (1) The scientific authority must publish in the *Gazette* any annual non-detriment findings on trade in specimens of listed threatened or protected species in accordance with an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic.
- (2) Any interim findings of the scientific authority must be published in the *Gazette* for public information within 30 days after the decision has been made.

Part 4 General provisions

Consultation

- 63.** (1) Before publishing a notice in terms of section 52(1), 53(1), 56(1) or 57(2), or amending or repealing such a notice in terms of section 55 or 58, the Minister must follow a consultative process in accordance with sections 99 and 100.

(2) Before publishing a notice in terms of section 52(1), or amending or repealing such a notice in terms of section 55, the MECY or environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 5 SPECIES AND ORGANISMS POSING POTENTIAL THREATS TO BIODIVERSITY

Purposes of Chapter

64. (1) The purpose of this Chapter is-

- (a)** to prevent the unauthorized introduction and spread of alien species and invasive species to ecosystems and habitats where they do not naturally occur;
 - (b)** to manage and control alien species and invasive species to prevent or minimize harm to the environment and to biodiversity in particular;
 - (c)** to eradicate alien species and invasive species from ecosystems and habitats where they may harm such ecosystems or habitats; and
 - (d)** to ensure that environmental assessments for purposes of permits in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), are conducted in appropriate cases in accordance with Chapter 5 of the National Environmental Management Act.
- (2) For the purpose of this Chapter, “specimen” has the meaning assigned to it in paragraphs **(a)** and **(b)** of the definition of “specimen” in section 1(1).

Part 1 Alien species

Restricted activities involving alien species

- 65.** (1) A person may not carry out a restricted activity involving a specimen of an 30
- (2) A permit referred to in subsection (1) may be issued only after a prescribed alien species without a permit issued in terms of Chapter 7. assessment of risks and potential impacts on biodiversity is carried out.

Exemptions

- 66.** (1) The Minister may, by notice in the *Gazette*, exempt from the provisions of section 65-
- (a)** any alien species specified in the notice; or
 - (b)** any alien species of a category specified in the notice.
- (2) Any person may carry out a restricted activity involving a specimen of an exempted alien species without a permit mentioned in section 65(1).
- (3) The Minister must regularly review a notice published in terms of subsection (1).

Restricted activities involving certain alien species totally prohibited

- 67.** (1) The Minister may, by notice in the *Gazette*, publish a list of those alien species in respect of which a permit mentioned in section 65(1) may not be issued.
- (2) A person may not carry out any restricted activity involving a specimen of an alien species published in terms of subsection (1).
- (3) The Minister must regularly review a list published in terms of subsection (1).

Amendment of notices

- 68.** The Minister may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 66(1) or 67(1).

Duty of care relating to alien species

69. (1) A person authorised by permit, in terms of section 65(1), to carry out a restricted activity involving a specimen of an alien species must-

(a) comply with the conditions under which the permit has been issued; and

(b) take all required steps to prevent or minimise harm to biodiversity.

(2) A competent authority may, in writing, direct any person who has failed to comply with subsection (1), or who has contravened section 65(1) or 67(2) to, take such steps-

(a) as may be necessary to remedy any harm to biodiversity caused by the actions of that person;

and (b) as may be specified in the directive.

(3) If that person fails to comply with a directive issued in terms of subsection(2), the competent authority may-

(a) implement the directive; and

(b) recover from that person all costs incurred by the competent authority in implementing the directive.

(4) Should an alien species establish itself in nature as an invasive species because of the actions of a specific person, a competent authority may hold that person liable for any costs incurred in the control and eradication of that species.

Part 2 Invasive species

List of invasive species

70. (1) (a) The Minister must within 24 months of the date on which this section takes effect, by notice in the Gazette, publish a national list of invasive species in respect of which this Chapter must be applied nationally.

(b) The MEC for environmental affairs in a province may, by *notice in the Gazette*, publish a provincial list of invasive species in respect of which this Chapter must be applied in the province.

(2) The Minister or the MEC for environmental affairs in a relevant province must regularly review the national list or any provincial list published in terms of subsection (1), as may be appropriate.

(3) An MEC for Environmental Affairs may only publish or amend a provincial list in terms of subsection (1) or (2) with the concurrence of the Minister.

Restricted activities involving listed invasive species

71. (1) A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7.

(2) A permit referred to in subsection (1) may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

Amendment of notices

72. The Minister or the MEC for environmental affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 70 (1).

Duty of care relating to listed invasive species

73. (1) A person authorised by permit in terms of section 71 (1)j to carry out a restricted

activity involving a specimen of a listed invasive species must take all the required steps to prevent or minimise harm to biodiversity.

(2) A person who is the owner of land on which a listed invasive species occurs must-

(a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;

(b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and

(c) take all the required steps to prevent or minimise harm to biodiversity.

(3) A competent authority may, in writing, direct any person who has failed to comply with subsection (1) or (2), or who has contravened section 71(1), to take such steps-

(a) as may be necessary to remedy any harm to biodiversity caused by-

(i) the actions of that person; or

(ii) the occurrence of the listed invasive species on land of which that person is the owner; and

(b) as may be specified in the directive.

(4) If that person fails to comply with a directive issued in terms of subsection (3), a competent authority may-

(a) implement

(b) recover all costs reasonably incurred by a competent authority in implementing the directive-

(i) from that person; or

(ii) proportionally from that person and any other person who benefited from implementation of the directive.

Requests to competent authorities to issue directives

74. (1) Any person may request a competent authority, in writing to issue a directive in terms of section 73(3).

(2) A competent authority must reply to the request, in writing, within 30 days of request.

(3) Should a competent authority fail to respond to the request within the stated period or refuses the request, the person who made the request may apply for a court order directing that competent authority to issue the directive.

Control and eradication of listed invasive species

75. (1) Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.

(2) Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.

(3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.

(4) The Minister must ensure the coordination and implementation of programmes for the prevention, control or eradication of invasive species.

(5) The Minister may establish an entity consisting of public servants to coordinate and implement programmes for the prevention, control or eradication of invasive species.

Invasive species control plans of organs of state

- 76.** (1) The management authority of a protected area preparing a management plan for the area in terms of the Protected Areas Act must incorporate into the management plan an invasive species control and eradication strategy.
- (2) (a) All organs of state in all spheres of government must prepare an invasive species monitoring, control and eradication plan for land under their control, as part of their environmental plans in accordance with section 11 of the National Environmental Management Act.
- (b) The invasive species monitoring, control and eradication plans of municipalities must be part of their integrated development plans.
- (3) The Minister may request the Institute to assist municipalities in performing their duties in terms of subsection (2).
- (4) An invasive species monitoring, control and eradication plan must include-
- (a) a detailed list and description of any listed invasive species occurring on the relevant land;
- (b) a description of the parts of that land that are infested with such listed invasive species;
- (c) an assessment of the extent of such infestation;
- (d) a status report on the efficacy of previous control and eradication measures;
- (e) the current measures to monitor, control and eradicate such invasive species; and
- (f) measurable indicators of progress and success, and indications of when the control plan is to be completed.

Invasive species status reports

- 77.** (1) The management authority of a protected area must at regular intervals prepare and submit to the Minister or the MEC for Environmental Affairs in the province a report on the status of any listed invasive species that occurs in that area.
- (2) A status report must include-
- (a) a detailed list and description of all listed invasive species that occur in the protected area;
- (b) a detailed description of the parts of the area that are infested with listed invasive species;
- (c) an assessment of the extent of such infestation; and
- (d) a report on the efficacy of previous control and eradication measures.

Part 3 Other threats

Genetically modified organisms

- 78.** (1) If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless an environmental assessment has been conducted in accordance with Chapter 5 of the National Environmental Management Act as if such release were a listed activity contemplated in that Chapter.
- (2) The Minister must convey his or her belief referred to in subsection (1) to the authority issuing permits in terms of the Genetically Modified Organisms Act, 1997, before the application for the relevant permit is decided.
- (3) For the purposes of subsection (1) "release" means trial release or general release as defined in section 1 of the Genetically Modified Organisms Act, 1997.

Part 4 General provisions

Consultation

79. (1) Before publishing a notice in terms of section 66(1), 67(1) or 70(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.

(2) Before publishing a notice in terms of section 70(1), or amending or repealing such a notice in terms of section 72, the MEC for environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 6 BIOPROSPECTING, ACCESS AND BENEFIT-SHARING

Purpose and application of Chapter

80. (1) The purpose of this Chapter is-

(a) to regulate bioprospecting involving indigenous biological resources;

(b) to regulate the export from the Republic of indigenous biological resources for the purpose of bioprospecting or any other kind of research; and

(c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous biological resources.

(2) In this Chapter-
indigenous includes-

(a) any indigenous biological resources as defined in paragraph (b) of the definition of “indigenous biological resource” in section 1, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;

(b) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i);
any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical compound found in any indigenous species or any animals, plants or other organisms referred to in subparagraph (i) or (ii); but

(b) excludes-

(i) genetic material of human origin;

(ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a)(iii); and

(iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture.

Permits

81. (1) No person may, without a permit issued in terms of Chapter 7-

(a) engage in bioprospecting involving any indigenous biological resources; or

(b) export from the Republic any indigenous biological resources for the purpose of bioprospecting or any other kind of research.

(2) Before any application for a permit referred to in subsection (1) may be considered by a relevant issuing authority, the applicant must at the request of the issuing authority, disclose to the issuing authority all information concerning the proposed bioprospecting and the indigenous biological resources to be used for such bioprospecting that is relevant for a proper consideration of the application.

Certain interests to be protected before permits are issued

82. (1) Before a permit referred to in section 51(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:

(a) A person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and

(b) an indigenous community

(i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or

(ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.

(2) If a stakeholder has an interest as set out in subsection (1) (a), an issuing authority if-

(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;

(b) the applicant and the stakeholder have entered into- (i) a material transfer agreement that regulates the provision of or access to such resources; and

(ii) a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant

the Minister has in terms of sections 83(2) and 84(2) approved such benefit-sharing and material transfer agreements.

(3) If a stakeholder has an interest as set out in subsection (1)(b), an issuing authority may issue a permit only if-

(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting;

(b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and

(c) the Minister has in terms of section 83(2) approved such benefit-sharing agreement.

(4) An issuing authority-

(a) may engage the applicant and stakeholder on the terms and conditions of a benefit-sharing or-material transfer agreement;

(b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;

(c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholders is fair and equitable;

(d) may make recommendations to the Minister; and

(e) must perform any other functions that may be prescribed.

Benefit-sharing agreements

83. (1) A benefit-sharing agreement must-

- (a) be in a prescribed format;
 - (b) specify-
 - (i) the type of indigenous biological resources to which the relevant bioprospecting relates;
 - (ii) the area or source from which the indigenous biological resources are to be collected or obtained;
 - iii) the quantity of indigenous biological resources that is to be collected or obtained;
 - (iv) any traditional uses of the indigenous biological resources by an indigenous community; and
 - (v) the present potential uses of the indigenous biological resources;
 - (c) name the parties to the benefit-sharing agreement;
 - (d) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for purposes of such bioprospecting;
 - (e) set out the manner in which and the extent to which the stakeholder will share in any benefits that may arise from such bioprospecting;
 - (f) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and
 - (g) comply with any other matters that may be prescribed.
- (2) A benefit-sharing agreement or any amendment to such an agreement-
- (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

Material transfer agreements

84. (1) A material transfer agreement must-

- (a) be in a prescribed format;
 - (b) specify particulars of the provider, and the exporter or recipient, of the indigenous biological resources;
 - the type of indigenous biological resources to be provided or to be given access to;
 - the area or source from which the indigenous biological resources are to be collected, obtained or provided;
 - the quantity of indigenous biological resources that is to be provided, collected, obtained or exported;
 - the purpose for which such indigenous biological resources are to be exported;
 - the present potential uses of the indigenous biological resources; and
 - (vii) conditions under which the recipient may provide any such indigenous biological resources, or their progeny, to a third party.
- (2) A material transfer agreement or any amendment to such an agreement-
- (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

Establishment of Bioprospecting Trust Fund

85. (1) A Bioprospecting Trust Fund is established into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to: or for the benefit of, stakeholders must be made.

- (2) All money paid into the bioprospecting trust fund is trust money within the meaning of section 13(l)(f)(ii) of the Public Finance Management Act.
- (3) The Director-General-
- (a) must manage the Fund in the prescribed manner; and
 - (b) is accountable for the money in the Fund in terms of the Public Finance Management Act.

Exemptions

86. (l) The Minister may by notice in the *Gazette*-

- (a) declare that this Chapter does not apply to indigenous biological resources specified in the notice or to an activity relating to such indigenous biological resources; and
 - (b) amend or withdraw a notice referred to in paragraph (a).
- (2) Before publishing a notice in terms of subsection (1) the Minister must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 7 PERMITS

Purpose of Chapter

87. The purpose of this Chapter is to provide for the regulation of the issuing of permits authorising-

- (a) restricted activities involving specimens of-
 - (i) listed threatened or protected species in terms of section 57(1);
 - (ii) alien species in terms of section 6.5(1); or
 - (iii) listed invasive species in terms of section 71(1);
- (b) activities regulated in terms of a notice published in terms of section 57(2);
- (c) bioprospecting involving indigenous biological resources in terms of section 81(1); or
- (d) the export of indigenous biological resources for bioprospecting or any other type of research in terms of section 81(1).

Part 1 Permit system

Application for permits

88. (1) A person may apply for a permit by lodging an application on the prescribed form to the authority.

- (2) An issuing authority may
- (a) request the applicant to furnish any additional information before it considers the application;
 - (b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;
 - (c) issue a permit unconditionally or issue it subject to conditions; or
 - (d) refuse a permit.
- (3) A decision of the issuing authority to issue or refuse a permit or to issue it subject to conditions, must be consistent with-
- (a) the applicable provisions of this Act;
 - (b) the national environmental management principles;
 - (c) the national biodiversity framework;
 - (d) any other relevant plans adopted or approved in terms of Chapter 3;
 - (e) any applicable international agreements binding on the Republic; u) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

(g) any requirements that may be prescribed.

(4) If compulsory conditions are prescribed for any kind of permit, an issuing authority may not issue a permit of that kind other than subject to those conditions.

(5) If an application is rejected, the issuing authority must give reasons for the decision in writing to the applicant.

Risk assessments and expert evidence

89. Before issuing a permit, the issuing authority may in writing require the applicant to furnish it, at the applicant's expense, with such independent risk assessment or expert evidence as the issuing authority may determine.

Permits

90. (1) A permit-

(a) must specify-

(i) the purpose for which it is used

(ii) the period for which it will remain valid; and

(iii) any other matters that may be prescribed;

(b) may be issued on conditions specified in the permit; and

(c) must be in the form and contain such other particulars as may be prescribed.

(2) A permit issued in terms of section 91 does not absolve the holder or any other person from complying with the provisions of any other applicable law.

Additional requirements relating to alien and invasive species

91. An issuing authority may issue a permit for a restricted activity involving a specimen of an alien species or of a listed invasive species only if-

(a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity;

(b) the relevant species has been found to have negligible or no invasive potential;

(c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment

(d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.

Integrated permits

92. (1) If the carrying out of an activity mentioned in section 90 is also regulated in terms of other law, the authority empowered under that other law to authorise that activity and the issuing authority empowered under this Act to issue permits in respect of that activity may-

(a) exercise their respective powers jointly; and

(b) issue a single integrated permit instead of a separate permit and authorisation.

(2) An authority empowered under that other law may issue an integrated permit for the activity in question if that authority is designated in terms of this Act also as an issuing authority for permits in respect of that activity.

(3) An integrated permit may be issued only if-

(a) the relevant provisions of this Act and that other law have been complied with;

(b) the permit specifies the-

(i) provisions in terms of which it has been issued; and

(ii) authority or authorities that have issued it.

Cancellation of permits

93. An issuing authority which issued a permit may cancel the permit if-

(a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant; or

(b) the applicant or permit holder has contravened or failed to comply with

(i) any condition of the permit;

(ii) any provision of this Act or other law governing the permitted activity; or

(iii) any foreign law governing the permitted activity.

Part 2 Appeals

Appeals to be lodged with Minister

94. (1) An applicant who feels aggrieved by the decision of an issuing authority in terms of section 88(2)(c) or (d), or a permit holder whose permit has been cancelled in terms of section 93, may lodge with the Minister an appeal against the decision within 30 days after having been informed of the decision.

(2) The Minister must either-

(a) consider

(b) redirect the appeal to the MEC for Environmental Affairs in the relevant province to consider and decide the appeal; or

(c) designate a panel of persons to consider and decide the appeal.

(3) An appeal does not suspend the decision against which the appeal is lodged unless the Minister, MEC for Environmental Affairs or appeal panel considering the appeal directs otherwise.

Appeal panels

95. (1) If the Minister decides that the appeal must be considered and decided by an appeal panel, the Minister must designate-

(a) a number of persons with appropriate knowledge as members of the panel;

(b) one of the panel members as the presiding member.

and

(2) The presiding member of the appeal panel decides when and where the Panel meets.

(3) An appeal panel must-

(a) consider and decide the appeal in accordance with a prescribed procedure; and

(b) keep a record of its proceedings and decisions.

Decisions

96. (1) The Minister, MEC for Environmental Affairs or appeal panel considering an appeal may-

(a) either uphold or refuse the appeal; and

(b) when upholding or refusing the appeal, make such other orders as may be appropriate.

(2) If the appeal is upheld against-

(a) a refusal to issue a permit, the Minister, MEC for Environmental Affairs or appeal panel may issue the permit unconditionally or subject to conditions;

(b) a condition subject to which the permit was issued, the Minister, MEC for

Environmental Affairs or appeal panel may withdraw or amend the condition; or
(c) the cancellation of a permit, the Minister, MEC for Environmental Affairs or 10 appeal panel may restore the permit.

CHAPTER 8 ADMINISTRATION OF ACT

Part 1 Regulations

Regulations by Minister

97. (1) The Minister may make regulations relating to -

- (a) the monitoring of compliance with and enforcement of norms and standards referred to in section 9;
- (b) (i) the designation of organs of state which may be issuing authorities for permits referred to in section 57(1) or (2);
(ii) the facilitation of the implementation and enforcement of section 57(1) or any notice published in terms of section 57(2);
(iii) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species which is binding on the Republic;
(iv) the facilitation of the implementation and enforcement of an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic;
(v) the minimising of the threat to the survival in the wild of a listed threatened or protected species;
(vi) the minimising of the threat to the ecological integrity of a listed ecosystem;
(vii) the composition and operating procedure of the scientific authority; or
(viii) the ecologically sustainable utilization of biodiversity;
- (c) (i) the designation of organs of state which may be issuing authorities for permits referred to in section 67(1) or 71(1);
(ii) the designation of organs of state which may be competent authorities for implementing and enforcing the provisions of this Chapter;
(iii) the facilitation of the implementation and enforcement of section 65, 67 or 71;
(iv) the prescription of compulsory conditions for any permit issued in terms of section 65(1) or 71(1);
(v) the assessment of risks and potential impact on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; and
(vi) the control and eradication of listed invasive species;
- (d) biosafety and the environment;
- (e) (i) the designation of organs of state that may be issuing authorities for permits referred to in section 81:
(ii) the form and contents of, and the requirements and criteria for benefit-sharing agreements and material transfer agreements and material transfer agreements;
(iii) moneys payable in connection with benefit-sharing agreements; and
(iv) the administration of the Bioprospecting Trust Fund;
- (f) (i) the conditions subject to which issuing authorities may issue permits in terms of this Act;
(ii) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for permits;
(iii) the powers of issuing authorities when considering and deciding such applications;

- (iv) the conditions with which applicants must comply before or after the lodging of their applications;
 - (v) appropriate consultation the authorities whose consent is required before permits may be issued;
 - (vi) the factors that must be taken into account when deciding applications;
 - (vii) the circumstances in which applications must be refused or may be approved;
 - (viii) contents and form of the permits ;
 - (ix) the conditions on which permits must be issued, or guidelines for determining conditions on which permits may be issued;
 - (x) methods, procedures and conditions of enforcing compliance with the conditions of a permit;
 - (xi) the giving of security in respect of any obligation that may arise from carrying out a restricted activity authorised by a permit, and the form of such security;
 - (xii) the period of validity of permits;
 - (xiii) the transferability of permits;
 - (xiv) the period of validity of permits;
 - (xv) the procedure to be followed and the fees to be paid in connection with the lodging and
 - (xvi) consideration of appeals;
 - (g) any other matter that may be prescribed in terms of this Act; and
 - (h) any other matter that may be necessary to facilitate the implementation of this Act
- (2) Any regulation with direct fiscal implications may be made only with the concurrence of the Minister of Finance.
- (3) Before publishing any regulations in terms of subsection (1), or any amendment to the regulations, the Minister must follow a consultative process in accordance with sections 99 and 100.
- (4) Subsection (3) need not be applied to a non-substantial change to the regulations. Act.

General

98. (1) Regulations made in terms of section 97 may-

- (a) restrict or prohibit any act either absolutely or conditionally;
 - (b) apply-
 - (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only to a specified category of persons;
 - (iii) generally with respect to all species or only to a specified species or category of species;
 - (iv) generally with respect to all permits or appeals or only to a specified category of permits or appeals; or
 - (c) differentiate between different-
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons;
 - (iii) species or categories of species; or
 - (iv) categories of permits or appeals.
- (2) Regulations made in terms of section 97 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to-
- (a) imprisonment for a period not exceeding five years;
 - (b) an appropriate fine; or

(c) both a fine and such imprisonment.

Part 2 Consultation process

Consultation

99. (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister must follow an appropriate consultative process in the circumstances.

(2) The Minister must, in terms of subsection (1)-

(a) consult all Cabinet members whose areas of responsibility may be affected by the exercise of the power;

(b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the **MEC** for Environmental Affairs of each province that may be affected by the exercise of the power; and

(c) allow public participation in the process in accordance with section 100.

Public participation

100. (1) The Minister must give notice of the proposed exercise of the power referred to in section 99-

(a) in the *Gazette*; and

(b) in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area.

(2) The notice must-

(a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on, or objections to, the proposed exercise of the power; and

(b) contain sufficient information to enable members of the public to submit meaningful representations or objections.

(3) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.

(4) The Minister must give due consideration to all representations or objections received or presented before exercising the power.

CHAPTER 9 OFFENCES AND PENALTIES

Offences

101. (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of-

(a) section 57(1), 65(1), 67(2), 71(1) or 81(1);

(b) a notice published in terms of section 57(2); or

(c) a directive issued in terms of section 69(2) or 73(3).

(a) contravenes or fails to comply with a provision of section 69(1) or 73(1);

(b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or

(c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).

- (2) A person who is the holder of a permit is guilty of an offence if that person- an offence in terms of paragraph (a) or (b).
- (3) A person is guilty of an offence if that person-
- (a) fraudulently alters any permit;
 - (b) fabricates or forges any document for the purpose of passing it as a permit;
 - (c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit; or
 - (d) knowingly makes any false statement or report for the purpose of obtaining a permit.

Penalties

- 102.** (1) A person convicted of an offence in terms of section 101 is liable to a fine, or to imprisonment for a period not exceeding five years, or to both fine and such imprisonment.
- (2) A fine in terms of subsection (1) may not exceed-
- (a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); or
 - (b) if a person is convicted of an offence involving a specimen of a listed threatened or protected species, an amount determined in terms of paragraph (a) or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.

CHAPTER 10 MISCELLANEOUS

Repeal of Act 122 of 1984

- 103.** The Forest Act, 1984 (Act No. 122 of 1984), is repealed by this Act.

Savings

- 104.** (1) Anything done in terms of the Forest Act, 1984 (Act No. 122 of 1984), which may or must be done in terms of this Act must be regarded as having been done in terms of this Act.
- (2) A person who immediately before the repeal of the Forest Act, 1984, by section 100 of this Act was-a member of the board of the National Botanical Institute, becomes a member of the Board of the South African National Biodiversity Institute and remains such a member until the Minister appoints the members of the Board in terms of section 15; the chief executive officer of the National Botanical Institute becomes the acting chief executive officer of the South African National Biodiversity Institute and remains the acting chief executive officer until the Board appoints a person as the chief executive officer of the Institute in terms of section 29; and
- all employees of the National Botanical Institute, including its chief executive officer, must be regarded as having been appointed in terms of section 30 as employees of the South African National Biodiversity Institute subject to the same conditions of services which applied to them immediately before the repeal of the Forest Act, 1984.
- (3) Subsection (2)(c) does not affect pension, leave and other benefits which accrued to employees referred to in that subsection before the repeal of the Forest Act, 1984, and such benefits must be respected as if there was no break in their service and no change of employer.
- (4) As from the date of repeal of the Forest Act, 1984
- (a) all assets and liabilities and all rights and obligations of the National Botanical

Institute are vested in the South African National Biodiversity Institute; and
 (b) any balance in the National Botanical Institute Fund referred to in section 64 of that Act must be paid to the South African National Biodiversity Institute.

Existing bioprospecting projects

105. (1) Any party involved at the commencement of Chapter 6 in a bioprospecting project which concerns any interests to be protected in terms of section 82, may despite that section continue with the project pending the negotiation and entry into force of an appropriate benefit-sharing agreement in terms of that Chapter.

(2) Subsection (1) lapses one year after Chapter 6 takes effect.

Short title and commencement

106. This Act is called the National Environmental Management: Biodiversity Act, 2004, and takes effect on a date determined by the President by proclamation in the *Gazette*.

Comparison of South African legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

This Act deals with issues addressed by many of the common provisions as well as other issues

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	<p>Objectives of Act</p> <p>2. The objectives of this Act are-</p> <p>(a) within the framework of the National Environmental Management Act, to provide for-</p> <p>(i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;</p> <p>(ii) the use of indigenous biological resources in a sustainable manner; and</p> <p>(iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;</p> <p>(b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;</p> <p>(c) to provide for co-operative governance in biodiversity management and conservation; and</p> <p>(d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.</p> <p>Purpose and application of Chapter</p> <p>80. (1) The purpose of this Chapter is-</p> <p>(a) to regulate bioprospecting involving indigenous biological resources;</p> <p>(b) to regulate the export from the Republic of indigenous biological resources for the purpose of bioprospecting or any other kind of research; and</p> <p>(c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous biological resources.</p>	
2. definition of terms- key terms used in the draft	<p>Definitions</p> <p>1. (1) In this Act, unless the context indicates otherwise-</p> <p>“alien species” means a species that is not an indigenous species; or an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;</p>	

	<p>“benefit”, in relation to bioprospecting involving indigenous biological resources, means any benefit, whether commercial or not, arising from bioprospecting involving such resources, and includes both monetary and non-monetary returns;</p> <p>“biological diversity” or “biodiversity” means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems;</p> <p>“bioprospecting”, in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes-</p> <p>(a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;</p> <p>(b) the utilisation for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; or</p> <p>(c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation;</p> <p>“bioregion” means a geographic region which has in terms of section 40(1) been determined as a bioregion for the purposes of this Act;</p> <p>“Board” means the board referred to in section 13;</p> <p>“competent authority”, in relation to the control of an alien or invasive species, means-</p> <p>(a) the Minister;</p> <p>(b) an organ of state in the national, provincial or local sphere of government designated by regulation as a competent authority for the control of an alien species or a listed invasive species in terms of this Act; or</p> <p>(c) any other organ of state;</p> <p>“components”, in relation to biodiversity, includes species, ecological communities, genes, genomes, ecosystems, habitats and ecological processes;</p> <p>“control”, in relation to an alien or invasive species, means-</p> <p>(a) to combat or eradicate an alien or invasive species; or</p> <p>(b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;</p> <p>“critically endangered ecosystem” means any ecosystem listed as a critically endangered ecosystem in terms of section 52(2);</p> <p>“critically endangered species” means any indigenous species listed as a critically endangered species in terms of section 56;</p> <p>“delegation”, in relation to a duty, includes an instruction to perform the duty;</p> <p>“Department” means the national Department of Environmental Affairs and Tourism;</p> <p>“derivative”, in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;</p> <p>“Director-General” means the Director-General of the Department;</p> <p>“ecological community” means an integrated group of species inhabiting a given area;</p> <p>“ecosystem” means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;</p> <p>“endangered ecosystem” means any ecosystem listed as an endangered ecosystem in terms of section 52(2);</p> <p>“endangered species” means any indigenous species listed as an endangered species in terms of section 56;</p> <p>“environmental management inspector” means a person authorised in terms of the National Environmental Management Act to enforce the provisions of this Act;</p> <p>“export”, in relation to the Republic, means to take out or transfer, or attempt to take out or transfer, from a place within the Republic to another country or to international waters;</p> <p>‘Gazette’, when used-</p> <p>(a) in relation to the Minister, means the <i>Government Gazette</i>; or</p>	
--	---	--

	<p>(b) in relation to the MEC for Environmental Affairs of a province, means the <i>Provincial Gazette</i> of that province;</p> <p>“genetic material” means any material of animal, plant, microbial or other biological origin containing functional units of heredity;</p> <p>“genetic” includes-</p> <p>(a) any genetic material; or</p> <p>(6) the genetic potential or characteristics of any species;</p> <p>“habitat” means a place where a species or ecological community naturally occurs;</p> <p>“import”, in relation to the Republic-</p> <p>(a) means to land on, bring into or introduce into the Republic, or attempt to land on, bring into or introduce into the Republic; and</p> <p>(b) includes to bring into the Republic for re-export to a place outside the Republic;</p> <p>“indigenous biological resource” -</p> <p>(a) when used in relation to bioprospecting, means any indigenous biological resource as defined in section 80(2); or</p> <p>(b) when used in relation to any other matter, means any resource consisting of-</p> <p>(i) any living or dead animal, plant or other organism of an indigenous species;</p> <p>(ii) any derivative of such animal, plant or other organism; or</p> <p>(iii) any genetic material of such animal, plant or other organism;</p> <p>“indigenous species” means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;</p> <p>“Institute” means the South African National Biodiversity Institute established in terms of section 10;</p> <p>“introduction”, in relation to a species, means the introduction by humans, whether deliberately or accidentally, of a species-to a place outside the natural range or natural dispersal potential of that species;</p> <p>“introduction from the sea”, in relation to a specimen of any species, means the transportation into the Republic of a specimen taken from a marine environment not under the jurisdiction of any state;</p> <p>“invasive species” means any species whose establishment and spread outside of its natural distribution range-</p> <p>(a) threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species; and</p> <p>(b) may result in economic or environmental harm or harm to human health;</p> <p>“issuing authority”, in relation to permits regulating the matters mentioned in section 87, means-</p> <p>(a) the Minister; or</p> <p>(b) an organ of state in the national, provincial or local sphere of government designated by regulation in terms of section 97 as an issuing authority for permits of the kind in question;</p> <p>“listed ecosystem” means any ecosystem listed in terms of section 52(1);</p> <p>“listed invasive species” means any invasive species listed in terms of section 70(1);</p> <p>“listed threatened or protected species” means any species listed in terms of section 56(1);</p> <p>“local community” means any community of people living or having rights or interests in a distinct geographical area;</p> <p>“management authority”, in relation to a protected area, means an authority to whom the management of a protected area has been assigned;</p> <p>“MEC for Environmental Affairs” means a member of the Executive Council of a province who is responsible for the conservation of biodiversity in the province;</p> <p>“migratory species” means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;</p> <p>“Minister” means the Cabinet member responsible for national environmental management;</p> <p>“municipality” means a municipality established in terms of the Local</p>	
--	---	--

	<p>Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);</p> <p>“national botanical garden” means land declared or regarded as having been declared as a national botanical garden in terms of section 33, and includes any land declared in terms of section 33 as part of an existing botanical garden;</p> <p>“National Environmental Management Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);</p> <p>“national environmental management principles” means the principles referred to in section 7;</p> <p>“non-detriment findings” means the determination of the non-detrimental impact of an action on the survival of a species in the wild;</p> <p>“organ of state” has the meaning assigned to it in section 239 of the Constitution;</p> <p>“permit” means a permit issued in terms of Chapter 7;</p> <p>“prescribe” means prescribe by regulation in terms of section 97;</p> <p>“protected area” means a protected area defined in the Protected Areas Act;</p> <p>“Protected Areas Act” means the National Environmental Management: Protected Areas Act, 2003;</p> <p>“protected ecosystem” means any ecosystem listed as a protected ecosystem in terms of section 52(2);</p> <p>“protected species” means any species listed as a protected species in terms of section 56;</p> <p>“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);</p> <p>“restricted activity”:-, (a) in relation to a specimen of a listed threatened or protected species, means-</p> <ul style="list-style-type: none"> (i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen; (ii) gathering, collecting or plucking any specimen of a listed threatened or protected species; (iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species; (iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species; (v) exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species; (vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species; (vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply; (viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species; (ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or (x) any other prescribed activity which involves a specimen of a listed threatened or protected species; and <p>(b) in relation to a specimen of an alien species or listed invasive species, means-</p> <ul style="list-style-type: none"> (i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species; (ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species; (iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply; (iv) conveying, moving or otherwise translocating any specimen of an alien invasive or listed species; (v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or (vi), any other prescribed activity which involves a specimen of an alien or 	
--	---	--

	<p>listed invasive species; “re-export”, in relation to a specimen of a listed threatened or protected species, means the export from the Republic of a specimen of a listed threatened or protected species previously imported into the Republic;</p> <p>“species” means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population;</p> <p>(a) any living or dead animal, plant or other organism;</p> <p>(b) a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;</p> <p>“specimen” means-</p> <p>(c) any derivative of any animal, plant or other organism; or</p> <p>(d) any goods which- (i) contain a derivative of an animal, plant or other organism; or</p> <p>(ii) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism;</p> <p>“stakeholder” means-</p> <p>(a) a person, an organ of state or a community contemplated in section 82(1)(a);</p> <p>(b) an indigenous community contemplated in section 82(1)(b);</p> <p>“subordinate legislation”, in relation to this Act, means-</p> <p>(a) any regulation made in terms of section 97; or</p> <p>(b) any notice published in terms of section 9, 33, 34, 40(1), 42(2), 43(3), 46(2), 52(1), 53(1), 55,56(1), 57(2), 58, 66(1), 67(1), 68,70(1), 72, 86(1) or 100(1)</p> <p>“sustainable”, in relation to the use of a biological resource, means the use of such resource in a way and at a rate that-</p> <p>(a) would not lead to its long term decline;</p> <p>(b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and</p> <p>(c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;</p> <p>“this Act” includes any subordinate legislation issued in terms of a provision of this Act;</p> <p>“threatening process” means a process which threatens, or may threaten-</p> <p>(a) the survival, abundance or evolutionary development of an indigenous species or ecological community; or</p> <p>(b) the ecological integrity of an ecosystem,</p> <p>and includes any process identified in terms of section 53 as a threatening process;</p> <p>“vulnerable ecosystem” means any ecosystem listed as a vulnerable ecosystem in terms of section 52(2);</p> <p>“vulnerable species” means any indigenous species listed as a vulnerable species in terms of section 56.</p> <p>(2) In this Act, words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates that another meaning is intended.</p> <p>80(2) In this Chapter-</p> <p>indigenous includes-</p> <p>(a) any indigenous biological resources as defined in paragraph (b) of the definition of “indigenous biological resource” in section 1, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;</p> <p>(b) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i);</p> <p>any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology,</p>	
--	---	--

	<p>have been altered with any genetic material or chemical compound found in any indigenous species or any animals, plants or other organisms referred to in subparagraph (i) or (ii); but</p> <p><i>(b)</i> excludes-</p> <p>(i) genetic material of human origin;</p> <p>(ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a)(iii); and</p> <p>(iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>State's trusteeship of biological diversity</p> <p>3. In fulfilling the rights contained in section 24 of the Constitution, the state through its components its organs that implement legislation applicable to biodiversity, must</p> <p><i>(a)</i> manage, conserve and sustain South Africa's biodiversity and</p> <p><i>(b)</i> implement this Act to achieve the progressive realisation of those rights.</p> <p>Application of Act</p> <p>4. (1) This Act applies-</p> <p><i>(a)</i> in the Republic, including-</p> <p>(i) its territorial waters, exclusive economic zone and continental shelf described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and</p> <p>(ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and</p> <p><i>(b)</i> to human activity affecting South Africa's biological diversity and its components.</p> <p>(2) This Act binds all organs of state</p> <p><i>(a)</i> in the national and local spheres of government; and</p> <p><i>(b)</i> in the provincial sphere of government, subject to section 146 of the Constitution.</p>	
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>Permits</p> <p>81. (1) No person may, without a permit issued in terms of Chapter 7-</p> <p><i>(a)</i> engage in bioprospecting involving any indigenous biological resources; or</p> <p><i>(b)</i> export from the Republic any indigenous biological resources for the purpose of bioprospecting or any other kind of research.</p> <p>(2) Before any application for a permit referred to in subsection (1) may be considered by a relevant issuing authority, the applicant must at the request of the issuing authority, disclose to the issuing authority all information concerning the proposed bioprospecting and the indigenous biological resources to be used for such bioprospecting that is relevant for a proper consideration of the application.</p> <p>Material transfer agreements</p> <p>84. (1) A material transfer agreement must-</p> <p><i>(a)</i> be in a prescribed format;</p> <p><i>(b)</i> specify particulars of the provider, and the exporter or recipient, of the indigenous biological resources;</p> <p>the type of indigenous biological resources to be provided or to be given access to;</p> <p>the area or source from which the indigenous biological resources are to be collected, obtained or provided;</p> <p>the quantity of indigenous biological resources that is to be provided, collected, obtained or exported;</p> <p>the purpose for which such indigenous biological resources are to be exported;</p> <p>the present potential uses of the indigenous biological resources; and</p> <p><i>(vii)</i> conditions under which the recipient may provide any such indigenous</p>	

	<p>biological resources, or their progeny, to a third party.</p> <p>(2) A material transfer agreement or any amendment to such an agreement- (a) must be submitted to the Minister for approval; and (b) does not take effect unless approved by the Minister.</p> <p>Purpose of Chapter</p> <p>87. The purpose of this Chapter is to provide for the regulation of the issuing of permits authorising-</p> <p>(a) restricted activities involving specimens of-</p> <p>(i) listed threatened or protected species in terms of section 57(1);</p> <p>(ii) alien species in terms of section 6.5(1); or</p> <p>(iii) listed invasive species in terms of section 71(1 j);</p> <p>(6) activities regulated in terms of a notice published in terms of section 57(2);</p> <p>(c) bioprospecting involving indigenous biological resources in terms of section 81(1); or</p> <p>(d) the export of indigenous biological resources for bioprospecting or any other type of research in terms of section 8 1 (1 j).</p> <p>Part 1 Permit system</p> <p>Application for permits</p> <p>88. (1) A person may apply for a permit by lodging an application on the prescribed form to the authority.</p> <p>(2) An issuing authority may</p> <p>(a) request the applicant to furnish any additional information before it considers the application;</p> <p>(b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;</p> <p>(c) issue a permit unconditionally or issue it subject to conditions; or</p> <p>(d) refuse a permit.</p> <p>(3) A decision of the issuing authority to issue or refuse a permit or to issue it subject to conditions, must be consistent with-</p> <p>(a) the applicable provisions of this Act;</p> <p>(b) the national environmental management principles;</p> <p>(c) the national biodiversity framework;</p> <p>(d) any other relevant plans adopted or approved in terms of Chapter 3;</p> <p>(e) any applicable international agreements binding on the Republic; u) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);</p> <p>(g) any requirements that may be prescribed.</p> <p>(4) If compulsory conditions are prescribed for any kind of permit, an issuing authority may not issue a permit of that kind other than subject to those conditions.</p> <p>(5) If an application is rejected, the issuing authority must give reasons for the decision in writing to the applicant.</p> <p>Risk assessments and expert evidence</p> <p>89. Before issuing a permit, the issuing authority may in writing require the applicant to furnish it, at the applicant's expense, with such independent risk assessment or expert evidence as the issuing authority may determine.</p> <p>Permits</p> <p>90. (1) A permit-</p> <p>(a) must specify-</p> <p>(i) the purpose for which it is used</p> <p>(ii) the period for which it will remain valid; and</p> <p>(iii) any other matters that may be prescribed;</p> <p>(b) may be issued on conditions specified in the permit; and</p> <p>(c) must be in the form and contain such other particulars as may be prescribed.</p> <p>(2) A permit issued in terms of section 91 does not absolve the holder or any other person from complying with the provisions of any other applicable law.</p>	
--	--	--

	<p>Additional requirements relating to alien and invasive species</p> <p>91. An issuing authority may issue a permit for a restricted activity involving a specimen of an alien species or of a listed invasive species only if-</p> <p>(a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity;</p> <p>(b) the relevant species has been found to have negligible or no invasive potential;</p> <p>(c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment</p> <p>(d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.</p> <p>Integrated permits</p> <p>92. (1) If the carrying out of an activity mentioned in section 90 is also regulated in terms of other law, the authority empowered under that other law to authorise that activity and the issuing authority empowered under this Act to issue permits in respect of that activity may-</p> <p>(a) exercise their respective powers jointly; and</p> <p>(b) issue a single integrated permit instead of a separate permit and authorisation.</p> <p>(2) An authority empowered under that other law may issue an integrated permit for the activity in question if that authority is designated in terms of this Act also as an issuing authority for permits in respect of that activity.</p> <p>(3) An integrated permit may be issued only if-</p> <p>(a) the relevant provisions of this Act and that other law have been complied with;</p> <p>(b) the permit specifies the-</p> <p>(i) provisions in terms of which it has been issued; and</p> <p>(ii) authority or authorities that have issued it.</p> <p>Cancellation of permits</p> <p>93. An issuing authority which issued a permit may cancel the permit if-</p> <p>(a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant; or</p> <p>(b) the applicant or permit holder has contravened or failed to comply with</p> <p>(i) any condition of the permit;</p> <p>(ii) any provision of this Act or other law governing the permitted activity; or</p> <p>(iii) any foreign law governing the permitted activity.</p> <p>Part 2 Appeals</p> <p>Appeals to be lodged with Minister</p> <p>94. (1) An applicant who feels aggrieved by the decision of an issuing authority in terms of section 88(2)(c) or (d), or a permit holder whose permit has been cancelled in terms of section 93, may lodge with the Minister an appeal against the decision within 30 days after having been informed of the decision.</p> <p>(2) The Minister must either-</p> <p>(a) consider</p> <p>(b) redirect the appeal to the MEC for Environmental Affairs in the relevant province to consider and decide the appeal; or</p> <p>(c) designate a panel of persons to consider and decide the appeal.</p> <p>(3) An appeal does not suspend the decision against which the appeal is lodged unless the Minister, MEC for Environmental Affairs or appeal panel considering the appeal directs otherwise.</p> <p>Appeal panels</p> <p>95. (1) If the Minister decides that the appeal must be considered and decided by an appeal panel, the Minister must designate-</p> <p>(a) a number of persons with appropriate knowledge as members of the panel;</p> <p>(b) one of the panel members as the presiding member.</p> <p>and</p> <p>(2) The presiding member of the appeal panel decides when and where the Panel meets.</p>	
--	--	--

	<p>(3) An appeal panel must-</p> <p>(a) consider and decide the appeal in accordance with a prescribed procedure; and</p> <p>(b) keep a record of its proceedings and decisions.</p> <p>Decisions</p> <p>96. (1) The Minister, MEC for Environmental Affairs or appeal panel considering an appeal may-</p> <p>(a) either uphold or refuse the appeal; and</p> <p>(b) when upholding or refusing the appeal, make such other orders as may be appropriate.</p> <p>(2) If the appeal is upheld against-</p> <p>(a) a refusal to issue a permit, the Minister, MEC for Environmental Affairs or appeal panel may issue the permit unconditionally or subject to conditions;</p> <p>(b) a condition subject to which the permit was issued, the Minister, MEC for Environmental Affairs or appeal panel may withdraw or amend the condition; or</p> <p>(c) the cancellation of a permit, the Minister, MEC for Environmental Affairs or appeal panel may restore the permit.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>Certain interests to be protected before permits are issued</p> <p>82. (1) Before a permit referred to in section 51(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:</p> <p>(a) A person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and</p> <p>(b) an indigenous community</p> <p>(i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or</p> <p>(ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.</p> <p>(2) If a stakeholder has an interest as set out in subsection (1) (a), an issuing authority if-</p> <p>(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;</p> <p>(b) the applicant and the stakeholder have entered into- (i) a material transfer agreement that regulates the provision of or access to such resources; and</p> <p>(ii) a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant the Minister has in terms of sections 83(2) and 84(2) approved such benefit-sharing and material transfer agreements.</p> <p>(3) If a stakeholder has an interest as set out in subsection (1)(b), an issuing authority may issue a permit only if-</p> <p>(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting;</p> <p>(b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and</p>	

	<p>(c) the Minister has in terms of section 83(2) approved such benefit-sharing agreement.</p> <p>(4) An issuing authority-</p> <p>(a) may engage the applicant and stakeholder on the terms and conditions of a benefit-sharing or-material transfer agreement;</p> <p>(b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;</p> <p>(c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholders is fair and equitable;</p> <p>(d) may make recommendations to the Minister; and</p> <p>(e) must perform any other functions that may be prescribed.</p> <p>Benefit-sharing agreements</p> <p>83. (1) A benefit-sharing agreement must-</p> <p>(a) be in a prescribed format;</p> <p>(b) specify-</p> <p>(i) the type of indigenous biological resources to which the relevant bioprospecting relates;</p> <p>(ii) the area or source from which the indigenous biological resources are to be collected or obtained;</p> <p>(iii) the quantity of indigenous biological resources that is to be collected or obtained;</p> <p>(iv) any traditional uses of the indigenous biological resources by an indigenous community; and</p> <p>(v) the present potential uses of the indigenous biological resources;</p> <p>(c) name the parties to the benefit-sharing agreement;</p> <p>(d) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for purposes of such bioprospecting;</p> <p>(e) set out the manner in which and the extent to which the stakeholder will share in any benefits that may arise from such bioprospecting;</p> <p>(f) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and</p> <p>(g) comply with any other matters that may be prescribed.</p> <p>(2) A benefit-sharing agreement or any amendment to such an agreement-</p> <p>(a) must be submitted to the Minister for approval; and</p> <p>(b) does not take effect unless approved by the Minister.</p> <p>Establishment of Bioprospecting Trust Fund</p> <p>85. (1) A Bioprospecting Trust Fund is established into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to: or for the benefit of, stakeholders must be made.</p> <p>(2) All money paid into the bioprospecting trust fund is trust money within the meaning of section 13(l)(f)(ii) of the Public Finance Management Act.</p> <p>(3) The Director-General-</p> <p>(a) must manage the Fund in the prescribed manner; and</p> <p>(b) is accountable for the money in the Fund in terms of the Public Finance Management Act.</p>	
7. Sanctions and remedies-dealing with breaches	<p>CHAPTER 9 OFFENCES AND PENALTIES</p> <p>Offences</p> <p>101. (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of-</p> <p>(a) section 57(1), 65(1), 67(2), 71(1) or 81(1);</p> <p>(b) a notice published in terms of section 57(2); or</p> <p>(c) a directive issued in terms of section 69(2) or 73(3).</p> <p>(a) contravenes or fails to comply with a provision of section 69(1) or 73(1);</p> <p>(b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or</p>	

	<p>(c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).</p> <p>(2) A person who is the holder of a permit is guilty of an offence if that person- an offence in terms of paragraph (a) or (b).</p> <p>(3) A person is guilty of an offence if that person-</p> <p>(a) fraudulently alters any permit;</p> <p>(b) fabricates or forges any document for the purpose of passing it as a permit;</p> <p>(c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit; or</p> <p>(d) knowingly makes any false statement or report for the purpose of obtaining a permit.</p> <p>Penalties</p> <p>102. (1) A person convicted of an offence in terms of section 101 is liable to a fine, or to imprisonment for a period not exceeding five years, or to both fine and such imprisonment.</p> <p>(2) A fine in terms of subsection (1) may not exceed-</p> <p>(a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); or</p> <p>(b) if a person is convicted of an offence involving a specimen of a listed threatened or protected species, an amount determined in terms of paragraph (a) or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.</p>	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>Norms and standards</p> <p>9. (1) The Minister may, by notice in the <i>Gazette</i>-</p> <p>(a) issue norms and standards for the achievement of any of the objectives of this Act., including for the-</p> <p>(i) management and conservation of South Africa's biological diversity and its components;</p> <p>(ii) restriction of activities which impact on biodiversity and its components;</p> <p>(b) set indicators to measure compliance with those norms and standards; and</p> <p>(c) amend any notice issued in terms of paragraph (a) or (b).</p> <p>(2) (a) Before publishing a notice in terms of subsection (1), the Minister must follow a consultative process in accordance with sections 99 and 100.</p> <p>(b) A consultative process referred to in paragraph (a) need not apply to a non-substantial change to the notice.</p> <p>(3) Norms and standards may apply</p> <p>(a) nationwide;</p> <p>(b) in a specific area only; or</p> <p>(c) to a specific category of biodiversity only.</p> <p>(4) Different norms and standards may be issued for-</p> <p>(a) different areas; or</p> <p>(b) different categories of biodiversity.</p> <p>CHAPTER 2 SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE</p> <p>Part 1 Establishment, powers and duties of Institute</p> <p>Establishment</p> <p>10. (1) The South African National Biodiversity Institute is established by this Act.</p> <p>(2) The Institute is a juristic person.</p> <p>Functions</p> <p>11. (1) The Institute-</p> <p>(a) must monitor and report regularly to the Minister on-</p> <p>(i) the status of the Republic's biodiversity;</p> <p>(ii) the conservation status of all listed threatened or protected species and</p> <p>(iii) the status of all listed invasive species;</p> <p>(b) must monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment,</p>	

	<p>including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture;</p> <p>(c) may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;</p> <p>(d) must coordinate and promote the taxonomy of South Africa's biodiversity;</p> <p>(e) must manage, control and maintain all national botanical gardens;</p> <p>(f) may establish, manage, control and maintain-</p> <p>(i) herbaria; and</p> <p>(ii) collections of dead animals that may exist;</p> <p>(g) must establish facilities for horticulture display, environmental education, visitor amenities and research;</p> <p>(h) must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;</p> <p>(i) may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;</p> <p>(j) must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;</p> <p>(k) may allow, regulate or prohibit access by the public to national botanical gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;</p> <p>(l) may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;</p> <p>(m) may coordinate and implement programmes for-</p> <p>(i) the rehabilitation of ecosystems; and</p> <p>(ii) the prevention, control or eradication of listed invasive species;</p> <p>(n) may coordinate programmes to involve civil society in-</p> <p>(i) the conservation and sustainable use of indigenous biological resources;</p> <p>(ii) the rehabilitation of ecosystems;</p> <p>(o) on the Minister's request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;</p> <p>(p) on the Minister's request, must advise him or her on any matter regulated in terms of this Act, including</p> <p>(i) the implementation of this Act and any international agreements</p> <p>(ii) the identification of bioregions and the contents of any bioregional plans;</p> <p>(iii) other aspects of biodiversity planning;</p> <p>(iv) the management and conservation of biological diversity; and</p> <p>(v) the sustainable use of indigenous biological resources;</p> <p>(q) on the Ministers advice must advised him or her on the declaration management of, and development in, national protected areas: and</p> <p>*r) must perform any other duties</p> <p>(i) assigned to it in terms of this Act; or</p> <p>(ii) as may be prescribed.</p> <p>(2) When the Institute in terms of subsection (1) gives advice on a scientific matter, it may consult any appropriate organ of state or other institution which has expertise in that matter.</p> <p>General powers</p> <p>12. The Institute may for the purpose of performing its duties-</p> <p>(a) appoint its own staff, subject to section 29;</p> <p>(b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;</p> <p>(c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;</p> <p>(d) open and operate its own bank accounts;</p> <p>(e) establish a company which has as its object the production and supply of goods or the rendering of service⁹ on behalf of the Institute, subject to the Public Finance Management Act;</p> <p>(f) invest any of its money, subject to section 32;</p> <p>(g) borrow money, subject to section 66 of the Public Finance Management</p>	
--	---	--

	<p>Act;</p> <p>(h) charge fees-</p> <p>(i) for access to national botanical gardens, herbaria and other places under its control;</p> <p>(ii) for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 11(l)(m), (n) or (p); or</p> <p>(iii) for access to the results of, or to other information in connection with, any research performed by it;</p> <p>(i) collect royalties resulting from any discoveries, inventions or computer programmes;</p> <p>(j) insure itself against;</p> <p>(i) any loss, damage or risk; or</p> <p>(ii) any liability it may incur in the application of this Act;</p> <p>(k) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and</p> <p>(l) institute or defend any legal action.</p> <p>Part 2 Governing board, composition and membership</p> <p>Composition</p> <p>13. (1) The Institute is governed by a Board consisting of-</p> <p>(a) not fewer than seven and not more than nine members appointed in terms of section 15;</p> <p>(b) the Director-General or an official of the Department designated by the Director-General; and</p> <p>(c) the Chief Executive Officer of the Institute.</p> <p>(2) The Minister-</p> <p>(a) must determine the number of members to be appointed in terms of subsection 40</p> <p>(1)(a);and</p> <p>(b) may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.</p> <p>(3) The Board takes all decisions in the performance of the duties and exercise of powers of the Institute, except-</p> <p>(a) those decisions taken in consequence of a delegation in terms of section 27; or</p> <p>(b) where the Public Finance Management Act provides otherwise.</p> <p>Qualifications</p> <p>14. (1) A member of the Board must-</p> <p>(a) be a fit and proper person to hold office as a member; and</p> <p>(b) have appropriate qualifications and experience in the field of biodiversity.</p> <p>(2) The following persons are disqualified from becoming or remaining a member of the Board:</p> <p>(a) A person holding office as a member of Parliament, a provincial legislature or a municipal council; or</p> <p>(b) a person who has been removed from office in terms of section 21.</p> <p>Appointment procedure</p> <p>15. (1) Whenever it is necessary to appoint members of the Board referred to in section 13(1)(a), the Minister must</p> <p>(a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and</p> <p>(b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.</p> <p>(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by-</p> <p>(a) the personal details of the nominee;</p> <p>(b) nominee's qualifications or experience; and</p> <p>(c) any other information that may be prescribed.</p> <p>(3) The Minister must, subject to subsection (4), appoint-</p> <p>(a) the required number of persons from the list compiled in terms of</p>	
--	--	--

	<p>subsection 1(b); and</p> <p>(b) if such list is inadequate, any suitable person.</p> <p>(4) When making appointments the Minister must-</p> <p>(a) consult the MECs for Environmental Affairs; and</p> <p>(b) have regard to the need for appointing persons to promote representivity.</p> <p>(5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise in the field of biodiversity.</p> <p>Chairperson</p> <p>16. (1) Whenever necessary the Minister must appoint a member of the Board as the Chairperson of the Board.</p> <p>(2) The Chairperson is appointed for a period which is determined by the Minister which may, in the case of a member referred to in section 13(1)(a), not extend beyond the period of his or her term as a member.</p> <p>(3) The Minister may appoint a member of the Board as acting chairperson of the Board if-</p> <p>(a) the Chairperson is absent for a substantial period; or</p> <p>(b) the appointment of a Chairperson is pending.</p> <p>Term of office</p> <p>17. Members of the Board referred to in section 13(1)(a)-</p> <p>(a) are appointed for a period of three years or, if section 22(2) applies, for a term determined in terms of that section;</p> <p>(b) on completion of that term, are eligible for reappointment for one additional term of three years; and</p> <p>(c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.</p> <p>Conditions of appointment</p> <p>18. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 13(1)(a).</p> <p>(2) (a) The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of Government.</p> <p>(b) Their remuneration and allowances are paid by the Institute.</p> <p>(3) (a) Members who are in the employ of the Government are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by the Institute.</p> <p>(b) Such members are appointed on a part-time basis.</p> <p>Conduct of members</p> <p>19. (1) A member of the Board-</p> <p>(a) must perform the duties of office in good faith and without favour or prejudice;</p> <p>(b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that Board member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;</p> <p>(c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and</p> <p>(d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Institute.</p> <p>(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.</p> <p>Termination of membership</p> <p>20. (1) A member of the Board referred to in section 13(1)(a) ceases to be a member when that person-</p> <p>(a) is no longer eligible in terms of section 14 to be a member;</p> <p>(b) resigns; or</p>	
--	---	--

	<p>(c) is removed from office in terms of section 21.</p> <p>(2) A member may resign only by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.</p> <p>21. (1) The Minister may remove a member of the Board referred to in section 13(1)(a) from office, but only on the ground of-</p> <p>(a) misconduct, incapacity or incompetence;</p> <p>(b) absence from three consecutive meetings of the Board without the prior permission of the Board except on show of good cause;</p> <p>(c) insolvency; or</p> <p>(d) conviction of a criminal offence without the option of a fine.</p> <p>(2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.</p> <p>(3) The Minister may suspend a member under investigation in terms of this section.</p> <p>Filling of vacancies</p> <p>22. (1) A vacancy in the Board is filled-</p> <p>(a) in the case of a vacating Chairperson, by appointing another member in terms of section 16(1) as the Chairperson; and</p> <p>(b) in the case of a vacating member referred to in section 13(l)(a), by following the procedure set out in section 15.</p> <p>(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating Chairperson or member.</p> <p>Part 3 Operating procedures of Board</p> <p>Meetings</p> <p>23. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a Board meeting at a time and in a place set out in the request.</p> <p>(2) The Chairperson presides at meetings of the Board, but if the Chairperson is absent from a meeting the members present must elect another member to preside at the meeting.</p> <p>Procedures</p> <p>24. (1) The Board may determine its own procedures subject to the provisions of this Act.</p> <p>(2) The Board must keep records of its proceedings and of decisions taken.</p> <p>Quorum and decisions</p> <p>25. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.</p> <p>(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.</p> <p>(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.</p> <p>Committees</p> <p>26. (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.</p> <p>(2) When appointing members to a committee, the Board is not restricted to members of the Board</p> <p>(3) The Board</p> <p>(a) must determine the duties of a committee;</p> <p>(b) must appoint a chairperson and other members of the committee;</p> <p>(c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and</p> <p>(d) must determine a working procedure of a committee.</p> <p>(4) The Board may dissolve a committee at any time.</p> <p>(5) (a) Section 18 read with the necessary change as the context may require,</p>	
--	---	--

	<p>applies to the terms and conditions of employment of committee members. (b) A staff member of the Institute appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.</p> <p>Delegation of powers and duties 27. (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or duties to- (a) a member of the Board; (b) a committee referred to in section 26; or (c) a staff member of the Institute. (2) The following powers and duties may not be delegated by the Board: (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 28(1) or (2); (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 28(3); (c) the determination of an employment policy in terms of section 29(1); and (d) the setting of financial limits in terms of section 29(2)(a) or (3). (3) A delegation in terms of subsection (1)- (a) is subject to any limitations, conditions and directions that the Board may impose; (b) must be in writing; (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board. (4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.</p> <p>Part 4 Administration of Institute Appointment of Chief Executive Officer 28. (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Institute. (2) The Chief Executive Officer-- (a) is appointed for a term not exceeding five years; and (b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years. (3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance. (4) The Chief Executive Officer-- (a) is responsible for the management of the Institute; (b) must perform such duties and may exercise such powers as the Board may delegate to him or her; and (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner, as the Board may determine. (5) (a) The Chairperson of the Board may appoint another employee of the Institute as acting Chief Executive Officer for a period not exceeding six months, whenever (i) the Chief Executive Officer is for any reason absent or unable to perform his or her duties; or (ii) there is a vacancy in the office of the Chief Executive Officer. (b) Whilst acting as Chief Executive Officer, such employee- (i) has the powers and duties of the Chief Executive Officer; and (ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).</p>	
--	--	--

	<p>Employment of staff</p> <p>29. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Institute.</p> <p>(2) The Chief Executive Officer--</p> <p>(a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Institute; and</p> <p>(b) may appoint persons in posts on the staff establishment.</p> <p>(3.) An employee of the Institute is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of, and within the financial limits set by, the Board.</p> <p>(4) (a) A person in the service of another organ of state may be seconded to the Institute by agreement between the Chief Executive Officer and such organ of state.</p> <p>(b) Persons seconded to the Institute perform their duties under the supervision of the Chief Executive Officer.</p> <p>(5) A person in the service of the Institute may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.</p> <p>Part 5 Financial matters</p> <p>Financial accountability</p> <p>30. The Institute is a public entity for the purposes of the Public Finance Management Act, and must comply with the provisions of that Act.</p> <p>Funding</p> <p>31. The funds of the Institute consist of-</p> <p>(a) income derived by it from the performance of its duties and the exercise of its powers;</p> <p>(b) money appropriated by Parliament;</p> <p>(c) grants received from organs of state;</p> <p>(d) voluntary contributions, donations and bequests;</p> <p>(e) money borrowed in terms of section 12(g);</p> <p>(f) income derived from investments referred to in sections 32; and</p> <p>(g) money derived from any other ,source, subject to the Public Finance Management Act.</p> <p>Investments</p> <p>32. The Institute may invest any of its funds not immediately required-</p> <p>(a) subject to any investment policy that may be prescribed in terms of section 7 of the Public Finance Management Act.</p> <p>(b) in such a manner that the Minister may approve.</p> <p>Part 7 General</p> <p>Minister's supervisory powers</p> <p>35. (1) The Minister</p> <p>(a) must monitor the exercise and performance by the Institute of its powers and duties;</p> <p>(b) may set norms and standards for the exercise and performance by the Institute of its powers and duties;</p> <p>(c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;</p> <p>(d) must determine limits on fees charged by the Institute in the exercise and performance of its powers and duties; and</p> <p>(e) may identify land for new botanical gardens and extensions to existing botanical gardens.</p> <p>(2) The Institute must exercise its powers and perform its duties subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).</p> <p>Absence of functional Board</p> <p>36. In the event of absence of a functional Board, the powers and duties of the</p>	
--	--	--

	<p>Board revert to the Minister who in such a case, must exercise those powers and perform those duties until the Board is functional again</p> <p>CHAPTER 8 ADMINISTRATION OF ACT</p> <p>Regulations</p> <p>Regulations by Minister</p> <p>The Minister may make regulations relating to -</p> <p>monitoring of compliance with and enforcement of norms and standards referred to in section 9;</p> <p>the designation of organs of state which may be issuing authorities for permits referred to in section 57(1) or (2);</p> <p>facilitation of the implementation and enforcement of section 57(1) or any notice issued in terms of section 57(2);</p> <p>carrying out of a restricted activity involving a specimen of a listed threatened or protected species which is binding on the Republic;</p> <p>facilitation of the implementation and enforcement of an international agreement relating to international trade in specimens of listed threatened or protected species which is binding on the Republic;</p> <p>minimising of the threat to the survival in the wild of a listed threatened or protected species;</p> <p>minimising of the threat to the ecological integrity of a listed ecosystem;</p> <p>composition and operating procedure of the scientific authority; or</p> <p>the ecologically sustainable utilization of biodiversity;</p> <p>the designation of organs of state which may be issuing authorities for permits referred to in section 67(1) or 71(1);</p> <p>the designation of organs of state which may be competent authorities for monitoring and enforcing the provisions of this Chapter;</p> <p>facilitation of the implementation and enforcement of section 65, 67 or 71;</p> <p>prescription of compulsory conditions for any permit issued in terms of section 71(1);</p> <p>assessment of risks and potential impact on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; and</p> <p>control and eradication of listed invasive species:</p> <p>safety and the environment;</p> <p>the designation of organs of state that may be issuing authorities for permits referred to in section 81:</p> <p>the form and contents of, and the requirements and criteria for benefit-sharing agreements and material transfer agreements and material transfer agreements;</p> <p>fees payable in connection with benefit-sharing agreements; and</p> <p>administration of the Bioprospecting Trust Fund;</p> <p>the conditions subject to which issuing authorities may issue permits in terms of this Chapter;</p> <p>the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for permits;</p> <p>the powers of issuing authorities when considering and deciding such applications;</p> <p>the conditions with which applicants must comply before or after the lodging of their applications;</p> <p>the appropriate consultation of the authorities whose consent is required before permits may be issued;</p> <p>the factors that must be taken into account when deciding applications;</p> <p>the circumstances in which applications must be refused or may be approved;</p> <p>the contents and form of the permits;</p> <p>the conditions on which permits must be issued, or guidelines for determining the conditions on which permits may be issued;</p> <p>the methods, procedures and conditions of enforcing compliance with the conditions of a permit;</p> <p>the giving of security in respect of any obligation that may arise from carrying out a restricted activity authorised by a permit, and the form of such security;</p> <p>the period of validity of permits;</p> <p>the transferability of permits;</p> <p>the period of validity of permits;</p> <p>the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals;</p>	
--	---	--

	<p>other matter that may be prescribed in terms of this Act; and other matter that may be necessary to facilitate the implementation of this Act regulation with direct fiscal implications may be made only with the concurrence Minister of Finance. ore publishing any regulations in terms of subsection (l), or any amendment regulations, the Minister must follow a consultative process in accordance with s 99 and 100. section (3) need not be applied to a non-substantial change to the regulations.</p> <p>General 98. (1) Regulations made in terms of section 97 may- (a) restrict or prohibit any act either absolutely or conditionally; (b) apply- (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas; (ii) generally to all persons or only to a specified category of persons; (iii) generally with respect to all species or only to a specified species or category of species; (iv) generally with respect to all permits or appeals or only to a specified category of permits or appeals; or (c) differentiate between different- (i) areas or categories of areas; (ii) persons or categories of persons; (iii) species or categories of species; or (iv) categories of permits or appeals. (2) Regulations made in terms of section 97 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to- (a) imprisonment for a period not exceeding five years; (b) an appropriate fine; or (c) both a fine and such imprisonment.</p> <p>Part 2 Consultation process Consultation 99. (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister must follow an appropriate consultative process in the circumstances. (2) The Minister must, in terms of subsection (1)- (a) consult all Cabinet members whose areas of responsibility may be affected by the exercise of the power; (b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC for Environmental Affairs of each province that may be affected by the exercise of the power; and (c) allow public participation in the process in accordance with section 100.</p> <p>Public participation 100. (1) The Minister must give notice of the proposed exercise of the power referred 15 to in section 99- (a) in the <i>Gazette</i>; and (b) in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area. (2) The notice must- (a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the <i>Gazette</i>, written representations on, or objections to, the proposed exercise of the power; and (b) contain sufficient information to enable members of the public to submit meaningful representations or objections. (3) The Minister may in appropriate circumstances allow any interested person</p>	
--	--	--

	<p>or community to present oral representations or objections to the Minister or a person designated by the Minister.</p> <p>(4) The Minister must give due consideration to all representations or objections received or presented before exercising the power.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p>Exemptions</p> <p>86. (1) The Minister may by notice in the <i>Gazette</i>-</p> <p>(a) declare that this Chapter does not apply to indigenous biological resources specified in the notice or to an activity relating to such indigenous biological resources; and</p> <p>(b) amend or withdraw a notice referred to in paragraph (a).</p> <p>(2) Before publishing a notice in terms of subsection (1) the Minister must follow a consultative process in accordance with sections 99 and 100.</p>	
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws- avoiding conflict with other laws	<p>Application of other biodiversity legislation</p> <p>6. (1) This Act must be read with any applicable provisions of the National Environmental Management Act</p> <p>(2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.</p> <p>National environmental management principles</p> <p>7. The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.</p> <p>Conflicts with other legislation</p> <p>8. (1) In the event of any conflict between a section of this Act and-</p> <p>(a) other national legislation in force immediately prior to the date of commencement of this Act, the section of this Act prevails if the conflict specifically concerns the management of biodiversity or indigenous biological resources;</p> <p>(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and</p> <p>(c) a municipal by-law, the section of this Act prevails.</p> <p>(2) In the event of any conflict between subordinate legislation issued in terms of this Act and-</p> <p>(a) an Act of Parliament, the Act of Parliament prevails;</p>	

	<p>(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;</p> <p>(c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails; and</p> <p>(3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146 of the Constitution, submit all subordinate legislation issued in terms of this Act which affects provinces to the National Council of Provinces for approval.</p>	
13. recognition of requirements of other nations-mutual recognition of rights and ensuring they are complied with	<p>Application of international agreements</p> <p>5. This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.</p>	
14. transitional provisions-existing uses	<p>Repeal of Act 122 of 1984</p> <p>103. The Forest Act, 1984 (Act No. 122 of 1984), is repealed by this Act.</p> <p>Savings</p> <p>104. (1) Anything done in terms of the Forest Act, 1984 (Act No. 122 of 1984), which may or must be done in terms of this Act must be regarded as having been done in terms of this Act.</p> <p>(2) A person who immediately before the repeal of the Forest Act, 1984, by section 100 of this Act was-a member of the board of the National Botanical Institute, becomes a member of the Board of the South African National Biodiversity Institute and remains such a member until the Minister appoints the members of the Board in terms of section 15;</p> <p>the chief executive officer of the National Botanical Institute becomes the acting chief executive officer of the South African National Biodiversity Institute and remains the acting chief executive officer until the Board appoints a person as the chief executive officer of the Institute in terms of section 29; and</p> <p>all employees of the National Botanical Institute, including its chief executive officer, must be regarded as having been appointed in terms of section 30 as employees of the South African National Biodiversity Institute subject to the same conditions of services which applied to them immediately before the repeal of the Forest Act, 1984.</p> <p>(3) Subsection (2)(c) does not affect pension, leave and other benefits which accrued to employees referred to in that subsection before the repeal of the Forest Act, 1984, and such benefits must be respected as if there was no break in their service and no change of employer.</p> <p>(4) As from the date of repeal of the Forest Act, 1984</p> <p>(a) all assets and liabilities and all rights and obligations of the National Botanical Institute are vested in the South African National Biodiversity Institute; and</p> <p>(b) any balance in the National Botanical Institute Fund referred to in section 64 of that Act must be paid to the South African National Biodiversity Institute.</p> <p>Existing bioprospecting projects</p> <p>105. (1) Any party involved at the commencement of Chapter 6 in a bioprospecting project which concerns any interests to be protected in terms of section 82, may despite that section continue with the project pending the negotiation and entry into force of an appropriate benefit-sharing agreement in terms of that Chapter.</p> <p>(2) Subsection (1) lapses one year after Chapter 6 takes effect.</p>	

14. Vanuatu

Analysed against the common provisions

Environmental Management and Conservation Act [Cap 283] 2002

An Act to provide for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities.

PART 1 – PRELIMINARY

1. Application of this Act

This Act applies throughout Vanuatu, including its lands, air and waters.

2. Interpretation

In this Act, unless the contrary intention appears:

"authorised officer" means a person appointed under section 5;

"biological diversity" means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;

"biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity;

"bioprospecting" means any activity undertaken to harvest or exploit all or any of the following:

(a) samples of genetic resources; (b) samples of any derivatives of genetic resources; (c) the knowledge, innovations, and customary practices of local communities associated with those genetic resources;

for purposes of research, product development, conservation or industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives; "conservation" includes the preservation and protection of natural resources and heritage; "Council" means the Biodiversity Advisory Council established under section 29; "Department" means the Department responsible for the environment; "Director" means the Director of the Department; "environment" means the components of the earth and includes all or any of the following:

(a) land and water;

(b) layers of the atmosphere; (c) all organic and inorganic matter and living organisms; (d) the interacting natural, cultural and human systems that include components referred to in paragraphs (a) to (c);

"environmental impact assessment" means the environmental impact assessment process as provided in Part 3, and "EIA" has a corresponding meaning; "Environmental Registry" means the registry established under section 6; "foreign organism" includes all stages of any life form not endemic or normally found in Vanuatu; "genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity; "genetic resources" means genetic material of actual or potential value; "land" includes land covered by water; "Minister" means the Minister responsible for the environment; "natural resources" includes all living and non-living, finite and renewable resources found within Vanuatu but does not include resources

lawfully maintained for domestic or commercial purposes; "person" includes any statutory body, company or association or body of persons corporate or unincorporate; "project proponent" means the person whose signature appears, or is otherwise nominated, on any application form as being responsible for any project, proposal or development activity; "regulation" means a regulation made under this Act; "traditional knowledge" means any knowledge:

(a) that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and (b) whose nature or use of which has been transmitted from generation to generation; and (c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu;

"water" means all or any of the following:

(a) water flowing or situated upon the surface of any land; (b) water flowing or contained in: (i) any river, stream, creek or other natural course for water; or (ii) any sea, lake, lagoon, bay, swamp, marsh or spring;

whether or not it has been altered or artificially improved;

(c) groundwater, including geothermal water; (d) any estuarine or coastal sea water.

PART 2– ADMINISTRATION

Division 1 – Powers and functions

3. Director appointed (1) A Director of the Department is to be appointed under the Public Service Act [Cap. 246]. (2) The Director is accountable to the Public Service Commission for the efficient and effective administration of this Act. (3) The Director must advise and assist the Minister in all matters relating to this Act.

4. Functions of the Director (1) The Director is responsible for the development, co-ordination and, where appropriate, implementation of the Government's environmental policies and programs. (2) In carrying out the functions outlined in subsection (1), the Director must do the following:

- (a) administer the Environmental Registry established under section 6;
- (b) prepare State of the Environment Reports under section 7;
- (c) prepare National Policies and National Plans under section 8;
- (d) administer the Environmental Impact Assessment procedure under Part 3;
- (e) prepare guidelines, standards, codes of practice and procedures;
- (f) prepare advice on international environmental treaties and instruments, including implementation strategies;
- (g) undertake environmental research, assessment, monitoring, and inspection generally;
- (h) undertake such other duties and responsibilities as may lawfully be required by the Minister.

(3) The Director may carry out any duty, function or responsibility under this Act in association with any other Government Ministry, Department, Agency, local government or municipal council.

5. Powers of the Director (1) The Director has the powers conferred by this Act, and such other powers as may be necessary or convenient for the performance of the Director's functions under this Act, including:

- (a) the appointment of persons not employed by the Department as authorised officers for the purpose of administering this Act; and

(b) the establishment of committees for the purpose of ensuring better inter-departmental and inter-agency co-ordination on particular environmental matters.

(2) The Director must consult with the Public Service Commission and such local government or municipal council as is appropriate before appointing any authorised officer under subsection (1)(a). (3) The Director must consult with the Minister before establishing any committee under subsection (1) (b). (4) The powers, duties and responsibilities of any person appointed under subsection (1) (a) or any committee established under subsection (1) (b) must be stated in any instrument of appointment or establishment. (5) The Director may delegate to officers of the Department and any authorised officers appointed under subsection (1) (a), such powers and functions as he or she considers appropriate, with the exception of this power of delegation.

Division 2 – Instruments

6. Establishment of Environmental Registry (1) The Director must establish, operate and maintain an Environmental Registry of all records relating to:

- (a) environmental impact assessment documentation provided under Part 3; and
- (b) applications, permits and approvals required or issued under this Act; and
- (c) regulations, standards, guidelines or codes of environmental practice established under this Act; and
- (d) National State of the Environment Reports prepared under section 7; and
- (e) National Policies and National Plans prepared under section 8; and
- (f) Community Conservation Areas registered under section 37; and
- (g) international environment and conservation treaties and instruments to which Vanuatu is a party; and
- (h) such other matters as may be prescribed by regulation.

(2) All material entered in the Environmental Registry must be lodged with the Department in a physical or electronic form, and be available for public inspection during normal working hours. (3) If the Director determines that any registered material is commercially or culturally sensitive, he or she may classify that material, including any part of any material, as confidential and stipulate the terms and conditions, if any, on which any person can access that material. (4) The Minister on the advice of the Director may, by order, prescribe a system of fees and charges for the purpose of recovering any operational costs arising from requests for copies of material held in the Environmental Registry.

7. Preparation of National State of the Environment Reports (1) The Director must prepare and publish a National State of the Environment Report at least once every 10 years following the commencement of this Act. (2) A National State of the Environment Report must include all of the following:

- (a) an assessment of the state of all natural resources;
- (b) a review of the current use of natural resources;
- (c) an assessment of the quality of Vanuatu's environment;
- (d) an assessment of social and economic development trends and their likely impact upon the environment;
- (e) a summary of government and private sector policies, programs and initiatives to address and monitor environmental management and conservation issues;
- (f) such other matters as the Minister considers appropriate.

(3) A National State of the Environment Report must be submitted to the Minister for approval, and a copy of any such report must be lodged in the Environmental Registry.

8. Development of National Policies and National Plans If the Minister determines that a National Policy or National Plan is required for the conservation, sustainable development and management of the environment, the Director must prepare the National Policy or National Plan.

9. Purpose of National Policies and National Plans (1) The purpose of a National Policy is:

- (a) to promote the environmentally sound and safe management and conservation of the natural resources of Vanuatu; and
- (b) to provide for the co-ordination of related activities.

(2) The purpose of a National Plan is:

- (a) to provide for the implementation of the National Policy; and
- (b) to provide for the conservation and/or sustainable management and development of particular natural resources of Vanuatu.

(3) A National Policy must include all of the following:

- (a) an evaluation of the current state of the particular matter that is the subject of the Policy;
- (b) an evaluation of the social, human health, custom, economic and ecological considerations and issues in respect of that matter;
- (c) a description of any relevant national priorities;
- (d) an outline of the objectives to be achieved by the Policy;
- (e) specific actions, initiatives or activities required to give effect to the objectives of the Policy, including any specific legal, financial and institutional aspects that need to be addressed;
- (f) mechanisms for monitoring and reviewing the implementation of the Policy.

(4) A National Plan must contain details of all the operational matters that are necessary to implement the National Policy. (5) National Policies and National Plans must be developed through appropriate public consultation, and be submitted by the Director to the Minister for approval. (6) Once approved by the Minister, a National Policy or National Plan must be referred to the Council of Ministers for approval. A National Policy or National Plan takes effect on the date of its publication in the Gazette.

10. Variation of National Policy or Plan (1) The Minister may instruct the Director to prepare a variation to any National Policy or National Plan. (2) A variation must be prepared, notified and consulted upon in accordance with this Act and the regulations. (3) A variation must be approved by the Council of Ministers, and takes effect on the date of its publication in the Gazette.

PART 3 – ENVIRONMENTAL IMPACT ASSESSMENT

Division 1 – Activities subject to EIA

11. All activities subject to this Act

All projects, proposals or development activities that:

- (a) impact or are likely to impact on the environment of Vanuatu; and
 - (b) require any license, permit or approval under any law;
- must comply with the provisions of this Act.

12. Activities that are subject to an EIA (1) All projects, proposals or development activities that: (a) cause or are likely to cause significant environmental, social and/or custom impacts; or (b) cause impacts relating to the matters listed in subsection (2); are subject to the EIA provisions of this Part. (2). Without limiting subsection (1), all projects, proposals or development activities that will do or are likely to do all or any of the following are subject to the EIA provisions of this Part:

- a) affect coastal dynamics or result in coastal erosion;
- b) result in the pollution of water resources;
- c) affect any protected, rare, threatened or endangered species, its habitat or nesting grounds;
- d) result in the contamination of land;
- e) endanger public health;
- f) affect important custom resources;
- g) affect protected or proposed protected areas;
- h) affect air quality;
- i) result in the unsustainable use of renewable resources;
- j) result in the introduction of foreign organisms and species;
- k) result in any other activity prescribed by regulation.

13. Activities not subject to an EIA The following projects, proposals or development activities are exempt from the requirements of this Part:

- (a) the construction of any single family residential building in an approved residential development area, however, such construction must be at least 30 metres from any river, stream, or from the line of mean high water spring tide of the sea;
- (b) any additions to an existing residential dwelling, being additions that are used only for residential purposes and are at least 30 metres from any river, stream, or from the line of mean high water spring tide;
- (c) the construction of traditional or custom structures fabricated from traditional materials, however, any natural rock, sand, coral, rubble or gravel that is used must not be taken from within 20 metres of the line of mean high water spring tide;
- (d) emergency action to protect the lives and property of people where there is not enough time to follow the requirements of this Act;
- (e) any other activity prescribed by regulation.

14. Preliminary assessment of applications

(1) Subject to subsection (2), any Ministry, Department, Government Agency, local government or municipal council that receives an application for any project, proposal or development activity not exempted by section 13, must undertake, or have undertaken on its behalf, a preliminary EIA of that application to determine:

- (a) whether the project, proposal or development activity is likely to cause any environmental, social or custom impact; and
- (b) the significance of any identified impact; and
- (c) whether any proposed actions are likely to effectively mitigate, minimise, reduce or eliminate any identified significant impact.

(2) If any Ministry, Department, Government Agency, local government or municipal council is the project proponent, the person who receives the application must refer the application to the Director for an assessment of the need for an EIA under section 17. (3) The Ministry, Department, Government Agency, local government or municipal council that received the application must, within 10 days after the preliminary determination is made, advise the Director in writing of the determination, and may process the application without further reference to this Act if the preliminary EIA determines that:

- (a) no significant environmental, social or custom impacts are likely to be caused by the project, proposal or development activity; or
- (b) the proposed actions will effectively mitigate, minimise, reduce or eliminate any identified significant impact.

(4) The Ministry, Department, Government Agency, local government or municipal council that received the application must, within 10 days after the preliminary determination is made, refer the application to the Director if the preliminary EIA determines that:

- (a) significant environmental, social or custom impacts are likely to be caused by the project, proposal or development activity; or
- (b) the proposed actions will not or are not likely to effectively mitigate, minimise, reduce or eliminate any identified significant impact.

15. Director may require direct referral (1) Despite section 14, the Director may, by written notice served on the relevant Ministry, Department, Government Agency, local government or municipal council, require the application for a project, proposal or development activity to be referred directly to the Director for an assessment of the need for an EIA. (2) However, the Director cannot require a direct referral unless he or she is:

- (a) aware of significant impacts caused by similar projects, proposals or development activities inside or outside Vanuatu; and
- (b) satisfied that a direct referral is more efficient having regard to the likely impact of the project, proposal or development activity.

(3) The Director must inform the relevant Ministry, Department, Government Agency, local government or municipal council of the grounds for the referral in the written notice under subsection (1).

16. Lead agency determined by Director (1) If an application for the same project, proposal or development activity is required to be made to more than one Ministry, Department, Government Agency, local government or municipal council, the Director must be advised by each authority receiving an application and must determine which authority is to act as the co-ordinating lead agency for the purpose of undertaking the preliminary EIA. (2) Despite subsection (1), the Department must act as the lead agency if the Director so determines and undertake the preliminary EIA.

17. EIA determination (1) The Director must determine the need for an EIA if:

- (a) a referral is required under section 14(2); or
- (b) a referral has been made under section 14(4); or

(c) a direct referral has been made under section 15.

(2) The Director must advise the project proponent, in writing, of his or her decision on the need for an EIA within 21 days of receiving the application, unless a longer duration is agreed with the project proponent.

Division 2 – EIA process

18. Environmental Impact Assessment (1) This section applies if the Director determines under section 17 that an EIA is required. (2) The EIA must be undertaken:

(a) in such manner as the Director determines as appropriate in the circumstances; and

(b) as required under section 19; and

(c) in accordance with the regulations; and

(d) in a manner consistent with any guidelines issued for this purpose by the Director.

(3) The Director must:

(a) register the particulars of the project, proposal or development activity in the Environmental Registry; and

(b) notify the project proponent and any affected Ministry, Department, Government Agency, local government or municipal council concerning the registration of the project, proposal or development activity.

(4) An EIA must be undertaken with the fullest practicable consultation with the project proponent and other relevant interested parties.

19. Terms of reference for EIA (1) The Director must develop a terms of reference for any work that is to be undertaken for an EIA, including a description of the scope of work required. (2) In developing the terms of reference, the Director must give special consideration to the need for consultation, participation and involvement of custom landowners, chiefs and other interested parties, and may consult with the National Council of Chiefs for that purpose. (3) The Director must refer the terms of reference for the EIA to the project proponent for written comment within 15 days or such longer period as the Director specifies. (4) Within 30 days after receiving any written comments from the project proponent, the Director must make such revisions as are considered appropriate, and issue the final written terms of reference for the EIA to the project proponent. A copy of the terms of reference must be lodged in the Environmental Registry at the same time. (5) Unless otherwise agreed, all costs associated with the preparation of an EIA are the responsibility of the project proponent.

20. Public notice of EIA (1) The project proponent must give such public notice about the project, proposal or development activity as the Director determines is appropriate in the circumstances.

(2) Any requirement for public notice must be practical and be reasonably certain to reach any identified interested parties. (3) If the public notice invites written submissions, it must specify:

(a) the time period by which submissions must be received; and

(b) the address to which submissions must be sent.

(4) If practicable, a copy of any public notice must be lodged by the project proponent in

the Environmental Registry. (5) Unless otherwise agreed, all costs associated with any public notice requirement are the responsibility of the project proponent.

21. Deficiencies in EIA Report

After receiving and reviewing the EIA report, including any submissions made under section 20, the Director may, by notice in writing, require the project proponent to correct any deficiencies and/or provide additional information in relation to the EIA report.

22. Review of EIA (1) Within 30 days after receiving the EIA report and any additional material required under section 21, the Director must review the report and make a recommendation on the project, proposal or development activity to the Minister. (2) The Director's recommendation must include any draft terms and conditions by which the application for the project, proposal or development activity can proceed. (3) The Director and the project proponent may, by agreement, extend any time limit under subsection (1).

23. Decision on application (1) The Minister must consider the Director's recommendation and, within 21 days after receiving the recommendation, make a decision on the application for the project, proposal or development activity. (2) The Minister must do one of the following:

- (a) approve the application with or without terms and conditions;
- (b) refer the matter back to the Director for further assessment;
- (c) reject the application.

(3) The Director must advise the project proponent in writing of the Minister's decision within 14 days after the Director becomes aware of it. (4) If the Minister refers the matter back to the Director or rejects the application, the Minister must provide the Director with written reasons for the decision.

Division 3 – Miscellaneous

24. Activities without approval (1) Subject to subsection (2), it is an offence for any person:

(a) to undertake any activity that is subject to an environmental impact assessment prior to receiving written approval under this Part; or

(b) to undertake any such activity where approval has been refused under the provisions of this Part.

(2) A project proponent may undertake any activity necessary for the purpose of preparing the EIA report if:

- (a) such activity has minimal impact on the environment; and
- (b) the Director is advised, in writing, of the nature of any such activity at least one week in advance of its undertaking.

(3) A person found guilty of an offence under subsection (1) is punishable on conviction to a fine of not more than VT 1,000,000 or to imprisonment for a period of not more than 2 years, or both..

25. Compliance with terms and/or conditions

If an application is approved under section 23, the project proponent must comply with all terms and/or conditions of the approval.

26. Directions (1) The Director may issue a notice in writing if:

- (a) a breach of a term or condition of an approval given under section 23 occurs; or
- (b) an activity is undertaken contrary to the provisions of this Part.

(2) The notice may require either or both of the following:

- (a) the stopping of any specified activity for such period of time as is stated in the order;
- (b) the restoration of any area affected.

(3) An activity that is subject to a notice must not restart until the Director cancels the notice and notifies the project proponent in writing.

27. Director may determine alternate process (1) If the Director considers that an EIA is not appropriate in the circumstances, an alternate agreed process may be established consistent with the regulations. (2) If an alternate agreed process is not completed to the satisfaction of the Director, he or she may terminate the process and require the activity to be completed in accordance with this Part.

28. Minister's approval no guarantee (1) If the Minister approves a project, proposal or development activity, the approval is not to be interpreted as an approval for all requirements under the laws of Vanuatu. (2) A project proponent is responsible for ensuring that all approvals, permits, licences, agreements, authorities or permissions required under or by any other Act are obtained before proceeding with the approved project, proposal or development activity.

PART 4 – BIODIVERSITY AND PROTECTED AREAS Division 1 – Bioprospecting

29. Establishment of Biodiversity Advisory Council (1) The Biodiversity Advisory Council is established. (2) The Director is the Chairperson of the Council, and the Department is to provide administrative support to the Council. (3) The Minister, in consultation with the Director, may appoint up to 5 additional members to the Council, on merit and for such terms, not exceeding three years, as he or she determines, taking into account:

- (a) the scientific, custom and technical needs of the Council; and
- (b) the nature of the legal and commercial issues likely to be involved; and
- (c) the volume of relevant bioprospecting applications; and
- (d) any other relevant matters.

(4) The Council is to meet as the Director requires but must meet at least twice every year. (5) The Council is to regulate its own procedures. (6) Members of the Council may be reappointed for a further term or terms.

30. Other terms and conditions

The Minister is to determine, on the recommendation of the Director, the other terms and conditions of appointment of the additional members of the Council.

31. Functions of the Council

The Council is responsible for advising the Minister, through the Chairperson, on any matter relating to the implementation of the *Convention on Biological Diversity* and, in particular, on matters relating to commercial bioprospecting.

32. Bioprospecting to require permit A person who:

- (a) undertakes or attempts to undertake any biodiversity prospecting without a bioprospecting permit; or
- (b) exports or attempts to export any specimen obtained from biodiversity prospecting without a bioprospecting permit; or
- (c) imports or attempts to import any foreign organism that may have a significant adverse impact on Vanuatu's native flora or fauna without a bioprospecting permit; or
- (d) contravenes any law relating to the protection of Vanuatu's native flora and fauna;

is guilty of an offence punishable on conviction to a fine of not more than VT 1,000,000 or to imprisonment for a period of not more than 2 years, or both.

33. Application for bioprospecting permit (1) Any person wanting to undertake bioprospecting must apply in writing to the Director. (2) The application must be in such form as is approved by the Director and include the following:

- (a) the name and particulars of the applicant, including that of any associate, affiliate or party that may benefit or share in the research or obtain any benefit from such research;
- (b) a full and accurate description of the nature and extent of the research that is to be undertaken, and the area where such research will take place;
- (c) a description of the nature of any biological resource or traditional knowledge that is to be investigated;
- (d) a statement concerning the nature of the research to be undertaken, including an outline of the investigation and sampling methods to be used;
- (e) an outline of the nature, duration and extent of any expected commercial research and development plan that may result from the biodiversity prospecting;
- (f) a statement indicating whether any information in the application should be regarded as confidential;
- (g) and such other matters as the Director considers appropriate in the circumstance.

If the Director is satisfied that the application is complete, he or she must refer the application to the Council for determination.

34. Determination of application (1) The Council must meet within 21 days after receiving an application from the Director for the purpose of determining that application. (2) The Chairperson and at least 3 Council members must determine the application. (3) The Council must do one of the following:

- a) approve the application with or without terms and conditions;
- b) refer the matter back to the Director for further assessment or additional information;
- c) reject the application.

(4) The Director must advise the applicant in writing of the Council's decision within 14 days of the determination. (5) If the Council refers the matter back to the Director or rejects the

application, the written advice must state the reason for this. (6) Before making its decision, the Council must satisfy itself that:

- (a) a legally binding and enforceable contract is concluded with custom landowners, or any owner of traditional knowledge, concerning:
 - (i) rights of access; and
 - (ii) rights of acquisition of any biological resource or traditional knowledge; and
 - (iii) appropriate fees, concessions or royalties that will be charged for any research, or the acquisition of any biological resource or traditional knowledge, or for any commercial benefit that may be obtained; and
- (b) a research and investigation plan is completed by the applicant which outlines the nature of the research to be undertaken, the investigation and sampling method, and any specimens to be taken; and
- (c) a monitoring and auditing system is established to verify all activities undertaken by the applicant; and
- (d) any bond arrangements for damage or harm that may result from any non-compliance with the Government of Vanuatu are properly in place; and
- (e) the decision is consistent with all other Acts.

Division 2 – Community Conservation Areas

35. Identification of sites having national biodiversity significance

The Director may negotiate with custom landowners for the protection and registration of any site as a Community Conservation Area where he or she is satisfied that the site:

- (a) possesses unique genetic, cultural, geological or biological resources; or
- (b) constitutes the habitat of species of wild fauna or flora of unique national or international importance; or
- (c) merits protection under the Convention Concerning the Protection of World Cultural and Natural Heritage.

36. Director may provide assistance

If custom landowners agree to establish a Community Conservation Area, the Director may consult with and provide assistance to the landowners, chiefs and other interested parties to do all or any of the following:

- (a) review and evaluate the nature of any proposed Community Conservation Area;
- (b) accurately identify the area to be included in any proposed Community Conservation Area;
- (c) verify rights and interests in land that is to be included in the proposed Community Conservation Area;
- (d) identify and evaluate the conservation, protection and management options proposed.

37. Registration of Community Conservation Areas (1) If custom landowners agree to the formal protection of areas of biodiversity significance, these areas may be registered by the Director as Community Conservation Areas. (2) Before registering a Community Conservation Area, the Director must ensure that:

- (a) the objectives of the proposed Community Conservation Area are identified, and are in accordance with sound conservation practices; and
- (b) the boundaries of any proposed Community Conservation Area are accurately identified; and
- (c) consent and approval are

obtained from all persons having rights and interests in any land that is to be included in the proposed Community Conservation Area; and (d) an appropriate conservation, protection or management plan is developed for the area to ensure the achievement of identified conservation objectives.

(3) If the Director is satisfied that the requirements of subsection (2) have been met, he or she may register the proposed Community Conservation Area as a Community Conservation Area in the Environmental Registry, and issue a certificate of registration to the landowners.

38. Amendment to registered areas (1) A landowner may, at any time, apply in writing to the Director for a determination to do all or any of the following:

(a) cancel the registration of a Community Conservation Area, or any part of such area; (b) amend any established conservation, protection or management plan; (c) modify any area of the registered Community Conservation Area.

(2) Upon receiving an application from a landowner, the Director must consult with the landowner and other interested parties before determining the application.

(3) If the registration of the Community Conservation Area is cancelled, the Environmental Registry must be amended accordingly. (4) If any amendment is made to a Community Conservation Area, a new certificate of registration must be issued and the Environmental Registry amended accordingly. (5) Before modifying any Community Conservation Area, the Director must ensure that:

(a) the boundaries of any area to be added to or removed from a registered Community Conservation Area are accurately identified; and (b) agreement is obtained from all persons having rights and interests in any land to be added to the registered Community Conservation Area.

39. Effect of registration (1) The landowners, or the management committee formed by the landowners or Director for the purpose, are responsible for the development and implementation of any conservation, protection or management plan established for a registered Community Conservation Area. (2) The Director may provide technical or financial support to the landowners or any such management committee for the purpose of developing or implementing an appropriate conservation, protection or management plan. (3) If a registration is cancelled under sections 38 or 40, the Director must provide no further technical or financial support to the landowners.

40. Deregistration if plan not implemented If the conservation, protection or management plan for a Community Conservation Area is not implemented within the time agreed with the Director at the time of registration, he or she may, by notice in writing, cancel the registration of that Community Conservation Area and must remove it from the Environmental Registry.

PART 5 – OFFENCES

41. Offences A person who:

(a) provides false or misleading information, including any false or misleading report, under any requirement of this Act; or

(b) hinders or obstructs an officer or any person empowered to carry out any function or duty under this Act; or
(c) fails to give all reasonable assistance to any officer or any person empowered to carry out any function or duty under this Act; or (d) contravenes a term or condition of an approval, permit or notice issued under this Act; or (e) contravenes or fails to comply with any regulation, direction or order made under this Act; or (f) contravenes any term or condition of a registered community conservation area;

is guilty of an offence punishable on conviction to a fine of not more than VT 1,000,000 or to imprisonment for a period of not more than 2 years, or to both. **42. Continuing offence** Where an offence under this Act is committed or continues on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continues.

PART 6 – MISCELLANEOUS

43. Appeal to the Supreme Court

(1) A person may appeal to the Supreme Court against any decision made by the Minister or Director to do all or any of the following:

(a) to require an EIA under section 17; (b) to reject an application under section 23 or section 34; (c) to impose terms and conditions on any approval given under section 23 or section 34; (d) to issue a direction under section 26; (e) to make a decision prescribed by the regulations as a decision in respect of which an appeal can be made.

(2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow. (3) The Supreme Court may:

(a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Minister, Director or Council as may be necessary to give effect to the Court's decision; or (b) refer the matter back to the Minister, Director or Council with directions to reconsider the whole or any specified part of the matter.

44. Protection of officers, etc. An individual is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

45. Regulations (1) The Minister may make regulations to give effect to the purposes and provisions of this Act, including for all or any of the following:

(a) to establish criteria for the licensing of environmental practitioners and environmental laboratories or analytical facilities; (b) to prescribe and promote standards, guidelines or codes of environmental practice to give effect to any requirement under this Act; (c) to establish alternate dispute resolution processes for resolving environmental disputes, including the prescribing of criteria for the appointment of qualified persons to act as a mediator, arbitrator or facilitator; (d) to provide for the variation of any environmental assessment procedure; (e) to prescribe fees and charges in respect of any application made or service provided under this Act, including for the purpose of expert review of applications; (f) to control the taking or use of specified species;

(g) to provide for the registration of Community Conservation Areas; (h) to establish conditions or model agreements for bioprospecting.

(2) The Minister may make regulations with other Ministers, including for the purpose of any or all of the following:

(a) regulating the environmental effects of:

(i) the importation and transportation of hazardous substances; (ii) the proposed introduction of foreign organisms; (iii) pests and weeds; (iv) waste management; (v) air and water pollution;

(b) regulating the harvesting of marine resources; (c) providing for the containment, isolation, seizure, transportation, safe-keeping or disposal of any species of wild flora or fauna.

Comparison of Vanuatu Legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

Some of the common provisions are addressed. The scope of this Act extends beyond genetic resources per se and embraces environmental issues more generally. There are specific provisions addressing bioprospecting

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources		
2. definition of terms- key terms used in the draft	<p>2. Interpretation</p> <p>In this Act, unless the contrary intention appears:</p> <p>"authorised officer" means a person appointed under section 5;</p> <p>"biological diversity" means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;</p> <p>"biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity;</p> <p>"bioprospecting" means any activity undertaken to harvest or exploit all or any of the following:</p> <p>(a) samples of genetic resources; (b) samples of any derivatives of genetic resources; (c) the knowledge, innovations, and customary practices of local communities associated with those genetic resources;</p> <p>for purposes of research, product development, conservation or industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives; "conservation" includes the preservation and protection of natural resources and heritage; "Council" means the Biodiversity Advisory Council established under section 29; "Department" means the Department responsible for the environment; "Director" means the Director of the Department; "environment" means the components of the</p>	

	<p>earth and includes all or any of the following:</p> <p>(a) land and water;</p> <p>(b) layers of the atmosphere; (c) all organic and inorganic matter and living organisms; (d) the interacting natural, cultural and human systems that include components referred to in paragraphs (a) to (c);</p> <p>"environmental impact assessment" means the environmental impact assessment process as provided in Part 3, and "EIA" has a corresponding meaning; "Environmental Registry" means the registry established under section 6; "foreign organism" includes all stages of any life form not endemic or normally found in Vanuatu; "genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity; "genetic resources" means genetic material of actual or potential value; "land" includes land covered by water; "Minister" means the Minister responsible for the environment; "natural resources" includes all living and non-living, finite and renewable resources found within Vanuatu but does not include resources lawfully maintained for domestic or commercial purposes; "person" includes any statutory body, company or association or body of persons corporate or unincorporate; "project proponent" means the person whose signature appears, or is otherwise nominated, on any application form as being responsible for any project, proposal or development activity; "regulation" means a regulation made under this Act; "traditional knowledge" means any knowledge:</p> <p>(a) that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and (b) whose nature or use of which has been transmitted from generation to generation; and (c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu;</p> <p>"water" means all or any of the following:</p> <p>(a) water flowing or situated upon the surface of any land; (b) water flowing or contained in:</p> <p>(i) any river, stream, creek or other natural course for water; or (ii) any sea, lake, lagoon, bay, swamp, marsh or spring; whether or not it has been altered or artificially improved;</p> <p>(c) groundwater, including geothermal water; (d) any estuarine or coastal sea water.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>1. Application of this Act</p> <p>This Act applies throughout Vanuatu, including its lands, air and waters</p>	
4. beneficiaries- who should benefit	<p>35. Identification of sites having national biodiversity significance</p> <p>The Director may negotiate with custom landowners for the protection and registration of any site as a Community Conservation Area where he or she is satisfied that the site:</p> <p>(a) possesses unique genetic, cultural, geological or biological resources; or</p> <p>(b) constitutes the habitat of species of wild fauna or flora of unique national or international importance; or</p> <p>(c) merits protection under the Convention Concerning the Protection of World Cultural and Natural Heritage.</p> <p>36. Director may provide assistance</p> <p>If custom landowners agree to establish a Community Conservation Area, the Director may consult with and provide assistance to the landowners, chiefs and other interested parties to do all or any of the following:</p> <p>(a) review and evaluate the nature of any proposed Community</p>	

	<p>Conservation Area;</p> <p>(b) accurately identify the area to be included in any proposed Community Conservation Area;</p> <p>(c) verify rights and interests in land that is to be included in the proposed Community Conservation Area;</p> <p>(d) identify and evaluate the conservation, protection and management options proposed.</p> <p>37. Registration of Community Conservation Areas (1) If custom landowners agree to the formal protection of areas of biodiversity significance, these areas may be registered by the Director as Community Conservation Areas. (2) Before registering a Community Conservation Area, the Director must ensure that:</p> <p>(a) the objectives of the proposed Community Conservation Area are identified, and are in accordance with sound conservation practices; and (b) the boundaries of any proposed Community Conservation Area are accurately identified; and (c) consent and approval are obtained from all persons having rights and interests in any land that is to be included in the proposed Community Conservation Area; and (d) an appropriate conservation, protection or management plan is developed for the area to ensure the achievement of identified conservation objectives.</p> <p>(3) If the Director is satisfied that the requirements of subsection (2) have been met, he or she may register the proposed Community Conservation Area as a Community Conservation Area in the Environmental Registry, and issue a certificate of registration to the landowners.</p> <p>38. Amendment to registered areas (1) A landowner may, at any time, apply in writing to the Director for a determination to do all or any of the following:</p> <p>(a) cancel the registration of a Community Conservation Area, or any part of such area; (b) amend any established conservation, protection or management plan; (c) modify any area of the registered Community Conservation Area.</p> <p>(2) Upon receiving an application from a landowner, the Director must consult with the landowner and other interested parties before determining the application.</p> <p>(3) If the registration of the Community Conservation Area is cancelled, the Environmental Registry must be amended accordingly. (4) If any amendment is made to a Community Conservation Area, a new certificate of registration must be issued and the Environmental Registry amended accordingly. (5) Before modifying any Community Conservation Area, the Director must ensure that:</p> <p>(a) the boundaries of any area to be added to or removed from a registered Community Conservation Area are accurately identified; and (b) agreement is obtained from all persons having rights and interests in any land to be added to the registered Community Conservation Area.</p> <p>39. Effect of registration (1) The landowners, or the management committee formed by the landowners or Director for the purpose, are responsible for the development and implementation of any conservation, protection or management plan established for a registered Community Conservation Area. (2) The Director may provide technical or financial support to the landowners or any such management committee for the purpose of developing or implementing an appropriate conservation, protection or management plan. (3) If a registration is cancelled under sections 38 or 40, the Director must provide no further technical or financial support to the landowners.</p> <p>40. Deregistration if plan not implemented If the conservation, protection or management plan for a Community Conservation Area is not</p>	
--	---	--

	<p>implemented within the time agreed with the Director at the time of registration, he or she may, by notice in writing, cancel the registration of that Community Conservation Area and must remove it from the Environmental Registry.</p>	
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>	<p>33. Application for bioprospecting permit (1) Any person wanting to undertake bioprospecting must apply in writing to the Director. (2) The application must be in such form as is approved by the Director and include the following:</p> <ul style="list-style-type: none"> (a) the name and particulars of the applicant, including that of any associate, affiliate or party that may benefit or share in the research or obtain any benefit from such research; (b) a full and accurate description of the nature and extent of the research that is to be undertaken, and the area where such research will take place; (c) a description of the nature of any biological resource or traditional knowledge that is to be investigated; (d) a statement concerning the nature of the research to be undertaken, including an outline of the investigation and sampling methods to be used; (e) an outline of the nature, duration and extent of any expected commercial research and development plan that may result from the biodiversity prospecting; (f) a statement indicating whether any information in the application should be regarded as confidential; (g) and such other matters as the Director considers appropriate in the circumstance. <p>If the Director is satisfied that the application is complete, he or she must refer the application to the Council for determination.</p> <p>34. Determination of application (1) The Council must meet within 21 days after receiving an application from the Director for the purpose of determining that application. (2) The Chairperson and at least 3 Council members must determine the application.</p> <p>(3) The Council must do one of the following:</p> <ul style="list-style-type: none"> a) approve the application with or without terms and conditions; b) refer the matter back to the Director for further assessment or additional information; c) reject the application. <p>(4) The Director must advise the applicant in writing of the Council's decision within 14 days of the determination. (5) If the Council refers the matter back to the Director or rejects the application, the written advice must state the reason for this. (6) Before making its decision, the Council must satisfy itself that:</p> <ul style="list-style-type: none"> (a) a legally binding and enforceable contract is concluded with custom landowners, or any owner of traditional knowledge, concerning: <ul style="list-style-type: none"> (i) rights of access; and (ii) rights of acquisition of any biological resource or traditional knowledge; and (iii) appropriate fees, concessions or royalties that will be charged for any research, or the acquisition of any biological resource or traditional knowledge, or for any commercial benefit that may be obtained; and (b) a research and investigation plan is completed by the applicant which outlines the nature of the research to be undertaken, the investigation and sampling method, and any specimens to be taken; and (c) a monitoring and auditing system is established to verify all activities undertaken by the applicant; and (d) any bond arrangements for damage or harm that may result from any non-compliance with the Government of Vanuatu are properly in place; 	

	and (e) the decision is consistent with all other Acts.	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building		
7. Sanctions and remedies- dealing with breaches	32. Bioprospecting to require permit A person who: (a) undertakes or attempts to undertake any biodiversity prospecting without a bioprospecting permit; or (b) exports or attempts to export any specimen obtained from biodiversity prospecting without a bioprospecting permit; or (c) imports or attempts to import any foreign organism that may have a significant adverse impact on Vanuatu's native flora or fauna without a bioprospecting permit; or (d) contravenes any law relating to the protection of Vanuatu's native flora and fauna; is guilty of an offence punishable on conviction to a fine of not more than VT 1,000,000 or to imprisonment for a period of not more than 2 years, or both.	
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	3. Director appointed (1) A Director of the Department is to be appointed under the Public Service Act [Cap. 246]. (2) The Director is accountable to the Public Service Commission for the efficient and effective administration of this Act. (3) The Director must advise and assist the Minister in all matters relating to this Act. 4. Functions of the Director (1) The Director is responsible for the development, co-ordination and, where appropriate, implementation of the Government's environmental policies and programs. (2) In carrying out the functions outlined in subsection (1), the Director must do the following: (a) administer the Environmental Registry established under section 6; (b) prepare State of the Environment Reports under section 7; (c) prepare National Policies and National Plans under section 8; (d) administer the Environmental Impact Assessment procedure under Part 3; (e) prepare guidelines, standards, codes of practice and procedures; (f) prepare advice on international environmental treaties and instruments, including implementation strategies; (g) undertake environmental research, assessment, monitoring, and inspection generally; (h) undertake such other duties and responsibilities as may lawfully be required by the Minister. (3) The Director may carry out any duty, function or responsibility under this Act in association with any other Government Ministry, Department, Agency, local government or municipal council. 5. Powers of the Director (1) The Director has the powers conferred by this Act, and such other powers as may be necessary or convenient for the performance of the Director's functions under this Act, including: (a) the appointment of persons not employed by the Department as authorised officers for the purpose of administering this Act; and (b) the establishment of committees for the purpose of ensuring better	

	<p>inter-departmental and inter-agency co-ordination on particular environmental matters.</p> <p>(2) The Director must consult with the Public Service Commission and such local government or municipal council as is appropriate before appointing any authorised officer under subsection (1)(a). (3) The Director must consult with the Minister before establishing any committee under subsection (1) (b). (4) The powers, duties and responsibilities of any person appointed under subsection (1) (a) or any committee established under subsection (1) (b) must be stated in any instrument of appointment or establishment. (5) The Director may delegate to officers of the Department and any authorised officers appointed under subsection (1) (a), such powers and functions as he or she considers appropriate, with the exception of this power of delegation.</p> <p>29. Establishment of Biodiversity Advisory Council (1) The Biodiversity Advisory Council is established. (2) The Director is the Chairperson of the Council, and the Department is to provide administrative support to the Council. (3) The Minister, in consultation with the Director, may appoint up to 5 additional members to the Council, on merit and for such terms, not exceeding three years, as he or she determines, taking into account:</p> <p>(a) the scientific, custom and technical needs of the Council; and (b) the nature of the legal and commercial issues likely to be involved; and (c) the volume of relevant bioprospecting applications; and (d) any other relevant matters.</p> <p>(4) The Council is to meet as the Director requires but must meet at least twice every year. (5) The Council is to regulate its own procedures. (6) Members of the Council may be reappointed for a further term or terms.</p> <p>30. Other terms and conditions</p> <p>The Minister is to determine, on the recommendation of the Director, the other terms and conditions of appointment of the additional members of the Council.</p> <p>31. Functions of the Council</p> <p>The Council is responsible for advising the Minister, through the Chairperson, on any matter relating to the implementation of the <i>Convention on Biological Diversity</i> and, in particular, on matters relating to commercial bioprospecting.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in	<p>6. Establishment of Environmental Registry (1) The Director must establish, operate and maintain an Environmental Registry of all records</p>	

intellectual property applications	<p>relating to:</p> <p>(a) environmental impact assessment documentation provided under Part 3; and</p> <p>(b) applications, permits and approvals required or issued under this Act; and</p> <p>(c) regulations, standards, guidelines or codes of environmental practice established under this Act; and</p> <p>(d) National State of the Environment Reports prepared under section 7; and</p> <p>(e) National Policies and National Plans prepared under section 8; and</p> <p>(f) Community Conservation Areas registered under section 37; and</p> <p>(g) international environment and conservation treaties and instruments to which Vanuatu is a party; and</p> <p>(h) such other matters as may be prescribed by regulation.</p> <p>(2) All material entered in the Environmental Registry must be lodged with the Department in a physical or electronic form, and be available for public inspection during normal working hours. (3) If the Director determines that any registered material is commercially or culturally sensitive, he or she may classify that material, including any part of any material, as confidential and stipulate the terms and conditions, if any, on which any person can access that material. (4) The Minister on the advice of the Director may, by order, prescribe a system of fees and charges for the purpose of recovering any operational costs arising from requests for copies of material held in the Environmental Registry.</p> <p>7. Preparation of National State of the Environment Reports (1) The Director must prepare and publish a National State of the Environment Report at least once every 10 years following the commencement of this Act. (2) A National State of the Environment Report must include all of the following:</p> <p>(a) an assessment of the state of all natural resources;</p> <p>(b) a review of the current use of natural resources;</p> <p>(c) an assessment of the quality of Vanuatu's environment;</p> <p>(d) an assessment of social and economic development trends and their likely impact upon the environment;</p> <p>(e) a summary of government and private sector policies, programs and initiatives to address and monitor environmental management and conservation issues;</p> <p>(f) such other matters as the Minister considers appropriate.</p> <p>(3) A National State of the Environment Report must be submitted to the Minister for approval, and a copy of any such report must be lodged in the Environmental Registry.</p> <p>8. Development of National Policies and National Plans If the Minister determines that a National Policy or National Plan is required for the conservation, sustainable development and management of the environment, the Director must prepare the National Policy or National Plan.</p>	
12. interaction with existing laws- avoiding conflict with other laws		
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		

14. transitional provisions-existing uses		