

Indigenous Knowledge Forum

Comparative Study

Garuwanga: Forming a Competent
Authority to protect Indigenous
knowledge

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Executive Summary and Methodology

Introduction

The unique characteristics of Aboriginal rights and interests provides a nexus to sustaining Indigenous health, Indigenous laws and has the capacity to create opportunities in self-determined wealth creation to sustain Indigenous peoples on country, and to protect Indigenous knowledge systems.¹

In 2016 the Closing the Gap Report detailed the existing gaps in life expectancy, health and well-being for Indigenous peoples of Australia.² The Report demonstrates the pressing need for the domestic implementation of the United Nations Sustainable Development Goals in order to improve the lives of Indigenous communities.³ The United Nations recognises the significant role of Indigenous knowledge and the contribution of Indigenous peoples cultural, social and environmental practices that underpin global achievement.⁴ This is evidenced by the numerous international instruments that deal with the preservation, protection and utilization of Indigenous and/or traditional knowledge.⁵ Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples 2007*⁶ recognises Indigenous peoples' right to own and control their revitalized and traditional knowledge, and to enjoy the commercial and non-economic benefits which may flow from the use of Indigenous knowledge by others.⁷

Australia is a biologically rich, mega-diverse country⁸ and there are implications for bioprospecting and biopiracy in relation to sourcing and developing genetic material as well as accessing and using associated Indigenous knowledge, with or without the permission of the Indigenous knowledge holder or holders.⁹ The Australian Government ratified the *Convention on Biological Diversity 1992* in 1993 but has yet to ratify the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, ('Nagoya Protocol').¹⁰ While the Australian Government has signed the Nagoya Protocol, ratification would promote and protect Indigenous peoples' human rights to be properly consulted where Indigenous knowledge, whether tangible or intangible, is accessed and used.¹¹

¹ Dr Virginia Marshall, 'A reconstructed metaphor for Aboriginal property rights and interests in Australia: The challenges in normalizing Aboriginal ontology into Western concepts of knowledge and resources' in Natalie Stoianoff (ed), *Indigenous Knowledge Forum – Comparative Systems for Recognising and Protecting Indigenous Knowledge and Culture* (LexisNexis, 2017) 150.

² Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Prime Minister's Report 2016*, <http://closingthegap.dpmc.gov.au/assets/pdfs/closing_the_gap_report_2016.pdf>.

³ Dr Virginia Marshall, 'Deconstructing aqua nullius: Reclaiming Aboriginal water rights and communal identity in Australia' (2016) 8(26) *Indigenous Law Bulletin*, 11.

⁴ *Ibid.*

⁵ Australian Human Rights Commission, *Chapter 7: The Protection of Indigenous Knowledges, Native Title Report* (2008) 215. There are ten such international instruments listed in Natalie P. Stoianoff & Alpana Roy, 2015, 'Indigenous Knowledge and Culture in Australia — The Case for Sui Generis Legislation', 41(3) *Monash University Law Review* 745, 754.

⁶ A non-binding document adopted by the United Nations General Assembly on 13 September 2007.

⁷ Virginia Marshall, Terri Janke and Anthony Watson, 'Community economic development in patenting traditional knowledge: A case study of the mudjula TK project in the Kimberley region of Western Australia' (2013) 8(6) *Indigenous Law Bulletin* 19.

⁸ Evana A. Wright, Ann Cahill & Natalie P. Stoianoff, 'Australia and Indigenous traditional knowledge' in Natalie P. Stoianoff (ed), *Indigenous Knowledge Forum: Comparative Systems for Recognising and Protecting Indigenous Knowledge and Culture* (LexisNexis 2017) 39, 41.

⁹ Virginia Marshall, 'Negotiating Indigenous access and benefit sharing agreements in genetic resources and scientific research' (2013) 8(8) *Indigenous Law Bulletin* 14.

¹⁰ *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*, opened for signature 2 February 2011 (entered into force 12 October 2014) ('Nagoya Protocol').

¹¹ Marshall above n 9, 16-17.

The cultural integrity of the land and waters in Australia is maintained by Indigenous peoples interpreting how all things were formed through Aboriginal laws and creation story and explains the inherent relationships of Indigenous peoples within the Indigenous environment and space; Indigenous language is a conduit for knowledge, as well as the Indigenous values, beliefs and identity which connects Indigenous peoples with country.¹²

Purpose of the Comparative Study Report & Methodology

This Comparative Study Report is prepared as part of Activity 1 under the ARC Linkage Project Garuwanga: Forming a Competent Authority to protect Indigenous knowledge.

The Garuwanga project aims to

- Identify and evaluate a variety of legal structures for a Competent Authority suitable for governing and administering an Indigenous knowledge protection regime
 - Facilitate Aboriginal Community engagement in the process of such identification and evaluation
- Recommend an appropriate legal structure for such a Competent Authority in accordance with that engagement

The methodological approach in the project draws upon the distinct and diverse perspectives of Indigenous peoples including the Partner Investigators involved with this research project and informed by the Indigenous protocols and value systems held by the Indigenous groups we are consulting, and underpinned by an Indigenous research framework that compliments ethical research. The development of a theoretical framework in undertaking Indigenous research should “prioritise the Indigenous voice, values and beliefs of Indigenous peoples” in a “shared, flexible interaction between the researcher and the research participants”.¹³

The Comparative Study Report examines a range of governance structures, such as a ‘competent authority’, that exist in other countries in order to identify the range of legal and policy models already established to protect Indigenous knowledge and determine how access and benefits are regulated by the competent authority to ensure Indigenous peoples are not disadvantaged. A ‘Competent Authority’ is an organisation that has the legal authority to perform a specific function or to deal with a particular matter.¹⁴ The *Nagoya Protocol* has as its purpose to facilitate a fair and equitable system for the sharing of the benefits that comes from the use of genetic resources, generally these resources are Indigenous.

The Report has been prepared using data from the World Intellectual Property Organisation database of intellectual property legislation known as ‘WIPO Lex’. A search of the database using the term ‘Traditional Knowledge’ identified a number of existing legislative and policy regimes for the protection of Indigenous knowledge already in existence in other parts of the world.

An analysis of each legislative instrument was undertaken to identify the competent authority (if any) established under each regime. Where a competent authority was identified further analysis was carried out to identify the following:

¹² Virginia Marshall, *Examining the competing Aboriginal claim for water property rights and interests in Australia* (PhD Thesis, Macquarie University, 2014), ch 1.

¹³ *Ibid* 89-90.

¹⁴ Angus Stevenson (ed), *Oxford Dictionary of English* (Oxford University Press, 3rd ed, 2010) ‘competent’

- the functions of the competent authority
- the structure of the competent authority including corporate structure and membership
- the funding of the competent authority
- the accountability of the competent authority including reporting obligations

Summary of Outcomes

The analysis demonstrated that the existing regimes have taken very different approaches to establishing a competent authority for the protection of traditional knowledge. Some countries have used existing authorities, such as the national intellectual property office or Ministry of Environment, to act as the competent authority.

Other countries have established entirely new bodies to regulate access and benefit sharing in relation to traditional knowledge. In addition, some countries have established Indigenous advisory boards to support and provide advice to the national competent authority.

The analysis has identified the following countries of interest for the purpose of the Garuwanga project: Brazil, Cook Islands, Costa Rica, Ethiopia, India, Kenya, Niue, Peru, Philippines, South Africa, Vanuatu and Zambia.

Table 1: Number of Competent Authorities and whether the Authority is an Existing or New Body breakdown by Country

Country	Number of Competent Authorities	Existing Authority	New Authority
Brazil	1		X
Cook Islands	3 tiers	x	X
Costa Rica	1		X
Ethiopia	1		X
India	3 tiers		X
Kenya	4 tiers	x	
Niue	2		X
Peru	2	x	X
Philippines	1		X
South Africa	3		X
Vanuatu	2	x	X
Zambia	2	x	

Table 2: Government and Indigenous and Local Community Involvement in Competent Authority breakdown by Country

Country	Part of Government Ministry	Government Oversight	Independent from Government	Indigenous and Local Community Participation
Brazil	x			X
Cook Islands	x		x	X
Costa Rica	x			X
Ethiopia		X		
India		X		X
Kenya	x			
Niue	x	X		X
Peru	x	X		X
Philippines	x			X
South Africa	x			X
Vanuatu		X	x	X
Zambia	x			

Introduction: Australia and Nagoya Protocol

Australia has been grappling with how to protect Indigenous knowledge and culture for more than 40 years. The *Nagoya Protocol*, to which Australia is a signatory, calls for a Competent Authority to govern and administer a legal framework:

- (i) ensuring prior informed consent of Indigenous communities is obtained for access to their traditional knowledge, and
- (ii) establishes fair and equitable benefit-sharing mechanisms for use of Indigenous knowledge.

Specifically Australia is required to designate both a 'competent national authority' and a 'national focal point' on access and benefit sharing under with Article 13 of the *Nagoya Protocol*. The Competent National Authority is responsible for granting access or providing evidence that access requirements have been complied with. The Competent National Authority is responsible for providing advice on the relevant procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms with regard to access; there may be more than one Competent National Authority.

The National Focal Point is responsible for providing information on procedures for obtaining prior informed consent (or approval and involvement where appropriate) and mutually agreed terms including benefit sharing as well as providing information on the competent national authorities, Indigenous and local communities, and other stakeholders. The National Focal Point may be the same body as the Competent National Authority.

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 fulfill 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.

International Provisions

WIPO Draft Articles

The Protection of Traditional Knowledge: Draft Articles Facilitator's Rev. 2 (2 December 2016)

Note: The provisions of the Draft Articles are subject to ongoing negotiations and are yet to be finalised.

Objective

The Draft Articles for the Protection of Traditional Knowledge aim to,

1. Provide beneficiaries with the means to:
 - (a) prevent the [misappropriation/illegal appropriation, misuse, and unauthorized use], of their traditional knowledge;
 - (b) [control ways in which their traditional knowledge is used beyond the traditional and customary context;]
 - (c) achieve the fair and equitable sharing of benefits arising from the use of their traditional knowledge, with prior informed consent or approval and involvement and taking customary law into consideration as appropriate; and
 - (d) encourage and protect tradition-based creation and innovation, whether or not commercialized.

Alternative

- (d) encourage and protect creation and innovation, whether or not commercialized.
- [2. Aid in the prevention of the grant of erroneous intellectual property/[patent rights] over [traditional knowledge and [[traditional knowledge] associated [with] genetic resources].]

Alternative 2

This instrument should aim to prevent the [misuse]/[unlawful appropriation] of protected traditional knowledge and encourage creation and innovation.

Alternative 3

The objective of this instrument is to [ensure][support] the [appropriate use] [protection] of traditional knowledge within the intellectual property system, in accordance with national law, recognizing the rights of [traditional knowledge holders][beneficiaries].

Alternative 4

The objectives of this instrument are to:

- (a) contribute toward the protection of innovation and to the transfer and dissemination of knowledge, to the mutual advantage of holders and users of protected traditional knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations;
- (b) recognize the value of a vibrant public domain, the body of knowledge that is available for all to use and which is essential for creativity and innovation, and the need to protect, preserve and enhance the public domain; and
- (c) prevent the erroneous grant of intellectual property rights [over traditional knowledge and traditional knowledge associated with genetic resources][that are directly based on protected traditional knowledge obtained by unlawful appropriation].

Competent Authority

The draft articles set out provisions governing the establishment of a competent authority in article 8.

[ARTICLE 8 ADMINISTRATION [OF RIGHTS] / [OF INTERESTS]

Alternative 1

[Member States]/[Contracting Parties] [may]/[shall] [establish]/[appoint] a competent authority or authorities, with the [direct involvement and approval of] [free, prior and informed consent of] [in consultation with] [beneficiaries] [traditional knowledge holders], in accordance with their national law [to administer the rights/interests provided for by this instrument] [and without prejudice to the right of [beneficiaries] [traditional knowledge holders] to administer their rights/interests according to their customary protocols, understandings, laws and practices].

Alternative 2

[Member States]/[Contracting Parties] may establish, or designate, a competent authority, or authorities, in accordance with national law, to administer the rights/interests provided for by this [instrument].

Alternative 3

Member States may establish competent authorities, in accordance with national and customary law, that are responsible for the national traditional knowledge databases provided for by this [instrument]. Responsibilities may include the receipt, documentation, storage and online publication of information relating to traditional knowledge.]

The Protection of Traditional Cultural Expressions: Draft Articles Rev. 2 (2 April 2014)

Note: The provisions of the Draft Articles are subject to ongoing negotiations and are yet to be finalised.

Objective

The Draft Articles for the Protection of Traditional Cultural Expressions have the following objectives

1. To provide Indigenous [Peoples] and [local communities] [and nations] / [beneficiaries] with the [legislative, policy [and]/[or] administrative]/[and practical/appropriate] means, [including effective and accessible enforcement measures/sanctions, remedies and exercise of rights], to:
 - (a) [prevent] the [misappropriation and misuse/offensive and derogatory use] of their traditional cultural expressions [and adaptations thereof];
 - (b) [control ways in which their traditional cultural expressions [and adaptations thereof] are used beyond the traditional and customary context [and promote the equitable sharing of benefits arising from their use], as necessary;]
 - (c) [promote [the equitable compensation]/[sharing of benefits] arising from their use with prior informed consent or approval and involvement]/[fair and equitable compensation], as necessary; and]
 - (d) encourage [and protect] [tradition-based] creation and [innovation].

2. [To [prevent/preclude] the [grant], exercise and [enforcement] of intellectual property rights [acquired by unauthorized parties/inappropriately acquired] over traditional cultural expressions [and their adaptations]].
3. [To promote/facilitate intellectual and artistic freedom, research [or other fair] practices and cultural exchange [based on mutually agreed terms which are fair and equitable [and subject to the prior informed consent or approval and involvement of] Indigenous [Peoples], [local communities] and [nations/beneficiaries.]]
4. To [secure/recognize] rights [already acquired by third parties] and [secure/provide for] legal certainty [and a rich and accessible public domain].]

Competent Authority

The draft articles set out provisions governing the establishment of a competent authority in Article 4.

[ARTICLE 4] ADMINISTRATION OF [RIGHTS]/[INTERESTS]

- 4.1 [Member States]/[Contracting Parties] [may]/[shall] [establish]/[appoint] a competent authority or authorities, [with the prior informed consent or approval and involvement of] [in consultation with] [traditional cultural expressions [holders]/[owners]], in accordance with their national law [and without prejudice to the right of traditional cultural expression [holders]/[owners] to administer their [rights]/[interests] according to their customary protocols, understandings, laws and practices].

Alternative 1

- 4.1 [Where so requested by the beneficiaries, a competent authority may, to the extent authorized by the beneficiaries and for their direct benefit, assist with the management of the beneficiaries' rights]/[interests] under this [instrument].

[End of Alternative 1]

Alternative 2

- 4.1 [Member States]/[Contracting Parties] may establish a competent authority, in accordance with national law, to administer the [rights]/[interests] provided [under]/[for by] this [instrument].

[End of Alternative 2]

- 4.2 [The [identity] of any authority established under Paragraph 1 [should]/[shall] be communicated to the International Bureau of the World Intellectual Property Organization.]

Regional Provisions

Andean Community

Decision No. 391 Establishing the Common Regime on Access to Genetic Resources

Objective

The objective of Decision No. 391 Establishing the Common Regime on Access to Genetic Resources (Decision 391), as set out in Article 2, is to regulate access to genetic resources and their by-products in order to,

- (a) establish the conditions for just and equitable participation in the benefits of the access;
- (b) lay the foundations for the recognition and valuation of the genetic resources and their by-products and of their associated intangible components, especially when native, Afro-American or local communities are involved;
- (c) promote conservation of the biological diversity and the sustainable use of the biological resources that contain genetic resources;
- (d) promote the consolidation and development of scientific, technological and technical capacities at the local, national and subregional levels; and
- (e) strengthen the negotiating capacity of the Member countries.

In implementing these obligations, the member countries undertake to 'recognise and value the rights and authority of the native, Afro-American and local communities to decide about their know-how, innovations and traditional practices associated with genetic resources and their by-products.' (Article 7)

Competent Authority

Decision 391 provides for a Competent National Authority (as set out in Title X, Article 50). The term 'Competent National Authority' is defined in Article 1:

State entity or public institution appointed by each Member Country, authorized to supply the genetic resource or its by-products and therefore to sign or supervise the access contracts, to take the actions provided for in this common regime and to ensure their performance

Functions of Competent Authority

The functions of the Competent National Authority are set out in Article 50:

- (a) Issue the necessary internal administrative provisions to comply with this Decision and, until the appropriate Community rules and regulations are enacted, stipulate how the genetic resources and their by-products shall be identified and packed;
- (b) Receive, evaluate, accept or deny applications for access;
- (c) Negotiate, sign and authorize access contracts and issue the corresponding access resolutions;
- (d) Ensure the rights of suppliers of biological resources that contain genetic resources and of the intangible component;
- (e) Keep the technical files and the Public Registry of Access to Genetic Resources and their by-products;
- (f) Keep a directory of persons or institutions pre-qualified to perform scientific or cultural support tasks;
- (g) Amend, suspend, nullify or terminate access contracts and arrange their cancellation, as the case may be, in keeping with the terms of those contracts, this Decision and Member Country legislation;

- (h) Oppose the suitability of the national support institutions proposed by the applicant and demand its replacement by another, suitable one;
- (i) Supervise and control compliance with the contractual conditions and the provisions of this Decision and accordingly establish such monitoring and evaluation mechanisms as it deems advisable;
- (j) Review, in keeping with this Decision, contracts involving access already signed with other institutions or persons and carry out the corresponding actions for repossession;
- (k) Delegate supervisory activities to other institutions, while keeping the responsibility and direction over that supervision, in conformity with national legislation;
- (l) Supervise the state of conservation of the biological resources containing the genetic resources;
- (m) Coordinate continuously with its respective liaison institutions all matters having to do with fulfillment of the provisions of this Decision;
- (n) Keep the national inventory of genetic resources and their by-products;
- (o) Keep in continuous contact with the competent national offices for industrial property and set up appropriate information systems with them; and
- (p) All such other functions as the domestic legislation of the Member Country itself may assign it.

Membership of the Competent Authority

No provisions setting out the membership of the Competent Authority.

Funding of Competent Authority

No provisions setting out funding of the Competent Authority.

Accountability

No provisions setting out reporting obligations.

European Union

Directive 2004/24/EC of the European Parliament and of the Council, 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community Code relating to medicinal products for human use.

Directive to facilitate the registration and harmonisation of traditional herbal medicinal products. This does not provide for access and benefit sharing in relation to traditional knowledge.

Directive 98/44/EC of the European Parliament and of the Council, 6 July 1998 on the Legal Protection of biotechnological inventions

Directive provides for harmonisation of legal protections for biotechnological inventions. Does not provide for access and benefit sharing in relation to traditional knowledge.

Organisation of African Unity (OAU)

African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources

Objective

The primary objective of the African Model Legislation is to ensure 'the conservation, evaluation and sustainable use of biological resources, including agricultural genetic resources, and

knowledge and technologies'. This objective is to be achieved through the use of an access and benefit sharing regime including the use of 'appropriate institutional mechanisms for the effective implementation and enforcement of the rights of local communities, including farming communities and breeders, and the conditions of access to biological resources, community knowledge and technologies.' The rights of local communities with regards to innovations, practices, knowledge and technologies acquired through generations are explicitly recognised in Article 16.

Competent Authority

Each State is required to designate or establish a National Competent Authority for the purpose of implementing and enforcing the obligations under the Model Legislation (Article 57).

In addition to the National Competent Authority, the Model Legislation provides for the establishment of a National Inter-Sectoral Coordination Body that is made up of 'representatives from relevant public sectors, scientific and professional organisations, and non-governmental and local community organisations.' (Article 59) The purpose of the National Inter-Sectoral Coordination Body is to coordinate and ensure the proper implementation of the Model Legislation by the National Competent Authority.

Functions of the Competent Authority

The functions of the National Competent Authority include approving the grant of access to biological resources or community innovation, practice, knowledge or technology (Articles 7 & 10) subject to the prior informed consent of the local community (Article 5).

Additional functions include (as set out in Article 58)

- (i) create and operate a regulatory mechanism that will ensure effective protection of Community Intellectual Rights and Farmers' Rights, and the regulation of access to biological resources;
- (ii) carry out the process of consultation and participation of local communities, including farming communities, in the identification of their rights as provided for under customary practices and laws of the communities;
- (iii) identify types of Community Intellectual Rights and Farmers' Rights;
- (iv) identify and define the requirements and procedures necessary for the recognition of Community Intellectual Rights and Farmers' Rights;
- (v) develop criteria and mechanisms to standardise procedures;
- (vi) develop a system of registration of items protected by Community Intellectual Rights and Farmers' Rights according to customary practices and law;
- (vii) issue licenses for the exploitation and commercialisation of biological resources, including protected species, varieties or lineages, and community innovations, practices, knowledge and technologies;
- (viii) identify relevant technical institutions that will assist local communities, including farming communities in the categorisation and characterisation of their biological resources, innovations, practices, knowledge and technologies.

The National Competent Authority is also responsible for implementing and enforcing the provisions on Plant Breeders' Rights (Article 37). This includes receiving and examining applications, carrying out the required trials to test the variety, registering and issuing certificates of grant, hearing oppositions to registration and maintaining the register of rights (see Articles 38 & 39).

The functions of the National Inter-Sectoral Coordination Body are set out in Article 60 as follows:

- (i) ensure that the minimum conditions for agreements with collectors are strictly observed and complied with;
- (ii) ensure that the rights of local communities, including farming communities, are protected with due regard for gender equity, wherever the activities relating to the accessing, collection or research on biological resources, community innovations, practices, knowledge and technologies are conducted, including verifying that the requirements of prior informed consent by the local communities are complied with;
- (iii) recommend policies and laws on the sustainable use of biological resources including new laws on intellectual property rights, Community Intellectual Rights and Farmers' Rights over their biological resources, innovations, practices, knowledge and technologies; and
- (iv) perform such other functions as may be necessary for the effective implementation of this legislation.

Membership of the Competent Authority

No provisions setting out the membership of the National Competent Authority or the National Inter-Sectoral Coordination Body. A reference is made to the need for ensuring due regard for gender equity.

Funding of Competent Authority

No provisions setting out funding of the National Competent Authority or the National Inter-Sectoral Coordination Body.

Accountability

No provisions setting out reporting obligations.

Secretariat of the Pacific Community

Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture, 2002

Objective

The Regional Framework establishes a Model Law for the Protection of Traditional Knowledge and Expressions of Culture for adoption by Pacific Island Countries. As set out in s 3(1), the Model Law applies to traditional knowledge and expression of culture that,

- (a) were in existence before the commencement of this Act; or
- (b) are created on or after that commencement.

However, in accordance with ss 3(3) and 3(3) respectively, the Model Law does not affect or apply to 'rights that exist immediately before the commencement of this Act, including intellectual property rights' and 'does not affect or apply to contracts, licences or other agreements entered into by traditional owners before the commencement of this Act in relation to the use of traditional knowledge or expressions of culture'.

Competent Authority

The Model Law requires the relevant Minister to designate an existing or new body to act as the 'Cultural Authority' for the member country. According to the Guidelines for developing national legislation for the protection of traditional knowledge and expressions of culture based on the

Pacific Model Law 2002, the Cultural Authority may be an 'existing office, authority or society [and] it could be governmental, quasi-governmental or non-governmental'.

Functions of the Competent Authority

The functions of the Cultural Authority are set out in s 37 of the Model Law as follows

The functions of the Cultural Authority may include the following:

- (a) to receive and process applications under Part 4;
- (b) to monitor compliance with authorised user agreements and to advise traditional owners of any breaches of such agreements;
- (c) to develop standard terms and conditions for authorised user agreements;
- (d) to provide training and education programs for traditional owners and uses of traditional knowledge or expressions of culture;
- (e) to develop a Code of Ethics in relation to use of traditional knowledge and expressions of culture;
- (f) to issue advisory guidelines for the purposes of this Act;
- (g) to liaise with regional bodies in relation to matters under this Act;
- (h) to maintain a record of traditional owners and/or knowledge and expressions of culture;
- (i) if requested to do so to provide guidance on the meaning of customary use in specific cases;
- (j) such other functions as are conferred on it by this Act.

The applications referred to under Part 4 are applications for prior and informed consent of the traditional owners to use traditional knowledge or expressions of culture for non-customary use including commercial and non-commercial use (see ss 14 and 15(1)).

The Cultural Authority acts as an intermediary for requests for access to traditional knowledge and expressions of culture (s 15). Potential users must apply to the Cultural Authority and the Cultural Authority is responsible for providing a copy of the application to the traditional owners of the traditional knowledge or cultural expressions to which the application relates and publishing the application including details on how interested parties may obtain a copy of the application (see ss 15, 16).

While decisions on applications for access are made by the traditional owners the Cultural Authority must review any proposed agreement prior to execution (s 21) and the traditional owners must provide the Cultural Authority with a copy of the final agreement (s 23(2)). The Cultural Authority must maintain a register of authorised user agreements (s 23(3)).

The Cultural Authority may act as the traditional owner of the traditional knowledge or expression of culture for the purpose of the Act where the traditional owners cannot be identified or agreement cannot be reached as to the ownership (see s 19).

It should be noted that a potential user of traditional knowledge or expressions of culture may seek prior informed consent from the traditional owners without making an application to the Cultural Authority (s 25(1)). In these cases the potential user must advise the Cultural Authority that they have sought prior informed consent (s 25(2)) **and** provide the Cultural Authority with a copy of the proposed access agreement for review (s 25(3)). Signed access agreements must be provided to the Cultural Authority to be entered into the register (s 25(4)).

Membership of the Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability

No provisions.

Country Specific Provisions – Traditional Knowledge

Benin

Law No. 2005-30, 5 April 2006, relating to Copyright and Related Rights of the Republic of Benin

Objectives

It establishes provisions relating to the protection of expressions of folklore (Articles 80-85). The term 'expressions of folklore' is defined in Article 1:

...the production of characteristic elements of the traditional artistic heritage developed and perpetuated on the territory of the Republic of Benin by a community or by individuals recognized as meeting the traditional artistic expectations of such community and includes:

- folk tales, poetry and mysteries;
- folk songs and instrumental music;
- folk dancing and entertainments;
- products of folk art, such as drawings, paintings, sculptures, pottery, terracotta, carvings, mosaics, woodwork, metal objects, jewellery, textiles and costumes.

In Article 80, 'expressions of folklore shall be protected against reproduction, communication to the public by means of performance, broadcast, distribution by cable or other means, adaptation, translation or any other transformation, where such uses are carried out for commercial purposes or outside their traditional customary context'.

The Acts in Article 80 are subject to prior approval of 'the collective management organisation provided for in Article 12' of Law No. 2005-30 and shall be subject to a royalty as 'determined in accordance with the customary terms in each of the categories of creation considered'. (see Article 81).

Competent Authority

Article 12 establishes a 'public cultural institution' responsible for the 'collective management and defence of the rights' set out in Law No 2005-30. It is intended that the institution will have 'legal personality and financial autonomy'.

Functions of Competent Authority

The 'public cultural institution' will be responsible for managing the 'economic rights of authors and of the holders of neighbouring rights [to] issue authorizations for exploitation and to collect the related royalties'. The specific provisions relating to the structure of the institution including the terms for the collection and distribution of royalties is subject to the establishment of a decree to be proposed by the Minister of Culture and subsequently adopted by the Council of Ministers.

Membership of the Competent Authority

No provisions but subject to future decree of Council of Ministers.

Funding of Competent Authority

No provisions but subject to future decree of Council of Ministers.

Accountability

No provisions but subject to future decree of Council of Ministers.

Decree No. 2005-187, 14 April 2005 on the Establishment, Powers and Operation of the National Commission on the Fight Against Piracy of Literary and Artistic Works in the Republic of Benin

(French Only)

Law No. 91-006, 25 February 1991, implementing the Cultural Charter in the Republic of Benin

(French Only)

Bhutan

Biodiversity Act of Bhutan Water Sheep Year 2003

Objectives

The Objectives of the Biodiversity Act are set out in s 2 as follows:

This Act shall have the following purposes and objectives:

1. To ensure national sovereignty of the RGOB over genetic resources in accordance with relevant National and International Law.
2. To ensure the conservation and sustainable use of the biochemical and genetic resources.
3. To promote the equitable sharing of benefits derived from the use of genetic resources.
4. To promote technology transfer and capacity building at the national and local levels, including the building of scientific and technological capacity relevant to the conservation and sustainable use of biological diversity.
5. To recognize and protect Traditional Knowledge, innovation and practices of local communities associated with biodiversity.
6. To regulate and facilitate the process by which collectors may legally obtain genetic resources.
7. To prevent illegal access to genetic and biochemical resources and associated Traditional Knowledge.
8. To recognize and protect the farmers' and breeder's rights.
9. To make plant varieties subject to property rights.
10. Ensure that plant breeders are able to recover the cost from useful improvements and innovations, and continue to do so.
11. Provide legal recognition of varieties which are not protectable under the internationally existing patent and/or plant breeders rights laws and thereby recognize farmers' plant variety improvements and innovations and provide a means of sharing benefits derived from the use of farmers' or traditional varieties as breeding material for commercial purposes.
12. To promote access to foreign sources of improved plant varieties to Bhutanese farmers.

Competent Authority

The Competent Authority is the Head of the Ministry of Agriculture of Royal Government of Bhutan (s 51(f)). The Authorised Agency is the body designated as Authorised Agency by the Competent Authority (s 51(c)).

Functions of Competent Authority

The Competent Authority of Bhutan is responsible for the following functions:

- granting prior informed consent to access to genetic resources and ‘representing the national interests of the local communities harbouring, cultivating, developing and maintaining the biological diversity concerned’ (s 5);
- granting access, through the Authorized Agency, subject to minimum conditions in s 9;
- entering into Material Transfer Agreement or Contract Agreement to be signed between the Competent Authority and the Applicant including minimum conditions for benefit sharing (s 10);
- issuing a Certificate of Origin where access and benefit sharing procedures and conditions have been complied with (s 10.1);
- receiving proposed authorised user agreements from the owners of Traditional Knowledge for comment with the final right to approve or deny the proposed user agreement on the grounds of national interest vested in the Competent Authority (s 39);
- receiving final copy of the authorised user agreement for Traditional Knowledge (s 40);
- providing advice, upon request, on negotiations relating to access or authorised user agreements (s 41);
- through the Authorised Agency, carrying out an inventory and documentation of Traditional Knowledge (s 42);
- revoke access permits where (i) the collector violates the provisions of the *Biodiversity Act*; (ii) the permit is obtained on basis of false or misleading information; (iii) the collector has failed to comply with the terms of the access permit or MTA; or (iv) there are reasons of public interest in doing so including protection of the environment and biological diversity (s 45).

Membership of the Competent Authority

The Head of the Ministry of Agriculture of Royal Government of Bhutan (s 51(f)) which is the Authorised Agency and the body designated as Authorised Agency by the Competent Authority (s 51(c)).

Funding of Competent Authority

No provisions.

Accountability

No provisions.

Bolivia

Law No. 529, 23 May 2014, on Beni Cultural Heritage

(Spanish Only)

Law No. 530, 23 May 2014, on Bolivian Cultural Heritage

(Spanish Only)

Law No. 511, 21 March 2014, on the Tobas Dance

(Spanish Only)

Law No. 505, 27 February 2014, on the Vallegrande Carnival

(Spanish Only)

Law No. 500, 17 February 2014, on Cultural Heritage of the Bolivian National Song Festival

(Spanish Only)

Law No. 459, 19 December 2013, on Ancestral Traditional Bolivian Medicine

(Spanish Only)

Supreme Decree No. 24676, 21 June 1997 – Regulations to Decision No 391 of the Commission of the Cartagena Agreement and Regulations on Biosafety.

Objective

To implement and regulate Decision 391 (Andean Community) with regard to access to genetic resources.

Competent Authority

The Competent National Authority is the Ministry for Sustainable Development and Environment through the Office of the National Secretary for Natural Resources and Environment (Article 4).

Functions of the Competent Authority

The Competent Authority has the following functions, to (as set out in Article 5):

- (a) comply with and enforce these Regulations, the legal and contractual conditions for access to genetic resources, their by-products or the intangible components associated with them, and other related legal provisions.
- (b) draft, define and implement national policies on the conservation, sustainable use and development of the genetic resources existing on the national territory.
- (c) guarantee recognition of the rights of indigenous peoples and local communities as suppliers of the intangible component associated with the genetic resources, in coordination with the Office of the National Secretary for Ethnic Affairs, Gender and Generations, and the organizations representing said indigenous peoples and local communities.
- (d) call meetings of the Technical Advisory Body and be responsible for its operation.
- (e) promote the dissemination of information on access to genetic resources.
- (f) build institutional capacity in order to ensure full compliance with Decision 391 and these Regulations.
- (g) submit, through the competent body of the Ministry for External Relations and Religion, the relevant recommendations to the Office of the General Secretary of the Andean Community.
- (h) grant or deny access to genetic resources.
- (i) keep and maintain the technical files and the Public Registry of Applications for Access to Genetic Resources.
- (j) hear and resolve legal appeals to it under the administrative process for access to genetic resources, in the case of denied applications.
- (k) punish those who infringe Decision 391 and these Regulations, whether they be private individuals or public officials.
- (l) object to the suitability of the National Support Institution proposed by the applicant.
- (m) promote the drawing-up of a national inventory of genetic resources for which Bolivia is the country of origin.

The Supreme Decree also provides for the creation of a Technical Advisory Body ‘responsible for providing advice and technical support to the Competent National Authority in regards to access to genetic resources’ (Article 7). The Technical Advisory Body has the following functions (in Article 12)

- (a) to draw up its Rules of Procedure;
- (b) to conduct a technical evaluation of the applications for access to genetic resources and to submit the corresponding technical ruling to the Competent National Authority.
- (c) to submit technical proposals to the Competent National Authority for the establishment of partial or total limitations on the access sought;
- (d) to rate the suitability of the National Support Institution proposed by the applicant and suggest a replacement, as need be;
- (e) to recommend to the Competent National Authority suitable institutions for the deposit of duplicates of the genetic material accessed.
- (f) to evaluate the potential of the genetic resources for uses other than the one requested, and warn the Competent National Authority accordingly.

Membership of Competent Authority

The Ministry for Sustainable Development and Environment through the Office of the National Secretary for Natural Resources and Environment.

The Technical Advisory Body is made up of representatives from the Offices of the National Secretary for: (i) Natural Resources and the Environment; (ii) Agriculture and Stockbreeding; (iii) Ethnic Affairs, Gender and Generations; (iv) Industry and Trade (Article 9). There shall also be a representative from the university system (See Article 9). The Chair of the Technical Advisory Body shall be the representative from the Office of the National Secretary for Natural Resources and the Environment (Article 10).

The Technical Advisory Body may also invite (in accordance with Article 9):

other specialists with a recognized scientific and technical background, as well as representatives of technical institutions, legally incorporated scientific organizations, indigenous peoples and local communities which are involved as suppliers of the intangible component associated with the genetic resources, the directors of the protected area when the resource for which access is sought is found therein, legally incorporated non-governmental organizations which carry out activities related to the genetic resources, and other similar bodies.

Funding of Competent Authority

No provisions.

Accountability

No provisions.

Brazil

Law No. 13.123, 20 May 2015 Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge

(Portuguese Only)

Competent Authority

According to FAOLEX, the legislative database of the Legal Office of the Food and Agriculture Organisation (FAO) of the United Nations, Law No 13.123 establishes the Genetic Heritage Management Council under the Ministry of the Environment.

Function of Competent Authority

The Council is a 'collegiate body of deliberative, legislative, consultative and appeal character, which is responsible for coordinating the development and implementation of related policies for the management of access to genetic resources and associated traditional knowledge'.¹

Membership of Competent Authority

The representatives of the Council are made up of 60% of representatives from public administration bodies and 40% of representatives from civil society including business, academia, and Indigenous communities, traditional communities and traditional farmers (see Article 6).¹⁵

Decree No. 8772 of May 11, 2016 regulating Law No. 13.123 of May 20, 2015

(Portuguese Only)

The Decree establishes provisions regulating the Genetic Heritage Management Council (articles 4-6).

Burundi

Law No. 1/13 of July 28, 2009, on Industrial Property in Burundi

Objective

Law No. 1/13 is designed to regulate industrial property including traditional knowledge. The Law provides for the registration of traditional knowledge that has not been disclosed to the public, or if it has been disclosed has not been commercially or industrially exploited, in a register established and maintained by the Industrial Property Director (See articles 250-275).

Competent Authority

The authority responsible for maintaining the register of traditional knowledge is the Industrial Property Director.

Functions of Competent Authority

Industrial Property Director is responsible for (in relation to traditional knowledge):

- registered traditional knowledge in the register without examination (Articles 250 & 464);
- requesting (from the courts) the revocation of the registration of traditional knowledge if (i) the traditional knowledge has not been created by the Indigenous community designated on the certificate of registration; (ii) the traditional knowledge has been disclosed to the public and has been commercially or industrially exploited in Burundi

¹⁵ http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=149058&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL

prior to registration; or (iii) the traditional knowledge has ‘lost its value as a cultural identifier following its explicit abandonment, lack of persistent use or continued abuse by third parties, of which the holder of the traditional knowledge was aware’ (Article 251);

- amending the certificate of registration upon receipt of a request of modification from the community that holds the traditional knowledge (Article 255);
- registering any licensing agreements involving traditional knowledge (Article 275);

The State has the following rights:

to assist local communities, without replacing their representative bodies, in defending their rights and legitimate interests, at all levels of the public administration and the judiciary, at the national, regional and international level. Such assistance may consist in particular in taking the initiative to draw up inventories of traditional knowledge with a view to its registration; encouraging local communities to form associations in order to obtain legal capacity; and of instituting, on its own initiative, procedures for registering traditional knowledge when emergency situations so warrant. (Article 267);

If the general interest of a significant share of the population of Burundi so warrants, the Minister responsible for trade, after hearing the local community to which the registered traditional knowledge concerned belongs, may authorize the scientific, commercial or industrial exploitation of one or more of the elements of this knowledge by a third party, provided that such exploitation does not distort the cultural identity of the local community in question or offend it and that the local community receives a fair share of any type of benefits arising from such scientific, commercial or industrial exploitation, in view of the circumstances at hand. The scope and term of such authorization shall be limited for the specific purposes of public interest which warrant the authorization. Exploitation by the third party must cease once it is no longer justified by the public interest. (Article 270)

Membership of Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability

No provisions.

Strategie nationale et plan d'action en matiere d'accès aux ressources genetiques et de partage des avantages decoulant de leur utilisation au Burundi 2 August 2016

(French Only)

China

Decision of May 31, 2013, of the State Council Amending and Abolishing Some Administrative Regulations (promulgated by Order No. 638 of July 18, 2013, of the State Council of the People's Republic of China)

(Chinese Only)

Law of the People's Republic of China on Intangible Cultural Heritage 2011

A law for the protection of intangible cultural heritage and provides for the recording of intangible cultural heritage in databases that shall be publicly available unless designated as confidential in accordance with law (Article 13). In conducting investigations into intangible cultural heritage, the law requires that consent be obtained from knowledge holders, that their customs be respected and that 'their lawful rights and interests shall not be prejudiced' (Article 16). The law does not provide for access and benefit sharing in relation to traditional knowledge.

The department in charge of culture under the State Council is responsible for 'work concerning the protection and preservation of intangible cultural heritage throughout the country. The departments in charge of culture of the local people's governments above the county level are responsible for the work concerning the protection and preservation of intangible cultural heritage within their own administrative regions. The other relevant department of the people's governments above the county level is responsible for the work concerning the protection and preservation of intangible cultural heritage within the scope of their respective duties' (Article 7).

Interim Measures for Evaluation of National Intangible Cultural Heritage Representative Work (promulgated by Legislative Affairs Office of the State Council of the People's Republic of China of March 26, 2005)

(Chinese Only)

Regulation of April 2, 2003, of the People's Republic of China on Traditional Chinese Medicines (promulgated by Order No. 374 of April 7, 2003 of the State Council of People's Republic of China)

Regulations relating to traditional Chinese Medicines and does not provide for access and benefit sharing in relation to traditional knowledge.

Regulations on Protection of Traditional Chinese Medicines (promulgated by Order No. 106 of October 14, 1992, of the State Council of the People's Republic of China)

Regulations for the protection of traditional Chinese medicines that are not patented and does not provide for access and benefit sharing in relation to traditional knowledge.

Cook Islands

Traditional Knowledge Act 2013

Objective

An Act to '(a) give legal recognition to rights in the traditional knowledge of the traditional communities of the Cook Islands; and (b) help those communities, and the holders of those rights, to protect those rights for the benefit of the people of the Cook Islands'. (Preamble)

The Act applies to traditional knowledge that is entered on a register under the Act.

Competent Authority

There are three levels of decision maker/competent authority under the Act:

1. Are Korero are authorised to make decisions in relation to traditional knowledge of a traditional community and are defined in section 3 of the Act as follows:

- (a) for powers and functions exercised and carried out under this Act in relation to traditional knowledge of a traditional community of an island of the Cook Islands other than Rarotonga and Tongareva, means the body of people authorised by the paramount chiefs of the island to exercise the powers and carry out the functions traditionally exercised and carried out by Are Korero:
- (b) for powers and functions exercised and carried out under this Act in relation to traditional knowledge of a traditional community of a Vaka of Rarotonga, means the body of people authorised by the paramount chiefs of the Vaka to exercise the powers and carry out the functions traditionally exercised and carried out by Are Korero.

2. The Secretary of Cultural Development.

3. Traditional Knowledge Advisory Committee.

Functions of Competent Authority

The powers and functions of Are Korero under the Act are as follows:

- Review, in the first instance, applications for registration of traditional knowledge (s 19(1)) and verify the application (s 20). The application must be considered by the Are Korero and not filed with the Secretary of Cultural Development unless the Are Korero has confirmed that the knowledge is traditional knowledge and the applicant is the only rights holder or one of the rights holders and is acting on behalf of all rights holders of the knowledge (s 20(2)).
- Register traditional knowledge on the register, on behalf of the traditional community concerned, (i) if the creator and every customary successor of any traditional knowledge are dead or unidentifiable or (ii) if no application to register traditional knowledge has been filed within two years of commencement of the Act (s 15).
- Resolve disputes between people who are represented by the Are Korero or work with other Are Korero when the dispute involves people who are represented by two or more Are Korero (s 21).
- Submit applications to Executive Officer of the island who must then file the application with the Secretary of Cultural Development. Except for Are Korero of a Vaka of Rarotonga who may file with the Secretary directly. (s 22)
- Review statements of opposition and make a decision as to registration (s 31).
- Consider requests for relief and make recommendations as to remedies (ss 36 & 39).

The Secretary of Cultural Development is responsible for accepting applications for registration and maintaining the register of traditional knowledge (s 56(a)), required sub-registers (s 56(b)) and any other registers considered necessary for the purposes of the Act (s 56(c)).

The Traditional Knowledge Advisory Committee is responsible for advising 'the Minister and Cabinet on the operation of the Ministry in achieving the traditionally based outcomes under this Act'. (s 63)

Membership of Competent Authority

Are Korero for a traditional community of an island of the Cook Islands other than Rarotonga and Tongareva is made up of a,

body of people authorised by the paramount chiefs of the island to exercise the powers and carry out the functions traditionally exercised and carried out by Are Korero (section 3(a)).

The Traditional Knowledge Advisory Committee is made up on one member appointed by each Are Korero (s 64).

Funding of Competent Authority

No provisions.

Accountability

No provisions.

Costa Rica

Law No. 7788 of April 30, 1998, on Biodiversity (as last amended by Law No. 8686 of November 21, 2008)

(Spanish Only)

Objective

Conservation of biodiversity, sustainable use of biological resources and equitable benefit sharing (Article 1).

Competent Authority

The National Commission for the Management of Biodiversity under the Ministry of Environment and Energy (Article 14). The National Commission shall meet once per month (Article 15).

The National Commission will perform its obligations through the Executive Director of the Technical Office (Article 16).

Functions of Competent Authority

The functions of the National Commission for the Management of Biodiversity are as follows (see Article 14)

1. To formulate national policies relating to the conservation, sustainable ecological use and restoration of biodiversity, in accordance with conventions concerning biological diversity and other internationally corresponding agreements and treaties, as well as relating to national interests.
2. To formulate the policies and responsibilities established in chapters IV, V, and VI of this law, and to co-ordinate them with the different agencies responsible for these matters.
3. To formulate and co-ordinate the policies for access to the components of biodiversity and associated knowledge in order to ensure adequate scientific and technical transfer and the proper distribution of the benefits which, for the purposes of title V of this law, will be called general rules.
4. To formulate and pursue the national strategy for biodiversity.
5. To co-ordinate and facilitate the carrying out of an extensive educational process about policies for the conservation, sustainable ecological use and restoration of biodiversity, involving all political, economic and social sectors of the country,
6. To revoke the resolutions of the Technical Office of the Commission and the Phytosanitary Protection Service as regards access to the components of biodiversity; in this matter the administrative process shall be exhausted.
7. To advise other organs of Executive Power, autonomous institutions and private organizations, in order to regulate actions for the ecologically sustainable use of the components of biodiversity.
8. To watch over public and private actions relating to the management of the components of biodiversity covered by the policies established through this Commission.

9. To name the Secretary of the Commission, who will also be Executive Director of the Technical Office of this same organ.
10. To propose to the Minister of the Environment and Energy, with criteria of identity, the country's representatives before international meetings relating to biodiversity.

The functions of the Technical Office to the National Commission for the Management of Biodiversity shall include (Article 17)

- The negotiation, approval, rejection and control of applications for access to biological resources
- Coordination of matters related to access with Conservation Areas, the private sector, Indigenous peoples, and peasant communities
- Maintain a register of applications for access to biological resources.

The Executive Director of the Technical Office shall have the following functions (Article 18)

- Act as Secretary for the National Commission
- Sign all agreements and resolutions for the National Commission
- Represent the National Commission to the National Council of Conservation Areas
- Maintain the records of the National Commission
- Maintain the register of applications for access to biological resources
- Report to the National Commission on a quarterly basis
- Coordinate activities with the Ministry of Environment and Energy and other public institutions to fulfill functions of the National Commission
- Attend all meetings of the National Commission (with no vote).

Membership of the Competent Authority

The National Commission for the Management of Biodiversity includes representatives of Indigenous peoples and shall be made up of the following individuals (as set out in Article 15):

- a) The Minister of the Environment and Energy or his representative. He/she will also be the President of the Commission and responsible for its good operation.
- b) The Minister of Agriculture or his representative.
- c) The Minister of Health or his representative.
- d) The Executive Director of the National System of Conservation Areas.
- e) A representative of the Costa Rican Institute of Fishing and Agriculture.
- f) A representative of the Minister of Foreign Trade.
- g) A representative of the National Small Farmers Board.
- h) A representative of National Indigenous Peoples Board.
- i) A representative of the National Council of Rectors.
- j) A representative of the Costa Rican Federation for the Conservation of the Environment.
- k) A representative of the Costa Rican Union of Chambers of Commerce.

The Technical Office shall be made up of an Executive Director and such other personnel as specified in the Regulations (Article 17). The Executive Director is required to be a 'suitable professional designated, through public contest, by the Commission' (Article 18).

Funding of Competent Authority

The National Commission and Technical Office shall receive the following funds (as set out in Article 19)

- Funding from the Government of the Republic of Costa Rica

- Donations from individuals, national or international organisations, the State or its institutions
- Fees received from registrations, applications and inspections
- Fines collected as a result of failure to comply with access contracts
- Percentage of benefits established through access permits
- Ten percent of the entrance fees to National Parks.

Finances must be used exclusively for the operation of the National Commission and the Technical Office and will be administered by the Executive Director of the Technical Office through a trust fund or other mechanisms established in the Regulations (see Article 20).

Accountability

No provisions.

Executive Decree No. 31514-MINAE of October 3, 2003, approving the General Standards for Access to the Genetic and Biochemical Components and Resources of Biodiversity (as amended up to Regulation for the Implementation of Administrative Punishments in respect of Unauthorized Access to Genetic and Biochemical Elements and Resources established in Biodiversity Law No. 7788, approved by Executive Order No. 39341 of August 4, 2015)

(Spanish with Automatic Translate Tool)

Objective

Implements Law No. 7788 of April 30 1998 (as last amended by Law No. 8686 of November 21, 2008)

Competent Authority

According to Article 5, the National Commission for Management of Biodiversity (CONAGEBIO) is the competent national authority.

Function of Competent Authority

The functions of CONAGEBIO in Article 5 and are in addition to those in Article 17 of the Law on Biodiversity.

- Propose policies on access to biological and genetic resources and associated traditional knowledge
- Ensure fair and equitable sharing of benefits
- Approve or reject applications for access to biological and genetic resources and associated traditional knowledge.

Cuba

Law on the Protection of the Cultural Heritage (Law No. 1 of 1976)

(Spanish Only)

Dominican Republic

Estrategia Nacional de Conservación y Uso Sostenible de la Biodiversidad y Plan de Acción (2010-2020)

(Spanish Only)

Ley Sectorial de Biodiversidad (333-15) (2015)

(Spanish Only)

Reglamento de Investigación, Ministerio de Medio Ambiente y Recursos Naturales (2002)

(Spanish Only)

Ecuador

National Regulation regulating the Common Regime on Access to Genetic Resources in accordance with the Decision of the Andean Community No. 391 (Executive Decree No. 905 of October 3, 2011)

(Spanish Only)

Egypt

Law No. 82 of 2002 on the Protection of Intellectual Property Rights

Objective

An instrument for the protection of intellectual property with limited reference to traditional knowledge.

Where a breeder (for the purpose of plant breeder's rights) deals in 'Egyptian genetic sources, with a view to develop new varieties derived therefrom' they are required to obtain approval from the relevant competent administrative authorities (Article 200). The breeder must also,

undertake to acknowledge the Egyptian traditional knowledge as sources to what he could have achieved using such knowledge and experience, through the disclosure of the Egyptian source the breeder benefited from, and by sharing the profits gained with the interested party, as prescribed in the Regulations of this Law'. (Article 200)

The breeder must disclose the 'genetic source of the new plant variety' and this obligation extends to 'any traditional knowledge or indigenous know-how used as a basis for developing the new variety.' (See Article 180 of Implementing Regulations for Law No. 82 of 2002 on the Protection of Intellectual Property Rights Books One, Two and Four).

Competent Authority

The Competent Administrative Authority responsible for approving 'manipulation of Egyptian genetic resources in order to derive new varieties' under Article 200 of Law No. 82 is the Plant Genetic Resources National Program. (See Article 181 of Implementing Regulations for Law No. 82 of 2002 on the Protection of Intellectual Property Rights Books One, Two and Four.)

Membership of Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability

No provisions.

Ethiopia

Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006

Objective

The Object of this Proclamation is to 'ensure that the country and its communities obtain fair and equitable share from the benefits arising out of the use of genetic resources so as to promote the conservation and sustainable utilization of the country's biodiversity resources' (Article 3).

Competent Authority

The Competent Authority for the purposes of this proclamation is the 'Institute of Biodiversity Conservation established by Proclamation No. 120/1998 (as amended)' (Article 2.8).

The Institute of Biodiversity Conservation shall be an 'autonomous body of the Federal government with own juridical personality'. (See Article 3.1 'A Proclamation to Provide for the Establishment of the Institute of Biodiversity Conservation and Research Proclamation No. 120/1998 (as amended by A Proclamation to Amend the Institute of Biodiversity Conservation and Research Establishment Proclamation No. 381/2004')

Function of Competent Authority

The Institute of Biodiversity Conservation is responsible for the following activities under Proclamation 482/2006:

1. Following up on the execution of access agreements through the following mechanisms (a) inspection; (b) periodic progress and status reports from the access permit holder and relevant institutions designated to be involved in the collection, participate in the research and monitor the implementation of the access agreement; (c) reports by any other person/individual; and (d) any other mechanisms that may be deemed appropriate. (Article 20.1)
2. Informing the relevant local communities of the progress of research including related findings, the use of community knowledge and any benefits shared (Article 20.3)
3. Altering an access agreement and limit the size of genetic resource that may be accessed or impose any other limitation as may be deemed appropriate where it is recognised 'that the access has posed threat of genetic erosion, degradation of the environment or violation of the cultural values of communities which cannot be easily averted.' (Article 21.1)
4. Suspending or terminating an access agreement and prohibit access to genetic resources or community knowledge where (a) the access permit holder has violated or failed to comply with (i) the terms of the law or (ii) any access agreement; or (b) the access causes risk of damage to genetic resources or the environment or affects overriding public interest. (Article 21.2)

5. Communicating any alteration, suspension or termination of an access agreement to the relevant access permit holder and local community. (Article 21.3)

Additional powers and duties of the Institute of Biodiversity Conservation are specified in Article 27 as follows:

Without prejudice to the powers and duties entrusted to it in other provisions of this Proclamation, the Institute shall have the powers and duties to:

1. follow-up and ensure that access is carried out in accordance with this Proclamation as well as regulations and directives issued hereunder;
2. collect the benefits to be obtained from access agreements and pass over to beneficiaries;
3. prepare model access agreements;
4. sensitize contents of this Proclamation;
5. collect, analyse and as necessary disseminate to users information on access to genetic resources and community knowledge;
6. cause that legal actions be taken against offences committed in violations of this Proclamation;
7. issue directives and perform such other activities necessary for the implementation of this Proclamation;
8. delegate its powers and duties to other legally established bodies where deemed necessary and convenient to carry out its duties in a better way.

The powers and duties of the Institute of Biodiversity Conservation are further described in Article 6 of 'A Proclamation to Provide for the Establishment of the Institute of Biodiversity Conservation and Research Proclamation No. 120/1998 (as amended by A Proclamation to Amend the Institute of Biodiversity Conservation and Research Establishment Proclamation No. 381/2004').

The Institute shall have the powers and duties to:

1. initiate policy and legislative proposals on conservation of the country's biodiversity and, upon approval, enforce and follow up their implementation;
2. explore and survey the diversity and distribution of the country's plant, animal and microbial genetic resources; collect samples for ex-situ conservation and facilitate utilization of these genetic resources for research and development;
3. ensure the conservation of the country's biological resources using ex-situ and in situ conservation methods;
4. identify and study localities where man-made and natural calamities (sic) are causing genetic erosion and from such assessment (sic) recommend, to the concerned bodies, the restoration of the lost materials in the locality from the ex-situ conserved germplasm and, upon its endorsement, facilitate and support its implementation;
5. enrich that part of the country's biodiversity which can be utilized for its development through introduction of germplasm from international sources, and take appropriate measures based on international agreements to protect the interests of the country with regard to germplasm of Ethiopian origin and previously taken out of the country;
6. implement, in cooperation with the concerned bodies, treaties on biodiversity to which Ethiopia is a party;
7. work in cooperation with the concerned federal and regional bodies with respect to conservation biodiversity;
8. register germplasm of Ethiopian origin and undertake studies, in particular, on those threatened by extinction to develop a strategy for their conservation;
9. identify processes that promote or threaten the existence of the country's biodiversity resources; formulate and propose policy ideas to concerned authorities which enable to promote the healthy processes and control the threatening ones;

10. develop regional and international cooperation in biodiversity conservation activities, and based on international agreements and national legislation take appropriate action to maintain the sovereign rights of the country over its biodiversity;
11. study and develop systems and technical standards for the conservation of the country's biodiversity and create awareness of same among all concerned;
12. issue directives on the collection, dispatch, import and export of any biological specimen/sample and give permit to collect, dispatch, import or export same;
13. determine and collect commensurate fees for services it renders;
14. own property, enter into contracts and to sue and be sued in its own name;
15. perform such other duties as are conducive to the attainment of its objectives.

Membership of Competent Authority

The membership of the Institute is expressed in '*A Proclamation to Provide for the Establishment of the Institute of Biodiversity Conservation and Research Proclamation No. 120/1998 (as amended by A Proclamation to Amend the Institute of Biodiversity Conservation and Research Establishment Proclamation No. 381/2004)*'.

The Institute shall have a General Manager, Deputy General Manager and necessary staff (Article 7).

General Manager shall be appointed by the Government (Article 8.1) and shall be the Chief Executive of the Institute (Article 8.2). The General Manager is responsible for the following areas (as set out in Article 8.3).

- employ and administer personnel
- prepare and, following approval, implement the work program and budget of the Institute
- effect expenditure in accordance with the approved budget and work program
- represent the Institute in all dealings with third parties
- prepare and submit to the Ministry of Agriculture and Rural Development the reports of the Institute; and submit to the Environmental Protection Authority annual reports on the implementation of the Convention on Biological Diversity.

The General Manager may delegate part of his powers and duties to the Deputy General Manager or to other officials and employees of the Institute to the extent necessary for the efficient running of the Institute (Article 8.4).

Funding of Competent Authority

Budget for the Institute comes from the budget and subsidy allocated by the Government of Ethiopia; the income of the Institute and other sources (Article 9).

Institute is required to keep complete and accurate accounts (Article 10.1) and the accounts must be audited annually, either by the Auditor General or by an auditor designated by the Auditor General (Article 10.2).

Accountability of Competent Authority

The Competent Authority is accountable to the Ministry of Agriculture and Rural Development (Article 3.2 of '*A Proclamation to Provide for the Establishment of the Institute of Biodiversity Conservation and Research Proclamation No. 120/1998 (as amended by A Proclamation to Amend the Institute of Biodiversity Conservation and Research Establishment Proclamation No. 381/2004)*').

Gabon

Law No. 2/94 on the Protection of Cultural Property

(French Only)

Gambia

Copyright Act 2004

The *Copyright Act* has some provisions relating to folklore but does not provide for access and benefit sharing in relation to traditional knowledge.

Ghana

Traditional Medicine Practice Act 2000

The Act establishes the Traditional Medicine Practice Council to regulate the practice of traditional medicine but does not provide for access and benefit sharing in relation to traditional knowledge.

India

Biological Diversity Act 2002

Objective

The objective of the *Biological Diversity Act (BDA)* is the 'conservation of biological diversity, sustainable use of its components and fair and equitable benefit sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto' (Preamble).

Competent Authority

Establishes the Competent Authorities at a National, State and Local level supported by various Committees and Advisory Groups.

1. National Biodiversity Authority

Established in 2003 as a body corporate with perpetual succession and the power to hold and dispose of property, enter into contracts and to sue and be sued (s 8(2)).

Function of the National Biodiversity Authority

The NBA is responsible for the following functions:

- regulating access to biological resources by Foreign and Non-Resident Indian Users (s 3(1))
- grant approvals for the transfer of research results to Foreign and Non-Resident Indian Users (s 4)
- regulating the transfer to a third party of biological resources or associated knowledge that has been accessed following earlier approval of the NBA (s 20)
- approving applications for intellectual property rights over inventions based on Indian biological resources and associated knowledge (s 6(1))

- opposing grant of intellectual property rights overseas over biological resources or associated knowledge from India (s 18(4))
- ensuring the 'equitable sharing of benefits arising out of the accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto.' (s 21)
- provide advice to the Central government on matters relating to the conservation and sustainable use of bio-diversity and fair and equitable sharing of benefits arising from the use of biological resources and associated knowledge (s 18(3)(a), BDR r 12(ii))
- coordinating the activities of and providing advice and technical assistance to the State Biodiversity Boards (Biological Diversity Rules r 12(iii) – (iv))
- commissioning studies and research on the biodiversity conservation and benefit sharing (BDR r 12(v), 12(vii))
- communicate importance of biodiversity conservation and benefit sharing (BDR r 12(viii))
- publish information on the approvals granted under the *Biological Diversity Act* (s 19(4))
- consult with the Biodiversity Management Committee when making a decision about biological resources or associated knowledge within their territory (s 41(2)).

Membership of the National Biodiversity Authority

The Chairperson and 10 ex-officio members are appointed by the Central Government and 5 non official members (s 8(4)).

The Chair is to be an 'eminent person' with experience in conservation and sustainable use of biodiversity and shall be Chief Executive of the NBA. (ss (8)(4)(a) & 10).

Ex-officio members are:

- 2 members representing the Ministry dealing with the Environment and Forests (one of whom shall be the Additional Director General of Forests or the Director General of Forests)
- 1 member representing the Ministry of Tribal Affairs
- 1 member representing the Ministry of Agricultural Research and Education
- 1 member representing the Ministry of Biotechnology
- 1 member representing the Ministry of Ocean Development
- 1 member representing the Ministry of Agriculture and Cooperation
- 1 member representing the Ministry of Indian Systems of Medicine and Homeopathy
- 1 member representing the Ministry of Science and Technology
- 1 member representing the Ministry of Scientific and Industrial Research.¹⁶

5 non-official members to drawn from experienced scientists and experts in the fields of 'conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources'; (s 8(4)(d)).

The NBA shall appoint a Secretary who will be responsible for organising and maintaining records of the meetings of the NBA; (BDR r 9).

¹⁶ See s 8(4)(b) and (c).

2. State Biodiversity Board

A State Biodiversity Board must be established by each State of India except for the Union Territories and each State has followed through with this requirement (s 22(1) & (2)). Each State Biodiversity Board is a body corporate, with perpetual succession and common seal and the ability to hold and dispose of property, enter into contracts, to sue and be sued (s 22(3)).

Functions of State Biodiversity Board

The State Biodiversity Boards are responsible for the following functions:

- regulate access to biological resources and associated knowledge by Indian citizens and companies where such access is for commercial utilisation or bio-survey and bio-utilisation (ss 7 & 23(b))
- establish State Biodiversity Rules regulating the activities of the State Biodiversity Board (only 22 of the 29 States have established Biological Diversity Rules)
- advise the State Government on matters relating to biodiversity conservation, sustainable use and benefit sharing (s 23(a))
- consult with the Biodiversity Management Committee when making a decision about biological resources or associated knowledge within their territory (s 41(2)).

Membership of State Biodiversity Board

The Chair is required to be an 'eminent person having adequate knowledge and experience in conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits' (BDA s 22(4)(a)). The Chair shall also act as the Chief Executive Officer and will be appointed by the State Government (s 22(4)(a)). Including, 5 ex-officio members to represent the State Government Departments (s 22(4)) and 5 expert members (s 22(4)).

The State Biodiversity Board may also establish Committees as necessary to implement the obligations of the State Biodiversity Board under the BDA (ss 25 & 13).

3. Biodiversity Management Committee

Each local body is required to establish a Biodiversity Management Committee for the purpose of promoting the 'conservation, sustainable use and documentation of biological diversity.' (BDA s 41(1)). Under the National Biodiversity Authority there are 37,769 Biodiversity Management Committees across India.¹⁷

Functions of the Biodiversity Management Committee

Each Biodiversity Management Committee is responsible for the following tasks:

- Ensure the 'preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and micro-organisms and chronicling of knowledge related to biological diversity' (s 41(1))
- Prepare the People's Biodiversity Register for their region in consultation with local people (Biological Diversity Rules r 22(6))
- Maintain a register documenting access granted, details of the biological resources and associated knowledge and any fees imposed or collected and benefit sharing

¹⁷ National Biodiversity Authority, *Biodiversity Management Committees* (2 September 2015) <<http://nbaindia.org/content/20/35/1/bmc.html>>

- Provide advice of matters that are referred to the Biodiversity Management Committee by the National Biodiversity Authority or State Biodiversity Board (Biological Diversity Rules, r 22(7)).

Membership of the Biodiversity Management Committee

The Chair and 6 members nominated by the local body (Biological Diversity Rules r 22(2)) which have quotas for participation; 1/3 members should be women and not less than 18% of members should be members of a Scheduled Caste or Scheduled Tribe (Biological Diversity Rules r 22(3)).

4. Expert Committees

The National Biodiversity Authority may appoint Expert Committees to assist in the 'efficient discharge of its duties and the performance of its functions' (s 13). The current Expert Committees are:

- Expert Committee on Agro Biodiversity (India)
- Expert Committee on Normally Traded Commodities (India)
- Expert Committee on Access and Benefit Sharing (India)
- Expert Committee on Medicinal Plants (India)
- Expert Committee on Red Sanders (India).

Of particular importance is the Expert Committee on Access and Benefit Sharing, as this committee is responsible for reviewing applications received by the National Biodiversity Authority under the *Biological Diversity Act* and making recommendations as to whether access should be granted and on what terms including benefit sharing. The Expert Committee on ABS is currently made up of 27 members including the Chairman and Co-Chair and includes representatives from government ministries, the national IP office, State Biodiversity Boards, universities and research institutes.¹⁸

Jordan

Regulation No. 36 of 2002 on Traditional and Popular Crafts and Industries and their Trading

(Arabic Only)

Kenya

Protection of Traditional Knowledge and Cultural Expressions Act 2016

Objective

The *Act* establishes a 'framework for the protection and promotion of traditional knowledge and cultural expressions' (Preamble).

¹⁸ National Biodiversity Authority, *Office Order: Reconstitution of Expert Committee on Access and Benefit Sharing - for evaluation of the ABS applications received by the NBA - reg, 6 September 2016*
<http://nbaindia.org/uploaded/pdf/Oo_EC_on_ABS_06sep2016.pdf>

Competent Authority

There are four tiers of institutions that have responsibility for implementing and enforcing the provisions of the *Protection of Traditional Knowledge and Cultural Expressions Act 2016* and these institutions are pre-existing bodies.

1. Country Government
2. National Government
3. Kenya Copyright Board
4. Cabinet Secretary.

Functions of Competent Authority

1. County Government

The County Government, acting through the county executive member responsible for matters relating to culture, is responsible for the following functions (as set out in s 4(1))

- (a) in relation to the repository and for the purpose of collecting and compiling information relating to traditional knowledge and cultural expressions—
 - (i) the primary registration of traditional knowledge and cultural expressions within a county for the purposes of recognition under this Act;
 - (ii) the receipt, documentation, storage and updating of information relating to traditional knowledge and cultural expressions from communities within a county;
- (b) the preservation and conservation of traditional knowledge and cultural expressions;
- (c) the protection and promotion of the traditional knowledge and cultural expressions of communities within a county; and
- (d) the facilitation of collaboration, access to or the sharing of information and data relating to traditional knowledge and cultural expressions between county governments.

2. National Government

The National Government is responsible for the following functions (s 5):

- (a) the establishment and maintenance of the Repository at the Kenya Copyright Board;
- (b) the promotion and conservation of traditional knowledge and cultural expressions of communities in Kenya;
- (c) the protection of traditional knowledge and cultural expressions from misuse and misappropriation; and
- (d) the facilitation of access of information and the sharing of information and data relating to traditional knowledge and cultural expressions.

3. Kenya Copyright Board

The Kenya Copyright Board is responsible for holding the register of traditional knowledge (Traditional Knowledge Digital Repository).

4. Cabinet Secretary

The Cabinet Secretary is responsible for the following functions:

- keep a register of licenses and assignments granted (s 22(6))
- coordinate requests for access (ss 27 & 31)
- grant approvals in consultation with the relevant communities (s 35(5))
- grant approvals to transfer intellectual property rights, in or outside Kenya based on traditional knowledge and cultural expressions obtained in Kenya (s 35(6))

- (Note: prospective user can go directly to community and negotiate provided they provide notice to the Secretary and submit a copy of the access agreement).

Note: References to the 'Authority' appear starting in ss 30(2) then 32(2) and 43(2)(c).

Role of Customary Law

There is a role for customary law and protocol as set out in section 7(6)

Where concurrent claims arise from different communities, the Kenya Copyright Board or county government shall, while determining the claim, consider customary law and protocol of the communities in question, local information sources and any other means that may be applicable.

Membership of Competent Authority

No provisions.

Funding of Competent Authority

No provisions

Accountability of Competent Authority

No provisions.

Kiribati

Environment (Amendment) Act 2007

An Act for the conservation and protection of the environment but it does not provide for access and benefit sharing in relation to traditional knowledge.

Kyrgyzstan

Law of the Kyrgyz Republic on the Protection of Traditional Knowledge

Objective

The objective of the law is to establish a legal regime for the protection of traditional knowledge excluding expressions of folklore and national handicraft arts. (See Article 1)

Competent Authority

The law establishes an Authorised State Body in the field of Intellectual Property (Article 4)

Functions of the Competent Authority

The Authorised State Body is responsible for the following functions:

- receive applications for registration of Traditional Knowledge, fulfil the State registration and include data on registrations in the State Register (Articles 4, 9)
- establish the database on Traditional Knowledge (Article 4)
- grant certificates for the right to use Traditional Knowledge (Articles 11, 12)
- publish data on Traditional Knowledge (Article 4)
- 'elaborate and issue normative legal acts for enforcement' of the Law (Article 4)
- keep a register of agreements for the use of traditional knowledge (Article 14)
- collect fees relating to registration or granting the right to use traditional knowledge (Article 15)

- establish a ‘State Fund for development of Traditional Knowledge usage’ (Article 16).

Membership of Competent Authority

No provisions.

Funding of Competent Authority

The State Fund shall be financed from benefits under traditional knowledge use agreements and other sources (Article 16).

Accountability of Competent Authority

No provisions.

Order No. 154 of February 29, 2012 of the Government of the Kyrgyz Republic Approving the Rules on the Drafting, Filing and Examination of Applications for the Registration and Granting the Right to Use Traditional Knowledge and of Applications for Granting the Right to Use Already Registered Traditional Knowledge, Rules on Maintenance of State Traditional Knowledge Registry of the Kyrgyz Republic.

(Russian Only)

Order of the Government of the Kyrgyz Republic in Compliance with the Law 'On Protection of Traditional Knowledge'.

(Russian Only)

Regulations on Fees for the Registration and the Right to Use Traditional Knowledge

(Russian Only)

Lao People’s Democratic Republic

Law No. 08/NA on National Heritage

Objective

The law does not provide for access and benefit sharing in relation to traditional knowledge. Rather, the provides for the,

Administration, use, protection, conservation, restoration [and] rehabilitation of the national heritage, and also determines the rights and duties of the State, social organisations and individuals to preserve the value of the national cultural, historical and natural heritage (Article 1).

Competent Authority

The law does not establish a Competent Authority and is administered by the State through the Ministry of Information and Culture, that is: the information and culture divisions at the provincial and city level; the information and culture offices at the district and municipal level; and the village administrators.

Liechtenstein

Law on the Temporary Clerical Immunity of Cultural Property

(German Only)

Law on the Restitution of Unlawfully Removed Cultural Goods

(German Only)

Regulation concerning the Law on the Restitution of Unlawfully Removed Cultural Goods

(German Only)

Macao, China

Decree-Law No. 11/2013 of August 22, 2013, on the Protection of Cultural Heritage

(Chinese Only)

Mauritania

Framework law No. 2005-046 of 25 July 2005 on the Protection of Tangible Cultural Heritage

(French Only)

Law No. 2000-024 of 19 January 2000 related to the Natural Park of Banc d'Arguin

(French Only)

Law 2000-045 pertaining to the Environmental Code

(French Only)

Law No. 98-016 Organizing Oasis Participative Management

(French Only)

Law No. 72-160 on the Preservation and Enhancement of Natural, Prehistoric, Historic and Archaeological Heritage

(Arabic and French Only)

Decree PR-131 on the Advisory Committee of Museums

(French Only)

Mauritius

National Heritage Fund Act 2003

An Act establishing the National Heritage Fund to:

- (a) safeguard, manage and promote the national heritage of Mauritius; (b) preserve the national heritage sites as a source material for scientific and cultural investigation and as an enduring basis for the purposes of development, leisure, tourism and enjoyment of present and future generations worldwide; and (c) educate and sensitise the public on cultural values, national heritage and to instil a sense of belonging and civil pride with respect to national heritage. (s 4)

The Act does refer to traditional cultural expressions however it does not provide for access and benefit sharing relating to traditional knowledge.

Morocco

Law No. 2000 on Copyright and Related Rights as amended and supplemented by Law No. 34-05

The law provides for regulation and protection of copyright and expressions of folklore (traditional cultural expressions), however, authorisation must be obtained from the Moroccan Copyright Office to carry out any of the following acts in relation to an expression of folklore:

Section 7(1) Expressions of folklore shall be protected for the following uses, where those uses have a commercial aim or lie outside the conventional or customary framework:

- (a) reproduction;
- (b) communication to the public through representation, performance, broadcasting or cable transmission, or any other means;
- (c) adaptation, translation or any other modification;
- (d) fixation of expressions of folklore.

It is an offence to use an expression of folklore in a way that is not permitted by Article 7(1) without the authorisation of the Moroccan Copyright Office (Article 63). The law does not provide for access and benefit sharing regulations or a Competent Authority.

Mozambique

Resolution No. 12/97 of June 10, 1997, approving the Mozambique's Cultural Policy and the Strategy for its Implementation

A policy for the promotion and development of Mozambican culture and character; including expressions of culture. It does not provide for access and benefit sharing in relation to traditional knowledge.

Myanmar

Protection and Preservation of Cultural Heritage Regions Law 1998

A law for the protection and preservation of cultural heritage but does not provide for access and benefit sharing in relation to traditional knowledge.

Traditional Drug Law 1996

A law for the regulation of traditional medicine but it does not provide for access and benefit sharing in relation to traditional knowledge.

Nicaragua

Law No. 807 Law on Conservation and Sustainable Use of Biodiversity 2012

(Spanish Only)

Nigeria

Herbal Medicines and Related Products (Labelling) Regulations 2005

Regulations governing 'labelling of herbal medicines and related products used as diagnostic, therapeutic or prophylactic agents' (Article 1) but it does not provide for access and benefit sharing relating to traditional knowledge.

Niue

Tāoga Niue Act 2012

Objective

The purpose of the *Tāoga Niue Act 2012* is to establish the Department of Tāoga Niue, which is to act as a central coordinator of matters relating to tāoga Niue and to establish the Tāoga Niue Council to act as an advisory council to the Department of Tāoga Niue (s 4(a)-(b)).

The term 'tāoga Niue' means '(a) antiquities; and (b) objects of national cultural significance to Niue; and (c) objects of national historical significance to Niue; and (d) traditional knowledge; and (e) expressions of culture; and (f) customs, traditions, and history of Niue; and (g) Vagahau Niue; (h) traditional food'; (s 3(1)).

Competent Authority

1. The Department of Tāoga Niue: a department of Government (s 6)
2. Tāoga Niue Council.

Functions of Competent Authority

1. The Department of Tāoga Niue

The Department has the following functions to (s 7):

- (a) administer the Act; and
- (b) advance the purposes of this Act in each of the sectors, and for the purposes, set out in Schedule 1; and
- (c) advise the Government of Niue on all matters relating to tāoga Niue;
- (d) formulate objectives relating to the protection and public awareness of tāoga Niue; and
- (e) promote all aspects of work associated with tāoga Niue; and
- (f) facilitate the formulation of policies and law relating to tāoga Niue;
- (g) review laws relating to tāoga Niue and where necessary propose reform; and
- (h) develop a cultural bridge between Niue and Niueans abroad; and
- (i) develop an integrated strategy for continuing education in relation to tāoga Niue; and
- (j) develop and strengthen training to meet the needs of the Department; and
- (k) establish and maintain a register of protected objects; and
- (l) control the export of antiquities and protected objects in accordance with Part 4; and
- (m) introduce incentives for the people of Niue and Niueans to produce creative works; and
- (n) work with communities, groups, and relevant organisations to identify and define the various elements of the intangible cultural heritage of Niue; and
- (o) cooperate at the bilateral, sub-regional, regional and international levels with appropriate institutions for the safeguarding of intangible cultural heritage; and
- (p) be the competent body for the purposes of safeguarding the intangible cultural heritage of Niue; and

- (q) keep the public informed of any dangers threatening the intangible cultural heritage of Niue and the activities carried out for the purposes of safeguarding that heritage; and
- (r) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage of Niue; and
- (s) promote the cultural standards proclaimed in the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007; and
- (t) support the implementation of the Convention 1972.

2. The Tāoga Niue Council

The Council is responsible for the following functions (s 13)

- (a) to act as an expert advisory council to the Department in relation to tāoga Niue; and
- (b) to advise the Director on whether an object is –
 - (i) an antiquity; or
 - (ii) of national cultural significance; or
 - (iii) of national historical significance; and
- (c) to advise the director on the removal of protected objects from the register; and
- (d) to determine the ownership of antiquities and protected objects if it is unclear or if there is a dispute; and
- (e) all incidental and related matters.

The Council is required to meet at least 4 times per year (Sch 2, s 11(1)) and decisions of the Council are to be made by consensus if possible and if not, by vote (Sch 2, s 12).

Membership of Competent Authority

1. Department of Tāoga Niue

Under s 9, the Niue Public Service Commission must appoint a Director of the Department and other officers as necessary. The role of the Director is set out in s 54 as follows:

- (a) monitor compliance with authorised user agreements and advise traditional owners of any breaches of such agreements; and
- (b) develop standard terms and conditions for authorised user agreements; and
- (c) provide training and education programs for traditional owners and users of traditional knowledge or expressions of culture; and
- (d) develop a Code of Ethics in relation to the use of traditional knowledge and expressions of culture; and
- (e) issue advisory guidelines for the purpose of this Part; and
- (f) liaise with regional bodies in relation to matters in this Part; and
- (g) maintain a record of traditional owners and of traditional knowledge and expressions of culture; and
- (h) if requested, provide guidance on the meaning of customary use in specific cases.

2. Tāoga Niue Council

The Council consists of (s 14)

- (a) a representative of the Niue Language Commission; and
- (b) a representative of the Environment Department; and
- (c) a representative of the Education Department; and
- (d) one senior employee of the National Archives of Niue, the National Museum and Cultural Centre, the National Library, or the Justice, Lands and Survey Department that is selected jointly by those organisations to represent those organisations; and
- (e) the chairperson of the Niue Council of Women; and
- (f) the chairperson of the Niue Youth Council; and

- (g) three members selected and appointed by Cabinet; and
- (h) the Director (as a non-voting member).

In order to be appointed as a member selected and appointed by Cabinet (s 14(g)) the person must have primary residence in Niue and be widely regarded as experienced in either Niue culture and heritage or matters of the Department (s 15). The Director is required to recommend qualified members of the public to the government and then Cabinet will appoint the candidate they feel is most qualified (Sch 2, s 1(2)). Members are appointed under section 14(g) shall be appointed for a term of 3 years and may be reappointed (Sch 2, s 3).

Members of the Council are required to act (Sch 2, s 4).

- (a) in good faith; and
- (b) with reasonable care, diligence, and skill; and
- (c) with honesty and integrity; and
- (d) in accordance with the Niue Public Service Code of Conduct.

One of the members will be Chair and one member the deputy chairperson as appointed by Cabinet and upon written notice to the Council (Sch 2, s 10(1)). The Director may not be chairperson or deputy chairperson (Sch 2, s 10(2)).

Members may be compensated for their services as a member to the Council however certain individuals are not entitled to remuneration for service as member of the Council in addition to their remuneration in the position of (a) a Judge; (b) a member of Assembly; (c) an employee within any part of the Niue Public Service who is acting as a representative of the Niue Public Service (Sch 2, s 13(2)).

Accountability of the Competent Authority

1. Department of Tāoga Niue

The Director must submit on an annual basis a written report to the Minister responsible for the Department (s 10(1)). The Minister must table the report before the Assembly at the first available meeting (s 10(2)).

The Department is required to have regard to the Tohi Fakatokatoka Gahua (the Strategic Action Plan) in carrying out the functions under the Act (s 8(a)). The Department must have regard 'to the general policy of the Government in relation to the protection and preservation of tāoga Niue; [and] comply with any policy directive given to it by Cabinet.' (ss 8(b)-(c)).

2. Tāoga Niue Council

In accordance with Sch. 2, s 5, the Council must

- (a) not contravene this Act; and
- (b) act in a manner that is consistent with the objectives and function of the Council; and
- (c) perform its functions efficiently and effectively and in a manner consistent with the spirit of the public service.

Members of the Council are not liable for any 'act or omission done, in good faith, in the performance or intended performance and exercise of the functions and powers of the Council' (Sch 2, s 6). The Council must provide an annual written report to the Minister on the operations of the Council (Sch 2, s 14(1)) and the Minister must table the report before the Assembly at the first available meeting (Sch 2, s 14(2)).

Funding of Competent Authority

The Department of Tāoga Niue must provide the resources and facilities that are necessary for the Tāoga Niue Council to fulfil its obligations and functions under the Act (Sch 2, s 15).

Norway

Nature Diversity Act (Act No. 100 of June 19, 2009 relating to the Management of Biological, Geological and Landscape Diversity)

The Nature Diversity Act regulates access to genetic material (ss 57 & 61). The King is the highest authority under the Act and may delegate to municipal authorities as competent authorities under regulations (s 62). The Ministry is responsible for monitoring compliance with the Act (s 63).

An amendment to the *Nature Diversity Act* was adopted by Parliament in June 2013 in order to ratify the Nagoya Protocol. Nature Diversity Act § 61 a

Authorities shall facilitate respect and safeguarding of the interests of indigenous peoples and local communities when traditional knowledge associated with genetic resources that is developed and preserved by indigenous and local communities is accessed and utilized.

The King may issue a regulation stipulating that access to and utilisation of traditional knowledge associated with genetic resources requires prior informed consent from the indigenous peoples or local community, including rules on sanctions and remedies against misappropriation of such traditional knowledge associated with genetic resources. This could also be applied to traditional knowledge associated with genetic resources that is developed, transferred and preserved by indigenous peoples and local communities in another state, provided that the national legislation of that state requires prior informed consent for access to or utilization of traditional knowledge associated with genetic resources.

Act No. 50 of June 9, 1978, concerning the Cultural Heritage

(Norwegian Only)

Oman

Royal Decree No. 65/2008 promulgating the Law on Copyright and Related Rights

A Decree governing the protection of copyright works. While the decree does make reference to 'expressions of national folklore' it does not provide for access and benefit sharing in relation to traditional knowledge.

Royal Decree No. 6/80 promulgating the Law on the Protection of National Heritage

(Arabic Only)

Pakistan

The National Institute of Folk and Traditional Heritage (Lok Virsa) Ordinance, 2002 (Ordinance No. LIV of 2002)

The Ordinance provides for the reconstitution of the National Institute of Folk and Traditional Heritage to preserve Indigenous cultural heritage (Preamble) but it does not provide for an access and benefit sharing regime with regards to traditional knowledge.

The National Fund for Cultural Heritage Act, 1994 (Act No. VIII of 1994)

The Act establishes the National Fund for Cultural Heritage to provide for the conservation, preservation and maintenance of Pakistan's national heritage (Preamble) but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Panama

Law No. 20 of June 26, 2000 on Special System for the Collective Intellectual Property Rights of Indigenous Peoples for the Protection and Defence of their Cultural Identity and their Traditional Knowledge

Objective

The purpose of the law is to 'protect the collective intellectual property rights and traditional knowledge of indigenous peoples in their creations' (Article 1).

Competent Authority

Law No. 20 establishes the Departamento de Derechos Colectivos y Expresiones Folcloricas (the Department of Collective Rights and Expressions of Folklore) within the Directorate General of Registration of Industrial Property of the Ministry of Commerce and Industry (DIGERPI) (Article 7).

Functions of Competent Authority

No provisions. See Executive Decree No. 12 below.

Membership of Competent Authority

DIGERPI is required to 'create the position of collective indigenous rights examiner, to protect the intellectual property and other traditional rights of indigenous peoples. A public servant shall be empowered to examine all applications made to DIGERPI in relation to the collective rights of indigenous peoples and to prevent registrations in violation of this Act' (Article 9).

Funding of Competent Authority

No provisions.

Accountability of Competent Authority

No provisions.

Executive Decree No. 12 of March 20, 2001 regulating Law No. 20 of June 26, 2000 on the Special Intellectual Property Regime governing the Collective Rights of Indigenous Peoples for the Protection and Defence of their Cultural Identity and their Traditional Knowledge, and enacting other provisions

Objective

The Executive Decree sets out detailed provisions in relation to the Department of Collective Rights and Expressions of Folklore created under Law No. 20.

Competent Authority

Department of Collective Rights and Expressions of Folklore (part of Directorate General of Registration of Industrial Property of the Ministry of Commerce and Industry (DIGERPI)).

Functions of Competent Authority

The Department shall have the general objective 'to coordinate, develop, guide and register, in a general manner, the work of protecting the collective rights of the holders of traditional knowledge and expressions of folklore' (Article 14).

The functions of the Department are set out in Article 14 are as follows:

- (a) examination of applications filed for the registration of collective indigenous rights and expressions of folklore;
- (b) creation of a manual and an automated archive of traditional knowledge and expressions of folklore, with preference being given to the country, which shall contain registrations (the information permitted by the rules), data, publications, oral transmissions, the practice of traditions and other elements;
- (c) creation of a standardized typology of collective rights and expressions of folklore;
- (d) monitoring of compliance with existing laws relating to the protection of collective intellectual property rights in traditional knowledge and expressions of folklore, and promotion of the enactment of new laws on the subject;
- (e) promotion of the program of intellectual property protection for collective rights and expressions of folklore;
- (f) technical support and training in the field of the intellectual property protection of traditional knowledge and expressions of folklore for the peoples in possession of such knowledge and expressions;
- (g) coordination with domestic and international organizations and agencies concerned with conducting programs for the intellectual property protection of traditional knowledge and expressions of folklore;
- (h) close cooperation between our country and others with a view to ensuring, at the international level, the benefits of the pecuniary rights deriving from the registration of the collective rights in traditional knowledge and expressions of folklore of the peoples and the holders of such knowledge and expressions.

License contracts for the use of collective rights must be registered with DIGERPI (Article 19).

Membership of Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability of Competent Authority

No provisions.

Paraguay

Law No. 3.051 on National Culture

(Spanish Only)

Peru

Law No. 28216 on the Protection of Access to Peruvian Biological Diversity and Collective Knowledge of Indigenous Peoples

Objective

To establish a National Anti-Biopiracy Commission for the protection of Peruvian biological diversity and collective knowledge from acts of bio-piracy (Article 1).

Competent Authority

National Anti-Biopiracy Commission.

Function of the Competent Authority

The purpose of the Competent Authority is to protect Peruvian biological resources and collective knowledge from acts of biopiracy, as defined in Law 28216 (Third Supplementary Provision):

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

The National Anti-Biopiracy Commission is required to:

- Establish and maintain a register of Peruvian biological resources and traditional knowledge (Article 4(a))
- Identify patent applications or granted patents in Peru and overseas that relate to Peruvian biological resources or collective knowledge and carry out evaluations of such patents (Articles 4(c), (d))
- Determine whether it is appropriate to lodge an objection or application for revocation on the grounds that the patent does not meet the requirements of novelty and inventive step and pursue these actions where appropriate (Articles 4(e), (f))
- Maintain relationship with foreign intellectual property offices (Article 4(g))
- Raise awareness of biopiracy and formulate policy statements and proposals on preventing biopiracy (Articles 4(h), (i)).

Membership of the Competent Authority

Article 3 – Composition

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

- a representative of the National Institute for the Defence of Competition and Intellectual Property Protection (INDECOPI), as Chair
- a representative of the Ministry of Foreign Relations
- a representative of the Ministry of Foreign Trade and Tourism
- a representative of the National Environmental Council (CONAM)
- a representative of the Commission for the Promotion of Exports (PROMPEX)
- a representative of the National Institute for Natural Resources (INRENA)
- a representative of the National Institute for Agricultural Research and Extension (INIEA)

- a representative of the International Potato Institute (CIP)
- a representative of the National Center for Intercultural Health (CENSI).
- a representative of the Universities of the country concerned with the subject of the present Act, appointed by the National Assembly of Governors (ANR)
- two representatives of civil society (one from NGOs and the other from business associations) concerned with the subject of the present Act
- a representative of the National Commission of Andean, Amazonian and Afro-Peruvian Peoples (CONAPA).

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

The two members from civil society are currently the Peruvian Society of Environmental Law and the Peruvian Institute of Natural Products.

Funding of Competent Authority

The National Anti-Biopiracy Commission is funded through international cooperation and donations (Article 5) and according to the website the activities have been supported by the International Development Research Centre (Canada) however additional funding is required.¹⁹

Law No. 27811 of 24 July 2002, introducing a Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources

Objective

The objectives of Law 27811 are as set out in Article 5:

- (a) To promote respect for and the protection, preservation, wider application and development of the collective knowledge of indigenous peoples;
- (b) To promote the fair and equitable distribution of the benefits derived from the use of that collective knowledge;
- (c) To promote the use of the knowledge for the benefit of the indigenous peoples and mankind in general;
- (d) To ensure that the use of the knowledge takes place with the prior informed consent of the indigenous peoples;
- (e) To promote the strengthening and development of the potential of the indigenous peoples and of the machinery traditionally used by them to share and distribute collectively generated benefits under the terms of this regime;
- (f) To avoid situations where patents are granted for inventions made or developed on the basis of collective knowledge of the indigenous peoples of Peru without any account being taken of that knowledge as prior art in the examination of the novelty and inventiveness of the said inventions.

Competent Authority

The Competent Authority for the purpose of Law 27811 is the Office of Inventions of the National Institute for the Defence of Competition and Intellectual Property (INDECOPI). INDECOPI is an existing body and was established in 1992 under the Office of the Prime Minister

¹⁹ Comision Nacional contra la Biopirateria 'Financiamiento' <<http://www.biopirateria.gob.pe>>

and is responsible for administering the grant and protection of intellectual property among other functions.²⁰

Functions of the Competent Authority

In relation to Law 27811, INDECOPI is responsible for

- Maintaining the two national registers of traditional knowledge: National Public Register of Collective Knowledge of Indigenous Peoples and National Confidential Register of Collective Knowledge of Indigenous Peoples (Articles 15, 64);
- Assessing in consultation with the Indigenous Knowledge Protection Board whether license contracts entered into under Law 27811 between representatives of Indigenous communities and parties seeking access to collective knowledge are valid (Article 64)
- Maintaining a register of licenses for the use of collective knowledge (Article 64)
- Hearing and resolving disputes relating to the protection of traditional knowledge (see Articles 47 - 62)

Advisory Board to the Competent Authority

Law 27811 provides for the establishment of an Indigenous Knowledge Protection Board and is established to oversee and monitor the implementation of the regime under Law 27811 (Articles 65, 66(a)). The Indigenous Knowledge Protection Board is responsible for:

- Reviewing and providing an opinion on the validity of license contracts entered into under Law 27811 (Article 66(c))
- Providing advice and assistance to representative organisations of Indigenous communities upon request (Article 66(d))
- Provide support to INDECOPI and the Administrative Committee of the Fund for the Development of Indigenous Peoples (Article 66(b))

The Board is made up of five members with experience in the protection of collective knowledge (see Article 65).

- 2 members appointed by the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples
- 3 members appointed by the representative organisations of Indigenous communities.

Philippines

Executive Order No. 247 of May 18, 1995, prescribing Guidelines and establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-Products and Derivatives, for Scientific and Commercial Purposes; and for other Purposes

Objective

Regulate the 'prospecting of biological and genetic resources so that these resources are protected and conserved, are developed and put to the sustainable use and benefit of the

²⁰ Executive Order 25868 'Law Governing the Organisation and Functions of the National Institute for the Defense of Free Competition and the Protection of Intellectual Property' 24 November 1992; Legislative Decree 1033 Law on Organisation and Functions of the National Institute for the Defense of Competition and Protection of Intellectual Property Rights (INDECOPI) (2008), arts 1, 2.

national interest. Further, it shall promote the development of local capability in science and technology to achieve technological self-reliance in selected areas'. (s 1)

The Executive Order establishes an access and benefit sharing regime and requires the prior informed consent of Indigenous cultural communities where prospecting of biological and genetic resources occurs on ancestral lands (s 2(a)). Otherwise it requires prior informed consent of concerned local communities for prospecting of biological and genetic resources (s 2(b)).

Competent Authority

Inter-Agency Committee on Biological and Genetic Resources (attached to the Department of Environment and Natural Environment (DENR)).

Functions of Competent Authority

Established as a regulatory body to ensure that the provisions of the Executive Order are enforced and implemented (s 6), and where the Inter-Agency Committee shall meet at least once per quarter and the functions of the Inter-Agency Committee are further set out in s 7. The Committee is required to:

- (a) Process applications for Research Agreements and recommend for approval thereof to the Secretary of DENR, DOH, DA or DOST depending on the nature and character of the prospecting activity;
- (b) Ensure that the conditions for the Research Agreements are strictly observed.
- (c) Determine the list and amount of biological and genetic materials that may be taken from the area and ensure that these are complied with;
- (d) Deputize and train appropriate agencies so as to ensure that no biological and genetic materials are taken from the Philippines and exported abroad except under a valid Research Agreement. It shall also be ensured that the specimens collected have been deposited in the Philippines;
- (e) Ensure that the rights of the indigenous and local communities wherein the collection or researches are being conducted are protected, including the verification that the consent requirements in Sections 3 and 4 are complied with. The Inter-Agency Committee, after consultations with the affected sectors, shall formulate and issue guidelines implementing the provision on prior informed consent;
- (f) Study and recommend to the President and the Congress appropriate laws on the utilization of biological and genetic resources including new laws on intellectual property rights;
- (g) Involve local scientists in the decision making process by creating a Multi-Disciplinary Advisory Body and other entities as may facilitate local involvement in the research, collection and utilization of biological and genetic resources;
- (h) Develop a conceptual framework, using the research agreements entered into as well as other data as basis, for significantly increasing knowledge of Philippine biodiversity. The Inter-Agency Committee shall establish mechanisms to ensure the integration and dissemination of the information generated from research, collection and utilization activities;
- (i) Coordinate with the National Committee on Biosafety when necessary or appropriate;
- (j) Issue rules and regulations to effectively carry out the provisions of this Executive Order; and
- (k) Perform such other functions as may be necessary to implement this Executive Order.

Membership of Competent Authority

The Inter-Agency Committee includes a representative from Indigenous communities and:

1. An Undersecretary of the Department of Environment and Natural Resources designated by the DENR Secretary who shall be the Chairperson of the Committee.

2. An Undersecretary of the Department of Science and Technology (DOST) designated by the DOST Secretary who shall be Co-Chairperson of the Committee.
3. A permanent representative of the Secretary of the Department of Agriculture, who must be knowledgeable about biodiversity or biotechnology.
4. Two permanent representatives of the Philippine science community from the academe and who must be experts in any of the following fields: biodiversity, biotechnology, genetics, natural products chemistry or similar disciplines, shall be appointed by the DOST Secretary after nominations from and consultations with the science community.
5. A permanent representative of the Secretary of the Department of Health who must be knowledgeable about pharmaceutical research and development.
6. A permanent representative of the Department of Foreign Affairs who has to facilitate international linkage relative to bioprospecting.
7. A permanent representative of the National Museum who has expertise on natural history and/or biological diversity.
8. A representative from a Non-Government Organization (NGO) active in biodiversity protection to be selected by the NGO community through a process designed by themselves and later endorsed by the Philippine Council of Sustainable Development.
9. A representative from a People's Organization (PO) with membership consisting of indigenous cultural communities and/or their organizations to be selected by the PO community through a process designed by themselves and through the endorsement of the Philippine Council for Sustainable Development; (s 6).

Funding of Competent Authority

Inter-Agency Committee shall be funded 'in accordance with law' and funding may include 'savings coming from the appropriate and concerned Departments and proceeds from the fees imposed on Research Agreements'; (s 13).

Accountability of Competent Authority

No provisions.

Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources, Administrative Order No. 96-20

Objective

Implement Executive Order No. 247 dated 18 May 1995 prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-Products and Derivatives for Scientific and Commercial Purposes and for Other Purposes.

Competent Authority

Inter-Agency Committee on Biological and Genetic Resources.

Technical Secretariat

Functions of Competent Authority

Repeats provisions of Executive Order with regards to the Inter-Agency Committee

The Technical Secretariat shall have the following functions (rule 11.2)

- Sign notices of Inter-Agency Committee meetings, act as Secretary during such meetings and prepare minutes of meetings
- Carry out initial screening of proposals
- Conduct initial review and evaluation of bio prospecting applications

- Prepare evaluation results, draft Research Agreement and submit to Inter-Agency Committee for final evaluation
- Provide concerned parties with copies of the final Research Agreement
- Ensure the integration and dissemination of the information generated from research, collection and utilisation activities
- Other functions as designated by the Inter-Agency Committee.

Membership of Competent Authority

Repeats provisions of the Executive Order with regards to the Inter-Agency Committee.

The representatives of the Inter-Agency Committee shall be appointed as follows (rule 10.4):

- Secretary of the relevant government agency shall designate their representative
- Representatives from science community shall be designated by the DOST Secretary after nominations and consultations with the science community
- Representatives from NGOs and POs nominated through process designed by themselves and endorsed by the PCSD.

Alternate representatives shall also be appointed to ensure continuity of participation (see rule 10.4)

The Technical Secretariat shall be chaired by the Director of Protected Areas and Wildlife Bureau or their representative and will be staffed with personnel from Protected Areas and Wildlife Bureau or other Inter-Agency Committee member agencies (rule 11.1).

Funding of Competent Authority

In addition to the provisions specific in the Executive Order, the fund 'shall be administered by DENR-PAWB through a trust fund, thereafter, all IACBGR member-agencies shall allocate an annual appropriation to finance the activities of IACBGR'; (rule 16.1).

Accountability of Competent Authority

No provisions.

National Cultural Heritage Act of 2009

Objective

An Act for the protection and conservation of national cultural heritage.

Competent Authority

National Commission for Culture and the Arts.

Functions of Competent Authority

Establish and maintain a Philippine Registry of Cultural Property (PRECUP) that will hold information on all cultural property of the country that is deemed important to cultural heritage (s 14); enter into agreements with private owners for the preservation of cultural properties (s 18); authorise exports of cultural property registered in the Philippine Registry of Cultural Property (s 23(a)) and issue compulsory repair orders where necessary (s 26).

The Commission shall have the power to recover cultural property under the custody of foreign nationals or entities (s 29).

Members of Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability of Competent Authority

No provisions.

The Indigenous Peoples Rights Act of 1997

Objective

An Act to 'recognize, protect and promote the rights of Indigenous cultural communities/Indigenous peoples, creating a National Commission on Indigenous Peoples, Establishing implementing mechanisms, appropriating funds therefore, and for other purposes'; (Preamble). It establishes the National Commission on Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs) (NCIP).

Competent Authority

The National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP). The NCIP shall be an independent agency under the Office of the President (s 40) with the mandate to 'protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions'; (s 39).

Functions of Competent Authority

The functions of the Competent Authority are as set out in s 44:

- a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;
- b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
- c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;
- d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
- e) To issue certificate of ancestral land/domain title;
- f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;
- g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;
- h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;
- i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;
- j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;

- k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;
- l) To prepare and submit the appropriate budget to the Office of the President;
- m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;
- n) To decide all appeals from the decisions and acts of all the various offices within the Commission;
- o) To promulgate the necessary rules and regulations for the implementation of this Act;
- p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and
- q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

Membership of Competent Authority

Under s 40, the NCIP shall be composed of seven commissioners belonging to ICCs/IPs (one of whom will be the Chairperson); where two Commissioners must be women. The Commissioners will be appointed by the President from a list of recommendations made by the ICCs/IPs and the Commissioners must be appointed from each of the following specified regions: Region I and the Cordilleras, Region II, the rest of Luzon, Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao (s 40).

The Commissioners must meet the required qualifications under s 41:

The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, at least two of the seven Commissioners shall be members of the Philippine Bar.

Funding of Competent Authority

'Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP and it may also solicit and receive donations, endowments and grants in the form of contributions, and such endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof'; (s 71).

Accountability of Competent Authority

Subject to any relevant laws or regulations, all official records, documents, papers relating to official acts, transactions or decisions, as well as data used as the foundation for policy decisions, shall be made available to the public (s 45).

Portugal

Decree-Law No. 118/2002 of 20 April (Autochthonous plant material)

Objective

Establishes a legal framework for the ‘registration, conservation, legal safeguarding and transfer of autochthonous plant material’ including local varieties (Article 1(1)). The Decree includes specific provisions protecting traditional knowledge from reproduction, commercial or industrial use provided the traditional knowledge registered in the Register of Plant Genetic Resources. The register entry is phrased in such a way that third parties may ‘reproduce or utilize the traditional knowledge and obtain results identical to those obtained by the owner of the knowledge’; (Article 3(2)).

Competent Authority

CoTeRGAPA – Technical Council of the Ministry of Agriculture, Rural Development and Fisheries on Agrarian Genetic Resources, Fisheries and Aquaculture and the Ministry of the Environment and Land Management.

Functions of Competent Authority

Access is subject to prior authorisation of CoTeRGAPA with the owner of the registration having the opportunity to be heard (Article 7). Where access is for commercial purposes prior authorisation must also be obtained from the Ministry of the Environment and Land Management (where appropriate).

Membership of Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability of Competent Authority

No provisions.

Qatar

Law No. 7 of 2002 on the Protection of Copyright and Related Rights

Law No. 7 of 2002 establishes a copyright law that contains some provisions relevant to the protection of traditional folklore but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Republic of Korea

Act on Conservation and Utilization of Biodiversity (Act No. 11257 of February 1, 2012, as amended up to Act No. 12459 of March 18, 2014)

(Korean Only)

Cultural Heritage Protection Act (Act No. 961 of January 10, 1962, as amended up to Act No. 10000 of February 4, 2010)

The *Cultural Heritage Protection Act* establishes a law for the protection of cultural heritage with some reference to traditional cultural expressions but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Republic of Moldova

Code of Science & Innovation of the Republic of Moldova No. 259-XV of July 15, 2004

(Moldovan and Russian Only)

Law No. 135 of March 20, 2003, on Arts and Crafts (as amended up to Law No. 109 of June 4, 2010, on Amendments and Additions to Certain Legal Acts)

(Russian Only)

Russia

Order No. 169 of September 9, 2009 of the Federal Service for Law Enforcement in the Field of the Protection of Cultural Heritage Approving Reporting Forms for Accredited Collective Rights Management Organization

(Russian Only)

Samoa

Copyright Act 1998 (as consolidated in 2011)

Objective

The Act provides for protection of copyright with specific protections for traditional cultural expressions (ss 29 & 30) but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Competent Authority

The Act makes reference to a competent authority to be determined by the Minister (s 29(4)).

Functions of Competent Authority

The Competent Authority is responsible for authorising acts in relation to traditional cultural expressions under s 29(1). These acts include:

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when such expressions are made either for commercial purposes or outside their traditional or customary context.

Membership of Competent Authority

No provisions.

Funding of Competent Authority

No provisions.

Accountability of Competent Authority

No provisions.

Saudi Arabia

Copyright Law (Royal Decree No. M/41 of 2 Rajab, 1424 (August 30th, 2003)

Objective

A law for the protection of copyright and includes specific provisions relating to folklore. Under Article 7 folklore is the property of the State and the Ministry of Culture and Information who shall exercise the rights under copyright in relation to folklore. The import or distribution of copies of folklore works, copies of their translations or others produced outside Saudi Arabia without a licence from the Ministry of Culture and Information is prohibited (Article 7(2)). It does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Implementing Regulations of Copyright Law

Objective

Regulations to implement the Copyright Law (Royal Decree No. M/41 of 2 Rajab, 1424 (August 30th, 2003), which expand on the provisions relating to folklore providing that Saudi folklore is the public property of the State and may not be developed or amended without the prior approval of the Ministry of Culture and Information (Article 3). The regulations do not provide for an access and benefit sharing regime with regards to traditional knowledge.

Seychelles

Copyright Act 2014 (Act No. 5 2014)

Objective

The Act sets out a law for the protection of copyright with provisions specifically dealing with the folklore and traditional cultural expressions. It does not provide for an access and benefit sharing regime with regards to traditional knowledge.

South Africa

Intellectual Property Laws Amendment Act 2013 (Act No. 28 of 2013)

Objective

The Act is 'to provide for the recognition and protection of certain manifestations of indigenous knowledge as a species of intellectual property'; (Preamble). The *Amendment Act* sets out various intellectual property laws to provide protection to traditional knowledge as follows (and as set out in the Preamble):

- *Performers Protection Act 1967* provides for the recognition and protection of performances in traditional works
- *Copyright Act 1978* provides for the recognition and protection of Indigenous works, to establish a National Council in respect of Indigenous knowledge and National Databases for recording Indigenous knowledge and the establishment of a National Trust Fund for Indigenous Knowledge
- *Trade Marks Act 1993* provides for the recognition of Indigenous terms and expressions and registration of such terms and expressions as trade marks

- *Designs Act 1994* provides for the recognition and registration of Indigenous designs; and
- Other provisions to provide for establishment of National Council in respect of Indigenous knowledge, a National Database for the recording of Indigenous knowledge and a National Trust and Trust Fund for purposes of Indigenous knowledge.

The *Act* does not provide for an access and benefit sharing regime with regards to traditional knowledge but does establish competent authorities that may be useful in the current project.

Competent Authority

1. National Trust for Indigenous Knowledge
2. National Council for Indigenous Knowledge.

Functions of Competent Authority

1. National Trust for Indigenous Knowledge

The National Trust for Indigenous Knowledge is,²¹

responsible for the promotion and preservation of indigenous cultural expressions and knowledge, including, but not limited to –

- (a) the commercialisation and exploitation of indigenous cultural expressions or knowledge for the purpose of generating income;
- (b) facilitating the development of indigenous communities with respect to training on, and awareness of, their intellectual property and associated rights
- (c) assisting indigenous communities in the application of this Act and other legislation dealing with indigenous cultural expressions or knowledge.

2. National Council for Indigenous Knowledge

The functions of the National Council for Indigenous Knowledge set out in s 28M of the *Copyright Act*:

The Council shall:²²

- (a) advise the Minister on any matter concerning indigenous cultural expressions or knowledge;
- (b) advise the registrars of patents, copyrights, trademarks and designs on any matter relating to the registration of indigenous cultural expressions or knowledge;
- (c) advise the Minister on matters relating to performances of traditional work;
- (d) advise on the integrity of a database of intellectual property in relation to indigenous cultural expressions or knowledge;
- (e) perform such other functions as provided for in the (i) Patents Act, 1978 (Act No. 57 of 1978); (ii) Trade Marks Act, 1993 (Act No. 194 of 1993); (iii) Designs Act, 1993 (Act No. 195 of 1993); and Performers' Protection Act, 1967 (Act No. 11 of 1967);
- (f) refer any dispute received, to an institution contemplated in section 28K(1); and
- (g) carry out such tasks as assigned to it from time to time by the Minister.

²¹ Section 28I(2) of the *Copyright Act*.

²² Section 28M(1) of the *Copyright Act*.

Membership of Competent Authority

1. National Trust for Indigenous Knowledge

The Minister shall appoint five persons as trustees for the National Trust for Indigenous Knowledge (s 28I(1) of the *Copyright Act*).

2. National Council for Indigenous Knowledge

The National Council for Indigenous Knowledge shall be made up of at least 15 members appointed by the Minister (s 28L of the *Copyright Act*). One of the members shall be designated as Chairperson by the Council and the Minister will appoint members following a call for nominees.

In making the appointments, the Minister may consult with (in accordance with s 28L(5) of the *Copyright Act*);

- The Ministers responsible for agriculture; arts and culture; environmental affairs; health; and science and technology
- Organised local government
- An association of traditional healers
- The National House of Traditional Leaders
- Academia
- The Legal profession
- Organised commerce and industry;
- Any other relevant body or institution.

The National Council for Indigenous Knowledge shall be (in accordance with section 28L(6))

- (a) broadly representative of indigenous communities from different cultures within the Republic; and
- (b) at all times have as members –
 - (i) at least two persons with expertise and extensive knowledge in, and patronage of, traditional cultures and values of indigenous communities;
 - (ii) at least two persons with expertise and extensive knowledge in, and patronage of, traditional artistic, literary, musical works and performing arts; and
 - (iii) at least two persons with expertise and extensive knowledge of the law.

Funding of Competent Authority

1. National Trust for Indigenous Knowledge

The National Trust for Indigenous Knowledge shall establish a National Trust for Indigenous Knowledge to be administered by the trustee of the National Trust (ss 28I(3)-(9) of the *Copyright Act 1978*). The income of the National Trust shall be from the use of indigenous cultural expressions or knowledge including royalties and benefits paid under the *Copyright Act*, *Performers' Protection Act*, *Patents Act*, *Trade Marks Act* and the *Designs Act*.

The funds shall be applied for the benefit of Indigenous communities however the Minister may prescribe (as set out in section 28I(6))

- (i) administration fees;
- (ii) fees relating to commercialisation, exploitation and training of indigenous communities;
- (iii) the frequency and manner in which payments shall be made to indigenous communities; and

- (iv) any other matter related to the administration of the income received by the Fund.

The trustees may invest funds received from the commercialisation of Indigenous cultural expressions or knowledge pending the distribution thereof (see section 28I(4)),

- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
- (b) in an investment account with the Corporation for Public Deposits established in terms of s 2 of the Corporation for *Public Deposits Act*, 1984 (Act No. 46 of 1984).

The Fund may be subdivided into 'separate sub-funds which may be administered on behalf of and at the request of the National Trust by the registrars of patents, copyright, trademarks and designs.' Indigenous communities may establish their own legal entity, business or enterprise for the promotion and exploitation of Indigenous cultural expressions or knowledge (s 28I(8)):

Notwithstanding the provisions of this section, any indigenous community may establish a legal entity, business or other enterprise to promote or exploit indigenous cultural expressions or knowledge; Provided that any commercial benefit derived shall only be subject to royalties, benefits or license fees once, which royalties, benefits or license fees may be paid to the Fund, if the Fund is the owner, by the indigenous community.

Indigenous communities may request the National Trust to collect, manage and distribute royalties, benefits and license fees on its behalf subject to the payment of a prescribed fee (s 28I(9) of the *Copyright Act*).

National Environmental Management: Biodiversity Act 2004 (Act No. 10 of 2004)

Objective

An Act for the management and conservation of biodiversity; the sustainable use of Indigenous biological resources; fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment of South African National Biodiversity Institute (Preamble).

Competent Authority

While the Act establishes the South African National Biodiversity Institute, the competent authority for the purpose of access and benefit sharing is the Minister and the 'issuing authority' (s 81). The relevant 'Minister' is the Cabinet member responsible for national environmental management (s 1(1)). The 'issuing authority' in relation to permits means the Minister or other organ of the state in national, provincial or local government as designated in the regulations as an issuing authority for permits.

Functions of Competent Authority

The issuing authority, in relation to permits to access indigenous biological resources, (s 82(4)):

- (a) may engage the applicant and stakeholder on the terms and conditions of a benefit sharing or material transfer agreement;
- (b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;
- (c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable;
- (d) may make recommendations to the Minister; and
- (e) must perform any other functions that may be prescribed.

The issuing authority will review applications for permits and make decisions whether to approve or refuse a permit under s 88. The issuing authority may also cancel a permit in certain circumstances (s 89). The Minister must approve benefit sharing agreements (s 83(2)); and material transfer agreements (s 84(2)) and may hear appeals from an applicant against the decision of an issuing authority (s 94).

The Minister may make regulations for:

- the designation of issuing authorities (section 97(1)(e)(i))
- the form and contents of benefit sharing agreements and material transfer agreements (section 97(1)(e)(ii))
- monies payable under benefit sharing agreements and material transfer agreements (section 97(1)(e)(iii))
- administration of the Bioprospecting Trust Fund (section 97(1)(e)(iv))
- the conditions under which issuing authorities may issue permits (section 97(1)(f)(i)).

Accountability of Competent Authority

A Bioprospecting Trust Fund is established under s 85 of the *Act* and that all payments related to benefit sharing agreements and material transfer agreement due to stakeholders must be made. The funds held by the trust fund are considered trust monies and the Director-General is responsible for managing the funds and is accountable (s 85).

Regulations on Bio-Prospecting, Access and Benefit Sharing 2008

Objective

To regulate the permit system established under the National Environment Management, the *Biodiversity Act 2004* and to set out the requirements and criteria for benefit sharing and material transfer agreements (Regulation 2(a)-(b)).

Competent Authority

The Minister is the issuing authority for bioprospecting permits and integrated export and bioprospecting permits (Regulation 6(1)).

Functions of Competent Authority

- Process applications for permits within a reasonable time (r 7(1)).
- Make decisions on permits in accordance with the criteria set out in the Regulations (see r 7(2), r 8, r 12(1)). This includes ensuring that the applicant has obtained the prior consent of affected Indigenous communities and that benefit sharing agreements have been entered into which such community (r 8(1)(d)).
- Monitor permit holders compliance with the terms and conditions of their permit (r 7(4)).
- Determine the conditions to be imposed on a permit (r 11(2)(f) and r 12(2)(f))
- Approve all material transfer agreements (r 16(2))
- Review benefit sharing agreements to determine whether the agreement is fair and equitable to all parties; consult with advisors who may provide technical advice on the agreement; and invite public comment on the agreement while maintaining confidentiality where appropriate (r 17(3)).

Accountability of Competent Authority

The Bioprospecting Trust Fund shall be managed in accordance with Treasury Regulations issued under the *Public Finance Management Act 1999* (r 19(2)).

Sri Lanka

A Legal Framework for the Protection of Traditional Knowledge in Sri Lanka

Objective

A policy document setting out the legal framework for the protection and management of traditional knowledge in Sri Lanka through the use of an access and benefit sharing regime.

Competent Authority

The Director General of Intellectual Property is responsible for the administration of the provisions of the framework (s 4(1)). The framework proposes the establishment of a committee to advise and assist the Director General of Intellectual Property. The Minister for Intellectual Property shall consult with the Ministers in charge of Indigenous medicine, agriculture, biodiversity, environment, fauna and flora, wild life and forest in the appointment of committee members (s4(2)).

The Committee shall be made up of 'not more than 10 persons with distinguished and demonstrated knowledge and experience in traditional knowledge and the related subjects from the government agencies referred to above and other individuals with distinguished and demonstrated knowledge and experience in traditional knowledge and the related subjects'; (s 4(2)). The Chairman of the committee shall be appointed from within its members and the Director General of Intellectual Property shall be the Secretary and a member of the committee (s 4(2)).

Functions of Competent Authority

The Director General of Intellectual Property shall have the following functions under the proposed framework:

- hold rights in traditional knowledge in the public domain for the purposes of the Act on behalf of the Government of Sri Lanka. (s 5(1)).
- assist traditional knowledge holders in the preservation, development and management of traditional knowledge that is not in the public domain (s 5(4))
- maintain the Register of Traditional Knowledge (s 9(1)) and a database of Traditional Knowledge in the public domain (s 15(1))
- act as a party in negotiations with foreign or non-resident citizens for access to traditional knowledge (s 20(3))
- negotiate and enter into license agreements on behalf of the Government of Sri Lanka with regards to traditional knowledge in the public domain (s 20(6))
- maintain a register of license contracts (s 23(1))
- send information entered into the Traditional Knowledge databases, digital libraries or other records of Traditional Knowledge to other patent offices as potentially invalidating prior art (s 52).

Funding of Competent Authority

26. There shall be a fund called Traditional Knowledge Fund established and maintained under this Act. The following shall be credited to the Fund.

(1) All such sums of money as may be voted from time to time by Parliament for the Fund;

(2) All such sums of money that may be received as a result of a license contract entered into in pursuant to this Act,

(3) All such sums of money as may be received as royalties under this Act;

(4) All such sums of money as may be received as fees under this Act;

(5) All such sums of money as may be received as fines or damages awarded by Court under this Act;

(6) all such sums of money as may be received for the Fund by way of loans, donations, gifts, or grants from any source whatsoever, whether in or outside Sri Lanka;

27. The knowledge and for the implementation and administration of this Act.

Fund shall be utilized for the promotion, protection and preservation of traditional;

28. The Director General of Intellectual Property shall cause proper books of account to be kept of the income and expenditure, assets and liabilities and all other transactions in relation to the Fund;

29. The Auditor General shall audit the accounts of the Fund every year in accordance with Article 154 of the Constitution;

30. The books of account in relation to the Fund shall be a public document and available for public inspection;

31. The Minister may make regulations relating to the administration of the fund.

Sweden

Cultural Heritage Act (1988:950)

(Swedish Only)

Regulation on Cultural Heritage (1988:1188)

(Swedish Only)

Switzerland

Federal Act of June 25, 1954, on Patents for Inventions (status as of January 1, 2012)

Objective

An Act regulating patent protection with reference to traditional knowledge in the context of disclosure of origin of traditional knowledge of Indigenous or local communities in the patent application for an invention directly based on such knowledge (Article 49a), however it does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Ordinance of October 19, 1977, on Patents for Inventions (as amended up to September 1, 2014)

(French, German and Italian Only)

Federal Law of June 20, 2003 on the International Transfer of Cultural Property (as of January 1, 2012)

(French Only)

Tajikistan

Law on the Republic of Tajikistan on Popular Art Crafts

(Russian and Tajik Only)

Thailand

Protection and Promotion of Traditional Thai Medicinal Intelligence Act, B.E. 2542 (1999)

Objective

An Act regulating the protection and promotion of traditional Thai medicinal intelligence; including the right to intellectual property over the formula of traditional Thai drugs and text on traditional Thai medicine (s 14).

Competent Authority

The Committee on Protection and Promotion of Traditional Thai Medicinal Intellectual is established under s 5 of the Act.

The Committee shall have the following members (s 5);

- Permanent Secretary of the Ministry of Public Health (as chairman)
- Director General of the Medical Services Department
- Director General of the Intellectual Property Rights Department
- Director-General of the Livestock Department
- Director-General of the Forestry Department
- Director-General of the Department of Agriculture
- Director General of the Medical Sciences Department
- Secretary General of the Food and Drug Administration
- Secretary General of the Environment Policy and Planning Office
- Director of the Medical Registration Division
- And an equal number of 'qualified members appointed by the Minister, on the basis of selection from the practitioners, those with knowledge, capability and experience in traditional Thai medicine, the production or sales of traditional Thai drugs and plantation or transformation of herbs' and such appointments to be in accordance with rules and procedure set out in Ministerial regulations.

The Director of the Institute for Traditional Thai Medicine shall be a member and secretary of the Committee (s 5).

Functions of the Competent Authority

The Committee has the power and duty to (s 6)

- (1) provide consultation or advice to the Minister in issuing the Ministerial Regulations, Rules or Notifications under this Act;
- (2) promote and develop the use of intellectual traditional Thai medicine and herbs;
- (3) outline measures to strengthen stability and coordination between government agencies, state enterprises, communities and non-government organizations on issues concerned with protection and promotion of intellectuals on traditional Thai medicine and herbs;
- (4) approve the withdrawal of registrations of intellectual property rights on traditional Thai medicine under s 39(3);

- (5) consider the appeal against the order or decision of the registrar or the licensing authority under this Act;
- (6) lay down rules concerned with standards and procedures on lodging an appeal and consideration of appeal, registration of intellectual property rights on traditional Thai medicine, the administration and arrangement of benefits and expenses of the fund, and works concerned with protection and promotion of intellectuals on traditional Thai medicine and herbs;
- (7) perform other activities as stated in this Act or under other laws as the authority of the Committee;
- (8) perform other activities as assigned by the Minister.

There shall also be an Institute for Traditional Thai Medicine under the Office of the Permanent Secretary, the Ministry of Public Health, with the 'authority to carry out duties concerned with protection and promotion of education, training, research, studies and development of intelligence on traditional Thai medicine and herbs and shall also be responsible for the administrative and technical works of the Committee' (s 12).

The Director of the Institute for Traditional Thai Medicine shall be the central registrar and the provincial health chiefs are the provincial registrars (s 13).

Funding of Competent Authority

There is a Fund on Traditional Thai Medicine Intelligence established under s 76 under the Office of the Permanent Secretary, Ministry of Public Health, which is for expenses 'concerned with works on conservation and promotion of intelligence on traditional Thai medicine'.

The fund shall hold monies from the following sources: (i) grants from the State; (ii) funds from the private sector both locally or from overseas, foreign governments or international organisations; (iii) 'interests and benefits obtained from the fund'; (iv) 'other earnings from the functioning of the fund' (s 76).

The earnings of the fund shall not be considered as earnings that must be remitted to the Finance Ministry under the law on the treasury balance and the law on the budgetary procedures. The Office of the Permanent Secretary, Ministry of Public Health is responsible for maintaining the money and property of the fund, and shall withdraw the money in the fund in accordance with the provisions of this Act. The administration, management of benefits and use of money in the fund shall be in accordance with the rules prescribed by the Committee, with the approval of the Finance Ministry (s 76).

Togo

Law No. 90-24 of November 1990 on the Protection of National Cultural Heritage

(French Only)

Decree establishing an Inventory of Cultural Heritage in Togo

(French Only)

Tunisia

Law No. 35 dated 24 February 1994 relating to the issuance of the Code Of the Protection Of Archaeological And Historical Heritage and Traditional arts

(Arabic and French Only)

Turkey

Regulation on Exporting and Importing of Movable Cultural and Natural Property that Needs to be Protected

(Turkish Only)

Turkmenistan

Law of Turkmenistan No. 187-V of February 28, 2015, on the Protection of National Intangible Cultural Heritage

(Russian and Turkmen)

Uganda

The Copyright and Neighbouring Rights Act 2006

Objective

The copyright legislation refers to folklore and it does not provide for an access and benefit sharing regime with regards to traditional knowledge.

The National Environment Act

Objective

An Act for the 'sustainable management of the environment; to establish an authority as a coordinating, monitoring and supervisory body'; (Preamble). The Act does include some provisions regulating the conservation of biological diversity and access to genetic resources.

Competent Authority

The National Environment Management Authority (NEMA) is established under s 4 of the Act. NEMA is a body corporate with perpetual succession and is capable of suing and being sued in its own name and is under the general supervision of the Minister.

Functions of Competent Authority

The NEMA has a wide range of functions relating to environmental policy and management (s 6). In relation to genetic resources, the NEMA shall issue guidelines for the sustainable management and use of genetic resources (s 44(1)) and the guidelines shall specify the following (see s 44(2)):

- Arrangements for access to genetic resources by noncitizens of Uganda including fees payable
- Measures regulating the export of germ plasm
- Sharing of benefits derived from genetic resources of Uganda
- Any other measures necessary for the management of genetic resources.

Membership of Competent Authority

8. Establishment and membership of the board

(1) There shall be a board of directors of the authority.

(2) The board shall be appointed by the Minister with the approval of the policy committee.

- (3) The board shall consist of a chairperson, vice chairperson and seven other members drawn from the bodies specified in the Second Schedule to this Act.
- (4) The members of the board referred to in subsection (3) shall serve for three years and be eligible for reappointment for a further term.
- (5) The members appointed under subsection (2) shall be persons who qualify by virtue of their knowledge and experience in environmental management.
- (6) The executive director shall be an ex officio member of the board.

9. Functions and meetings of the board

- (1) The functions of the board shall be—
 - (a) to oversee the implementation and successful operation of the policy and functions of the authority;
 - (b) to review the policy and strategic plan of the authority;
 - (c) to provide guidance to the executive director and staff;
 - (d) to approve the annual budget and plans of the authority;
 - (e) to monitor and evaluate the performance of the authority against budgets and plans;
 - (f) to establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of the staff, administrative matters and financial matters;
 - (g) any other duties assigned to it by this Act.
- (2) The policy committee may, from time to time, give directions to the board on matters of policy, and the board shall comply with those directions.
- (3) The Second Schedule to this Act shall have effect so far as meetings of the board and other matters specified in that Schedule are concerned.
- (4) The Minister may, on the advice of the board, by statutory instrument, amend the Second Schedule.

11. Executive director and deputy executive director

- (1) There shall be an executive director and a deputy executive director appointed by the Minister on the recommendation of the board with the approval of the policy committee.
- (2) The executive director and the deputy executive director shall each serve for a period of five years and shall be eligible for reappointment.
- (3) The executive director or the deputy executive director shall cease to hold office if—
 - (a) he or she resigns; or
 - (b) is removed from office by the Minister on the advice of the board with the approval of the policy committee for—
 - (i) gross misconduct;
 - (ii) inability to discharge the functions of his or her office.

12. Functions of the executive director and the deputy executive director

- (1) The executive director shall be the chief executive of the authority and shall be responsible for the day-to-day operations of the authority.
- (2) Subject to this Act and the general supervision and control of the board, the executive director shall be responsible for the management of the funds, property and business of the authority and for the administration, organisation and control of the staff of the authority.
- (3) The executive director shall, from time to time, keep the board and the policy committee informed of the progress and activities of the authority.
- (4) The deputy executive director shall assist the executive director in the performance of his or her functions.
- (5) The executive director and the deputy executive director shall be responsible to the board.

13. Other staff of the authority

- (1) The board, on the advice of the executive director, may appoint other officers and employees of the authority.
- (2) The board, on the advice of the executive director, shall, from time to time, determine the terms and conditions of service of the officers and employees of the authority.

The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005

Objective

Regulating access to genetic resource for scientific research, commercial purposes, bio-prospecting, conservation or industrial application and to provide for the sharing of benefits derived from genetic resources (regulation 3).

Competent Authority

Uganda National Council for Science and Technology established under the *Uganda National Council for Science and Technology Act*.

Functions of Competent Authority

The functions of the competent authority are set out in reg 6 as follows:

- (a) to receive and facilitate the expeditious processing of all applications for access to genetic resources submitted to it;
- (b) to coordinate all activities of lead agencies relating to access to genetic resources in accordance with these Regulations and the Act;
- (c) to establish and maintain a depository for all materials transfer agreements and associated accessory agreements;
- (d) to establish administrative mechanisms for the implementation of these Regulations;
- (e) to implement in collaboration with the Authority, lead agencies, non-governmental organisations and other interested parties, an integrated training programme for promoting the implementation of these Regulations;
- (f) to ensure that representative samples and specimens of genetic resources collected under these Regulations are deposited in Uganda;
- (g) to advise on and approve the location for depositing of samples and specimens of genetic resources collected under these Regulations;
- (h) to ensure that technology transfer and information exchange in relation to genetic resources is effected by the persons accessing the genetic resources;
- (i) to facilitate negotiation and conclusion of all accessory and materials transfer agreements, including the terms and conditions upon which access is to be granted;
- (j) to ensure that all materials transfer agreements and associated accessory agreements contain sufficient provisions for the sharing of benefits arising out of use or application of genetic resources of Uganda accruing to any person or entity;
- (k) to ensure that the people of Uganda benefit from the genetic resources accessed;
- (l) to submit to the Authority, reports relating to the implementation of these Regulations.

Note references to the 'Authority' are to the National Environment Management Authority established under s 4 of the National Environment Act (see above).

In processing applications for access to genetic resources, the competent authority shall forward applications to the relevant lead agency (reg 7(2)). The lead agency will then review the application and advise the competent authority whether or not consent is granted to access (reg 7(3)). Once the lead agency has entered into an agreement with the accessing party then the competent authority may issue an access permit (reg 19). The competent authority may revoke access permits (in consultation with the lead agency) where the collector fails to comply with

the terms of the material transfer agreement or any permit conditions; where the collector fails to comply with the Regulations; or in the public interest with regards to biological diversity and the environment (reg 21).

Membership of Competent Authority

According to the *Uganda National Council for Science and Technology Act 1990* (s 6(1)) the Council shall be made up of:

1. One ex-officio member from each of the following Ministries:
 - Makerere University
 - Ministry responsible for agriculture
 - Ministry responsible for animal industry and fisheries
 - Ministry responsible for defence
 - Ministry responsible for education
 - Ministry responsible for energy
 - Ministry responsible for environment protection
 - Ministry responsible for health
 - Ministry responsible for housing and urban development
 - Ministry responsible for industry and technology
 - Ministry responsible for lands and surveys
 - Ministry responsible for planning and economic development
 - Ministry responsible for transport and communications
 - Ministry responsible for water and mineral resources
 - Ministry responsible for works
 - National Bureau of Standards
 - National Curriculum Development Centre
 - Uganda Manufacturers Association
 - Uganda Small Scale Industry Association
 - Uganda Polytechnic, Kyambogo
 - Universities other than Makerere University.
2. Not less than 15 members to be appointed by the Minister – such member to be a scientist of eminence in one of the following fields :
 - Agriculture and allied sciences
 - Computer science, electronics and informatics
 - Energy
 - Industrial science (engineering and technology)
 - Medical science (human and veterinary medicine)
 - Natural science (bio- and geo-sciences)
 - Physical science
 - Social sciences and humanities.

Funding of Competent Authority

According to s 21 of the *Uganda National Council for Science and Technology Act 1990*, the funds of the Council shall include (i) grants from the Government; (ii) money payable to the Council in performance of its functions; and (iii) donations made to the Council.

Accountability of Competent Authority

The Council is required to prepare a budget every year and the budget must be submitted to the Minister for their approval (s 23 of the *Uganda National Council for Science and Technology Act 1990*). The Minister must present the budget before the Parliament; all expenditure must be as approved by the Minister under the annual budget or in any supplementary budget.

The Council is required to keep proper books of account and prepare an annual statement of account including a balance sheet, statement of income and expenditure, and statement of surplus or deficit, and any other information that may be required by the Minister (s 24 of the *Uganda National Council for Science and Technology Act 1990*). The annual statement of account will be audited every year by the Auditor General or an auditor appointed by them (s 25 of the *Uganda National Council for Science and Technology Act 1990*).

The Council is required to prepare an annual report of the Council's activities and submit the report to the Minister (s 26 of the *Uganda National Council for Science and Technology Act 1990*).

Ukraine

Law on Folk Artistic Craft

(Ukrainian Only)

Law on Fundamentals of the Legislation on Culture

(Ukrainian Only)

United Arab Emirates

Federal Law No. 40 of 1992 on the Protection of Intellectual Works and Copyright

A law for the protection of copyright with reference made to national folklore but it does not provide an access and benefit sharing regime with regards to traditional knowledge.

Federal Law No. 7 of the Year 2002 Concerning Copyrights and Neighbouring Rights

A law for the protection of copyright with reference made to national folklore and it does not provide an access and benefit sharing regime with regards to traditional knowledge.

United Kingdom

Copyright, Designs and Patents Act 1988

The Act regulates the protection of intellectual property rights with some reference to folk songs and folklore but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

The Medicines (Traditional Herbal Medicinal Products for Human Use) (Consequential Amendment) Regulations 2006

For the regulation of traditional herbal medicines but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

The Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005

For the regulation of traditional herbal medicines but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

The Copyright (Recording of Folksongs for Archives) (Designated Bodies) Order 1989

This designates bodies authorised to maintain an archive of recordings of folk songs and sets out the prescribed conditions which must be met when seeking a copy of a sound recording contained in an archive. However it does not provide for an access and benefit sharing regime with regards to traditional knowledge.

United Republic of Tanzania

The Traditional and Alternative Medicine Act 2002 (Act No 23 of 2002)

For the regulation of traditional and alternative medicines but does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Vanuatu

Copyright and Related Rights Act No. 42 of 2000

Objective

The *Copyright and Related Rights Act* provides for copyright and related rights and establishes offences in relation to 'expressions of indigenous culture' (ss 41 & 42). It is a defence to an offence in relation to expressions of culture if the act was authorised by the National Cultural Council or the National Council of Chiefs (s 41(2)(e)).

Competent Authority

1. The National Cultural Council

The Vanuatu National Cultural Council (VNCC) established under the *Vanuatu National Cultural Council Act*. Under the *Vanuatu National Cultural Council Act*, the VNCC is a body corporate with perpetual succession and a common seal and the ability to sue and be sued in its own name (s 2).

2. National Council of Chiefs

Function of Competent Authority

In the context of the *Copyright Act*, the functions of the competent authorities are as follows:

- Authorise acts in relation to expressions of culture (s 41(2)(e))
- Institute proceedings, on request, on behalf of custom owners of expression for infringement (s 42(3))
- Institute proceedings as if it were the owner of the copyright or other right in the event that the custom owners cannot be identified or there is a dispute about ownership (s 42(4))
- The Council may issue written guidelines for the purpose of sections 41-42 dealing with offences in relation to expressions of indigenous culture (s 42(9)).

Membership of Competent Authority

The National Cultural Council shall be made up of the director appointed by the Minister and six members appointed by the Minister responsible for cultural affairs (s 3(1) of the *Vanuatu National Cultural Council Act*)

- one representative of the Ministry responsible for Cultural Affairs nominated by the Minister of Cultural Affairs
- one representative of the National Council of Chiefs nominated by the National Council of Chiefs
- one representative of the National Council of Women nominated by the National Council of Women
- one representative of the Vanuatu Cultural Centre
- two persons whom the Minister responsible for cultural affairs ‘considers have ‘relevant experience in matters relating to museums, public libraries or archives.’

Funding of Competent Authority

In s 12 of the *Vanuatu National Cultural Council Act*, the funds of the Council shall consist of:

- (a) grants from the Government out of monies appropriated by Parliament for such purposes;
- (b) grants from other sources;
- (c) monies borrowed by the Council;
- (d) monies received by the Council in any other way in the course of the discharge of its objects.

Accountability of Competent Authority

The Council is required to keep proper accounts and records in respect of receipts and expenditure and to prepare an annual statement of accounts for each financial year (s 16(1). The accounts shall be audited annually by the Auditor-General (s 16(2) of *Vanuatu National Cultural Council Act*)

The Council must submit audited accounts and any audit report to the Minister for Finance and the Minister for Cultural Affairs (s 16(3) of *Vanuatu National Cultural Council Act*). The Council must submit an annual report of activities to the Minister for Cultural Affairs accompanied with a copy of the audited accounts and the Minister must table the report before Parliament (s 17 of the *Act*)

Patents Act No. 2 of 2003

Patents Act with specific provisions governing the registration of patents involving traditional knowledge. Where a patent application involves ‘indigenous knowledge’ this must be referred to the National Council of Chiefs (s 47(1)). The Registrar may only grant a patent that is ‘based on, arose out of, or incorporates indigenous knowledge’ where the custom owners have given prior informed consent and the applicant and custom owners have entered into an agreement for the sharing of benefits (s 47(2)).

However, in accordance with s 47(3) of the *Act*, the Registrar may grant the patent without the prior informed consent of the custom owners if the Registrar is, after consultation with the National Council of Chiefs, satisfied that:

- (a) the custom owners cannot be identified; or
- (b) there is a dispute about ownership of the indigenous knowledge concerned.

In such a case, the Registrar must not grant the patent unless the applicant and the National Council of Chiefs have entered into an agreement on the payment by the applicant to the National Council of Chiefs of an equitable share of the benefits from exploiting the patent.

Any payments made to the National Council of Chiefs as an equitable share of benefits must be used for the purposes of 'indigenous cultural development' (s 47(5)).

Designs Act No. 3 of 2003

The *Act* regulates the registration of designs with specific reference to registration of a design involving 'indigenous knowledge'. Where an application for registration of a design involves 'indigenous knowledge' is must be referred to the National Council of Chiefs (s 62(1)). The Registrar may only register a design that is based on, arose out of, or incorporates indigenous knowledge where the custom owners have given prior informed consent and the applicant and custom owners have entered into an agreement for the sharing of benefits (s 62(2)).

However, in accordance with section 62(3), the Registrar may register the design without the prior informed consent of the custom owners if the Registrar is, after consultation with the National Council of Chiefs, satisfied that:

- (a) the custom owners cannot be identified; or
- (b) there is a dispute about ownership of the indigenous knowledge concerned.

Under the *Act* the Registrar must not register the design unless the applicant and the National Council of Chiefs have entered into an agreement on the payment by the applicant to the National Council of Chiefs of an equitable share of the benefits from exploiting the patent. Any payments made to the National Council of Chiefs as an equitable share of benefits must be used for the purposes of 'indigenous cultural development' (s 62(5)).

Vietnam

Law No. 50/2005/QH11 of November 29, 2005, on Intellectual Property (promulgated by the Order No. 28/2005/L-CTN of December 12, 2005, of the President of the Socialist Republic of Vietnam)

As set out in Article 1, the law provides for 'copyright, copyright-related rights, industrial property rights, rights to plant varieties and the protection of these rights' and makes reference to folklore and folk art works but it does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Yemen

Intellectual Property Law (Presidential Law Decree No. 19 of 1994 in respect of Intellectual Property)

Regulates intellectual Property law over copyright and related rights, patents, trademarks and other intellectual property rights; with some reference to tradition and folklore. It does not provide for an access and benefit sharing regime with regards to traditional knowledge.

Zambia

The Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, 2016 (Act No. 16 of 2016)

Objective

To establish a framework for the 'protection of, access to, and use of, traditional knowledge, genetic resources and expressions of folklore, which also guarantees equitable sharing of benefits and effective participation of holders'; (Preamble).

Competent Authority

The Act relies on existing competent authorities established under the *Patents and Companies Registration Agency Act*.

1. The Agency – Patents and Companies Registration Agency established in accordance with the *Patents and Companies Registration Agency Act*. The Agency is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name (s 3 of the *Patents and Companies Registration Agency Act*).
2. The Registrar – Registrar appointed in accordance with the *Patents and Companies Registration Agency Act 2010*.

Functions of the Competent Authority

1. The Agency shall:
 - Act on behalf of the knowledge holder (on request) to facilitate requests for prior informed consent or collect benefits (ss 18(1) & (3))
 - Approve contracts for prior informed consent and benefit sharing in relation to traditional knowledge (s 18(6))
 - Notify applicants where traditional knowledge is claimed by several knowledge holders (s 18(8))
 - Act as mediator in the event of a dispute as to the identity of the rights holder of particular traditional knowledge (s 18(10))
 - Approve assignment or license of access contracts in relation to traditional knowledge (s 19(3))
 - Keep a register of assignments and licenses in relation to traditional knowledge (s 19(4))
 - Approve access agreements in respect of genetic resources (s 28(2))
 - Keep a register of access agreements in relation to genetic resources (s 28(3))
 - Process, examine and grant or deny (where appropriate) applications for permits to access genetic resources (ss 33 & 34)
 - Process, examine and grant or deny (where appropriate) applications for exploration permits in relation to genetic resources (ss 37 & 39)
 - Monitor the execution of access agreements through inspections; progress and status reports from permit holders; regular reports by parties interested in preservation, conservation or use of genetic resources and traditional knowledge; any other mechanism (s 45(1))
 - Approve licensing agreements in relation to traditional cultural expressions (s 52(3))
 - Authorise exploitation of expressions of folklore (s 52(4)-(5))
 - Maintain a register of license agreements in relation to expressions of folklore (s 52(6)).

2. The Registrar shall be responsible for the following activities (s 6)

- a) raise awareness, educate, guide, monitor, register, enforce and perform other activities related to the protection of traditional knowledge, genetic resources and expressions of folklore
- b) collect, analyse and disseminate to holders and users information on access;
- c) advise and assist holders in enforcing their rights;
- d) where a dispute arises between a traditional community and a community outside Zambia, regarding ownership of traditional knowledge, genetic resources, or expressions of folklore, where applicable refer the dispute to a regional or an international body for resolution upon exhaustion of local remedies;
- e) monitor and ensure that access is carried out in accordance with this Act;
- f) prepare model access agreements and, where necessary, collect from users benefits on behalf of holders and other beneficiaries; and
- g) maintain registers and publish journals as required under this Act.

The Registrar may also hold proceedings to make determinations as to disputes under the Act (s 56(1)).

Role of Customary Law

Where the Agency is acting on behalf of a knowledge holder, it is required to act in accordance with traditional decision-making and governance processes relevant to the traditional community involved (s 18(2)).

Membership of Competent Authority

The Board of the Agency is made up of the following part time members as appointed by the Minister (in accordance with s 6 of the *Patents and Companies Registration Agency Act*)

- (a) a representative of the Ministry responsible for commerce;
- (b) a representative of the Attorney-General;
- (c) an accountant registered with the Zambia Institute of Chartered Accountants;
- (d) a representative of the Zambia Association of Chambers of Commerce and Industry;
- (e) one person with expertise in matters of intellectual property; and
- (f) two other persons.

The Registrar is the chief executive officer of the Agency (s 14(1) of the *Patents and Companies Registration Agency Act*) and shall be an ex-officio member of the Board, and must be a legal practitioner with at least five years legal experience. (s 14 of the *Patents and Companies Registration Agency Act*).

Funding of Competent Authority

Funds of the Agency shall be in accordance with s 16 of the *Patents and Companies Registration Agency Act* and consist of those monies as may,

- (a) be appropriated to the Agency by Parliament for the purposes of the Agency;
- (b) be paid to the Agency by way of fees, loans, grants or donations; and
- (c) otherwise vest in or accrue to the Agency.

Accountability of Competent Authority

The Agency is required to keep proper books of account (s 18(1) of the *Patents and Companies Registration Agency Act*). The accounts shall be audited annually by the Auditor General (or other independent auditors as approved by the Auditor General) (s 18(2) of the *Patents and Companies Registration Agency Act*).

The Agency must submit to the Minister an annual report of the Agency's activities including an audited balance sheet, audited statement of income and expenditure and any other information required by the Minister (s 19(1)-(2) of the *Patents and Companies Registration Agency Act*). The Minister shall table the annual report with the National Assembly (s 19(3) of the *Patents and Companies Registration Agency Act*).

Country Specific Provisions – Genetic Resources

Albania

Law No. 113/2012 of 22.11.2012 "On the accession of the Republic of Albania to the Nagoya Protocol On Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization"

(Albanian Only)

Belarus

The Statute of the National Coordination Centre on Access to Genetic Resources and Benefit-Sharing 2014

Objective

To regulate the National Coordination Centre on Access to Genetic Resources and Benefit-Sharing.

Competent Authority

The Centre shall operate as a department of the State Scientific Institution 'Institute of Genetics and Cytology of the National Academy of Sciences of Belarus' (s 2)

Functions of Competent Authority

Tasks (s 8), for

- the collection, analysis and systematization of information on the legislation in regulation of access to genetic resources of the Republic of Belarus and benefit-sharing from their utilization;
- the collection, systematization and analysis of information, development of the genetic resources national databank on genetic resources of the Republic of Belarus, to which access and joint utilization, including benefit-sharing, can be provided;
- maintaining constant liaison with the Secretariat of the Convention on Biological Diversity and participation in the ABS Clearing-House for information exchange on genetic resources, on legislative control over access to them and benefit-sharing;
- the provision of information to applicants (legal entities and natural persons), wishing to get access to genetic resources of the Republic of Belarus, on the procedure of obtaining the prior informed consent and making mutually agreed terms, including benefit-sharing;
- the provision of information to applicants (legal entities and natural persons), wishing to get access to traditional knowledge, associated with genetic resources, and information on the procedure of obtaining the prior informed consent and making mutually agreed terms, including benefit-sharing;
- the provision of information on competent national authorities, relevant entities of the activities, associated with conservation and utilization of genetic resources, to interested Republican bodies of the State management, and media;
- the arrangement of scientific and economic examination of projects, agreements and treaties on access to genetic resources of the Republic of Belarus and terms of their utilization, including benefit-sharing;

- the sharing information with focal points and with international organizations concerning access to genetic resources of other countries;
- the rendering of advisory services to the State bodies and other institutions in developing draft legislative acts concerning regulation of access to genetic resources of the Republic of Belarus and benefit-sharing from their utilization; and
- the rendering of advisory services to the State bodies and other institutions in preparing proposals for conclusion of bilateral and multilateral agreements, in developing international agreements on access to genetic resources and terms of their utilization, including benefit-sharing.²³

Functions (s 9)

- carrying out of coordination and information activities in ensuring access to genetic resources and terms of their utilization, including benefit-sharing;
- rendering of information and advisory assistance to the State bodies and other institutions, whose activities come within the scope of the Nagoya Protocol;
- taking part in the development and improvement of standard legal acts regulating access to genetic resources and benefit-sharing from their utilization;
- carrying out of activities to raise awareness of the goals and objectives of the Nagoya Protocol in civil servants, experts in science, agriculture and forestry, customs services, reserve management, fishing and hunting inspection, lawyers and educational personnel, the general population;
- holding of scientific and practical republican and international conferences on the regulation issues on access to genetic resources and benefit-sharing from their utilization under the Nagoya Protocol;
- organization of scientific and economic examination of projects, agreements and treaties on access to genetic resources of the Republic of Belarus and terms of their utilization, including benefit-sharing, after obtaining the prior informed consent by the applicant;
- preparation and publication of informative-and-practical textbooks and reference books on the Nagoya Protocol for experts of scientific, scientific-and-practical, State and departmental institutions as well as for a wide range of stakeholders;
- maintaining constant liaison with the Secretariat of the Convention on Biological Diversity and participation in activities of the Access and Benefit-Sharing Clearing-House for information-sharing on genetic resources, legislative regulation of access to them and benefit-sharing from their utilization;
- maintaining and ongoing building of the national capacity to collaborate with the Clearing-House under the Nagoya Protocol;
- promoting of international cooperation under the Nagoya Protocol in all formats, its successful implementation in the Republic of Belarus and other countries;
- preparing National reports on fulfilment of obligations under the Nagoya Protocol by the Republic of Belarus;
- designing and maintaining information-and-reference website on the Nagoya protocol issues and its inclusion in the system of information exchange with the Access and Benefit-Sharing Clearing-House Internet portal; and

²³ *The Statute of the National Coordination Centre on Access to Genetic Resources and Benefit Sharing 2014* (Belarus) section 8

- preparing and publishing normative and legal acts of the Republic of Belarus as well as information materials on implementation of the Nagoya Protocol in the Republic of Belarus at the Access and Benefit-Sharing Clearing-House Internet portal.

Powers (s 10)

10. For carrying out its activities, the Centre is vested with the following rights:

10.1. To request and receive the required documents and information from State bodies, legal entities and natural persons in accordance with established procedure;

10.2. To apply to the State bodies with proposals for improving the legislation and raising the efficiency of administrative and other measures specified for fulfilment of obligations of the Republic of Belarus under the Nagoya Protocol;

10.3. To establish the relationship with foreign governmental and non-governmental institutions in the field of information-sharing, consultations on legislative regulation of access to genetic resources and benefit-sharing from their utilization;

10.4. To establish the relationship with foreign governmental and nongovernmental institutions for participation in international workshops, expert working groups and councils under the Nagoya Protocol and organization of similar events in Belarus;

10.5. To apply to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus with proposals for the appointment of ABS national focal points under the Nagoya Protocol and for participation in the Access and Benefit-Sharing Clearing-House;

10.6. To apply to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus for reporting incidents of non-compliance with the Nagoya Protocol in the territory of the Republic of Belarus;

10.7. To apply to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus with proposals for format of distributing a positive experience of ensuring access to genetic resources and their mutually beneficial utilization in compliance with the Nagoya Protocol provisions among the interested legal entities and natural persons.

Membership of Competent Authority

Head of Centre appointed by the Director of the Institute (s 3)

Under s 11 of the *Act* the Head of the Centre is required to:

- submit expenditure estimates for approval by the Director of the Institute
- develop and implement scientific and practical plans of the Centre activities
- exercise other powers related to direct management of the Centre
- engage in 'effective planning, ensuring and improving the quality of the activities'
- make recommendations to the Management of the Institute with regards to promotions or disciplinary proceedings for employees of the Centre
- ensure compliance with requirements for: protecting information that is a state or commercial secret; labour protection including fire safety; internal regulations; and local standard legal acts concerning the Centre activities.

Centre employees are appointed and dismissed by Order of the Director of the Institute (s 5).

Funding of Competent Authority

Structure, personnel, expenditure estimates and the program of activities to be approved by the Director of the Institute (s 4). Financing of the Centre is made from the funds, allocated to the

Institute for performing the duties of the Centre and of the Checkpoint for monitoring the utilization of genetic resources, within the Republican budget funds for scientific and scientific-and-technical activities, allocated for ensuring statutory activities of the National Academy of Sciences of Belarus; (s 6).

Coordination and Cooperation with other Organisations

1. Analysis and reporting: 'Deputy Director for Research, Deputy Director for Scientific-and-Innovative Work, Scientific Secretary of the Institute, Heads of laboratories of the Institute, as well as with the Department of Biological Sciences and the National Academy of Sciences of Belarus' (s 12.1)

2. Contracts and Agreements on scientific and technical programs, innovative projects, treaties, grants: 'Deputy Director of the Institute for Scientific-and-Innovative Work, with the Ministry of Natural Resources and Environmental Protection; other ministries and agencies; laboratories of the Institute, Department of International Cooperation of the National Academy of Sciences of Belarus, Planning and Financial Department of the National Academy of Sciences of Belarus, institutions of the National Academy of Sciences of Belarus, legal entities and other institutions of different forms of ownership, individual entrepreneurs' (s 12.2).

3. International scientific and technical cooperation within the competence of the Centre: 'Deputy Directors for Research and Scientific-and Innovative Work, Accounts Department of the Institute, Planning and Financial Department of the National Academy of Sciences of Belarus, Department of International Cooperation of the National Academy of Sciences of Belarus' (s 12.3).

4. Selection, preparing and implementation of innovative projects and projects of international technical assistance: 'Deputy Director for Research, Heads of laboratories of the Institute, innovation funds, the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus, other ministries and departments, legal entities and other institutions of different forms of ownership, individual entrepreneurs' (s 12.4)

5. Compliance with Nagoya Protocol: Ministry of Natural Resources and Environmental Protection (s 12.5).

Note: The Competent Authorities for the purpose of the Nagoya Protocol: National Coordination Centre on Access to Genetic Resources and Benefit Sharing; and Ministry of Natural Resources and Environmental Protection of the Republic of Belarus.

Kenya

Environmental Management and Coordination Act 1999 (Revised Edition 2012) and The Environmental Management and Co-ordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations 2006

Objective

An Act to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected to these issues; (Preamble).

Competent Authority

The National Environment Management Authority is established under the *Environmental Management and Coordination Act 1999 (Rev. 2012)*, which is the Competent Authority for the

purposes of the *Environmental Management and Coordination Act 1999 (Revised Edition 2012)* and the *Environmental Management and Co-ordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations 2006*.

The Authority is established under s 7(1) and is a body corporate with perpetual succession and a common seal (s 7(2)). The Authority is capable of '(a) suing and being sued; (b) taking, purchasing, charging and disposing of movable and immovable property; (c) borrowing money; (d) entering into contracts; and (e) doing or performing all such other things or acts for the proper administration of this Act, which may lawfully be performed by a body corporate.' (s 7(2)).

Functions of Competent Authority

The National Environment Management Authority is responsible for the Authority; (Ss 9(1) and 9(2)).

The Regulations also set out the following functions for the Authority:

- prepare an inventory of biological diversity of Kenya (reg 6(1))
- receive applications for access to genetic resources in Kenya (reg 9(1))
- review applications for access to genetic resources in Kenya (reg 11(1))
- issue permits for access to genetic resources in Kenya (reg 11(1))
- impose conditions on access to genetic resources in Kenya (reg 15(1)-(2))
- suspend, cancel or revoke access permits (reg 16(1))
- keep, manage and update register of access permits (reg 17).

Powers of the Authority

The powers of the Authority are specified in s 11, as follows:

The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have powers to—

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organisations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
- (e) open a banking account or banking accounts for the funds of the Authority; and
- (f) invest any funds of the Authority not immediately required for its purposes in the manner provided in s 26.

Members of the Authority

The Authority is managed by a Board, composed of:

- (a) a chairman appointed by the President;
- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to the Authority or an officer of that Ministry designated in writing by the Permanent Secretary;
- (c) a Director-General appointed by the President;
- (d) three Directors who shall be officers of the Authority;
- (e) seven members, not

being public officers appointed by the Minister in consultation with the Council; and (f) the Secretary to the Board, who shall be appointed by the Authority. (s 10(1)).

Board members are required to hold a post-graduate degree in one of the following fields of environmental law, environmental science, natural resource management or a relevant social science (s 10(2)).

The Director General must have at least 15 years work experience in the relevant field (section 10(2)).

Funding of Competent Authority

The Authority has a general fund that holds:

- monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions(s 20(2)(a));
- sums granted by the Minister towards expenditure incurred by the Authority in the exercise of its powers or the performance of its functions (ss 20(2)(b) & 20(3));
- any other monies provided for, donated or loaned to the Authority (s 20(2)(c)).

The Authority is required to establish a budget (Annual Estimates) that sets out the details of revenue and expenditure per year (s 22(1)); including salaries, pensions, maintenance of buildings and equipment/other property, creation of reserve funds to cover future liabilities (s 22(2)). The budget must be provided to the Minister for approval and cannot be increased without the consent of the Minister (s 22(3)). The annual accounts must be submitted to the Auditor General (Corporations) or an auditor appointed with approval of the Auditor General (Corporations) (ss 23(2) & 23(3)).

A National Environment Trust Fund is established under s 24 for the purpose of facilitating 'research intended to further the requirements of environmental management, capacity building, environmental awards, environmental publications, scholarships and grants' (s 24(4)) and shall consist of:

- (a) such sums of money as may be received by the Trust Fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Trust Fund;
- (b) such sums of money or other assets as may be specifically designated to the Trust Fund by the Authority out of its general fund. (s 24(2)).

Trust Fund shall be administered by a Board of five Trustees (to be appointed by the Minister) and shall be vested in the Authority (s 24(3)).

A National Environmental Restoration Fund is established under s 25 for the purpose of providing 'supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation.' The Restoration Fund shall consist of:

- (a) such proportion of fees or deposit bonds as may be determined by the Authority from time to time;
- (b) such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund. (s 25(2)).

Accountability of Competent Authority

The Annual Financial Report must be submitted to the National Environment Council including the audited statement of income and expenditure and the estimates of income and expenditure for the following year and the Minister shall lay it before the National Assembly (s 27).

Country Specific Provisions – Other relevant institutions

New Zealand

Patents Act 2013

The *Act* does not regulate access and benefit sharing in relation to traditional knowledge. However, it regulates the grant of intellectual property rights in the form of patents and provides, in s 226, for a Māori advisory committee to advise the Commissioner on request whether:

- (a) an invention claimed in a patent application is derived from Māori traditional knowledge or from indigenous plants or animals; and
- (b) if so, whether the commercial exploitation of that invention is likely to be contrary to Māori values.

The Māori Advisory Committee shall be as appointed by the Commissioner and must not appoint any person as a member of the committee unless the person is 'qualified for appointment, having regard to that person's knowledge of mātauranga Māori (Māori traditional knowledge) and tikanga Māori (Māori protocol and culture).' This judgement is to be made by the Commissioner based on their opinion. (s 225(3)).

The advice of the Māori advisory committee is not binding on the Commissioner however the Commissioner must consider the advice in making a decision (s 227). The Māori Advisory Committee is able to regulate its own procedure subject to the directions of the Commissioner (s 228).