

Chapter 20:27
Environmental Management
Prohibition Access to Genetic Resources & Indigenous Genetic Resource-based
Knowledge Regulations, 2009

Statutory Instrument 61 of 2009

Gazetted on the 1st May, 2009

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IT is hereby notified that the Minister of Environment and Tourism has, in terms of section 140 of the Environmental Management Act [*Chapter 20:27*], as read with section 117 of that Act, and after consultation with the Environmental Management Agency, made the following regulations:—

PART I
PRELIMINARY

Title

1 These regulations may be cited as the Environmental Management (Access to Genetic Resources & Indigenous Genetic Resource-based Knowledge) Regulations, 2009.

Interpretation

2 In these regulations—

"**access**", in relation to genetic resources and indigenous genetic resource-based knowledge, includes the collection, use or exploitation of those resources and that knowledge,

"**Agency**" means the Environment Management Agency;

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

"**bioprospecting licence**" means a licence issued in terms of section *fourteen* or *twenty-three*;

"**block bioprospecting licence**" means a bioprospecting licence covering the areas of 2 or more local authorities, whether they are contiguous or not, issued under Part VI;

"**block general licence**" means a general licence for access to the genetic resources in the areas of 2 or more local authorities, whether they are contiguous or not, issued under Part VI;

"**Board**" means the Environment Management Board of the Agency;

"**Committee**" means the Genetic Resources and Related Indigenous Knowledge Protection Committee established under section *four*;

"**communal rights claim**" means a claim by an indigenous community for the recovery or recognition of ancestral rights to genetic resources and genetic resource-based knowledge made in terms of section Part VII;

"**Chief**" means any person appointed as a Chief in terms of section 3(1) of the Traditional Leaders Act [*Chapter 29:17*];

"**community**" or "**indigenous community**" means a community of persons that has inhabited Zimbabwe continuously since before the year 1890 and whose members share the same language or dialect or the same cultural values, traditions or customs;

"**explicit prior informed consent**", in relation to the giving of consent by an indigenous community to access to its genetic resources or genetic resource-based knowledge, means the giving of such consent—

(a) before an application for a licence is granted by a licensing authority; and

(b) in a form that satisfies the licensing authority that the consent is voluntarily made on the basis of full disclosure of all relevant information in connection with the application, especially with respect to access that may be detrimental to the integrity of the community's natural or cultural heritage;

"**foreign research or conservation institution**" means any association or body outside Zimbabwe, whether corporate or unincorporated, or established by or under an enactment, which is directly or indirectly engaged in the promotion, preservation or development otherwise than primarily for profit of genetic resources;

"**form**" means a form prescribed in the *First Schedule* or a form substantially in accordance with a form so prescribed;

"**general licence**" means a licence referred to in section *fourteen* or *twenty-three*;

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

"**genetic resources**" means genetic material of actual or potential value;

"**headman**" means any headman appointed in terms of section 8 of the Traditional Leaders Act, [*Chapter 29:17*];

"**indigenous genetic resource-based knowledge**" means any knowledge or innovation (however expressed, mediated, articulated or transmitted) in relation to genetic materials and their use that constitutes part of the common, traditional or customary patrimony of a local authority or indigenous community, and includes traditional medical knowledge;

"**individual proprietary claim**" means an individual proprietary claim to the exclusive use of any traditional medicine or traditional medical knowledge on the basis that the medicine or knowledge in question was—

- (a) discovered or improved by that practitioner; or
- (b) inherited by that practitioner from a member of the family of that practitioner;

"**licence**" means a bioprospecting licence, block bioprospecting licence, general licence or block general licence;

"**Licensing authority**" means the person or persons responsible for issuing licences in terms of section *fourteen* (1) or (2), *twenty-three*(1) or *twenty-five*(1);

"**local research or conservation institution**" means any association or body, whether corporate or unincorporated, established by or under an enactment, which is directly or indirectly engaged in the promotion, preservation or development otherwise than primarily for profit of genetic resources, and includes the Parks and Wild Life Management Authority established under the Parks and Wild Life Act [*Chapter 20:14*], the Agricultural Research Council established under the Agricultural Research Act [*Chapter 18:05*], a university established by Act of Parliament, a museum or a library;

"**medicine**" means any substance (including a herb, root, germplasm or other by-product or derivative of any plant, animal, microbe or other microorganism) or mixture of substances which is used, or is manufactured, sold or represented as suitable for use, in—

- (a) the diagnosis, treatment, mitigation or prevention of disease or abnormal physical mental state or the symptoms thereof in human beings or in animals; or
- (b) restoring, correcting or modifying any physical, mental or organic function in human beings or in animals;

"**National Biotechnology Authority**" means the National Biotechnology Authority established in terms of the National Biotechnology Authority Act [*Chapter 14:31*] ;

"**protected genetic material**" means any genetic material that is the subject of a work of a vesting and reservation notice;

"**subcommittee**" means the subcommittee on Traditional Medicines and Traditional Medical Knowledge constituted in terms of section *seventeen*;

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

"**traditional leadership**" means the Chief or any headman or village head of any community or part of community residing within the area of a local authority;

"**traditional medical knowledge**" means any knowledge or innovation in relation to genetic materials and their use for therapeutic purposes—

(a) that constitutes part of the common, traditional or customary patrimony of a local authority or indigenous community; or

(b) that is held by a traditional medical practitioner, whether or not by virtue of being a member of a local authority or community referred to in paragraph (a);

"**traditional medical practitioner**" means a person registered as such in terms of the Traditional Medical Practitioners Act [*Chapter 27:14*];

"**Traditional Medical Practitioners Council**" means the Traditional Medical Practitioners Council established by section 3 of the Traditional Medical Practitioners Act [*Chapter 27:14*];

"**traditional medicine**" means any medicine—

(a) that constitutes part of the common, traditional or customary patrimony of a local authority or indigenous community; or

(b) that is manufactured or dispensed by a traditional medical practitioner, whether or not a member of a local authority or community referred to in paragraph (a);

"**traditional medicines and knowledge vesting and reservation notice**" means a notice published in terms of section *nineteen*;

"**unlicensed**", in relation to the possession or use of any protected genetic material, means the possession or use of such material without or otherwise than in accordance with a licence;

"**vesting and reservation notice**" means a notice published in terms of section *ten*(3);

"**village head**" means any person appointed as a village head in terms of section 11 of the Traditional Leaders Act, [*Chapter 29:17*];.

Purposes of regulations

3 The purposes of these regulations are, pursuant to sections 116 and 117 of the Act, to—

(a) protect the rights of local authorities and communities to their genetic materials and indigenous genetic resource-based knowledge;

(b) promote indigenous genetic resource-based knowledge by conserving and strengthening the indigenous communal systems of informal knowledge, collective innovations and transmission thereof which do not conform to the notions of

(i) private ownership, private intellectual property rights or individual privilege, or

- (ii) public or State ownership in the knowledge or innovations concerned;
- (iii) That are contrary to the moral, intellectual and cultural values of the communities in question;
- (c) ensure the conservation and sustainable use of genetic resources in order to maintain and improve their diversity as a means of sustaining the life-support and health-care systems of the people of Zimbabwe;
- (d) provide an appropriate system of access to genetic resources and indigenous genetic resource-based knowledge that is based upon the explicit prior informed consent of the concerned local or indigenous communities and the State;
- (e) implement appropriate mechanisms for the fair and equitable sharing of the benefits arising from the use of genetic resources and indigenous genetic resource-based knowledge, that is to say, mechanisms that ensure the participation and agreement of concerned communities in making decisions regarding the distribution of benefits which may be derived from the use of genetic resources and indigenous genetic resource-based knowledge;
- (f) promote and encourage the building of a national scientific and technological capacity relevant to the conservation and sustainable use of genetic resources and indigenous genetic resource-based knowledge;
- (g) promote new innovations and discoveries to reproduce, manage and enhance genetic resource use;
- (h) ensure that the movement and transfer of genetic materials and the sharing and transmission of indigenous genetic resource-based knowledge takes place in a transparent manner;
- (i) engage the support of local and foreign research or conservation institutions in assisting the Board and Committee to achieve the foregoing purposes.

PART II

GENETIC RESOURCES AND INDIGENOUS GENETIC RESOURCE-BASED KNOWLEDGE PROTECTION COMMITTEE

Establishment and composition of Genetic Resources and Indigenous Genetic Resource-based Knowledge Protection Committee

4 (1) The Board shall establish Genetic Resources and Indigenous Genetic Resource-based Knowledge Protection Committee which shall consist of at least 7 and not more than 11 members appointed by the Board.

(2) Of the members appointed in terms of subsection (1) the Board shall designate a chairperson and a deputy chairperson of the Committee and a member to act as secretary of the Committee.

(3) The deputy chairperson of the Committee shall exercise the functions of the chairperson during any period that the chairperson is unable to exercise his or her function.

(4) The *Second Schedule* shall apply to the conditions of office, disqualifications and vacation of office of members of the Committee and related matters, and to the meetings and procedure of the Committee.

Functions of Committee and exercise thereof

5 (1) The general function of the Committee shall be to advise the Board on all aspects concerning the protection of the rights of indigenous communities over their knowledge of genetic resources and how the communities have managed, maintained, conserved, reproduced and enhanced traditional knowledge, culture and various forms of practice related to the plants, animals and other genetic resources which are held by them in common.

(2) The Committee shall have the following specific functions—

(a) Evolving a long term policy and guidelines for

the conservation and sustainable use of genetic resources and their components; and

the equitable sharing of benefits arising out of the utilisation of genetic resources; and

(b) reviewing project proposals for controlled experimental trials involving genetic resources, and advising the Board on whether to approve, prohibit or restrict such trials; and

(c) making recommendations to the Board

for the creation of a uniform national mechanism for accessing and introducing any genetic resource; and

on project proposals involving the use of or access to genetic resources on a large scale; and

on the safety aspects of the import, export, manufacture, processing and selling of any genetic resource; and

on national priorities with respect to the accessing and use of genetic resources and

designing training programmes for any of the foregoing purposes; and

(d) assisting indigenous communities to document their indigenous genetic resource-based knowledge and to register any intellectual property rights in relation thereto; and

(e) making a complete inventory of the genetic resources of the nation; and

(f) promoting the use of all available and appropriate scientific techniques and procedures in order to identify and classify genetic resources, such as molecular techniques of identification; and

developing an archive of records in any medium embodying the indigenous genetic resource-based knowledge of indigenous communities, with a view to providing a basis for the recognition of community ownership rights in that knowledge; and

monitoring the causes of the loss or scarcity of genetic resources; and

establishing contact and maintaining liaison with bodies in other countries and international organisations concerned with conservation and sustainable utilisation of genetic resources; and

(j) raising funds for the purpose of assisting local communities to manage access to genetic resources without affecting the environment; and

(n) performing such other functions as are provided for in these regulations.

(3) in carrying out activities referred to in subsection (2), the Committee may through the Board, report to the National Biotechnology Authority in relation to matters related to biotechnology research.

PART III

COMMUNITY RIGHTS OVER GENETIC RESOURCES AND INDIGENOUS GENETIC RESOURCE-BASED KNOWLEDGE

Intra-communal rights in relation to genetic resources and indigenous genetic resource-based knowledge

6 (1) The rights of the residents of a local authority or members of an indigenous community, as the case may be, to exchange among themselves genetic resources, the products derived therefrom and associated indigenous genetic resource-based knowledge, for their own purposes in accordance with their customary practices, shall subsist exclusively in the residents of the local authority or the members of the indigenous community concerned, without prejudice, however, to the right of traditional medical practitioners who are not residents or members of the local authority or community concerned to have access to such resources, products and knowledge to enable them to practise their vocation.

(2) The rights expressed in subsection (1) are inalienable and shall be deemed to have always been held by residents of the local authority or members of an indigenous community concerned, notwithstanding the past absence of any written law recognising such right.

General extra-communal rights in relation to genetic resources and indigenous genetic resource-based knowledge

7 A local authority or indigenous community, as the case may be, shall, in relation to any genetic resources and indigenous genetic resource-based knowledge that constitute part of the common, traditional or customary patrimony of the local authority or indigenous community, have the following general rights with respect to access to its genetic resources and indigenous genetic resource-based knowledge—

(a) to be consulted with respect to such access where it is to be given to persons who are not residents of the local authority or members of the indigenous community concerned; and

(b) to give its explicit prior informed consent to such access, where such access

(i) is to be given to persons who are not residents of the local authority or members of the indigenous community concerned, and

(ii) may be detrimental to the integrity of its natural or cultural heritage; And

(c) to be compensated for

(i) any ecological or environmental costs that may be incurred as a result of such access; and

(ii) any benefits that may accrue from such access; and

(iii) to publish any indigenous genetic resource-based knowledge that constitutes part of the common, traditional or customary patrimony of an indigenous community;

(d) to withdraw its consent to such access if it is or is likely to be detrimental to its natural or cultural heritage, or to place restrictions to such access in those circumstances.

Specific extra-communal rights in relation to genetic resources and indigenous genetic resource-based knowledge

8 The following rights shall subsist exclusively in a local authority or indigenous community, as the case may be, in relation to any genetic resources and indigenous genetic resource-based knowledge that constitute part of the common, traditional or customary patrimony of the local authority or indigenous community—

- (a) to manage, maintain, conserve and reproduce genetic materials that are indigenous to the local authority or the indigenous community concerned;
- (b) to harvest, gather, collect specimens of or take samples from or otherwise prospect for, genetic materials that are indigenous to the local authority or the indigenous community concerned;
- (c) to harvest, gather, or collect on a large or commercial scale genetic materials that are indigenous to the local authority or the indigenous community concerned; To cultivate or breed on a large or commercial scale genetic materials that are indigenous
- (d) to cultivate or breed on a large or commercial scale genetic materials that are indigenous to the local authority or the indigenous community concerned;
- (e) to export from Zimbabwe any protected genetic materials that are indigenous to the local authority or indigenous community concerned;
- (f) to import into Zimbabwe any protected genetic materials that are indigenous to the Local authority or the indigenous community concerned;
- (g) to market, beneficiate or otherwise exploit for gain genetic materials that are indigenous to the local authority or the indigenous community concerned;
- (h) to publish indigenous genetic resource-based knowledge that constitutes part of the common, traditional or customary patrimony of an indigenous community;
- (i) to publish, or register a patent or other intellectual property right in relation to—
 - (i) any genetic material indigenous to the local authority or the indigenous community concerned;
 - (ii) any indigenous genetic resource-based knowledge.

PART IV

RIGHTS IN AND ACCESS TO GENETIC RESOURCES AND INDIGENOUS GENETIC RESOURCE-BASED KNOWLEDGE

Local authorities to make initial inventories of indigenous genetic materials

9 (1) The Committee shall, by written communication to the chief executive officer of every local authority, require the local authority concerned to draw up an initial inventory of genetic materials indigenous to the area of the local authority or to any indigenous community residing within the area of the local authority.

(2) Upon receipt of a communication in terms of subsection (1) chief executive officer of the local authority concerned shall refer the communication to the next meeting of the governing body of

the local authority to obtain directions on the manner in which the initial inventory of genetic materials indigenous to the area of the local authority or to any community residing within the area of the local authority is to be drawn up.

(3) In giving directions in terms of subsection (2) the governing body of the local authority shall take cognisance of the following—

(a) The need to undertake adequate consultations with

the traditional leadership of any community residing within the area of the local authority; and

the members of any community residing within the area of the local authority concerned; and

traditional medical practitioners residing or practising within the area of the local authority concerned; and

(b) the identification of the plant, animal or other item of genetic material by

the name or names under which it is known in the indigenous language of the community and (if possible) in English; and

the description of its visible characteristics; and

the description of its use by or utility to the local authority, community or traditional medical practitioner concerned; and

the description of the location where the genetic material is grown, cultivated or bred or may be found within the area of the local authority concerned;

(c) the description by name and location of any

indigenous community residing within the area of the local authority concerned that has a special claim on traditional grounds to the use of, or has indigenous knowledge of or in relation to, a particular genetic material; and

traditional medical practitioner residing or practising within the area of the local authority concerned who that has a special claim on traditional or other grounds to the use of any particular genetic material; and

(d) The need to disclose the level of scarcity, if any, of identified indigenous genetic materials, and to identify any threats to the survival of those genetic materials.

(4) Having drawn up the initial inventory of genetic materials indigenous to the area of the local authority or of any indigenous community therein, the local authority concerned shall, through its chief executive officer, submit the inventory to the Committee for vetting.

Approval of final inventories of indigenous genetic materials and vesting of custodianship thereof in local authorities

10 (1) in vetting the initial inventories of genetic materials indigenous to the area of any local authority or of any indigenous community therein, the Committee—

(a) shall determine whether any identified item of genetic material ought to be excluded from an initial inventory because

(i) it is not indigenous to a particular local authority or to any community within it, or is of recent provenance in that local authority or community:

Provided that no item of genetic material shall be excluded from an initial inventory by reason only of—

A. its being of recent provenance from without the local authority or community concerned, if the members of the community concerned have made use of it in any way that is unique to that community; or

B. its being common to 2 or more communities, whether residing within or outside the local authority, as long as the item of genetic material is indigenous to those communities;

(ii) its use is in the public domain, that is to say, the genetic material in question has become widely used outside the area of the local authority concerned:

Provided that if—

A. the occurrence of the genetic material in question is limited to the area of the local authority concerned, or to a few local authorities in addition to that local authority; and

B. the survival of the genetic material in question is for that reason threatened;

the Committee shall not exclude the genetic material in question from the initial inventory, even if its use is in the public domain;

(b) may refer back to the local authority for better identification in terms of section *nine*(3)(b) any item of genetic material included in an initial inventory;

(c) may demand evidence from the local authority that it has undertaken the consultations required by section *nine*(3)(a), or may direct that any matter arising in connection with the initial inventory to be referred back to the local authority for further consultations in accordance with section *nine*(3)(a),

(d) may undertake its own consultations in terms of section *nine* (3)(a).

(2) After vetting an initial inventory of genetic materials indigenous to the area of any local authority or of any indigenous community therein in terms of subsection (1), the Committee shall approve it, having made any deletions or additions thereto, as the final inventory of genetic materials indigenous to that local authority or of any community therein.

(3) On the advice of the Committee the Board may, subject to subsections (4) and (5), by notice in the *Gazette*—

(a) vest in a local authority the custodianship of genetic materials included in a final inventory of such materials issued in the name of that local authority:

Provided that it shall suffice for the notice to identify those genetic materials by name without specifying their precise location, their actual or potential value or use, or other such details; and

reserve to the local authority referred to in paragraph (a) the exclusive right to do or authorise the doing, on behalf of the residents of the local authority as a whole or of the Members of any particular community within that local authority (as the case may be) of any 1 or more of the things referred to in section *eight* in relation to any genetic resources traditionally or customarily

used by the residents of the local authority or members of any community residing within the area of the local authority:

Provided that, where substantial numbers of members of a particular community reside within the areas of 2 or more local authorities, the Board may reserve such rights to any or all of such local authorities, or apportion the rights amongst them.

(4) Where any genetic resources that are vested in a local authority in terms of subsection (3)(a) are indigenous to any community within that local authority, the local authority shall exercise its custodianship of such resources on behalf and in the interests of the community concerned.

(5) Before publishing a vesting and reservation notice, the Board shall publish a notice in the *Gazette*, and in such newspaper or newspapers as it considers appropriate—

(a) declaring its intention to vest in a named local authority the custodianship of specified genetic materials; and

(b) identifying those genetic materials by name without specifying their precise location, their actual or potential value or use, or other such details: and

(c) describing the rights that are proposed to be reserved in the local authority in relation to those genetic materials; and

(d) inviting persons who wish to object to the proposed vesting and reservation notice to submit their objections to the Board, in writing, within a reasonable specified period after publication of the notice.

(6) Before the Board makes a vesting and reservation notice it shall pay due regard to any objections that may be submitted under subsection (5)(d) in response to a notice published in terms of subsection (4), and in that connection the Board—

(a) shall hold a public hearing in accordance with Part VII if—

(i) any objection has been received by an indigenous community asserting a communal rights claim to any genetic materials referred to in the proposed vesting and reservation notice; and

(ii) the local authority concerned, having been consulted on the claim by the Board, indicates to the Board that it wishes to contest the claim;

or

(b) may, if it thinks fit, where any objection has been received by any other person, including a traditional medical practitioner asserting an individual proprietary claim to any genetic materials referred to in the proposed vesting and reservation notice, hold a public hearing in accordance with Part VII;

at which the objector and any other interested persons will be afforded an opportunity of appearing and making oral representations.

Effect of vesting and reservation notice

11 (1) Subject to these regulations, on and after the date when a vesting and reservation notice is published, no person who is not a local research or conservation institution, or a traditional medical practitioner, or a resident of the local authority or member of the community in favour of which the vesting and reservation notice is published shall—

- (a) harvest, gather, collect specimens of or take samples from or otherwise prospect for, any protected genetic materials, except in accordance with a bioprospecting licence issued by or on behalf of the local authority concerned;
- (b) do any of the following
 - (i) harvest, gather, or collect on a large or commercial scale genetic materials;
 - (ii) cultivate or breed on a large or commercial scale genetic materials;
 - (iii) export any protected genetic materials from Zimbabwe, otherwise than for the personal and private use of the person exporting it;
 - (iv) import into Zimbabwe any protected genetic materials, otherwise than for the personal and private use of the person importing it;
 - (v) publish in any way any indigenous knowledge of, or in relation to, any protected genetic material;
 - (vi) market, benefitiate or otherwise exploit for gain protected genetic materials or any indigenous knowledge in relation thereto;
 - (vii) patent or register any other intellectual property right over any protected genetic materials;
 - (viii) do anything or cause anything to be done in relation to any protected genetic material, where the right to do that thing has been specifically reserved to the local authority or any community residing within the area of the local authority;

except in accordance with a licence issued under section *fourteen*.

(2) Any person who contravenes subsection (1) shall be guilty of an offence, unless he or she satisfies the court that—

- (a) he or she did not know and had no reason to believe that the genetic material in question was protected genetic material; or
- (b) his or her unlicensed possession or use of the protected genetic material in question is justified on any of the grounds specified in section *thirteen*.

(3) A person who is guilty of an offence in terms of subsection (2) shall be liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.

Amendment of final inventories of indigenous genetic materials

12 (1) The Committee may, on its own initiative, or at the request of a local authority communicated in writing through its chief executive officer, or in response to a communal rights claim lodged by an indigenous community, advise the Board to make any addition to, deletion from or other amendment of the final inventory of indigenous genetic materials relating to the local authority.

(2) On the advice of the Committee the Board may, subject to subsection (3), amend the vesting and reservation notice by notice in the *Gazette* to take account of any amendment of the final inventory of indigenous genetic materials relating to the local authority.

(3) Before amending a vesting and reservation notice, the Board shall publish a notice in the *Gazette*, and in such newspaper or newspapers as it considers appropriate—

(a) declaring its intention to amend the vesting and reservation notice in relation to a named local authority; and

(b) describing what amendment of the final inventory of indigenous genetic materials relating to the local authority has necessitated the amendment of the vesting, and reservation notice; and

(c) inviting persons who wish to object to the proposed amendment of the vesting and reservation notice to submit their objections to the Board, in writing, within a reasonable specified period after publication of the notice.

(4) Before the Board amends a vesting and reservation notice it shall pay due regard to any objections that may be submitted in response to a notice published in terms of subsection (3), and in that connection section *ten*(6) applies to the holding by the Board of any public hearing in accordance with Part VII.

Freedom to do certain things in relation to protected genetic materials

13 The unlicensed possession or use of any protected genetic material in the following circumstances or for the following purposes shall not be an offence against section *eleven*(1)—

(a) private non-profit research or private study by the person possessing or using the protected genetic material;

(b) the collection of protected genetic material for the Purposes of conservation in a seed bank, botanical collection or similar collection maintained by an educational establishment or a non-profit biodiversity conservation establishment within Zimbabwe;

(c) the recording and preservation of indigenous genetic resource-based knowledge by a local research or conservation institution;

(d) the taking of samples of protected genetic material for forensic purposes, that is, for use in any judicial proceedings;

(e) the taking of samples or other use of the genetic material that is specifically authorised by any enactment.

Bioprospecting licences and general licences

14 (1) A local authority in favour of which a vesting and reservation notice is made may, in its by-laws, appoint itself as the authority to be responsible for receiving licence applications and issuing licences for the purposes of these regulations, or may in like manner (subject to subsection (2)) appoint another person or persons in terms of subsection (2) to be so responsible.

(2) Where a local authority in favour of which a vesting and reservation notice is made is not itself the licensing authority, it may appoint any of the following as the licensing authority—

(a) the chief executive officer of the local authority; or

(b) an employee of the local authority especially employed to act as the licensing authority; or

(c) a committee of the governing body of the licensing authority, which may be constituted partly of members of the governing body and partly of persons within the local authority having knowledge of the genetic resources traditionally or customarily used by the residents of the local authority or members of any community residing within the area of the local authority, including traditional medical practitioners and members of the traditional leadership.

(3) An application for a bioprospecting licence or a general licence shall be made in **Form GRTK 1** or **GRTK 2**, as the case may be, to the licensing authority, accompanied by the appropriate application and licence fee, if any, prescribed by the local authority in its by-laws.

(4) An application for a bioprospecting licence may be made in relation to specified protected genetic materials or genetic materials generally, whether protected or not, and whether known to the applicant or not.

(5) In considering an application for a bioprospecting or general licence involving any access to genetic materials or indigenous genetic resource-based knowledge the licensing authority shall—

(a) satisfy itself that—

the project or proposal outlined in the application is not detrimental to the interests of the local authority or any indigenous community residing within it; and

the applicant—

is capable of carrying out the project or proposal outlined in the application and complying with the terms and conditions of the bioprospecting licence or general licence sought by it; and

is otherwise a fit and proper person to receive a bioprospecting licence or general licence;

and

(b) where the materials and knowledge in question are indigenous to a particular community—

seek the explicit prior informed consent of the community concerned, and such community shall have the right to refuse consent or access to the genetic materials or knowledge in question where such access will be detrimental to the integrity of their natural and cultural heritage; and

transparently and as accurately as possible calculate and disclose to the community—

Any ecological or environmental costs that may be incurred as a result of the licensed use of the genetic resources, and ensure that provision is made under the licence for the community to be compensated for those costs if the licence is granted; and

Any benefits that may accrue from the licensed use of the genetic materials or knowledge in question, and explore ways in which the community may share in those benefits.

(6) After considering an application for a bioprospecting or general licence the licensing authority may grant it in **Form GRTK 3** or **GRTK 4**, as the case may be, with or without conditions, or refuse it, and if the application is refused the licence fee shall be refunded to the applicant:

Provided that the licensing authority shall not grant an exclusive licence to any person except with the written leave of the Board.

(7) All fees paid in terms of this section shall form part of the revenues of the local authority concerned, subject to any arrangements mandated or approved by the Board for the sharing of the licence fees with any indigenous community affected by the exercise of the licence.

(8) A local authority may prescribe in its by-laws the duration of each class of licence and the circumstances under which a bioprospecting or general licence may be amended, renewed, suspended, cancelled or restored:

Provided that—

(a) where the genetic resources subjected to a licence are indigenous to any community, that community shall have the right to withdraw its consent to any licensed activity likely to be injurious to their interest, or to place restrictions thereon, and the licensing authority shall, immediately upon receiving the representations of the community to that effect, amend, suspend or cancel the licence, as the case may be;

(b) no licence shall be issued for a term shorter than 7 days or **longer than 10 years**;

(c) no licence shall be amended, suspended or cancelled except

(i) on at **least 14 days' notice** to the licensee, other than in exceptional circumstances dictated by the need to conserve genetic materials;

(ii) on such reasonable grounds as the local authority concerned shall specify in the notice.

Registers of licences under Part IV

15 (1) Every licensing authority shall establish and maintain a register of bioprospecting and general licences issued under Part IV, in which the following shall be recorded—

(a) the name and address of every licensee; and

(b) the date of issue of every bioprospecting and general licence;

(c) any terms or conditions imposed upon the grant of bioprospecting and general licence;

(d) the particulars of the suspension or cancellation of any licence, and of the restoration of any such suspended or cancelled registration; and

any alterations to the particulars referred to in paragraph (a) or (c).

(2) Any person may inspect the register free of charge at all reasonable times at the premises of the licensing authority or at such other place as the licensing authority may direct.

Model by-laws

16 (1) The Board may issue binding model by-laws prescribing any matters that may under this Part be prescribed by a local authority in its by-laws.

(2) **No later than 30 days** after the issuance of the model bylaws referred to in subsection (1), every local authority shall adopt them subject to such modifications as are strictly necessary to adapt the by-laws to local conditions.

PART V

RIGHTS OF TRADITIONAL MEDICAL PRACTITIONERS AND COMMUNITIES TO TRADITIONAL MEDICINES AND TRADITIONAL MEDICAL KNOWLEDGE AND ACCESS THERETO

Formation of Subcommittee on Traditional Medicines and Traditional Medical Knowledge

17 For the purposes of this Part the Committee shall constitute a subcommittee, to be called the Subcommittee on Traditional Medicines and Traditional Medical Knowledge, consisting of—

- (a) 2 members of the Committee nominated by the Committee and approved by the Board, 1 of whom shall be the chairperson of the subcommittee; and
- (b) 2 members appointed by the Committee with the approval of the Board from a list of 4 names submitted by the Traditional Medical Practitioners Council.

Committee to draw up compendium of traditional medicines and traditional medical knowledge

18 (1) For the purpose of drawing up a compendium of traditional medicines and traditional medical knowledge in accordance with this section, the Committee shall compile from each final inventory of genetic materials approved by it in terms of section *ten*(2) its own inventory of those items it considers to be descriptions of traditional medicines and traditional medical knowledge.

(2) The Committee shall, by written communication to the Traditional Medical Practitioners Council, require the Council to compile a catalogue of traditional medicines and traditional medical knowledge—

- (a) that constitute part of the common, traditional or customary patrimony of any named indigenous community; or
- (b) that are manufactured or dispensed by named traditional medical practitioners whether or not as a members of a local authority or community referred to in paragraph (a).

(3) In drawing up the Catalogue in terms of subsection (2) the Traditional Medical Practitioners Council shall take cognisance of the following—

- (a) the need to undertake adequate consultations with

the traditional leadership of any community residing within the area of the local authority; and
the members of any community residing within the area of the local authority concerned; and
traditional medical practitioners residing or practising within the area of the local authority concerned;

and

- (b) the identification of the traditional medicine or item of traditional medical knowledge by the name or names under which it is known in the indigenous language of the community and (if possible) in English; and

the description of its visible characteristics; and

the description of its use by or utility to the community or traditional medical practitioner concerned; and

the description of the location where the genetic material is grown or may be found within the area of the local authority concerned;

(c) The description by name and location of any

community residing within the area of the local authority concerned that has a special claim on traditional grounds to the use of any traditional medicine or traditional medical knowledge; and

traditional medical practitioner residing or practising within the area of the local authority concerned who has an individual proprietary claim to any traditional medicine or traditional medical knowledge;

and

(d) the need to disclose the level of scarcity, if any, of identified indigenous genetic materials, and to identify any threats to the survival of those genetic materials.

(4) Having compiled the catalogue of traditional medicines and traditional medical knowledge, the Traditional Medical Practitioners Council shall submit the catalogue to the Committee for it to make the reconciliation referred to in subsection (5).

(5) The Committee shall, in consultation with the Subcommittee, draw up a compendium of traditional medicines and traditional medical knowledge by reconciling—

the catalogue of traditional medicines and traditional medical knowledge compiled in accordance with subsections (2) to (4); and

its inventory referred to in subsection (1);

and in so doing it shall take special care to identify and verify every individual proprietary claim.

Traditional medicines and knowledge vesting and reservation notice

19 (1) On the advice of the Committee, the Board may, subject to subsections (2) and (3), by notice in the *Gazette*—

(a) vest in the Subcommittee the custodianship of traditional medicines and traditional medical knowledge included in the compendium referred to in section *eighteen* on behalf and in the interests of

the residents of the local authority as a whole or of the members of any particular community within that local authority (as the case may be); or

any named traditional medical practitioner who has an individual proprietary claim;

(b) identify

by name the traditional medicines which are the subject of the notice without specifying their precise location, their actual or potential value or use, or other such details;

the traditional medical knowledge which is the subject of the notice in the briefest and most general terms consistent with adequate specificity;

and

(c) reserve to the Subcommittee the exclusive right to do or authorise the doing, on behalf and in the interests of

the residents of the local authority as a whole or of the members of any particular community within that local authority (as the case may be); or

any named traditional medical practitioner who has an individual proprietary claim;

any 1 or more of the things referred to in section *eight* in relation to the traditional medicine or traditional medical knowledge specified in the notice.

(2) Before publishing a traditional medicines and knowledge vesting and reservation notice, the Board shall publish a notice in the *Gazette*, and in such newspaper or newspapers as it considers appropriate—

(a) declaring its intention to vest the Subcommittee the custodianship of identified traditional medicines and items of traditional medical knowledge; and

(b) identifying

(i) by name the traditional medicines which are to be the subject of the traditional medicines and knowledge vesting and reservation notice without specifying their precise location, their actual or potential value or use, or other such details;

(ii) the traditional medical knowledge which is the subject of the traditional medicines and knowledge vesting and reservation notice in the briefest and most general terms consistent with adequate specificity;

and

(c) describing the rights that are proposed to be reserved in the Subcommittee in relation to those identified traditional medicines and items of traditional medical knowledge; and

(d) inviting persons who wish to object to the proposed traditional medicines and knowledge vesting and reservation notice to submit their objections to the Board, in writing, within a reasonable specified period after publication of the notice.

(3) Before the Board makes a traditional medicines and knowledge vesting and reservation notice it shall pay due regard to any objections that may be submitted in response to a notice published in terms of subsection (2), and in that connection the Board—

(a) shall hold a public hearing in accordance with Part VII if

(i) any objection has been received by—

an indigenous community asserting a communal rights claim to any identified traditional medicine or items of traditional medical knowledge; or

a traditional medical practitioner asserting an individual proprietary claim to any identified traditional medicine or items of traditional medical knowledge;

referred to in the proposed a traditional medicines and knowledge vesting and reservation notice;

and

(ii) the Subcommittee, having been consulted by the Board, indicates that it wishes to contest the communal rights claim or individual proprietary claim;

(b) may, if it thinks fit, where any objection has been received by any other person, hold a public hearing in accordance with Part VII;

at which the objector and any other interested persons will be afforded an opportunity of appearing and making oral representations.

Effect of traditional medicines and knowledge vesting and reservation notice

20 (1) Subject to these regulations, on and after the date when a traditional medicines and knowledge vesting and reservation notice is published, no person who is not a local research or conservation institution, or a traditional medical practitioner, or a resident of the local authority or member of the community in favour of which the vesting and reservation notice was published shall—

(a) harvest, gather, collect specimens of or take samples from or otherwise prospect for, any identified traditional medicines, except in accordance with a bioprospecting licence issued by the Subcommittee;

(b) do any of the following--

(i) export any identified traditional medicines and items of traditional medical knowledge from Zimbabwe, otherwise than for the personal and private use of the person exporting it;

(ii) import any identified traditional medicines and items of traditional medical knowledge into Zimbabwe, otherwise than for the personal and private use of the person exporting it;

(iii) publish in any way any identified item of traditional medical knowledge;

(iv) market, benefitiate or otherwise exploit for gain identified traditional medicines and items of traditional medical knowledge;

(v) patent or register any other intellectual property right over any identified traditional medicines and items of traditional medical knowledge;

(vi) do anything or cause anything to be done in relation to any identified traditional medicines and items of traditional medical knowledge, where the right to do that thing has been specifically reserved to the local authority or any community residing within the area of the local authority;

except in accordance with a licence under section *twenty-three*.

(2) Any person who contravenes subsection (1) shall be guilty of an offence, unless he or she satisfies the court that—

(a) he or she did not know and had no reason to believe that the medicine or knowledge in question was an identified traditional medicine and item of traditional medical knowledge; or

(b) his or her unlicensed possession or use of the identified traditional medicine or item of traditional medical knowledge in question is justified on any of the grounds specified in section *twenty-two*(1).

(3) A person who is guilty of an offence in terms of subsection (2) shall be liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.

Amendment of compendium of traditional medicines and traditional medical knowledge

21 (1) The Subcommittee may, on its own initiative, at the request of a local authority communicated in writing through its chief executive officer, or in response to a communal rights claim lodged by an indigenous community, advise the Board to make any addition to, deletion from or other amendment of the compendium referred to in section *eighteen*.

(2) On the advice of the Subcommittee the Board may, subject to subsection (3), amend the of traditional medicines and knowledge vesting and reservation notice by notice in the *Gazette* to take account of any alteration to the compendium referred to in section *eighteen*.

(3) Before amending a traditional medicines and knowledge vesting and reservation notice, the Board shall publish a notice in the *Gazette*, and in such newspaper or newspapers as it considers appropriate—

(a) declaring its intention to amend the traditional medicines and knowledge vesting and reservation notice; and

(b) describing what alteration to the compendium referred to in section *eighteen* has necessitated the amendment of the traditional medicines and knowledge vesting and reservation notice; and

(c) inviting persons who wish to object to the proposed amendment of the traditional medicines and knowledge vesting and reservation notice to submit their objections to the Board, in writing, within a reasonable specified period after publication of the notice.

(4) Before the Board amends a vesting and reservation notice it shall pay due regard to any objections that may be submitted in response to a notice published in terms of subsection (3), and in that connection section *nineteen*(3) applies to the holding by the Board of any public hearing in accordance with Part VII.

Freedom to do certain things in relation to identified traditional medicines and items of traditional medical knowledge

22 The unlicensed possession or use of any identified traditional medicines and items of traditional medical knowledge in the following circumstances or for the following purposes shall not be an offence against section *twenty*(1)

(a) private non-profit research or private study by the person possessing or using the identified traditional medicine or item of traditional medical knowledge;

(b) the collection of identified traditional medicines for the purposes of conservation in a seed bank, botanical collection or similar bank or collection maintained by an educational establishment or a non-profit biodiversity conservation establishment within Zimbabwe;

(c) the recording and preservation of identified items of traditional medical knowledge by a local research or conservation institution;

(d) the taking of samples of identified traditional medicines for forensic purposes, that is, for use in any judicial proceedings;

(e) the taking of samples or other use of the identified traditional medicines and items of traditional medical knowledge that is specifically authorised by any enactment.

Bioprospecting licences and general licences in relation to traditional medicines and traditional medical knowledge

23 (1) A Subcommittee shall be the authority responsible for receiving licence applications and issuing licences for the purposes of this Part.

(2) An application for a bioprospecting licence or a general licence shall be made in **Form GRTK 1** or **GRTK 2** (suitably adapted for the purposes of this Part), as the case maybe, to the Subcommittee, accompanied by the appropriate application and licence fee, if any, prescribed by the Subcommittee.

(3) An application for a bioprospecting licence may be made in relation to specified traditional medicines included in the compendium referred to in section *eighteen* or traditional medicines generally, whether known to the applicant or not.

(4) If, upon examining an application for a bioprospecting licence or a general licence, the Subcommittee is satisfied that—

(a) The project or proposal outlined in the application is not injurious to the national interest or the interests of any local authority or indigenous community; and

(b) The applicant

(i) is capable of carrying out the project or proposal outlined in the application and complying with the terms and conditions of the bioprospecting licence or general licence sought by it; and

(ii) is otherwise a fit and proper person to receive a bioprospecting licence or general licence;

The Subcommittee shall by notice in writing to the applicant grant provisional approval for the application and invite the applicant to attend at a public hearing or public hearings conducted in accordance with Part VII.

(5) As soon as possible after the conclusion of a public hearing or the last public hearing, as the case may be, held in connection with an application for a bioprospecting or general licence, the Subcommittee may grant the licence in **Form GRTK 3** or **GRTK 4**, as the case may be, with or without conditions, or refuse it, and if the application is refused the Subcommittee shall give the applicant written reasons for the refusal and refund the licence fee to the applicant:

Provided that the Subcommittee shall not grant an exclusive licence to any person except with the written leave of the Board.

(6) All fees paid in terms of this section shall form part of the revenues of the Agency, subject to any arrangements mandated or approved by the Board for the sharing of the licence fees with any community or traditional medical practitioner affected by the exercise of the licence.

(7) With the approval of the Board, the Subcommittee may fix the duration of each class of licence and the circumstances under which a bioprospecting or general licence may be amended, renewed, suspended, cancelled or restored:

Provided that—

(a) where the traditional medicine or item of traditional medical knowledge subjected to a licence is

(i) indigenous to any community, the community concerned shall have the right to withdraw its consent to any licensed activity if it is or is likely to be detrimental to its natural or cultural heritage, or to place restrictions thereon;

(ii) subject to an individual proprietary claim, the traditional medical practitioner concerned shall have the right to withdraw his or her consent to any licensed activity likely to be injurious to his or her interest, or to place restrictions thereon;

And the Subcommittee shall, immediately upon receiving the representations of the community or practitioner to that effect—

(iii) give appropriate directions in terms of section *thirty-nine*; or

(iv) amend, suspend or cancel the licence, as the case may be;

(a) no licence shall be issued for a term shorter than 7 days or **longer than 10 years**;

(b) no licence shall be amended, suspended or cancelled except

(i) on at least **14 days' notice** to the licensee, other than in exceptional circumstances dictated by the need to conserve genetic materials;

(ii) on such reasonable grounds as the Subcommittee shall specify in the notice:

Register of licences in relation to traditional medicines and traditional medical knowledge

24 (1) The Subcommittee shall establish and maintain a register of bioprospecting and general licences, in which the following shall be recorded—

(a) the name and address of every licensee; and

(b) the date of issue of every bioprospecting and general licence;

(c) any terms or conditions imposed upon the grant of bioprospecting and general licence;

(d) the particulars of the suspension or cancellation of any licence, and of the restoration of any such suspended or cancelled registration; and

any alterations to the particulars referred to in paragraph (a) or (c).

(2) Any person may inspect the register free of charge at all reasonable times at the premises of the licensing authority or at such other place as the Sub-committee may direct.

PART VI

BLOCK BIOPROSPECTING AND BLOCK GENERAL LICENCES

Applications for block bioprospecting and block general licences

25 (1) Notwithstanding any vesting and reservation notice or traditional medicines and knowledge vesting and reservation notice, the Committee shall be the authority responsible for receiving block bioprospecting and block general licence applications and issuing block bioprospecting and block general licences.

(2) An application for a block bioprospecting licence or a block general licence shall be made in **Form GRTK 1** or **GRTK 2** (suitably adapted for the purposes of this Part), as the case may be, to the Committee, accompanied by the appropriate application and licence fee, if any, prescribed by the Committee.

(3) An application for a block bioprospecting licence may be made in relation to specified protected genetic materials or specified traditional medicines included in the compendium referred to in section eighteen, or to genetic materials or traditional medicines generally, whether known to the applicant or not.

(4) On receiving an application for a block bioprospecting or block general licence the Committee shall make an initial ruling on the issue whether it is proper or desirable (on the grounds of practicality or the interests of any local authority or indigenous community affected by the application) for the application to be determined by it as a block application, or for the applicant to make—

(a) 2 or more applications in terms of Part IV to the appropriate local authorities for bioprospecting or general licences, instead of a block bioprospecting or block general licence; or

(b) An application to the Subcommittee in terms of Part V for a bioprospecting or general licence involving any traditional medicine or item of traditional medical knowledge, instead of a block bioprospecting or block general licence; or

(c) 2 or more applications

(i) in terms of Part IV to the appropriate local authority or local authorities for any bioprospecting or general licence; and

(ii) in terms of Part V for a bioprospecting or general licence involving any traditional medicine or item of traditional medical knowledge;

instead of a block bioprospecting or block general licence;

and the applicant may appeal against a decision of the Committee not to receive an application for a block bioprospecting or block general licence in terms of this subsection.

(5) If the Committee rules that it is proper or desirable for it to proceed with the application for the block bioprospecting or block general licence, and, upon examining the application it is satisfied that—

(a) the project or proposal outlined in the application is not detrimental to the national interest or the interests of any local authority or indigenous community; and

(b) The applicant

(i) is capable of carrying out the project or proposal outlined in the application and complying with the terms and conditions of the block bioprospecting licence or block general licence sought by it; and

(ii) is otherwise a fit and proper person to receive a block bioprospecting licence or block general licence;

the Committee shall by notice in writing to the applicant grant provisional approval for the application and invite the applicant to attend at a public hearing or public hearings conducted in accordance with Part VII.

(6) As soon as possible after the conclusion of a public hearing or the last public hearing, as the case may be, held in connection an application for a bioprospecting or general licence, the Committee may grant the licence in **Form GRTK 3** or **GRTK 4**, as the case may be, with or without conditions, or refuse it, and if the application is refused the Committee shall give the applicant written reasons for the refusal and refund the licence fee to the applicant:

Provided that the Committee shall not grant an exclusive licence to any person except with the written leave of the Board.

(7) All fees paid in terms of this section shall form part of the revenues of the Agency, subject to any arrangements mandated or approved by the Board for the sharing of the licence fees with any community or traditional medical practitioner affected by the exercise of the licence.

(8) With the approval of the Board, the Committee may fix the duration of each class of licence and the circumstances under which a bioprospecting or general licence may be amended, renewed, suspended, cancelled or restored:

Provided that—

(a) where the traditional medicine or item of traditional medical knowledge subjected to a licence is

(i) indigenous to any community, the community concerned shall have the right to withdraw its consent to any licensed activity likely to be injurious to their interest, or to place restrictions thereon;

(ii) subject to an individual proprietary claim, the traditional medical practitioner concerned shall have the right to withdraw his or her consent to any licensed activity likely to be injurious to his or her interest, or to place restrictions thereon;

and the Committee shall, immediately upon receiving the representations of the community or practitioner to that effect

(iii) give appropriate directions in terms of section *thirty-nine*; or

(iv) amend, suspend or cancel the licence, as the case may be, in its entirety; or

(v) amend, suspend or cancel the licence, as the case may be, in relation to the area of a particular local authority or indigenous community where the licensed activity complained of took place;

(b) no licence shall be issued for a term shorter than 7 days or **longer than 10 years**;

(c) no licence shall be amended, suspended or cancelled except--

(i) on at least **14 days' notice** to the licensee, other than in exceptional circumstances dictated by the need to conserve genetic materials;

(ii) on such reasonable grounds as the Subcommittee shall specify in the notice:

Register of block bioprospecting and block general licences

26 (1) The Committee shall establish and maintain a register of block bioprospecting and block general licences, in which the following shall be recorded—

- (a) the name and address of every licensee; and
- (b) the date of issue of every block bioprospecting and block general licence;
- (c) any terms or conditions imposed upon the grant of every block bioprospecting and block general licence;
- (d) the particulars of the suspension or cancellation of any licence, and of the restoration of any such suspended or cancelled registration; and

any alterations to the particulars referred to in paragraph (a) or (c).

(2) Any person may inspect the register free of charge at all reasonable times at the premises of the licensing authority or at such other place as the licensing authority may direct.

PART VII

COMMUNAL RIGHTS CLAIMS

Communal rights claims

27 An indigenous community may, in the circumstances specified in section *twenty-seven*, lodge a claim (in these regulations called a "communal rights claim") to redeem its rights to any genetic resource, indigenous genetic resource-based knowledge, traditional medicine or traditional medical knowledge on the basis that the resource, medicine or knowledge in question constitutes part of its common, traditional or customary patrimony.

Circumstances in which communal rights claims may be lodged

28 The circumstances in which an indigenous community may lodge a communal rights claim are the following—

- (a) when the Board publishes a notice inviting any objections to its intention to make a vesting and reservation notice in favour of a specified local authority in terms of section *ten*(5);
- (b) when the Board publishes a notice inviting any objections to its intention to amend a vesting and reservation notice in favour of a specified local authority in terms of section *twelve*(3);
- (c) when the Board has published a vesting and reservation notice in favour of a specified local authority in terms of section *ten*(3), and the indigenous community subsequently wishes to amend the notice to reflect its rights to any genetic material not previously included in the notice, or to any genetic material whose custodianship is specified in that notice to be held by the local authority in its own right and not on behalf of the indigenous community;
- (d) when the Board publishes a notice inviting any objections to its intention to make a traditional medicines and knowledge vesting and reservation notice in terms of section *nineteen*(2);
- (e) when the Board publishes a notice inviting any objections to its intention to amend a traditional medicines and knowledge vesting and reservation notice in terms of section *twenty-one*(3).

(f) when the Board has published a traditional medicines and knowledge vesting and reservation notice in favour of a specified local authority in terms of section *nineteen*(1), and the indigenous community subsequently wishes to amend the notice to reflect its rights to any traditional medicine or item of traditional medical knowledge not previously included in the notice, or to any such medicine or knowledge whose custodianship is specified in that notice to be held by the Subcommittee on behalf of a local authority, or traditional medical practitioner asserting an individual proprietary claim thereto, and not on behalf of the indigenous community in question;

Who may lodge a communal rights claim

29 Any member of the traditional leadership of an indigenous community, or any person authorised by that community to speak on its behalf may lodge a communal rights claim on behalf of that community.

Effect of successful communal rights claim

30 The effect of a successful communal rights claim—

(a) lodged in response to a notice published in terms of section *ten*(5), shall be to require the Board to amend the relevant vesting and reservation notice

(i) to reflect the rights of the claimant community to any genetic material not originally included in the notice, which rights shall be exercised by the local authority concerned on behalf and in the interests of the claimant community; or

(ii) if the genetic material in question is included in the notice but the custodianship thereof is awarded to a local authority in its own right, to specify that custodianship of the genetic material is to be held by the local authority concerned on behalf and in the interests of the claimant community, and not in the local authority's own right;

(b) lodged in response to a notice published on the advice of the Committee on the Committee's own initiative or at the request of a local authority in terms of section *twelve*(1), shall be to require the Board to amend the relevant vesting and reservation notice

(i) to reflect the rights of the claimant community to any genetic material not previously included in the notice, which rights shall be exercised by the local authority concerned on behalf and in the interests of the claimant community; or

(ii) if the genetic material in question was previously included in the notice but the custodianship thereof was awarded to a local authority in its own right, to specify that custodianship of any genetic material is to be held by the local authority concerned on behalf and in the interests of the claimant community, and not in the local authority's own right;

lodge by the community in terms of section *twelve*(1) after a vesting and reservation notice has been published in terms of section *ten*(3), shall be to require the Board to amend the vesting and reservation notice

To reflect the rights of the claimant community to any genetic material not previously included in the notice, which rights shall be exercised by the local authority concerned on behalf and in the interests of the claimant community; or

If the genetic material in question was previously included in the notice but the custodianship thereof was awarded to a local authority in its own right, to specify that custodianship of the

genetic material is to be held by the local authority concerned on behalf and in the interests of the claimant community, and not in the local authority's own right;

lodged in response to a notice published in terms of section nineteen(2), shall be to require the Board to amend the relevant traditional medicines and knowledge vesting and reservation notice

to reflect the rights of the claimant community to any traditional medicine or item of traditional medical knowledge not originally included in the notice, which rights shall be exercised by the Subcommittee on behalf and in the interests of the claimant community; or

if the traditional medicine or item of traditional medical knowledge in question is included in the notice but the custodianship thereof is awarded to the Subcommittee in its own right, to specify that the custodianship of the medicine or knowledge is held by the Subcommittee on behalf and in the interests of the claimant community, and not in the Subcommittee's own right;

lodged in response to a notice published in terms of section *twenty-one*(1) on the advice of the Subcommittee on the Subcommittee's own initiative or at the request of a local authority, shall be to require the Board to amend the traditional medicines and knowledge vesting and reservation notice

To reflect the rights of the claimant community to any genetic material not previously included in the notice, which rights shall be exercised by the local authority concerned on behalf and in the interests of the claimant community; or

If the genetic material in question was previously included in the notice but the custodianship thereof was awarded to the Subcommittee in its own right, to specify that custodianship of that medicine or knowledge is to be held by the Subcommittee on behalf and in the interests of the claimant community, and not in the Subcommittee's own right;

lodged by the community in terms of section *twenty-one*(1) after a traditional medicines and knowledge vesting and reservation notice has been published in terms of section *nineteen*(1), shall be to require the Board to amend the traditional medicines and knowledge vesting and reservation notice

To reflect the rights of the claimant community to any traditional medicine or item of traditional medical knowledge not previously included in the notice, which rights shall be exercised by the Subcommittee on behalf and in the interests of the claimant community; or

If the traditional medicine or item of traditional medical knowledge in question was previously included in the notice but the custodianship thereof was awarded to the Subcommittee in its own right,, to specify that custodianship of that medicine or knowledge is held by the Subcommittee on behalf and in the interests of the claimant community, and not in the Subcommittee's own right.

PART VIII

PUBLIC HEARINGS

Application of Act to public hearings held under these regulations

31 Sections 27, 28, 29 and 30 of the Act shall apply to public hearings held by the Board or the Subcommittee for the purposes of these regulations:

Venue and times of public hearings

32 (1) The Board shall endeavour to hold a public hearing involving

- (a) an objection to a vesting and reservation notice to be made or amended in favour of a particular local authority, at a location within the local authority concerned;
- (b) a communal rights claim lodged in relation to a vesting and reservation notice, at the nearest convenient location to the indigenous community lodging the claim;
- (c) an objection to a traditional medicines and knowledge vesting and reservation notice or application for a block bioprospecting or block general licence, where the objection is made by only one local authority, at a location within the local authority concerned;
- (d) A communal rights claim lodged in relation to a traditional medicines and knowledge vesting and reservation notice, at the nearest convenient location to the indigenous community lodging the claim.

(2) The Subcommittee shall endeavour to hold a public hearing on an application for a bioprospecting or general licence relating to any traditional medicine or item of traditional medical knowledge in each of the local authorities affected by the application or, if this is not practicable—

- (a) at the provincial centre of the Agency for the province containing the local authorities affected by the application;
- (b) at each provincial centre of the Agency where the application relates to 2 or more provinces containing several local authorities affected by the application.

(3) The Committee shall endeavour to hold a public hearing on an application for a block bioprospecting or block general licence in each of the local authorities affected by the application or, if this is not practicable—

- (a) at the provincial centre of the Agency for the province containing the local authorities affected by the application;
- (b) at each provincial centre of the Agency where the application relates to 2 or more provinces containing several local authorities affected by the application;

(4) The Board, Committee or Subcommittee, as the case may be, shall give **not less than 7 days' notice** of the dates, times and place or places of a public hearing—

- (a) by advertisement in a public place at the location where the public hearing is to be held; and
- (b) in 2 issues of a newspaper circulating in the location where the public hearing is to be held.

Purpose of public hearings held pursuant to section 10(6), 12(4), 19(3) or 21(4)

33 The principal purpose of a public hearing held in connection with any proposed vesting and reservation notice or traditional medicines and knowledge vesting and reservation notice or amendment thereof pursuant to section *ten(6)*, *twelve(4)*, *nineteen(3)* or *twenty-one(4)* shall be—

- (a) to explain to the residents of the local authority or members of the indigenous community affected by a proposed notice, the purpose and effect of the proposed notice; and

(b) to evaluate the response of the residents of the local authority or members of the indigenous community affected by a proposed notice in order to assist the Board in determining whether to publish the proposed notice in its original or in an amended form.

Purpose of public hearings held pursuant to section 23(4) or 25(5)

34 (1) The principal purpose of a public hearing held in connection with any application for a licence pursuant to section *twenty-three*(4) or *twenty-five*(5) shall be—

(a) to explain to the residents of the local authority or members of the indigenous community affected by the application the purpose and effect of the proposed licence; and

(b) to evaluate the response of the residents of the local authority or members of the indigenous community to the application in order to assist the Committee or Subcommittee in determining whether to issue the licence in question or issue it subject to any conditions.

(2) In particular, where an application for a licence involves any access to—

(a) genetic materials, indigenous genetic resource-based knowledge, traditional medicines or items of traditional medical knowledge, that are indigenous to a particular community, the Committee or Subcommittee shall

(i) Seek the explicit prior informed consent of the community concerned, and such community shall have the right to refuse consent or access to the material, medicine or knowledge in question where such access may be detrimental to the integrity of their natural and cultural heritage; and

(ii) Transparently and accurately calculate and disclose to the community—

A. Any ecological or environmental costs that may be incurred as a result of the licensed use of the materials, medicine or knowledge in question, and ensure that provision is made under the licence for the community to be compensated for those costs if the licence is granted; and

B. Any benefits that may accrue from allowing access to the materials, medicine or knowledge in question, and explore ways in which the community may share in those benefits;

(b) traditional medicines or items of traditional medical knowledge, that is the subject of an individual proprietary claim, the Committee or Subcommittee shall

(i) seek the explicit prior informed consent of the traditional medical practitioner concerned, and such practitioner shall have the right to refuse consent or access to the medicine or knowledge in question where such access will be detrimental to his or her interests; and

(ii) transparently and as accurately as possible calculate and disclose to the traditional medical practitioner concerned—

A. Any ecological or environmental costs that may be incurred as a result of the licensed use of the medicine or knowledge in question, and ensure that provision is made under the licence for the practitioner to be compensated for those costs if the licence is granted; and

B. Any benefits that may accrue from the collection, use or exploitation of the of the medicine or knowledge in question, and explore ways in which the practitioner may share in those benefits;

Informality of proceedings at public hearings

35 (1) Subject to this Part, the Board shall conduct a public hearing in such manner as it considers most suitable to the clarification of the issues, the fair resolution of the matters, and generally the just handling of the proceedings before it.

(2) The Board shall, so far as appear to it appropriate, avoid formality in its proceedings and may, where circumstances warrant it, depart from any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law generally.

(3) Notwithstanding section 28 of the Act, the Board shall, to the extent possible without compromising the effectiveness of the public hearing, avoid taking evidence on oath or summoning witnesses under subpoena.

Costs of public hearings

36 (1) Where a public hearing involves an applicant for a licence or a licensee, the costs of a public hearing shall, be shared equally between the Agency and such applicant or licensee.

(2) Where a public hearing is held pursuant to section *ten*(6), *twelve*(4), *nineteen*(3) or *twenty-one*(4) and no applicant for a licence or licensee is interested in the hearing, the costs of a public hearing shall, be shared equally between the Agency and any¹ of the following, as may be applicable—

(a) the local authority in whose favour a vesting and reservation notice or amendment thereof is to be made; or

(b) if the notice or amendment thereof has been made in favour of 2 or more local authorities, between those local authorities in equal shares.

as the case may be.

(3) If a public hearing is held at a location within a local authority, the local authority concerned shall provide all reasonable facilities required by the Board, Committee or Subcommittee in connection with the holding of the public hearing.

PART IX

GENERAL

Appeal to Board against decisions of licensing authority

37 (1) Any person who is aggrieved by any decision of a licensing authority in regard to the issue or refusal of a licence or any terms and conditions of such a licence, may appeal to the Board against that decision in **Form GRTK 5** delivered to the Director-General of the Agency not later than 14 days after the date on which the person received written notification of the decision.

(2) The reference to a person aggrieved in subsection (1) includes any community whose genetic materials and genetic resource-based knowledge are in any affected by the issue or refusal of the licence in question.

(3) On an appeal in terms of subsection (1), the Board may confirm, vary or set aside the decision appealed against or make such other order in the matter as it considers appropriate.

(4) Without derogating from subsection (3), on an appeal in terms of subsection (1), the Board may direct the licensing authority concerned, to grant a licence on such terms and conditions, including terms and conditions as to payment of a fee, as the Board may specify.

Compliance audits for the purposes of Parts V and VI

38 (1) Every person licensed under Part V or VI must undertake a licence compliance audit at regular intervals notified to the Committee or Subcommittee, as the case may be.

(2) Every person licensed under Part V or VI shall designate an appropriate qualified person who shall conduct its licence compliance audit and report on the audit to the Committee or Subcommittee, as the case may be.

(3) The Committee or Subcommittee, as the case may be, shall, at such intervals as it deems fit, carry out its own licence compliance audit of every person licensed under Part V or VI

Powers of Committee or Subcommittee to give directions

39 (1) If, whether after a compliance audit or otherwise, the Committee or Subcommittee, as the case may be, considers that a licensee is not compliant in all respects with the terms and conditions of its licence, it shall make appropriate written directions to the licensee to bring its operations into compliance with such terms and conditions within a specified time, and may temporarily order it to desist from any activity pending compliance with such directions.

(2) Any licensee who—

fails to comply with any directions made by the Committee or Subcommittee in terms of subsection (1) within the time specified by the Committee or Subcommittee; or

fails to comply with any order made by the Committee or Subcommittee in terms of subsection (1) to desist from any activity;

shall be guilty of an offence and liable to a fine not exceeding level 5 or imprisonment not exceeding six months or both such fine and such imprisonment.

Directions by Board in the interests of indigenous communities

40 Notwithstanding anything in these regulations, the Board may, after affording the licensing authority a reasonable opportunity to make oral or written representations in the matter, direct any licensing authority to grant, refuse, suspend, cancel or restore any licence if it is satisfied that on reasonable grounds that such action is necessary in the interests of—

(a) safeguarding the genetic resources and indigenous genetic resource-based knowledge of any indigenous community;

(b) securing to indigenous communities their inalienable right to access, use, exchange or share their genetic resources in sustaining their livelihood, or to share in any benefits from the commercial exploitation thereof;

(c) preventing the sale, assignment, transfer or other dealing in relation to genetic resources and indigenous genetic resource-based knowledge in any way which negatively affects the status of the indigenous community.

Disclosure of confidential information and use of information acquired by employees of Agency or local authorities

41 (1) If an employee of the Agency or any local authority in the course of his or her duties as such acquires information relating to the financial affairs or any commercial secret of any

applicant for a licence or licensee, he or she shall not for personal gain make use of such information, nor disclose it to any other person except—

- (a) for the purpose of legal proceedings under this Act or any other law; and
- (b) to the extent that it may be necessary to do so for the purpose of this Act or any other law, to another employee of the Agency or a local authority.

(2) No employee of the Agency or any local authority shall, for personal gain, make use of any information acquired by him or her in the course of his or her duties in connection with anything done in terms of these regulations for **a period of 5 years after** the date on which he or she ceased to be such employee.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

FIRST SCHEDULE (Section 2)

PRESCRIBED FORMS

[These may be requested in pdf from hlewis@optimalegal.co.zw]

SECOND SCHEDULE (Sections 3(4),7(7))

CONDITIONS OF OFFICE OF MEMBERS, MEETINGS AND PROCEDURE OF COMMITTEE

Term of office and conditions of service of members

1. (1) The term of office of members of the Committee shall be 3 years.
- (2) A member whose term of office has expired shall be eligible for reappointment.
- (3) There may be paid to a member from the funds of the Agency such fee for attendance at the meetings of the Committee as the Board, with the agreement of the Minister, may determine.

Disqualification for appointment or election as member

2. No person shall be appointed as a member of the Committee, or be qualified to hold office as a member who has—

- (a) in terms of the law in force in any country
 - (i) been judged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
 - (iii) adjudged or otherwise declared to be mentally disordered or defective;
- (b) within a period of 5 years immediately preceding the date of his proposed appointment, been convicted
 - (i) within Zimbabwe of a criminal offence; or

(ii) outside Zimbabwe of an offence by whatever name called which, if committed within Zimbabwe, would have been a criminal offence;

and sentenced by a court to imprisonment without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

Vacation of office of members

3. (1) An appointed member of a board or council shall vacate his office and office shall become vacant—

(a) 1 month after the date he or she gives notice in writing to the Chairperson of the Board of his or her intention to resign his office or after the expiration of such shorter period as he and the Chairperson of the Board may agree; or

(b) 1 month after the date he is sentenced by a court to imprisonment referred in paragraph 3 (b) after conviction of an offence referred in that paragraph:

Provided that if during the said period of 1 month an application for a free pardon is made or an appeal is lodged, the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside or a sentence other than imprisonment is substituted; or

(c) If he or she becomes disqualified in terms of paragraph 2 to hold office as a member; or

(d) If he or she is required in terms of paragraph 4 to vacate his office; or

(e) If he or she is absent without the permission of the Committee from 3 consecutive meetings of the Committee of which he or she has had notice; or

(f) if he or she ceases to hold a qualification which was necessary for his appointment.

Board may require member to vacate office or suspend him or her

4. (1) The Board may, after consultation with the Committee, require a member of the Committee to vacate his or her office if the Board is satisfied that the member—

(a) Has been guilty of improper conduct as a member; or

(b) Is mentally or physically incapable of efficiently performing his duties as a member.

(2) The Board may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he shall not carry out any duties as a member.

Filling of vacancy on Committee

5. On the death of, or vacation of office by, a member of the Committee, the vacancy shall be filled by the Board:

Provided that if, but for his or her death or the vacation of his or her office, the member would have continued to hold office for less than 3 months the Board need not appoint a person to fill the vacancy.

Meetings and procedure of Committee

6. (1) The Committee shall hold its first meeting on such date and at such place as the Board may specify and thereafter the Committee shall meet for the dispatch of business and, subject to this paragraph, adjourn, close and otherwise regulate its meetings and other proceedings as it thinks fit.

Provided that ordinary meetings of the Committee shall be held not less frequently than 4 times in every calendar year.

(2) A special meeting of the Committee—

(a) May, if in the opinion of the chairperson special circumstances so require, be convened by the chairperson on not less than 24 hours' written or verbal notice, including an agenda, given to every member;

(b) Shall be convened by the chairperson within 14 days of the receipt by him or her of a request in writing signed by not less than 4 members of the Committee and specifying the purposes for which the meeting is to be convened.

(3) At any meeting of the Committee a majority of the members shall form a quorum.

(4) If at any meeting of the Committee the chairperson is absent, the deputy chairperson shall preside at that meeting.

(5) If at any meeting of the Committee the chairperson and deputy chairperson are absent, the members present shall appoint 1 of the members to preside at that meeting.

(6) The decisions of the Committee shall, as far as possible, be made by consensus.

(7) In the absence of consensus, the Committee shall decide any matter by a majority vote at a meeting of the Committee at which a quorum is present.

(8) At all meetings of the Committee each member present shall have 1 vote on a question before the Committee and, in the event of an equality of votes, the person presiding shall have, in addition to a deliberative vote, a casting vote.

Members of Committee to disclose certain connections and interests

7. (1) In this paragraph—

"relative", in relation to a Committee member means the Committee member's spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)

(a) if a Committee member

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Committee ; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Committee member's private interests coming or appearing to come into conflict with his or her functions as a member of Committee; or

(iii) knows or has reason to believe that a relative of his or her—

A. Has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Committee; or

B. Owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Committee member's private interests coming or appearing to come into conflict with his or her functions as a member of the Committee; or

(b) if for any reason the private interests of a Committee member come into conflict with his or her functions as a member;

the Committee member shall forthwith disclose the fact to the Committee.

(3) A Committee member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Committee which relates to any contract, right, immovable property or interest referred to in that subsection.

(4) A Committee member who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Subcommittees of Committee

10. (1) For the proper exercise of its functions the Committee may establish subcommittees consisting of members and persons who are not members as it considers to be necessary or desirable in which the Committee may vest, and on which may be imposed, such of the powers and duties of the Committee as the Committee may specify.

(2) Every chairperson of a subcommittee shall be a member of the Committee and shall have a deliberative vote and, in the case of an equality of votes, a casting vote.

(3) The vesting or imposition of the functions of the Committee in a subcommittee shall not thereby divest the Committee of those functions.

(4) The chairperson of a subcommittee may at any time and at any place convene a meeting of that subcommittee.

(6) The procedure of a subcommittee shall be fixed by the Committee.

(7) No recommendation of a subcommittee shall be deemed to be the recommendation of the Committee until it has been confirmed at a meeting of the Committee.

Attendance of non-member at meeting of board, council or committee

11. Any person with particular knowledge of any matter being considered by the Committee or a subcommittee may, at the invitation of the Committee or subcommittee, as the case may be, attend meetings to assist the Committee or subcommittee, and such person shall be entitled to speak at any such meeting but shall not be entitled to vote.