ACCESS AND BENEFIT-SHARING OF BIOLOGICAL DIVERSITY ACT, 2022

No. 37 **of 2022**

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SCHEDULES

An Act to give effect in Botswana to the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity; to provide for the establishment of administrative structures and processes for access to biological or genetic resources and associated traditional knowledge; to regulate access to biological or genetic resources and associated knowledge; to protect the rights of the local communities over biological or genetic resources and associated traditional knowledge; to provide for a fair and equitable sharing of benefits accrued from the utilisation of biological or genetic resources and associated traditional knowledge; and to provide for related matters.

*Date of Assen*t: 29.09.2022
Date of Commencement: ON NOTICE
ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Access and Benefit-Sharing of Biological Diversity Act, 2022 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

"access authorisation" means an authorisation issued to a user by the Competent National Authority for the utilisation of biological or genetic resources or associated traditional knowledge;

"access permit" means a permit required under section 21 for access to biological or genetic resources or associated traditional knowledge;

"associated traditional knowledge" means a body of knowledge, innovation and practice passed from generation to generation in a community, that is linked to genetic resources by a knowledge holder;

"Authority" means an institution or a Department of Government charged with the authority to issue an access permit, and includes —

(*a*) the Department responsible for wildlife and national parks; and

(*b*) the Department responsible for forestry and range resources;

"biological diversity" means the —

(*a*) variability among any living organism from any source including, amongst other things, terrestrial, marine, any other aquatic ecosystem and the ecological complexes which are part of the organisms; and

(*b*) diversity within species, between species and ecosystems;

"biological resources" includes genetic resources, organisms or part of an organism, or populations;

"bioprospecting" means the research on, and collection and utilisation of, biological or genetic resources for purposes of applying the knowledge derived from such research, collection and utilisation for commercial purposes;

"biotechnology" means any technological application that uses biological system, living organism or derivatives thereof to make or modify a product or process for specific use;

"Committee" means the Implementation Committee on Access and Benefit-Sharing established under section 9;

"Competent National Authority" means the Competent National Authority designated under section 5;

"derivative" means a biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity;

"entity" means any office, organisation, institution, association, establishment or body created by or under any enactment or under powers conferred by any enactment, and includes a company registered under the Companies Act;

Cap. 42:01

"*ex situ* biological or genetic resources" means the biological or genetic resources found outside their natural ecosystem or habitat;

"gene sequence" means the decipherable expression of the order of nucleotides in deoxyribonucleic acid, regardless of the medium of expression;

"genetic information" means the inherent information contained in the biological or genetic resources, including a derivate of the biological or genetic resources, regardless of the medium in which the information is stored;

"genetic resources" means any material of actual or potential value, and of plant, animal, microbial or other origin containing functional units of heredity and the derivatives of such material;

"*in situ* biological or genetic resources" means the biological or genetic resources found within their natural ecosystem and habitats;

"local community" means units of the community, including individuals, families and, similar interest groups and those living in the same geographical location having a right or interest in biological or genetic resources or associated traditional knowledge;

"material transfer agreement" means an agreement between the concerned parties, for the transfer of biological and genetic materials, or associated traditional knowledge, and includes the setting of conditions thereof;

"mutually agreed terms" means the terms agreed upon by the user and the provider on the permitted or restricted utilisation of biological or genetic resources and associated traditional knowledge, and includes subsequent benefit-sharing arrangements;

"prior informed consent" means the consent obtained by the applicant from the local community or provider of traditional knowledge or Competent National Authority after fully disclosing the intent and scope of the proposed activity before that activity is carried out;

"provider" means the party providing a biological or genetic resource or owner of associated traditional knowledge;

"traditional knowledge" means the knowledge, innovation and practices of the local community related to biological or genetic resources;

"user" means a person who, for the purpose of utilisation, is granted authorisation in terms of this Act to use biological or genetic resources or associated traditional knowledge; and

"utilisation of biological or genetic resources" means to conduct research and development on the genetic or biochemical composition of biological or genetic resources, their derivatives, genetic information or gene sequence arising from the utilisation, including the application of biotechnology.

Application of Convention on Biological Diversity and Nagoya Protocol

3. Subject to this Act, the Articles under the Convention on Biological Diversity set out in Schedule 1 and Articles under the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity set out in Schedule 2 and their successor articles shall have the force of law in Botswana in relation to access to, and the sharing of benefits arising from the utilisation of, biological or genetic resources or associated traditional knowledge.

Application of Act

4. Notwithstanding section 3, this Act shall apply to—

(*a*) the utilisation of the *in situ* biological or genetic resources or *ex situ* biological or genetic resources;

(*b*) the utilisation of the derivative of biological or genetic resources;

(*c*) the utilisation of associated traditional knowledge;

(*d*) the genetic information or gene sequence arising from the utilisation of biological or genetic resources;

(*e*) a benefit arising from the utilisation of biological or genetic resources;

(*f*) a benefit arising from the utilisation of genetic information or gene sequences;

(*g*) a benefit arising from the utilisation of the derivatives of biological or genetic resources;

(*h*) a benefit arising from the utilisation of associated traditional knowledge; and

(*i*) a benefit arising from subsequent application and commercialisation arising from the utilisation of biological or genetic resources and associated traditional knowledge.

PART II — *Establishment and Functions of Competent National Authority, National Focal Point, and Implementation Committee on Access and Benefit-Sharing*

Competent National Authority

5. The Department responsible for environmental affairs is hereby designated as the Competent National Authority.

Functions of Competent National Authority

6. (1) The Competent National Authority shall —

(*a*) issue access authorisation for the utilisation of the biological or genetic resources or associated traditional knowledge, as applicable;

(*b*) facilitate —

(i) the granting of access to biological or genetic resources and associated traditional knowledge, or

(ii) where applicable, the issuing of written evidence that access requirements have been met;

(*c*) receive applications for the utilisation of biological or genetic resources, and associated traditional knowledge; and

(*d*) make available to the Access and Benefit-sharing Clearing House mechanism, a copy of a duly issued access authorisation to enable the issuance of an internationally recognised certificate of compliance as may be prescribed.

(2) The Competent National Authority shall carry out its functions under subsection (1) (*a*) through the Committee established under section 9.

National record system

7. (1) The Competent National Authority shall keep and maintain a national record system through which an owner of associated traditional knowledge shall register a claim of a right over the associated traditional knowledge.

(2) The information in the national record system shall —

(*a*) constitute a unique form of intellectual property; and

(*b*) enjoy the protection of any law related to intellectual property.

(3) The Minister may prescribe for the requirements to register a claim of a right over associated traditional knowledge and to access the national record system under subsection (1).

(4) The national record system shall be accessed upon payment of a prescribed fee.

National Focal Point

8. (1) The Competent National Authority shall designate a National Focal Point amongst the officers of the Competent National Authority and the National Focal Point shall —

(*a*) ensure that any information is made available to a person who seeks to —

(i) access biological or genetic resources,

(ii) access information on procedures for obtaining prior informed consent to access biological or genetic resources, and

(iii) establish mutually agreed terms;

(*b*) ensure that any information is made available to a person who seeks to —

(i) access traditional knowledge associated with genetic resources,

(ii) access information on procedures for obtaining prior informed consent of a local community, and access traditional knowledge associated with genetic resources, and

(iii) enter into mutually agreed terms including benefit-sharing;

(*c*) keep and maintain any information on the Competent National Authority, Authority and a local community;

(*d*) serve as a liaison between the Government and the Secretariat; and

(*e*) serve as a signatory for any correspondence pertaining to access and benefit-sharing.

(2) For purposes of subsection (1) (*d*), "Secretariat" means the Secretariat of the Convention on Biological Diversity.

Implementation Committee on Access and Benefit-Sharing

9. (1) The Minister shall establish an Implementation Committee on Access and Benefit-Sharing.

(2) The functions of the Committee shall be to —

(*a*) assess an application for any permit or authorisation made in terms of this Act, before approval;

(*b*) assess an application for a prior informed consent and determine if such application meets the requirements for the prior informed consent;

(*c*) assess whether an authorisation should be amended, transferred, suspended or revoked;

(*d*) decide on matters relating to the prohibition from accessing and utilising biological or genetic resources or associated traditional knowledge;

(*e*) negotiate mutually agreed terms, their amendment or any other ancillary functions associated with the conclusion, implementation or discontinuance of the mutually agreed terms;

(*f*) with a written consent of a provider of traditional knowledge —

(i) assist the provider of traditional knowledge in the negotiation of mutually agreed terms,

(ii) negotiate mutually agreed terms on behalf of the provider of traditional knowledge, or

(iii) conclude and enter into mutually agreed terms with a user for the benefit of the provider of the traditional knowledge;

(*g*) recommend to the Competent National Authority, any matter related to the Committee's functions; and

(*h*) advise the Competent National Authority on matters concerning the protection of unregistered traditional knowledge.

(3) The members of the Committee shall be appointed by the Minister and shall consist of —

(*a*) a Chairperson of the Committee, who shall be the Director of the Department responsible for environmental affairs;

(*b*) a Vice Chairperson of the Committee, who shall be elected by the members from amongst themselves;

(*c*) an attorney from the Attorney General's Chambers, who shall be an *ex-officio* member;
(*d*) one member from the Botswana Council for Non-Governmental Organisations;
(*e*) one member from a statutory body;
(*f*) one member from the research community;
(*g*) one member from the general public with expertise in matters related to traditional knowledge; and
(*h*) two members from Government departments responsible for wildlife and range resources.

(4) The Minister may appoint other persons to sit in the Committee as alternates to the substantive members of the Committee appointed under subsection (3).

(5) The Minister shall, by notice in the *Gazette*, publish the appointment of members and their alternates, specifying the dates of their appointment and the period for which they are appointed to the Committee.

Tenure of office

10. (1) A member shall hold office for a period not exceeding five years as may be specified in the notice appointing the member, and on the expiration of that period shall be eligible for re-appointment.

(2) In appointing members, the Minister shall so specify such periods of appointment such that the period of appointment of not more than one third of the members shall expire in any one year.

Disqualification

11. A person shall not be appointed as a member or shall not continue to hold office, who —

(*a*) has, in terms of a law in force in any country —
(i) been adjudged or otherwise declared bankrupt and has not been discharged, or
(ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;
(*b*) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted —
(i) of a criminal offence within Botswana, or
(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,
and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon;
(*c*) is a member of the National Assembly or *Ntlo ya Dikgosi*; or
(*d*) is a Councillor.

Removal of member

12. (1) The Minister may remove a member from office where the member —

(*a*) has been found to be physically or mentally incapable of performing his or her duties efficiently and a medical doctor has issued a certificate to that effect;

(*b*) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the functions of the Committee;

(*c*) has failed to comply with provisions of section 14 (1) or 38; or

(*d*) has been convicted of an offence under the Act or any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

(2) A member may resign from the Committee by giving 30 days' notice, in writing, to the Minister.

(3) The office of a member shall become vacant —

(*a*) if he or she is disqualified in terms of section 11;

(*b*) if he or she is adjudged bankrupt or insolvent;

(*c*) if he or she is absent from three consecutive meetings of the Committee without reasonable excuse;

(*d*) upon his or her death;

(*e*) upon the expiry of such time as the Minister may specify in writing, notifying the member of his or her removal from office by the Minister;

(*f*) upon the expiry of one month's notice in writing to the Minister of his or her intention to resign from office;

(*g*) if he or she becomes physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;

(*h*) if he or she is convicted of an offence under the Act or any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine; or

(*i*) if he or she is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act.

Filling of vacancy

13. (1) Where the office of a member becomes vacant before the vacancy of the member's term of office, the Minister shall appoint any other person who qualifies to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Conduct and disclosure of interest

14. (1) A member of the Committee shall not —

(*a*) engage in any activity that undermines the integrity of the Committee;

(*b*) unless the Committee otherwise directs, participate in making any decision of the Committee in respect of which the member has a direct or indirect financial or other personal interest in a private capacity; or

(*c*) use any confidential information obtained in the performance of the member's functions as a member to obtain, directly or indirectly, a financial or other benefit for that member or any other person.

(2) Every member shall —

(*a*) forthwith after the member's appointment, disclose in writing to the Minister, any direct or indirect financial interest which the member has in any business carried on in Botswana or elsewhere;

(*b*) disclose in writing to the Minister, any direct or indirect financial interest which the member acquires in any business carried on in Botswana or elsewhere, as soon as is practicable after the member acquires such financial interest; and

(*c*) at any meeting of the Committee at which any matter which is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, forthwith upon the commencement of the meeting, disclose such interest and shall not, take part in any consideration or discussion of, or vote on, any question concerning that matter, unless the Committee directs otherwise.

(3) A disclosure of interest made under subsection (2) (*c*) shall be recorded in the minutes of the meeting at which it is made.

(4) Where a member fails to disclose his or her interest in accordance with subsection (2) and the Committee makes a decision which benefits that member, that decision shall be void to the extent to which it benefits the member.

(5) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P30 000 or to a term of imprisonment not exceeding two years, or to both.

Proceedings of Committee

15. (1) Subject to the provisions of this Act, the Committee shall regulate its own proceedings.

(2) The Committee shall meet as often as is necessary or expedient for the discharge of its functions, which shall not be less than twice a year.

(3) Meetings of the Committee shall be held at such places and times as the Committee may determine and shall be convened by the Chairperson or, in the absence of the Chairperson, the Vice Chairperson of the Committee.

(4) The Chairperson may convene a special meeting of the Committee within seven days of receipt of a special request in writing from at least four members for such special meeting to be held.

(5) There shall preside at any meeting of the Committee —

(*a*) the Chairperson;

(*b*) in the absence of the Chairperson, the Vice Chairperson; or

(*c*) in the absence of the Chairperson or the Vice Chairperson, such member as the members present may elect from among themselves for the purpose of that meeting.

(6) A decision of the Committee on any matter shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to the Chairperson's deliberative vote.

(7) At any meeting of the Committee, a quorum shall be constituted by not less than one half of the members.

(8) The Chairperson of the Committee shall cause proper minutes of the meetings of the Committee to be taken and recorded.

(9) The minutes of each meeting of the Committee under subsection (8) shall be kept and confirmed by a subsequent meeting of the Committee.

Validity of decisions

16. An act, decision or proceeding of the Committee shall not be invalid on account of —

(*a*) the appointment of any member being defective; or

(*b*) the Committee having consisted of less than the number of people provided for under section 9 (3), if the act was done, or the decision was made, or the proceedings took place, in accordance with a majority vote of the persons who were at the time entitled to act as members.

Co-opted members

17. (1) The Committee may, in its discretion, invite any person whose presence it deems necessary to attend and participate in the deliberations of any meeting of the Committee, but such person shall not vote.

(2) Sections 14 and 38 shall, with the necessary modifications, apply to a co-opted member.

Remuneration

18. A member shall be paid such remuneration and such travelling expenses incurred in connection with his or her service to the Committee, if any, as the Minister may determine.

PART III — *Access to, and Utilisation of Biological or Genetic Resources and Associated Traditional Knowledge*

Prior informed consent

19. (1) A person who intends to utilise biological or genetic resources or the associated traditional knowledge for scientific research with commercial intent or commercialisation including industrial application, and for bioprospecting purposes, or for any other use as may be prescribed under section 22 (1) (*c*) shall obtain a prior informed consent from the —

(*a*) Competent National Authority; and

(*b*) concerned associated traditional knowledge right provider, including a local community, as may be applicable.

(2) A person who intends to utilise biological or genetic resources or the associated traditional knowledge shall, in such form and upon payment of such fee as may be prescribed, apply for a prior informed consent through the National Focal Point who shall direct the application to the Competent National Authority or the traditional knowledge provider, where applicable.

(3) The Competent National Authority or the traditional knowledge provider, where applicable, shall, where it is satisfied that an applicant meets the requirements for the issuance of a prior informed consent to utilise biological or genetic resources under this Act, issue to the applicant, a prior informed consent in such form and upon payment of such fee, as may be prescribed.

(4) The Competent National Authority or traditional knowledge provider may decline an application under this section to consent to the utilisation of the biological or genetic resources or associated traditional knowledge.

(5) Where a traditional knowledge provider has declined to consent to an application under this section to the utilisation of the associated traditional knowledge in terms of subsection (4), the Competent National Authority shall not issue a prior informed consent to an applicant for the utilisation of the associated traditional knowledge.

Additional requirements after issuance of prior informed consent

20. The Competent National Authority may, when issuing a prior informed consent, require an applicant to apply for an access permit or any other permit that may be required, and enter into a material transfer agreement with the provider, where applicable, in order to obtain an access authorisation to utilise the biological or genetic resources or associated traditional knowledge.

Access Authorisation required

21. (1) A person shall not utilise biological or genetic resources or associated traditional knowledge for scientific research with commercial intent or commercialisation including industrial application and bioprospecting purposes, or for any other use as may be prescribed under section 22 (1) (*c*) —

Cap. 35:06
Cap. 38:01
Cap. 38:03

(*a*) unless he or she has an access permit issued by an Authority in accordance with the Agricultural Resources Conservation Act, Wildlife Conservation and National Parks Act or Forest Act, through the Competent National Authority;

(*b*) unless he or she has obtained a prior informed consent in accordance with this Act; and

(*c*) without an access authorisation of the Competent National Authority.

(2) A person who contravenes subsection (1) commits an offence and is liable —

(*a*) in the case of a person who is an individual, to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both; or

(*b*) in the case of a person who is an accounting officer of an entity, to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding 20 years, or to both.

(3) In the case of a continuing offence, the offender shall be liable to a fine of P2 000 for every day on which the offence continues to be committed after he or she was first notified of the offence, but such fine shall not exceed P200 000.

Application for access authorisation to utilise biological or genetic resources or associated traditional knowledge

22. (1) A person who, after obtaining prior informed consent, intends to utilise biological or genetic resources or associated traditional knowledge shall apply to the Competent National Authority for an access authorisation to utilise the biological or genetic resources or associated traditional knowledge for purposes of —

(*a*) scientific research with a commercial intent;

(*b*) commercialisation, including industrial application and bioprospecting; and

(*c*) any other use as the Minister may prescribe.

(2) The Competent National Authority shall, when considering an application made in terms of subsection (1), where an access permit or any other permit is required, inform the applicant and forward the application to an Authority for processing in accordance with the Agricultural Resources Conservation Act, Wildlife Conservation and National Parks Act or Forest Act.

(3) Notwithstanding anything contained in any other law, an Authority shall, when considering an application made in terms of subsection (1), exercise its discretion in deciding whether to issue an access permit or any other permit, or not.

(4) An Authority shall submit its decision made in terms of subsection (3) to the Competent National Authority, and where the Authority has issued an access permit or any other permit, the access permit or any other permit shall form part of the mutually agreed terms to be entered into between the provider and the user.

(5) The Competent National Authority may, where it deems necessary, before it gives an access permit or any other permit issued by an Authority for purposes of this Act, to an applicant, require the applicant under this section to carry out an environmental impact assessment or an environmental impact study in accordance with the Environmental Assessment Act.

Cap. 65:07

Utilisation and benefit-sharing

23. (1) A person who intends to utilise biological or genetic resources or associated traditional knowledge for scientific research with a commercial intent, commercialisation including industrial application and bioprospecting, shall enter into mutually agreed terms to provide for a benefit-sharing agreement with the provider.

(2) The Minister may prescribe for the conditions and minimum standards which shall be observed by the parties to a benefit-sharing agreement under this section.

(3) A person who intends to utilise biological or genetic resources or associated traditional knowledge in accordance with subsection (1) shall ensure that a fair and equitable share of benefits from the utilisation of the biological or genetic resources or associated traditional knowledge benefits the provider of such biological and genetic resources or associated traditional knowledge.

(4) A benefit referred to under subsection (3) may include both monetary and non-monetary benefit and includes —

(*a*) in the case of a monetary benefit —

(i) access fee per sample collected or acquired,

(ii) up-front payment,

(iii) milestone payment,

(iv) payment of royalty,

(v) licence fees in case biological or genetic resources are to be utilised for commercialisation,

(vi) fees to be paid to trust funds supporting conservation and sustainable use of biodiversity,

(vii) salaries on preferential terms where mutually agreed upon,

(viii) research funding,

(ix) joint ventures, and

(x) ownership of the relevant intellectual property right; and

(*b*) in the case of a non-monetary benefit —

(i) sharing of research and development results,

(ii) collaboration, co-operation and contribution in scientific research and development programmes including biotechnological research activities,

(iii) participation in product development,

(iv) admittance to an *ex situ* biological and genetic resources facility and to databases by a participating institution,

(v) sharing of knowledge under fair and favourable terms, including concessional and preferential terms where agreed, in particular, knowledge and technology that make use of biological or genetic resources, or that are relevant to the conservation and sustainable utilisation of biological diversity,

(vi) developing capacities for technology transfer to Botswana,

(vii) institutional capacity building,

(viii) developing human and material resources to strengthen the capacities for the administration and enforcement of this Act,

(ix) access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventory and taxonomic study,

(x) institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activity,

(xi) employment opportunities,

(xii) a contract to supply the raw material in respect of the biological or genetic resources required to produce a commercial product,

(xiii) preferential access to technology developed from biological or genetic resources or associated traditional knowledge,

(xiv) training, both at institutional or local community level, to enhance local skills in biological and genetic resources conservation, evaluation, development, propagation and use, and

(xv) provision of equipment, infrastructure and technology support.

Issuance of access authorisation

24. (1) The Competent National Authority shall, where it is satisfied that an application for an access authorisation to utilise biological or genetic resources or associated traditional knowledge meets the requirements for the issuance of the access authorisation and mutually agreed terms have been entered into, issue such access authorisation in such form and upon payment of a fee as may be prescribed.

(2) An access authorisation issued in terms of this section shall, unless previously revoked, be valid for the duration of the mutually agreed terms.

(3) Subject to subsection (2), an application to amend, transfer, suspend or revoke an access authorisation shall be made in such form and upon payment of such fee as may be prescribed.

Duplicate access permit or any other permit

25. An applicant under section 22 who has obtained an access permit or any other permit issued for purposes of this Act may apply to an Authority through the Competent National Authority in such form and upon payment of such fees, as may be prescribed, for a duplicate of a permit where the applicant has lost the access permit or any other permit, or such access permit or any other permit is destroyed or mutilated.

Transfer of access permit or any other permit

26. (1) An applicant under section 22 who has obtained an access permit or any other permit issued for purposes of this Act may apply to an Authority through the Competent National Authority in such form and upon payment of such fees as may be prescribed for the access permit or any other permit to be transferred to another person.

(2) Without prejudice to the generality of subsection (1), an Authority may transfer a permit where —

(*a*) the permit holder has died, to his or her heir or beneficiary, on a written application by an executor named in the will of the deceased permit holder or any person appearing to the Authority to be entitled to take out letters of administration;

(*b*) the permit holder has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, to his or her trustees, on a written application by the liquidator of the permit holder's institution or business;

(*c*) the permit holder becomes the subject of any legal disability, to his or her legal representative, upon a written application by such legal representative; or

(*d*) a person acquires the institution or business for which a permit is issued or acquires a controlling interest in that institution or business, to that person, upon a written application by the owners of such institution or business.

(3) An Authority shall not issue the transfer of a permit where it has reason to believe that as a result of that transfer, a person who is disqualified from acquiring the permit under this Act would acquire it.

Emergency access authorisation

27. (1) The Minister may, acting on the advice of the Committee, issue an emergency access authorisation to a user where the Minister determines that special considerations ought to be made in a case of a present or imminent emergency that may threaten, or damage human, animal or plant health as the case may be.

(2) The Minister may, when issuing an emergency access authorisation referred to under subsection (1), consider the need for expeditious access to biological or genetic resources or associated traditional knowledge and expeditious fair and equitable sharing of benefits arising out of the use of such biological or genetic resource, or associated traditional knowledge.

Material transfer agreement

28. (1) A person shall not transfer or export biological or genetic resources or the associated traditional knowledge to another person without —

(*a*) an access permit and any other permit that may be required, which shall be issued for purposes of this Act; and

(*b*) entering into a material transfer agreement with the provider.

(2) A material transfer agreement shall provide for the terms, conditions and the minimum standards, as may be prescribed.

(3) A material transfer agreement shall not substitute the mutually agreed terms where utilisation is intended or carried out.

(4) Where there is transfer of material or knowledge from a provider in a case of a sample analysis by a third party who is not party to a mutually agreed terms agreement, the provider and the third party shall conclude a material transfer agreement.

Trans-boundary access and benefit-sharing arrangements

29. (1) The Competent National Authority shall, where biological or genetic resources or associated traditional knowledge, which is the subject of utilisation, is shared between Botswana and another country, enter into a trans-boundary access and benefit-sharing arrangement with a competent national authority of the other country through an established bilateral, regional or international platform.

(2) Where a benefit-sharing referred to under subsection (1) involves a local community in relation to traditional knowledge, the Competent National Authority shall assume a facilitative role in the negotiation and conclusion of a trans-boundary access and benefit sharing arrangement between the user and the provider of the traditional knowledge.

PART IV — *Rights Over Biological or Genetic Resources and Associated Traditional Knowledge, and Protection of Local Community Intellectual Property Rights*

Rights of State

30. (1) Notwithstanding anything contained in this Act, any right in relation to the —

(*a*) access to;
(*b*) collection and sale or disposal of; and
(*c*) exercise of control over,
biological or genetic resources shall vest in the State.

(2) Unless otherwise agreed by the parties, in the case of mutually agreed terms, the State shall retain the ownership of —
(*a*) any intellectual property right derived from the utilisation of the biological or genetic resources or associated traditional knowledge;
(*b*) the biological or genetic resources;
(*c*) the derivatives of the biological or genetic resources; and
(*d*) the sequenced information based on the biological or genetic resources.

Rights of local communities

31. A local community shall have the right to —
(*a*) ownership of traditional knowledge associated with biological or genetic resources;
(*b*) use biological or genetic resources or associated traditional knowledge, within such local community, in the course of sustaining the livelihood system of, conservation and sustainable use of biological diversity by, the local community; and
(*c*) share a benefit arising from the utilisation of biological and genetic resources, or associated traditional knowledge.

Protection of local community intellectual property rights

32. (1) The State shall recognise and protect a local community intellectual property right as enshrined and protected under the norms, practices and customary law found in, and recognised by, the concerned local community, whether written or unwritten.

(2) An item of traditional knowledge shall be identified, interpreted and ascertained in accordance with traditional practices or customary law.

(3) A traditional knowledge that is not registered does not render the traditional knowledge unprotected as a local community intellectual property right, and such traditional knowledge shall remain protected as part of the local community-owned traditional knowledge.

(4) A publication of any written or oral description of a genetic resource or associated traditional knowledge, or the presence of genetic resources in a gene bank or any other collection locally or internationally, or its local use, may not prevent a local community from exercising its local community intellectual property right in relation to the genetic resources.

Rights of farmers

33. A farmer shall have the right to —
(*a*) save, use and exchange, or sell, a farm-saved seed for propagation; and
(*b*) preserve and develop genetic resources and associated traditional knowledge for food production and agriculture.

PART V — *Promotion of Research and Development*

Promotion of research and development

34. (1) A local community or a research institution may utilise biological or genetic resources or associated traditional knowledge for the development of new knowledge or innovation to produce quality goods and services.

(2) A person shall ensure that any research and development initiative under subsection (1) incorporates the engagement of a local community in the identification of biological or genetic resources or associated traditional knowledge, and product development from the conceptualisation stage of the research and development initiative.

(3) A research institution shall develop a mechanism that the research institution shall use to work with a local community for product and technology development, human capital development and commercialisation, related to any genetic or biological resources or associated traditional knowledge under the control of the local community.

(4) The result of a research which is patentable or has the potential to be an intellectual property shall not be published without the negotiation and prior consent with the provider, on how the patentability or the intellectual property right will be dealt with.

(5) A person who has a valid access authorisation shall submit a report on the status of a research and development relating to the biological and genetic resources being utilised, to the Competent National Authority and an Authority.

PART VI — *Checkpoints*

Checkpoints

35. (1) The Competent National Authority shall designate a checkpoint for the purpose of monitoring and tracking authorisation to the biological and genetic resources or associated traditional knowledge.

(2) A checkpoint designated in terms of subsection (1) shall be a relevant institution involved in the —

(*a*) utilisation of biological or genetic resources; or

(*b*) collection of relevant information at any stage of a research, development, innovation, pre-commercialisation or commercialisation.

(3) A checkpoint under subsection (1) shall be responsible —

(*a*) for the collection or receipt, from a user of the biological or genetic resources, of —

(i) the internationally recognised biological or genetic resources certificates of compliance, where available,

(ii) any relevant information related to prior informed consent, and

(iii) the source of the biological or genetic resources;

(*b*) for checking for proof of whether a person has entered into mutually agreed terms or not;

(*c*) for the submission of any information collected in terms of this subsection to the Competent National Authority, National Focal Point or an Authority; and

(*d*) for the refusal of any request from a user where the user fails to —

(i) provide information to the checkpoint in terms of this subsection, or

(ii) demonstrate compliance with the requirements of a provider.

PART VII — *Investigating Officers*

Investigating officers

36. (1) The Minister shall, by Order published in the *Gazette*, appoint and authorise such investigating officers who shall be identified with an authority card issued by the Competent National Authority, to carry out the powers under subsection (2).

(2) Subject to subsection (3), an investigating officer appointed and authorised under subsection (1) may, at any reasonable time —

(*a*) enter into any premises where information, documents or biological or genetic materials are being kept;

(*b*) search any person on the premises if there are reasonable grounds for believing that the person has possession of any documents or article that has a bearing on the investigation, or biological or genetic materials;

(*c*) examine any document, article or biological or genetic materials found on the premises that has a bearing on the investigation;

(*d*) require information to be given about any document or article by —

(i) the owner of the premises,

(ii) the person in control of the premises,

(iii) any person who has control of the document or article, or

(iv) any other person who may have the information;

(*e*) if information, documents or biological or genetic materials are not provided, require any of the persons specified in paragraph (*d*) to state to the best of their knowledge, where the documents or the biological or genetic materials are to be found or how the relevant information may be retrieved;

(*f*) take extracts from or make copies of any book, document or biological or genetic materials found on the premises that has a bearing on the investigation;

(*g*) use any computer system on the premises or require the assistance of any person on the premises to use the computer system to —

(i) search any data contained in or available to that computer system,

(ii) reproduce any record from that data, and

(iii) seize any output from that computer system for examination and copying; and

(*h*) attach and, if necessary, remove from the premises for examination and safeguarding, any document, article that has a bearing on the investigation or biological or genetic materials.

(3) An investigating officer appointed and authorised under subsection (1) may not enter upon and search any premises unless the investigating officer obtains a warrant authorising such entry and search in accordance with subsection (4).

(4) If a magistrate is satisfied, upon an application made on oath or affirmation, that there are reasonable grounds for suspecting that it is necessary, in order to ascertain or establish whether any person has contravened, is contravening or is about to contravene this Act, for an investigating officer to exercise the powers conferred by subsection (2), the magistrate may grant a warrant authorising a named investigating officer to exercise those powers in relation to any premises specified in the warrant.

(5) Upon first entering any premises under a warrant, the investigating officer shall —

(*a*) provide to the owner of the premises or the person in control of the premises proof of —

(i) the investigating officer's authority to enter the premises by handing a copy of the warrant to that person, and

(ii) the investigating officer's authority card;

(*b*) where none of the persons mentioned in paragraph (*a*) is present, affix a copy of the warrant to the premises in a prominent and visible position;

(*c*) provide on request, a document from the Competent National Authority indicating the subject matter and purpose of the investigation and the nature of the practice under investigation; and

(*d*) allow an enterprise under investigation a reasonable period within which to obtain legal advice.

(6) Notwithstanding subsection (3), an investigating officer may, without a warrant, enter any premises other than a private dwelling to exercise the powers conferred by subsection (2) if the owner of the premises or any other person in control of the premises consents to the entry and search of the premises.

(7) An investigating officer exercising the powers conferred by subsection (2) by virtue of a warrant or in terms of subsection (6) may be accompanied and assisted by other persons specified in the warrant.

(8) An investigating officer who removes anything from any premises in accordance with subsection (2) (*h*) shall —

(*a*) issue a receipt for that thing to the owner of the premise or the person in control of the premises; and

(*b*) return that thing as soon as it is practicable to do so after achieving the purpose for which it was removed.

(9) On leaving any premises which an investigating officer has entered by virtue of a warrant under this section, the investigating officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as that investigating officer found them.

(10) Any person who obstructs, interferes with or hinders an investigating officer in the performance of his or her duties under this Act commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding one year, or to both.

PART VIII — *Miscellaneous*

Offences and penalties

37. A person who —

(*a*) accesses biological or genetic resources or associated traditional knowledge without an access authorisation issued under this Act;

(*b*) fails to comply with a condition imposed by an access authorisation issued under this Act;

(*c*) fails to provide, wilfully withholds, or provides false, information required under this Act;

(*d*) obtains prior informed consent or enters into a mutually agreed terms by fraudulent or dishonest means;

(*e*) possesses or utilises any biological or genetic resources or any associated traditional knowledge for commercial purposes in contravention of this Act or any mutually agreed terms;

(*f*) obtains biological or genetic resources or any associated traditional knowledge in another country in contravention of the law of that country;

(*g*) exports biological or genetic resources or associated traditional knowledge in contravention of this Act; or

(*h*) forges a permit or access authorisation issued under this Act, or any document required under this Act,

commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding 20 years, or to both.

Confidentiality

38. (1) A member of the Committee or an investigating officer appointed in terms of this Act shall observe and preserve the confidentiality of all matters coming before the Committee, and such confidentiality shall subsist even after the termination of the member's term of office or mandate.

(2) Any member of the Committee, any other person assisting the Committee, an investigating officer or any person to whom confidential information is revealed through working with the Committee or the investigating officer shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member of the Committee, any other person assisting the Committee, an investigating officer or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P30 000 or imprisonment for a term not exceeding two years, or to both.

(4) Subsection (1) does not apply to a disclosure of information —

(*a*) made with the consent of the Competent National Authority;

(*b*) made in circumstances where the information is in the form of a summary or collection of information so framed as not to enable information relating to a particular enterprise or to a particular person to be ascertained from it;

(*c*) that is already in the public domain;

(*d*) made to facilitate the performance of a function of the Competent National Authority such as giving reasons for its decisions;

(*e*) made in proceedings under this Act; or

(*f*) made in connection with the investigation of a criminal offence.

Appeals

39. A person aggrieved by a decision of the Competent National Authority regarding —

(*a*) its refusal to issue an access authorisation;

(*b*) its refusal to renew an access authorisation;

(*c*) its refusal to transfer an access authorisation;

(*d*) its revocation of an access authorisation; or

(*e*) anything done or authorised under this Act,

may appeal against a decision of the Competent National Authority, in writing, to the Minister, within 30 days of receiving a notice of such decision.

Regulations

40. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for —

(*a*) fees;

(*b*) the additional requirements for any permit under this Act; and

(*c*) additional requirements and prohibitions relating to the biological or genetic resources or associated traditional knowledge.

(3) The regulations made under this section may prescribe for any person who, without reasonable cause, fails to comply with the regulations to have committed an offence and liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding five years, or to both, and in the case of a continuing offence, to a fine of P350 per day for every day during which such offence continues provided that such fine shall not exceed P200 000.

SCHEDULES

Schedule 1
(*section 3*)

CONVENTION ON BIOLOGICAL DIVERSITY

Preamble

The Contracting Parties,
Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources.

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,

Concerned that biological diversity is being significantly reduced by certain human activities.

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source,

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

Noting further that *ex-situ* measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity,

Acknowledging further that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies,

Noting in this regard the special conditions of the least developed countries and small island States,

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries,

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,

Noting that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations.

Have agreed as follows:

Article 1. Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 2. Use of Terms

For the purposes of this Convention:

"*Biological diversity*" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes 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.

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

"*Country of origin of genetic resources*" means the country which possesses those genetic resources in *in-situ* conditions.

"*Country providing genetic resources*' means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.

"*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.

"*Ex-situ conservation*" means the conservation of components of biological diversity outside their natural habitats.

"*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 conditions*" means conditions where genetic resources exist within ecosystems and natural habitats, and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"*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 defined area which is designated or regulated and managed to achieve specific conservation objectives.

"*Regional economic integration organization*" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

"*Sustainable use*" means the use of components of biological diversity in a way and at a rate 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.

Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 4. Jurisdictional Scope

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

(*a*) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and

(*b*) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

Article 5. Cooperation

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

(*a*) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and

(*b*) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7. Identification and Monitoring

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(*a*) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;

(*b*) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (*a*) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(*c*) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and

(*d*) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (*a*), (*b*) and (*c*) above.

Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(*a*) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
(*b*) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
(c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
(*d*) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
(*e*) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
(*f*) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia,* through the development and implementation of plans or other management strategies;
(*g*) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
(*h*) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;
(*i*) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
(*j*) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
(*k*) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;
(*l*) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and
(*m*) Cooperate in providing financial and other support for *in-situ* conservation outlined in subparagraphs (*a*) to (1) above, particularly to developing countries.

Article 9. Ex-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing *in-situ* measures:

(*a*) Adopt measures for the *ex-situ* conservation of components of biological diversity, preferably in the country of origin of such components;
(*b*) Establish and maintain facilities for *ex-situ* conservation of and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;
(*c*) Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;
(*d*) Regulate and manage collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species, except where special temporary *ex-situ* measures are required under subparagraph (*c*) above; and
(*e*) Cooperate in providing financial and other support for *ex-situ* conservation outlined in subparagraphs (*a*) to (*d*) above and in the establishment and maintenance of *ex-situ* conservation facilities in developing countries.

Article 10. Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate:

(*a*) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;
(*b*) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;
(*c*) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
(*d*) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
(*e*) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 11. Incentive Measures

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.

Article 12. Research and Training

The Contracting Parties, taking into account the special needs of developing countries, shall:

(*a*) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries;
(*b*) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, *inter alia*, in accordance with decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and
(*c*) In keeping with the provisions of Articles 16, 13 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

Article 13. Public Education and Awareness

The Contracting Parties shall:

(*a*) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and
(*b*) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

Article 14. Impact Assessment and Minimizing Adverse Impacts

1. Each Contracting Party, as far as possible and as appropriate, shall:

(*a*) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;
(*b*) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;
(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;
(*d*) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(*e*) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.

Article 15. Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create renditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in such Contracting Parties.

7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

Article 16. Access to and Transfer of Technology

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms 10 which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

Article 17. Exchange of Information

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18. Technical and Scientific Cooperation

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 19. Handling of Biotechnology and Distribution of its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

Article 20. Financial Resources

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.

3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.

4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.

6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States.

7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas.

Article 21. Financial Mechanism

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting. For purposes of this Convention, the Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.

2. Pursuant to the objectives of this Convention, the Conference of the Parties shall at its first meeting determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.

3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it: shall take appropriate action to improve the effectiveness of the mechanism if necessary.

4. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.

Article 22. Relationship with Other International Conventions

1. The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

2. Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.

Article 23. Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.

4. The Conference of the Parties shall keep under review the implementation of this Convention, and, for this purpose, shall:

(*a*) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 26 and consider such information as well as reports submitted by any subsidiary body;

(*b*) Review scientific, technical and technological advice on biological diversity provided in accordance with Article 25;
(*c*) Consider and adopt, as required, protocols in accordance with Article 28;
(*d*) Consider and adopt, as required, in accordance with Articles 29 and 30, amendments to this Convention and its annexes;
(*e*) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned;
(*f*) Consider and adopt, as required, in accordance with Article 30, additional annexes to this Convention;
(*g*) Establish such subsidiary bodies, particularly to provide scientific and technical advice, as are deemed necessary for the implementation of this Convention;
(*h*) Contact, through the Secretariat, the executive bodies of conventions dealing with matters covered by this Convention with a view to establishing appropriate forms of cooperation with them; and
(*i*) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or nongovernmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 24. Secretariat

1. A secretariat is hereby established. Its functions shall be:
(*a*) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;
(*b*) To perform the functions assigned to it by any protocol;
(*c*) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;
(*d*) To coordinate with other relevant international bodies and, in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
(*e*) To perform such other functions as may be determined by the Conference of the Parties.

2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 25. Subsidiary Body on Scientific, Technical and Technological Advice

1. A subsidiary body for the provision of scientific, technical and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the authority of and in accordance with guidelines laid down by the Conference of the Parties, and upon its request, this body shall:

(*a*) Provide scientific and technical assessments of the status of biological diversity;
(*b*) Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;
(*c*) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;
(*d*) Provide advice on scientific programmes and international Cooperation in research and development related to conservation and sustainable use of biological diversity; and
(*e*) Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions, terms of reference, organization and operation of this body may be further elaborated by the Conference of the Parties.

Article 26. Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

Article 27. Settlement of Disputes

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compu1sory:

(*a*) Arbitration in accordance with the procedure laid down in Part 1 of Annex II;
(*b*) Submission of the dispute to the International Court of Justice.

4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.

5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 28. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted at a meeting of the Conference of the Parties.

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 29. Amendment of the Convention or Protocols

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any Party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall he notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this Article. "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 30. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of the Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

(*a*) Annexes to this Convention or to any protocol shal1 be proposed and adopted according to the procedure laid down in Article 29;
(*b*) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection and the annexes shal1 thereupon enter into force for that Party subject to subparagraph (*c*) below;
(*c*) On the expiry of one year from the date of the communication of the adoption by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provisions of subparagraph (*b*) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention or to any protocol, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention or to the protocol concerned enters into force.

Article 31. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 32. Relationship between this Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting Party to this Convention.

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned. Any Contracting Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

Article 33. Signature

This Convention shall be open for signature at Rio de Janeiro by all States and any regional economic integration organization from 5 June 1992 until 14 June 1992, and at the United Nations Headquarters in New York from 15 June 1992 to 4 June 1993.

Article 34. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article 35. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

3. The provisions of Article 34, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 36. Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol, has been deposited.

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 37. Reservations

No reservations may be made to this Convention.

Article 38. Withdrawals

1. At any time after two years from the date on which this Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 39. Financial Interim Arrangements

Provided that it has been fully restructured in accordance with the requirements of Article 21, the Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the institutional structure referred to in Article 21 on an interim basis, for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties or until the Conference of the Parties decides which institutional structure will be designated in accordance with Article 21.

Article 40. Secretariat Interim Arrangements

The secretariat to be provided by the Executive Director of the United Nations Environment Programme shall be the secretariat referred to in Article 24, paragraph 2, on an interim basis for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties.

Article 41. Depositary

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

Article 42. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Rio de Janeiro on this fifth day of June, one thousand nine hundred and ninety-two.

Annex I

IDENTIFICATION AND MONITORING

1. Ecosystems and habitats: containing high diversity, large numbers of endemic or threatened species, or wilderness; required by migratory species; of social, economic, cultural or scientific importance; or, which are representative, unique or associated with key evolutionary or other biological processes:

2. Species and communities which are: threatened; wild relatives of domesticated or cultivated species; of medicinal, agricultural or other economic value; or social, scientific or cultural importance: or importance for research into the conservation and sustainable use of biological diversity, such as indicator species: and

3. Described genomes and genes of social, scientific or economic importance.

Annex II

Part I

ARBITRATION

Article 1

The claimant party shall notify the secretariat that the parties are referring a dispute to arbitration pursuant to Article 27. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The secretariat shall forward the information thus received to all Contracting Parties to this Convention or to the protocol concerned.

Article 2

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(*a*) Provide it with ail relevant documents, information and facilities; and

(*b*) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of ail its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Part 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

Schedule 2
(section 3)

NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as "the Convention",

Recalling that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and recognizing that this Protocol pursues the implementation of this objective within the Convention,

Reaffirming the sovereign rights of States over their natural resources and according to the provisions of the Convention,

Recalling further Article 15 of the Convention,

Recognizing the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value to genetic resources in developing countries, in accordance with Articles 16 and 19 of the Convention,

Recognizing that public awareness of the economic value of ecosystems and biodiversity and the fair and equitable sharing of this economic value with the custodians of biodiversity are key incentives for the conservation of biological diversity and the sustainable use of its components,

Acknowledging the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and thereby contributing to achieving the Millennium Development Goals,

Acknowledging the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

Recognizing the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

Further recognizing the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources,

Recognizing also the vital role that women play in access and benefit-sharing and affirming the need for the full participation of women at all levels of policy-making and implementation for biodiversity conservation,

Determined to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

Recognizing that an innovative solution is required to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent,

Recognizing the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation of and adaptation to climate change,

Recognizing the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,

Recognizing the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,

Mindful of the International Health Regulations (2005) of the World Health Organization and the importance of ensuring access to human pathogens for public health preparedness and response purposes,

Acknowledging ongoing work in other international forums relating to access and benefit-sharing,

Recalling the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,

Recognizing that international instruments related to access and benefit-sharing should be mutually supportive with a view to achieving the objectives of the Convention,

Recalling the relevance of Article 8 (*j*) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

Noting the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable

use of its components, and for the sustainable livelihoods of these communities,
Recognizing the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities,

Mindful that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities,

Further recognizing the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity,

Noting the United Nations Declaration on the Rights of Indigenous Peoples, and

Affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities,

Have agreed as follows:

Article 1

OBJECTIVE

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Article 2

USE OF TERMS

The terms defined in Article 2 of the Convention shall apply to this Protocol. In addition, for the purposes of this Protocol:

(*a*) "Conference of the Parties" means the Conference of the Parties to the Convention;
(*b*) "Convention" means the Convention on Biological Diversity;
(*c*) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;

(*d*) "Biotechnology" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

(*e*) "Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

Article 3

SCOPE

This Protocol shall apply to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

Article 4

RELATIONSHIP WITH INTERNATIONAL AGREEMENTS AND INSTRUMENTS

1. The provisions of this Protocol shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph is not intended to create a hierarchy between this Protocol and other international instruments.

2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

3. This Protocol shall be implemented in a mutually supportive manner with other international instruments relevant to this Protocol. Due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

4. This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.

Article 5

FAIR AND EQUITABLE BENEFIT-SHARING

1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.

2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

3. To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate.

4. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Annex.

5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

Article 6

ACCESS TO GENETIC RESOURCES

1. In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.

2. In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

3. Pursuant to paragraph 1 above, each Party requiring prior informed consent shall take the necessary legislative, administrative or policy measures, as appropriate, to:

(*a*) Provide for legal certainty, clarity and transparency of their domestic access and benefit-sharing legislation or regulatory requirements;
(*b*) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;
(*c*) Provide information on how to apply for prior informed consent;
(*d*) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;
(*e*) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the Access and Benefit-sharing Clearing-House accordingly;
(*f*) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and
(*g*) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, *inter alia*:
  (i) A dispute settlement clause;
  (ii) Terms on benefit-sharing, including in relation to intellectual property rights;
  (iii) Terms on subsequent third-party use, if any; and
  (iv) Terms on changes of intent, where applicable.

Article 7

ACCESS TO TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

Article 8

SPECIAL CONSIDERATIONS

In the development and implementation of its access and benefit-sharing legislation or regulatory requirements, each Party shall:

(*a*) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research;

(*b*) Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. Parties may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially in developing countries;

(*c*) Consider the importance of genetic resources for food and agriculture and their special role for food security.

Article 9

CONTRIBUTION TO CONSERVATION AND SUSTAINABLE USE

The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.

Article 10

GLOBAL MULTILATERAL BENEFIT-SHARING MECHANISM

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

Article 11

TRANSBOUNDARY COOPERATION

1. In instances where the same genetic resources are found *in situ* within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

Article 12

TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(*a*) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
(*b*) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
(*c*) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

Article 13

NATIONAL FOCAL POINTS AND COMPETENT NATIONAL AUTHORITIES

1. Each Party shall designate a national focal point on access and benefit-sharing. The national focal point shall make information available as follows:

(*a*) For applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;

(*b*) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

(*c*) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders. The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit-sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the contact information of its national focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the contact information or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 above available through the Access and Benefit-sharing Clearing-House.

Article 14

THE ACCESS AND BENEFIT-SHARING CLEARING-HOUSE AND INFORMATION-SHARING

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

(*a*) Legislative, administrative and policy measures on access and benefit-sharing;
(*b*) Information on the national focal point and competent national authority or authorities; and
(*c*) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.

3. Additional information, if available and as appropriate, may include:

(*a*) Relevant competent authorities of indigenous and local communities, and information as so decided;
(*b*) Model contractual clauses;
(*c*) Methods and tools developed to monitor genetic resources; and
(*d*) Codes of conduct and best practices.

4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

Article 15

COMPLIANCE WITH DOMESTIC LEGISLATION OR REGULATORY REQUIREMENTS ON ACCESS AND BENEFIT-SHARING

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.

2. Parties shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 16

COMPLIANCE WITH DOMESTIC LEGISLATION OR REGULATORY REQUIREMENTS ON ACCESS AND BENEFIT-SHARING FOR TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit-sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.

2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 17

MONITORING THE UTILIZATION OF GENETIC RESOURCES

1. To support compliance, each Party shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources. Such measures shall include:

(*a*) The designation of one or more checkpoints, as follows:

(i) Designated checkpoints would collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate;

(ii) Each Party shall, as appropriate and depending on the particular characteristics of a designated checkpoint, require users of genetic resources to provide the information specified in the above paragraph at a designated checkpoint. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance;

(iii) Such information, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities, to the Party providing prior informed consent and to the Access and Benefit-sharing Clearing-House, as appropriate;

(iv) Checkpoints must be effective and should have functions relevant to implementation of this subparagraph (*a*). They should be relevant to the utilization of genetic resources, or to the collection of relevant information at, *inter alia*, any stage of research, development, innovation, pre-commercialization or commercialization.

(*b*) Encouraging users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(*c*) Encouraging the use of cost-effective communication tools and systems.

2. A permit or its equivalent issued in accordance with Article 6, paragraph 3 (*e*) and made available to the Access and Benefit-sharing Clearing-House, shall constitute an internationally recognized certificate of compliance.

3. An internationally recognized certificate of compliance shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

4. The internationally recognized certificate of compliance shall contain the following minimum information when it is not confidential:

(*a*) Issuing authority;

(*b*) Date of issuance;

(*c*) The provider;

(*d*) Unique identifier of the certificate;

(*e*) The person or entity to whom prior informed consent was granted;

(*f*) Subject-matter or genetic resources covered by the certificate;

(*g*) Confirmation that mutually agreed terms were established;

(*h*) Confirmation that prior informed consent was obtained; and

(*i*) Commercial and/or non-commercial use.

Article 18

COMPLIANCE WITH MUTUALLY AGREED TERMS

1. In the implementation of Article 6, paragraph 3 (*g*) (*i*) and Article 7, each Party shall encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

(*a*) The jurisdiction to which they will subject any dispute resolution processes;
(*b*) The applicable law; and/or
(*c*) Options for alternative dispute resolution, such as mediation or arbitration.

2. Each Party shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

3. Each Party shall take effective measures, as appropriate, regarding:

(*a*) Access to justice; and
(*b*) The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.

4. The effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.

Article 19

MODEL CONTRACTUAL CLAUSES

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

Article 20

CODES OF CONDUCT, GUIDELINES AND BEST PRACTICES AND/OR STANDARDS

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

Article 21

AWARENESS-RAISING

Each Party shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues. Such measures may include, *inter alia*:

(*a*) Promotion of this Protocol, including its objective;
(*b*) Organization of meetings of indigenous and local communities and relevant stakeholders;
(*c*) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;
(*d*) Information dissemination through a national clearing-house;
(*e*) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders;
(*f*) Promotion of, as appropriate, domestic, regional and international exchanges of experience;
(*g*) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;
(*h*) Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and
(*i*) Awareness-raising of community protocols and procedures of indigenous and local communities.

Article 22

CAPACITY

1. The Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In this context, Parties should facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.

2. The need of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition for financial resources in accordance with the relevant provisions of the Convention shall be taken fully into account for capacity-building and development to implement this Protocol.

3. As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.

4. In support of the implementation of this Protocol, capacity-building and development may address, *inter alia*, the following key areas:

(*a*) Capacity to implement, and to comply with the obligations of, this Protocol;
(*b*) Capacity to negotiate mutually agreed terms;
(*c*) Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; and
(*d*) Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.

5. Measures in accordance with paragraphs 1 to 4 above may include, *inter alia*:

(*a*) Legal and institutional development;
(*b*) Promotion of equity and fairness in negotiations, such as training to negotiate mutually agreed terms;
(*c*) The monitoring and enforcement of compliance;
(*d*) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;
(*e*) Development and use of valuation methods;
(*f*) Bioprospecting, associated research and taxonomic studies;
(*g*) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;
(*h*) Enhancement of the contribution of access and benefit-sharing activities to the conservation of biological diversity and the sustainable use of its components;
(*i*) Special measures to increase the capacity of relevant stakeholders in relation to access and benefit-sharing; and
(*j*) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

6. Information on capacity-building and development initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 5 above, should be provided to the Access and Benefit-sharing Clearing-House with a view to promoting synergy and coordination on capacity-building and development for access and benefit-sharing.

Article 23

TECHNOLOGY TRANSFER, COLLABORATION AND COOPERATION

In accordance with Articles 15, 16, 18 and 19 of the Convention, the Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. The Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and this Protocol. Where possible and appropriate such collaborative activities shall take place in and with a Party or the Parties providing genetic resources that is the country or are the countries of origin of such resources or a Party or Parties that have acquired the genetic resources in accordance with the Convention.

Article 24

NON-PARTIES

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

Article 25

FINANCIAL MECHANISM AND RESOURCES

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.

2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.

3. Regarding the capacity-building and development referred to in Article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall

take into account the need of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed countries and small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building and development requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Article 26

CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THIS PROTOCOL

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(*a*) Make recommendations on any matters necessary for the implementation of this Protocol;
(*b*) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
(*c*) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;
(*d*) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 29 of this Protocol and consider such information as well as reports submitted by any subsidiary body;
(*e*) Consider and adopt, as required, amendments to this Protocol and its Annex, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and
(*f*) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat and held concurrently with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held concurrently with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 27

SUBSIDIARY BODIES

1. Any subsidiary body established by or under the Convention may serve this Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any such decision shall specify the tasks to be undertaken.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under this Protocol shall be taken only by Parties to this Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

Article 28

SECRETARIAT

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

Article 29

MONITORING AND REPORTING

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement this Protocol.

Article 30

PROCEDURES AND MECHANISMS TO PROMOTE COMPLIANCE WITH THIS PROTOCOL

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention.

Article 31

ASSESSMENT AND REVIEW

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, four years after the entry into force of this Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, an evaluation of the effectiveness of this Protocol.

Article 32

SIGNATURE

This Protocol shall be open for signature by Parties to the Convention at the United Nations Headquarters in New York, from 2 February 2011 to 1 February 2012.

Article 33

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.

2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the fiftieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 34

RESERVATIONS

No reservations may be made to this Protocol.

Article 35

WITHDRAWAL

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 36

AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

DONE at Nagoya on this twenty-ninth day of October, two thousand and ten.

Annex

MONETARY AND NON-MONETARY BENEFITS

1. Monetary benefits may include, but not be limited to:

(*a*) Access fees/fee per sample collected or otherwise acquired;
(*b*) Up-front payments;
(*c*) Milestone payments;
(*d*) Payment of royalties;
(*e*) Licence fees in case of commercialization;

(*f*) Special 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.

2. Non-monetary benefits may include, but not be limited to:

(*a*) Sharing of research and development results;
(*b*) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;
(*c*) Participation in product development;
(*d*) Collaboration, cooperation and contribution in education and training;
(*e*) Admittance to *ex situ* facilities of genetic resources and to databases;
(*f*) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on 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;
(*g*) Strengthening capacities for technology transfer;
(*h*) Institutional capacity-building;
(*i*) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;
(*j*) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
(*k*) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
(*l*) Contributions to the local economy;
(*m*) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;
(*n*) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
(*o*) Food and livelihood security benefits;
(*p*) Social recognition;
(*q*) Joint ownership of relevant intellectual property rights.

PASSED by the National Assembly this 11th day of August, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.