

# **FINAL DRAFT**

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# **BIODIVERSITY CONSERVATION AND SUSTAINABLE USE ACT, 2006**

An Act to provide for the conservation of biological diversity and the sustainable use of biological resources and for matters connected therewith and incidental thereto.

BE IT ENACTED by [COUNTRY] as follows –

## **PART I**

### **PRELIMINARY**

#### **Short title.**

1. This Act shall be called the Biodiversity Conservation and Sustainable Use Act.

#### **Interpretation.**

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

“agreement” means multilateral environmental agreement;

“animal” means any member of the animal kingdom, whether dead or alive, in any stage of biological development, and any part or product thereof;

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

“biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity;

“Cabinet” means the Cabinet of Ministers of Government;

“CITES” means the Convention on International Trade in Endangered Species of Wild Flora and Fauna done at Washington, District of Columbia in the United States of America on the 3<sup>rd</sup> day of March, 1973 and any amend,ment thereto as may be adopted from time to time bu the Government of [Country];

“Committee” means the Multilateral Environmental Agreements Committee established at section 44;

“conservation” includes preservation, protection, management, rehabilitation, improvement, restoration and sustainable use;

“conservation status” means the sum of the influences acting on a species that may affect its long-term distribution and abundance;

“COP” means the Conference of the Parties to multilateral environmental agreements;

“cultural heritage” includes monuments, architectural works, elements or structures of an archaeological nature, buildings, works of man or the combined works of nature which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological perspective;

“domesticated animal” means an animal the form and growth of which has been modified through the provision of food, protection from enemies and selective breeding over several generations of living in association with human beings;

“endangered species” means any animal or plant species in danger of extinction and whose survival is unlikely if factors which threaten its extinction continue to operate;

“export” means to take out or transfer, or attempt to take out or transfer, from a place within [Country] to another country or to international waters;

“government authorities” includes the agency responsible for tourism;

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

“Heritage Committee” means the Natural and Cultural Heritage Committee established under section 37 of this Act;

“import” means to land on, bring into, introduce or attempt to land on, bring into or introduce into [Country] and includes bringing into or introducing into [Country] for re-export or trans-shipment;

“indigenous species means those species of national importance not covered by either Appendix I, II or III of CITES whose populations are believed to be at risk and are in need of conservation;

“introduction from the sea” means the transportation into [Country] of specimen which is taken from the marine environment not under the jurisdiction of any State;

“legislation on the conservation of biodiversity” includes enabling or primary legislation on the subject of forestry, wildlife, plant protection, national parks, protected areas or natural or cultural heritage;

“Management Authority” means the [Director of Forestry][Director of Environment];

“management plan” means in relation to any forest reserve or any protected area the plan adopted in accordance with section 20 of this Act;

“marine area” includes open water, water column, islands and the seabed;

“MEA” means a multilateral environmental agreement;

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

“[Minister]” means the [Minister assigned the responsibility for protected areas, forestry and wildlife]; [Minister assigned the responsibility for environmental management];

“natural heritage” includes natural features consisting of physical and biological formations, geological or physiological formations and areas which constitute the habitat of threatened species of wildlife or natural sites which are of outstanding universal value from the point of view of science, conservation or natural beauty;

“physical plan” means a plan showing the manner in which land may be used (whether by carrying out of development or otherwise) and the stages by which such development may be carried out;

“population” means a group of animals or plants belonging to the same species or sub-species which is geographically separate from other groups belonging to the same species or sub-species;

“protected area” means an area of land or sea especially dedicated to the protection and maintenance of biological diversity, and the natural and associated cultural resources, managed through legal or other means and includes wetlands;

“recovery plan” means a plan or policy that describes the activities necessary to allow a threatened species to recover its numbers to a secure status.

“species” includes any subspecies, variety, form or geographically separate population, whether wild or domesticated, of any species;

“specimen” includes a live or dead animal specimen or plant specimen;

“sustainable use” means the use of biological resources in such a way and at a rate that-

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

“take” includes –

- (a) in relation to an animal specimen, catch, capture, trap and kill; and
- (b) relation to plant specimen, pick, gather and cut;

“threatened species” means a species that is rare, vulnerable or endangered;

“taking” in relation to any plants includes to gather, pluck, cut, pull up, destroy, dig up, remove or injure the flora or to cause or permit the same to be done by any means;

“waterfowl” means birds that are ecologically dependent on wetlands;

“wetland” means an area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres;

“wildlife” means all animals including all terrestrial or freshwater wild animals, migratory species, vertebrate or invertebrate, turtles on land, plants or micro-organisms but does not include domesticated animals or plants;

### **Act binds the State.**

3. This Act binds the [State/Government].

### **Objects of the Act.**

4. The objects of the Act are –

(a) within the framework of the [Environmental Management Act], to provide for -

- (i) the management and conservation of biological diversity;
- (ii) the use of indigenous and exotic biological resources in a sustainable manner;
- (iii) the protection and conservation of cultural and natural heritage of [Country];

(b) implementation of the multilateral environmental agreements related to biodiversity mentioned in the First Schedule; and

(c) regulation of international trade in indigenous biological resources.

### **Scope and application.**

5. (1) The provisions of this Act shall be consistent with any applicable provisions of the [Environmental Management Act].

(2) In the event of any conflict between the provisions of this Act and the [Environmental Management Act], the latter shall prevail.

(3) Where any other law in force is inconsistent with the provisions and objectives of this Act, it shall, as of the date of coming into force of this Act, cease to apply to the extent of such inconsistency.

(4) The provisions of this Act shall prevail save and except they are expressly repealed.

## **PART II**

### **ADMINISTRATION**

## **Establishment and functions of Management Authority.**

6. (1) The [Director of Forestry] [Director of Environment] shall be the Management Authority for the purposes of this Act.[ OR]

(2) The [Minister] may by order from time to time designate such other person or such governmental authority as he thinks fit, to be the Management Authority for the purposes of this Act.

(3) It shall be the function of the Management Authority to -

- (a) administer this Act and the Regulations thereunder;
- (b) take such steps as are necessary to protect and monitor the natural resources and their habitats and the natural and cultural heritage of [Country];
- (c) maintain a programme for the conservation of biodiversity and its sustainable use;
- (d) coordinate the establishment and management of national parks and protected areas system, wetlands programmes and wildlife management programmes;
- (e) protect and conserve wildlife by regulating the exportation and importation of specified animals, plants and goods in accordance with the provisions of this Act;
- (f) be responsible for all functions and duties assigned to the Management Authority under CITES ;
- (g) conserve watersheds;
- (h) promote scientific research into the conservation and protection of biodiversity and education and training in the management of protected areas, wildlife, forestry and related areas;
- (i) enquire into and report to the [Minister] on any matters referred to it by him or in relation to the conservation of biodiversity and may advise the [Minister];
- (j) perform such other functions pertaining to the conservation of biodiversity as may be assigned to it by the [Minister] by or under this Act or any other law.

(4) In carrying out its functions under this Act, the Management Authority shall -

- (a) cooperate with other governmental authorities, [particularly the Department of Forestry] [particularly the Department of Environment] and non-governmental entities as necessary to fulfil its responsibilities under this Act;



- (b) supervise the preparation of the National Biodiversity Strategy;
  - (c) coordinate the inventory and monitoring of the status of biological resources and natural and cultural heritage in [Country];
  - (d) ensure that all physical plans and coastal and marine area management plans contain adequate provisions for *in-situ* conservation of biological diversity;
  - (e) coordinate with line ministries and local authorities to ensure that conservation and sustainable use of biological resources is adequately provided for in all policies and activities;
  - (f) coordinate with line ministries, regional and local authorities, and non-governmental organizations to develop programmes of appropriate incentives for conserving and using biological resources;
  - (g) ensure that environmental impact assessments are carried out for all plans, programmes and projects with potential impact on biological diversity and the natural and cultural heritage of [Country];
  - (h) coordinate with line ministries, local authorities, and local communities in administering the System Plan for Protected Areas;
  - (i) carry out any other activities which may be required to ensure compliance with the provisions of this Act.
- (4) The Minister shall have the power to remove any person or governmental authority designated as the Management Authority under this Act.

### **Establishment of Scientific Authority.**

7. (1) The Management Authority shall appoint a group of persons or body to be the Scientific Authority for the purpose of providing advice to the management Authority and in assisting in activities for the conservation of biodiversity in [Country] under this Act.

(2) On matters of a scientific nature, the Management Authority shall give deference to the Scientific Authority.

### **Functions of Scientific Authority.**

8. (1) The Scientific Authority shall –

- (a) advise the Management Authority on the implementation and enforcement of this Act;
- (b) in consultation with the Management Authority, prepare guidelines for the management of each category of protected area;
- (c) in consultation with the Management Authority and relevant line ministries, propose additional categories of protected areas;

- (d) be responsible for all functions and duties assigned to the Scientific Authority under CITES established by regulations under this Act;
- (e) advise on and guide the preparation of local, regional, and national inventories of habitats and species, particularly identifying the traditional and subsistence uses of each;
- (f) in cooperation with the Management Authority, develop guidelines for identifying degraded ecosystems and critical wildlife habitats;
- (g) compile and maintain up-to-date an archive of relevant scientific research and field work;
- (h) direct that research be undertaken when information on a relevant question is lacking;
- (i) make recommendations to the Management Authority on the issuance of permits and in regulating the trade in specimens of listed threatened or protected species;
- (j) monitor the provisions of this Act relating to the illegal trade in specimens of listed threatened or protected species; and
- (k) any other matter consistent with, or incidental to, its powers and duties.

(2) In performing its duties the Scientific Authority shall –

- (a) base its findings, recommendations and advice on scientific and professional review of all available information; and
- (b) consult, as necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations.

(3) The Scientific Authority shall provide written explanations for any findings, recommendations or advise it may submit in accordance with section 8(2).

### **Establishment of Multilateral Environmental Agreements Committee.**

9. (1) There is hereby established a Committee to be known as the Multilateral Environmental Agreements Committee which shall be appointed by Cabinet.

(2) The Second Schedule shall have effect as to the matters therein provided for in relation to the Committee.

### **Application of Part.**

10. (1) This Part applies to any multilateral environmental instrument whether [Country] became a party to it before or after coming into force of this Act.

(2) The provisions of any multilateral environmental instrument published in accordance with this section are evidence of the contents of the multilateral environmental instrument

in any proceedings or matter in which the provisions of the instrument come into question.

**Policy directions from [Minister].**

11. The Minister may from time to time give the Management Authority directions of a special or general character in the exercise of the powers conferred and the duties imposed on the authorities by or under this Act.

### **PART III**

#### **PROTECTED AREAS**

**Policy and planning.**

12. (1) The Government of [Country] shall ensure that a policy promoting the conservation of terrestrial and marine biological diversity and natural and conservation heritage is adopted as an obligatory element of all national, regional, and local physical plans and coastal zone and marine area management plans in accordance with [sec. on adoption of national plan, and management plan].

(2) The [Minister] shall revise the policy as appropriate but not less than every ten years, in accordance with the process set out by Regulations.

(3) No land use plan or coastal zone and marine area management plan shall be valid and binding until the Management Authority has issued its decision on the assessment of its impact on the conservation of biological diversity.

**Inventory.**

13. (1) The Management Authority shall keep an inventory of the biological resources and natural and cultural heritage of [Country].

(2) The inventory shall include all available information on the state of the biological resources and natural and cultural heritage of [Country], their ownership and utilisation and the areas requiring protection;

(3) The inventory shall be kept under periodic review and updated as necessary but not less than every five years;

(4) The inventory shall be accessible to any person during normal working hours of the [Department] in which it is kept.

**Wildlife surveys.**

14. The Management Authority shall monitor the state of the wildlife of [Country] and keep surveys of such species as may be necessary for the purposes of conservation of wildlife and biodiversity.

**Record of watersheds.**

15. The Management Authority shall keep a record of watersheds of [Country] and monitor their state, identifying watersheds which require particular protection for the purposes of the conservation of water and soil.

### **National plan.**

16. (1) The Management Authority shall prepare an integrated and co-ordinated national plan regarding protected areas and wildlife which shall –

- (a) establish a national protected area system, identifying areas of State and private lands which may be suitable for declaration as protected areas;
- (b) establish a regional network of coastal and marine protected areas to preserve and protect marine and coastal biodiversity;
- (c) protect habitats and associated ecosystems critical to the survival and recovery of endangered, threatened or migratory species;
- (d) protect areas of special biological, scientific, ecological, historical, cultural, archaeological, aesthetic or economic value ecological processes;
- (e) delimit wetlands and specific habitat types; and
- (f) develop an action plan for implementing and further developing the system.

### **Integrated management plans.**

17. (1) In preparing physical plans and coastal and marine area management plans, the value of biological diversity particularly as regards wetlands shall be taken into account.

(2) Physical plans and coastal zone and marine area management plans shall –

- (a) establish priority uses for types of ecosystems, including wetlands, soils and the seabed;
- (b) integrate areas important for the conservation of biological diversity along with principal activities including agriculture, civil construction, fishing, forestry, industry, mining, tourism, urbanization; and
- (c) incorporate recovery plans for degraded ecosystems to be developed.

### **Categories of protected areas.**

18. (1) The Management Authority may propose the following areas to be declared a protected area whenever it appears to be necessary for the following purposes as -

- (a) natural sites, to be managed for strict protection of natural areas and for scientific research;

- (b) national parks, to be managed for ecosystem conservation and tourism;
- (c) natural monuments;
- (d) habitat and wildlife management areas;
- (e) protected landscapes;
- (f) managed resource areas, to be managed for sustainable use of natural ecosystems;  
and
- (g) cultural and heritage sites.

(2) The Management Authority may, in consultation with the Scientific Authority and relevant line ministries, propose additional categories of protected areas.

(3) The protection of habitat types, including but not limited to coral reefs, forests, mangroves, wetlands and seagrass beds, shall be provided within the categories provided in paragraph (1) above, or in additional categories to be established.

#### **Declaration of protected area.**

19. (1) A proposal for the declaration of a protected area shall include –

- (a) a physical survey and description of the area including size and boundaries;
  - (b) a justification for establishment of the area and the category of protection proposed, including an evaluation of the advantages and disadvantages of establishing the site;
  - (c) a socio-economic impact survey of the local human population with a description of traditional uses of biological resources in the area proposed for declaration;
  - (d) a report on collaboration with local authorities and communities in determining the boundaries and category of the area proposed for declaration;
  - (e) a compilation of comments received from local authorities and citizens concerning the proposed declaration of the protected area and the category of protection to be declared;
  - (f) a description of any compensatory measures that may need to be taken as a result of establishment of the area being declared.
- (2) In furtherance of the requirements of subsection (1)(d) and (e), the Management Authority shall solicit comments regarding any proposal under this section and for this purpose shall –
- (a) publish the proposal in the *Gazette* and at least one national newspaper of general circulation;

- (b) send a copy of the proposal to relevant government departments and agencies; and
  - (c) consult with local national communities that are likely to be affected by the declaration.
- (3) After a period of not less than sixty days from the date of publication, the Management Authority shall hold at least one public consultation to discuss the proposal.
  - (4) Within ninety days from the expiry of the term referred to in subsection (2)(a), the Management Authority shall take into account any comments which have been received, and revise the proposal as appropriate.
  - (5) The Management Authority shall submit a recommendation to the [Minister] regarding the declaration of the protected area.
  - (6) The [Minister] may by proclamation published in the *Gazette* declare the concerned land to be a protected area.
  - (7) No land may be granted, devised or sold within a protected area.
  - (8) No right or title to or interest in any land within a protected area system may be acquired by prescription.

#### **Public utility works.**

- 20. (1) The Management Authority responsible for a public utility may, after an area has been declared a protected area under this Act manage and maintain any works or undertaking in any part of the protected area for which it was authorised and commenced to do before the area was declared to be a protected area.
- (2) Any new works or extension of existing works or undertaking on or under the surface of land within a protected area shall be in accordance with the management plan developed for such in accordance with the provisions of this Act.

#### **De-classifying protected areas.**

21. Any proposal for de-classifying a protected area shall be prepared by the Management Authority and shall include –

- (a) justification for de-classifying the protected area, which includes a description of the reasons for the proposal;
- (b) an environmental impact assessment which describes the impact of de-classifying the protected area on the ecosystems, species, and local communities affected by the de-classification;
- (c) a description of any mitigation measures that may need to be taken as a result of de-classifying the protected area; and

- (d) a compilation of comments from local authorities and citizens concerning the proposed de-classification.

### **Management plans and guidelines.**

22. (1) Subject to the contents of the national plan, the Management Authority shall, in consultation with the Scientific Authority, develop a management plan and guidelines for each protected area in accordance with the procedures established in Regulations made hereunder.

(2) Every management plan shall be kept under constant review and updated as necessary.

### **Contents of management plans.**

23. Every management plan shall contain the following –

- (a) physical boundaries for each protected area;
- (b) management objectives for the respective protected area including its relationship to national conservation strategies;
- (c) description of the physical and biological characteristics of the existing biological resources and their values, the state of conservation and the main environmental threats to them;
- (d) description of the socio-economic factors of the area including an analysis of the existing conflicts regarding the use of natural or historical-cultural resources and any provisions for the sharing of benefits from the area and maintaining traditional resource rights;
- (e) activities permitted within the protected area;
- (f) activities appropriate for surrounding areas; [Art. 9 SPAW Protocol]
- (g) provisions for controlling tourism and related services;
- (h) programmes and mechanisms for self-financing ;
- (i) legal framework for the implementation of the management plan including regulations for marine areas;
- (j) in the case of forestry, set out applicable conditions regarding activities which may be carried out, including conditions regarding –
  - (i) logging, including harvesting practices and minimum or maximum limits by quantity, species or size;
  - (ii) location and construction of main roads;

(iii) agricultural, pastoral and other activities, whether or not in conjunction with forestry;

(iv) afforestation and reforestation.

(k) any other provisions specific to the area.

### **Privately operated protected areas.**

24. The Management Authority may enter into formal agreements in respect of private lands with conservation organisations or private individuals that provide for specific obligations regarding activities which may have an adverse impact on biological diversity.

## **PART IV**

### **ENVIRONMENTAL IMPACT ASSESSMENTS**

#### **Environmental impact assessment.**

25. (1) Environmental impact assessments shall be carried out for all projects, and activities which may have significant adverse impacts on biological diversity.

(2) The Management Authority shall maintain consultations with relevant governmental authorities to ensure that the possible direct and indirect impacts, including cumulative impacts on biological diversity, of major projects listed in the Second Schedule are evaluated.

(3) Environmental impact assessments shall –

(a) be prepared during the planning process for industrial projects and other projects and activities that could have an adverse environmental impact;

(b) evaluate the possible direct, indirect and cumulative impacts of proposed project activities on protected areas and species, their habitats and associated systems; and

(c) involve, in its preparation and review, relevant agencies, the general public, conservation organisations and local communities in a timely manner.

(4) Any decision regarding environmental impact assessments that have been conducted shall be consistent with the purposes for which a protected area was established.

(6) The Management Authority may request the assistance of the Scientific and Technical Advisory Committee in making an environmental impact assessment of a proposed project activity.

(7) Any person desiring to conduct activities within 100 metres of a protected area which may affect any components of the water system including wetlands, mangroves, coral reefs, beaches or seagrass beds or is hydrologically connected to any significant wetland ecosystem, shall first obtain the approval of the Management Authority before commencing such activities.



**Prohibition.**

26. (1) Any activity that may result in the destruction of endangered or threatened species shall be prohibited.
- (2) No government agency shall authorise any activity that may undermine the purposes for which a protected area was established.

**PART V****SPECIES MANAGEMENT****Listing of species.**

27. (1) The Management Authority in consultation with the Scientific Authority shall publish a list of species according to the following categories –

- (a) endangered species threatened with extinction and which may be affected by trade therein;
- (b) species which could become extinct or which have to be effectively controlled;
- (c) species which CITES Parties regulate within their jurisdiction to prevent or restrain over-exploitation and require the cooperation of other Parties for the control of trade in such species; and
- (d) indigenous species which is to be controlled to meet conservation objectives .

(2) The Minister may, on the advice of the Management and Scientific Authority from time to time upon determining that an indigenous species of animal or plant is endangered, vulnerable or rare, amend any part of the list mentioned in subsection (1) by adding such particular species to the appropriate part of sub subsection (a) to (c).

(3) Migratory species may be included in any of the categories listed in subsection.

(4) The [Minister] may, in consultation with the Management and Scientific Authority, review and amend the list mentioned in subsections (1) and (2) from time to time to reflect changes in the conservation status of individual species taking into account any relevant amendments to Appendix I, II and III of CITES.

(5) The [Minister] shall cause the list and any amendment thereto to be published in the *Gazette*.

**Taking of listed species.**

28. (1) No person shall take any listed species except-

- (a) such person is the holder of valid permit issued by the Management Authority;
- (b) in accordance with the requirements of subsection (3) or any Regulations made hereunder; or
- (c) in accordance with any other law that authorises such taking.

(2) The [Minister] may by notice in the *Gazette* publish a list of activities that are prohibited from being carried out in respect of any listed species.

(3) The Management Authority may on such terms and conditions as it thinks fit on application made, grant a permit which shall entitle the holder of such permit to take a listed species for any of the following purposes -

- (a) scientific or educational purposes;
- (b) collection of specimens for zoological and botanical gardens, museums and similar institutions;
- (c) captive breeding;
- (d) artificial propagation;
- (e) traditional subsistence use; or
- (f) any other purpose that the Management Authority may deem appropriate.

Provided that such taking, in the opinion of the Scientific Authority, will not be detrimental to the survival in the wild of the species concerned.

(4) A permit issued under subsection (3) shall be –

- (a) in the prescribed form and shall not be transferable;
- (b) be in respect of a particular location or area;
- (c) for a specified purpose; and
- (d) valid for the period specified therein.

#### **Amendments.**

29. (1) Within 1 year of amending the status of any species referred to in section 27(2) and (4), the Management Authority in collaboration with the Scientific Authority shall prepare a Recovery Plan that would specify the conservation activities that will be undertaken to recover the species to a secure status.

(3) After a review and approval of the Recovery Plan, the Minister may publish in the *Gazette* such plan for such species.

- (4) Upon the publication of the Recovery Plan in the *Gazette* the Management Authority may issue instructions to Ministries, Departments, and governmental authorities for achieving the goals of the Recovery Plan, and it shall be the duty of all Ministries, Departments, and governmental authorities to carry out such instructions.

### **Non-indigenous species and living modified organisms.**

30. (1) The import and voluntary introduction into [Country] of species non-indigenous to native ecosystems and of living modified organisms through any means including in ballast water for use or release in areas within the jurisdiction or control of [Country] is prohibited, except in accordance with the conditions of a permit issued by the Management Authority.

(2) The introduction of non-indigenous species into protected areas is prohibited.

(3) The Management Authority, in cooperation with the Scientific Authority, shall prepare a list of species known to create negative impacts whose introduction may be strictly prohibited.

(4) Applicable quarantine provisions shall govern introductions of domestic pet animals and domestic plants.

(5) The Management Authority, in coordination with the relevant line agencies, shall prepare eradication plans for the removal of harmful or potentially harmful non-indigenous species which have already been introduced or which may be introduced accidentally in violation of this Act.

### **Re-introduction of indigenous species.**

31. The Management Authority shall permit re-introduction of indigenous species into an ecosystem, including into a protected area, provided that the Scientific Authority has advised that such re-introduction will not be detrimental to the conservation status of the receiving ecosystem.

### ***Ex-situ* conservation of species.**

32. (1) The Management Authority, in coordination with line ministries and national and international institutions, shall devise appropriate plans to establish facilities for *ex-situ* conservation of biological resources, on the basis of the requirements identified in the National Biodiversity Strategy to be prepared pursuant to section...below.

(2) Priority shall be given to *ex-situ* conservation of indigenous species and to genetic resources for which [Country] is the country of origin.

## **PART VI**

### **TRADE IN SPECIES**

#### **Import of species.**

33. (1) Subject to any other law, no person shall –

- (a) import any species mentioned in the list referred to in section 27 into [Country]
- (b) . introduce from the sea any species mentioned in the list referred to in section 27 into [Country];

except with a valid permit or certificate issued by the Management Authority.

(2) No species listed under CITES shall be imported into [Country] without a CITES Import Permit issued by the Management Authority.

(3) The Management Authority may, on written application, the payment of a prescribed fee, and the presentation of a valid export permit or re-export certificate, issue an import permit provided that –

- (i) such import is for purposes which are not detrimental to the survival of the species involved; and
- (ii) the recipient of such species is suitably equipped to house and care for it.

#### **Export of species.**

34. (1) Subject to any other law, no person shall export or re-export any species mentioned in the list referred to in section 27 from [Country] except with a valid permit issued by the Management Authority.

(2) No species listed under CITES shall be exported or carried coastwise for export without a CITES Export Permit issued by the Management Authority.

#### **Cancellation of permit or certificate.**

35. The Management Authority may cancel a permit or certificate mentioned in sections 28, 33(2) and 34(2) where –

- (1) such permit was issued as a result of misleading or false information by the applicant or a person acting on behalf of the applicant; or
- (2) the applicant has contravened or failed to comply with –
  - (a) any condition or term of the permit;
  - (b) any provision of this Act or other law governing the permitted activity;  
or
  - (c) any law of a Party to CITES governing the permitted activity.

#### **Appeals.**

36. (1) An applicant who is aggrieved by any decision of the Management Authority in respect of a permit or certificate issued under sections 29, 43(2) and 35(2) of this Act may appeal to the Magistrate's Court by way of a notice of appeal within 28 days after having been informed of the decision.

(2) The notice of appeal shall set out clearly the grounds of the appeal and there shall be attached to such notice, copies of any correspondence, documents or statements relevant to the appeal.

(3) A copy of the notice of appeal together with copies of any correspondence, document or statement shall be served on the Management Authority

#### **Customs Act.**

37. The provisions of the [Customs Act] relating to uncustomed and prohibited goods shall apply to prohibitions and restrictions imposed on wildlife under this Act.

#### **Offence to trade.**

38. No person shall possess, transport, sell, offer for sale or purchase any listed or protected species or product made from any listed or protected species which has been illegally imported, introduced from the sea, taken from the wild, or otherwise not lawfully acquired without a valid permit issued by the Management Authority.

#### **National Biodiversity Strategy and Plan.**

39. (1) The Management Authority shall adopt a national biodiversity strategy and plan for the conservation of biological diversity and its components within one (1) year from the date of adoption of this Act.

(2) The Management Authority shall ensure that –

- (a) measures identified in the strategy are included in national and regional sectoral and cross-sectoral plans; and
- (b) the national biodiversity strategy is updated periodically.

## **PART VII**

### **PROTECTION OF NATURAL AND CULTURAL HERITAGE**

#### **Duties of Management Authority,**

40. The Management Authority functions as the focal point for the identification, protection, conservation and rehabilitation of the natural and cultural heritage of [Country] in accordance with the Convention for the Protection of the World Cultural and National Heritage, to which [Country] is a party.

#### **Establishment, composition and function of Heritage Committee.**

41. (1) There is hereby established a Natural and Cultural Heritage Committee to act in an advisory capacity to the Management and Scientific Authorities on all matters pertaining to the protection of the natural and cultural heritage of [Country] including –

- (a) the adoption of a general policy to promote the cultural and natural heritage of [Country];
- (b) compilation, adoption or amendment of lists of –
  - (i) buildings, monuments, places and sites of prehistoric, historic or architectural merit or interest;
  - (ii) places of natural beauty or natural interest;
- (c) the issuance of interim preservation orders for the urgent protection of unlisted buildings, monuments and sites of prehistoric, historic or architectural merit or interest;
- (d) the determination of applications in respect of listed buildings, monuments or development of land within protected areas;
- (e) the incorporation of the protection, conservation and rehabilitation of the natural and cultural heritage into local, regional and national planning policy;
- (f) the preparation of plans for the preservation, conservation and rehabilitation of buildings of historical, architectural or historic merit or interest including the designation of buffer zones and the conditions for the use, development and enjoyment of land in such areas;
- (g) the designation of Heritage Conservation Areas;
- (h) the determination of applications for the construction of new buildings on land situated in Heritage Protection Areas or in the buffer zones of those areas; and
- (i) the conduct of enforcement measures.

(2) The Heritage Committee mentioned in subsection (1) shall consist of no more than [7] persons drawn from the following disciplines or groups, namely, culture, tourism, fisheries and forestry, environmental management, national parks, architectural society and non-governmental organisations.

(3) A member of the Heritage Committee shall be appointed for a term of 5 years and under such terms and conditions as the Minister may fix in the instrument of appointment.

(4) The Heritage Committee shall regulate its own procedure.

#### **Listing of buildings, monuments and sites.**

42. (1) The Management Authority may, on the advice of the Heritage Committee, compile lists of –

(a) buildings, monuments and sites of prehistoric, historic or architectural merit;  
and

(b) places of natural beauty or interest, including submarine and subterranean areas and their wildlife.

(2) If the Management Authority is of the view that it is desirable to grant special protection to any area on a list compiled under subsection (1), the Authority may, by order in the *Gazette*, declare that area to be a protected area under this Act.

(3) The Management Authority may amend such lists from time to time.

### **Effect of listing of monuments etc..**

43. (1) No person may execute or cause or permit to be executed any works for the demolition or alteration of works of a building or monument or disturbance of a site included in a list compiled under section 43 which would seriously affect its character, whether or not such works would ordinarily constitute permitted development under the [*Physical Planning and Development Control*] Act unless the Management Authority has granted its consent in writing.

(2) The Management Authority shall establish such conditions and procedures as it considers appropriate for the granting of such consent mentioned in subsection (1).

### **Interim preservation orders.**

44. (1) If it appears to the Management Authority to be expedient to make urgent provision for the preservation of any unlisted building, monument or site, the Authority may, for that purpose, by an order published in the *Gazette* restrict the demolition, alteration or extension of that building or monument or the disturbance of that land.

(2) The Minister may make regulations establishing the procedures for the making of an interim preservation order.

### **Conservation and preservation of listed buildings, monuments and sites.**

45. (1) Every owner and occupier of a listed building, monument or site is responsible for its conservation and rehabilitation.

(2) The Management Authority shall, as far as practicable, provide assistance to owners and occupiers in procuring technical and financial assistance for the purposes of the rehabilitation and conservation of any listed building, monument or site.

(3) The Management Authority may serve on the owner or occupier of any listed building, monument or site a notice requiring specific steps to be taken to conserve or rehabilitate the building, monument or site within a specified time.

(4) The Minister may make regulations regarding the procedure where the requirements of the notice mentioned in subsection (3) is not complied with.

#### **Heritage protection areas.**

46. (1) The Management Authority may, on the advice of the Heritage Committee, by order published in the *Gazette*, designate any area containing a group of separate or connected buildings which, because of their history, architecture, homogeneity or their place in the landscape, are of outstanding universal value, including such other land in the buffer zone of those buildings as a Heritage Protection Area.

(2) The Minister may by regulations establish the procedures for establishing a Heritage Protection Area.

#### **Preservation of amenities.**

47. The Management Authority may, as a condition subject to which permission is granted for the development of land, make provision for the preservation of amenities of any area, including the protection of any trees or the planting of new trees.

## **PART IX**

### **INFORMATION, TRAINING AND RESEARCH**

#### **Information.**

48. (1) The Scientific Authority shall compile information on the status of biological diversity in [Country] with the objective of identifying –

- (a) those areas, including wetlands, that are suitable for protected area status;
- (b) those species, including migratory species, for which conservation measures are required to be taken;
- (c) those activities that may have an adverse impact on the protected area status; and
- (d) such other purpose that the Scientific Authority may determine.

(2) The information that is compiled under subsection (1) shall be made available to the Multilateral Environmental Committee for the purpose of meeting its obligations for the submission of national reports to the COP to which [Country] is a party.

(2) The Management Authority shall coordinate the exchange of information on biological diversity in [Country] and the conservation and sustainable use of biological resources, particularly through appropriate established clearinghouse mechanisms.

#### **Public education and awareness.**



49. The Management Authority shall coordinate with the relevant line ministries and local authorities to prepare and carry out public awareness campaigns to inform and educate the public about the value of biological diversity, threats to biological diversity, cultural and natural heritage and ways to conserve and use them in a sustainable manner.

#### **Research.**

50. (1) The Scientific Authority shall promote research programmes for the conservation and sustainable use of biological resources, and shall cooperate in international programmes to conduct research and develop methods for the sustainable use and conservation of biological diversity.

(2) The Management Authority shall coordinate with national research institutions and line ministries to ensure that research programmes are relevant to the objectives of this Act and to those identified in the National Biodiversity Strategy.

(3) The Minister shall, prepare regulations governing the conservation and sustainable use of biological resources and natural and cultural heritage.

### **PART X**

## **MONITORING AND ENFORCEMENT**

#### **Monitoring of biodiversity.**

51. (1) The Scientific Authority shall monitor the status of biological diversity and the sustainable use of its components.

(2) The Management Authority shall be responsible for coordinating and instituting measures for the effective enforcement of the provisions of this Act.

(3) Where a governmental authority does not adequately monitor and enforce the provisions of this Act, the Management Authority is empowered to carry out all necessary monitoring, inspections and enforcement.

#### **Appointment of enforcement officers.**

52. [The [Minister] may, on the recommendation of the Management Authority appoint fit and proper persons to be enforcement officers for the purpose of carrying out the provisions of this Act.]

#### **Disqualification.**

53. A holder of a permit who contravenes the terms of his permit may be disqualified from holding a permit for a maximum period of 5 years.

#### **Seizure of specimens.**

54. (1) Where a court convicts a person of an offence under this Act or the regulations, the court shall order the forfeiture to the Government of any species used or otherwise involved in the commission of the offence.

(2) Where any species is forfeited under subsection (1) the Court may, on the advice of the Scientific Authority, order that the species be –

- (a) returned to the wild;
- (b) stored or kept under the control or management of, or donated to an approved zoological or academic organisation; or
- (c) returned to its owner or country of origin.

### **Seizure of goods.**

55. Where a court convicts a person of an offence under this Act or accompanying regulations, the court may order the forfeiture to the Government of any goods or equipment used or otherwise involved in the commission of the offence.

## **PART XI**

### **REGULATIONS**

56. The [Minister] may make regulations for –

- (a) the procedure for the adoption of national plan, management plans and revision of policy;
- (b) the ecologically sustainable utilisation of biodiversity;
- (c) detailed criteria for the selection of protected areas;
- (d) the establishment of fishing zones;
- (e) the establishment of maximum fishing limits and minimum size of catches;
- (f) prohibiting the use of certain types of equipment or fishing methods;
- (g) controlling access to protected areas by visitors and their activities through a system of permits and licences;
- (h) the conduct of research on biological diversity and its components in [Country];
- (i) detailed provisions and procedures for the implementation and enforcement of the CITES regulating the trade in specimens of listed threatened or protected species which is binding on [Country];
- (j) the listing of endangered, threatened, vulnerable, protected, alien or invasive species;

- (k) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species;
- (l) the procedure to be followed and the fees to be paid in respect of an application for a permit or certificate that is required under this Act;
- (m) the form and contents of permits or certificates that are required under this Act;
- (n) access to genetic resources;
- (o) the form and contents of, and the requirements and criteria for, benefit-sharing agreements and material transfer agreements relating to genetic resources;
- (p) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species;
- (q) procedures for making amendments to buildings, monuments or other properties of prehistoric, historic or architectural merit;
- (r) procedures for the making of interim preservation orders; and
- (s) any other matter that may be prescribed under this Act.

#### **Amendment of Schedules.**

57. (1) The Minister may by order published in the *Gazette* amend any Schedule under this Act or regulations made thereunder by adding thereto or deleting therefrom the name of any particular species or otherwise or by the inclusion of new protected areas or deleting or amending the existing protected areas and may apply any such deletion or alteration to the whole of [Country] or confine it to any district or other area thereof, (so, howsoever that the Minister shall, before amending any of the Appendices, comply with the relevant provisions of Article XV or XVI of CITES).

- (2) The Minister shall, by regulations, prescribe procedures for amending the Schedules mentioned in subsection(1).

## **PART XII**

### **OFFENCES AND PENALTIES**

#### **Penalty**

58. (1) A person who commits an offence under this Act shall be liable in summary conviction to a maximum fine of [sum] and imprisonment for a maximum of [time].

#### **Offences.**

59. Notwithstanding anything to the contrary in any other enactment, a person commits an offence who, except under and in accordance with the provisions of this Act -

- (a) encloses in or with any letter, parcel or packet any specimen to which this Act refers; or
- (b) uses any mailbag or mail van, ship or other vehicle used for the carrying of mail for the transportation of any specimen to which this Act applies.
- (c) for the purposes of obtaining whether for himself or for any other person, the issue, grant or renewal of any permit issued under this Act, makes any declaration or statement which is false or misleading in any material particular;
- (d) imports illegally or brings into [Country] or exports therefrom any specimen contrary to the provisions of this Act;
- (e) deals in any specimen by way of a transaction of any description whatsoever contrary to the provisions of this Act;
- (f) is in unlawful possession of, or has unlawfully under his control, or offers or exposes for sale or displays to the public any specimen to which this Act relates;
- (g) takes or attempts to take any wildlife within a protected area or forest reserve;
- (h) takes or attempts to take wildlife without a permit or contravenes the conditions of such permit;
- (i) threatens, assaults or obstructs an authorised person acting in the execution of his duties;

and shall be liable to the penalties prescribed in section 59.

#### **Obstruction of authorised persons.**

60. Every person who assaults, obstructs or hinders an authorised person in the execution of his duty under this Act or the regulations commits an offence and shall be liable to the penalties prescribed under section 59 of this Act.

#### **Wilful damage.**

61. (1) Every person who causes material harm by wilfully or recklessly and with the result that material harm will or might result commits an offence and shall be liable to the penalties prescribed under section 59 of this Act.

(2) Wilful damage is to be treated as material harm if –

- (a) it consists of a nuisance of high impact or on a wide scale; or
- (b) it involves actual or potential harm to the health or safety of human beings that is not trivial; or other actual or potential environmental harm that is not trivial.

#### **Continuing offences**

62. Where a person is convicted of an offence under this act or the regulations, then, if the contravention in respect of which he was convicted is continued after such conviction he shall be guilty of a further offence and liable on conviction to a further fine of [state fine or formula].

### **Orders of court.**

63. (1) Where an offender has been convicted of an offence under this Act or the regulations, in addition to any fine, imprisonment, or other sanction that may be imposed the court may, after considering the nature of the offence and the circumstances surrounding its commission, make an additional order having any or all of the following effects –

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take such action as the court considers appropriate as to remedy or avoid any harm to the biological and indigenous resources of [Country] that results or may result from the act or omission that constituted the offence.
- (c) directing the offender to publish, at the offender's cost, in the manner prescribed by the court, the facts relating to the conviction;
- (d) directing the offender to post such bond or pay such amount of money into court as will ensure compliance with any order made pursuant to this section;
- (e) requiring the offender to comply with such other reasonable conditions as the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence.

## **PART XIII**

### **MISCELLANEOUS**

#### **Non-application of Act to certain specimen.**

64. Where in relation to any specimen that is to be exported or re-exported –

- (a) the Management Authority is satisfied that the specimen was acquired before the relevant provisions of CITES applied to that specimen, and;
- (b) the Management Authority grants a certificate, that is to say, a pre-CITES certificate to that effect,

the provisions of section 34 shall not apply to that specimen.

#### **Expired permit may serve as proof of lawful import.**

65. If in any proceedings there arises any question as to whether a specimen is lawfully imported or is lawfully in the possession of the holder thereof, an expired permit or

certificate may serve as proof of the lawful import, export, re-export of the specimen to which it relates.

**Repeal and transitional.**

66. (1) The [name of Acts] are hereby repealed.

(2) Notwithstanding subsection (1), the regulations made under those Acts shall remain valid and shall apply *mutatis mutandis* until such time as regulations are made under this Act .

## FIRST SCHEDULE (sec. 9)

### ESTABLISHMENT AND FUNCTIONS OF MULTILATERAL ENVIRONMENTAL AGREEMENTS COMMITTEE

#### **Composition.**

1. (1) The Committee shall consist of not more than eleven persons appointed in accordance with this regulation.  
  
(2) The Cabinet shall appoint –
  - (a) a Chairman;
  - (b) eight other persons representing government agencies responsible for forestry, fisheries, finance, physical planning, environmental management, tourism, foreign affairs and legal affairs; and
  - (c) two other persons representing non-governmental organisations and the private sector.  
(3) The names of the members appointed to the Committee shall be published in the *Gazette* and at least one daily newspaper of general circulation.

#### **Meetings.**

2. The Committee shall meet at such times and at such place as the Chairman determines is necessary for the efficient discharge of its functions.

#### **Procedure.**

3. The Committee may determine its own procedures and may, subject to the approval of Cabinet, make rules governing such procedures.

#### **Sub-committees and working groups.**

4. The Committee may appoint such sub-committees or working groups as necessary to assist in the performance of its functions or to further the objectives of the Act.

#### **Functions.**

5. (1) The Committee shall be responsible for advising the Cabinet on all matters pertaining to the ratification of, monitoring, and compliance with multilateral environmental agreements to which [Country] is a party including those agreements set out in the First Schedule.  
  
(2) The Committee shall prepare an Annual Performance Report to –
  - (a) meet the government's commitment to –

(i) the agreements to which [the Country] is a party

(ii) Agenda 21;

(iii) the Johannesburg Plan of Implementation;

(iv) the Small Island Developing States Programme of Action; and

(v) St. George's Declaration.

(b) cover all relevant activities of governmental entities, statutory bodies and other agencies.

(3) The Committee may appoint persons or contractors as it considers necessary to act as a Secretariat to ensure preparation of the report.

(4) The purpose of the report shall be to –

(a) review procedures for coordinating policies and budgets to meet the objectives of the MEAs to which [Country] is a Party;

(b) review national implementing legislation and regulations; and

(c) review progress on public education and awareness programmes to support their objectives.

(5) The Committee shall make recommendations to Cabinet regarding –

(a) the ratification/accession of any multilateral environmental agreement by [Country];

(b) projects, programmes or other activities that may be instituted to facilitate compliance with or enforcement of any multilateral environmental agreement to which [Country] is a party;

(c) the policy positions that should be taken at international regional or sub-regional negotiations related to any multilateral environmental agreement.

(6) In making recommendations under subsection (5) (a) the Committee shall submit reports to Cabinet regarding the following particulars –

(a) the resources that are available to facilitate implementation;

(b) the views of interested and affected parties;

(c) the benefits and disadvantages to the country of becoming a party;

(d) the responsibilities of relevant agencies involved;

(e) reservations to be made, if any; and

(f) any other matter which may be relevant.



(7) After considering the report mentioned in subsection (6), the Cabinet may ratify/accede to an MEA.

(8) Cabinet shall take such steps as may be necessary to implement any MEA mentioned in paragraph (6) including –

- (a) the coordination of the implementation of such agreement;
- (b) the allocation of responsibilities with respect to such agreement;
- (c) the gathering of information for the purposes of compiling and updating reports for submission to Parliament;
- (d) the dissemination of information related to the instrument and reports from attendance at meetings;
- (e) initiatives and steps regarding research, education, training, awareness raising and capacity-building;
- (f) ensuring public participation;
- (g) implementation of and compliance with the provisions of the agreement, including the creation of offences and the prescription of penalties where applicable;
- (h) the submission of reports as required under the respective multilateral environmental agreement Secretariats; and
- (i) any other matter necessary to give effect to the instrument.

(9) Cabinet may, prior to making a recommendation mention under paragraph (6), publish a notice in the *Gazette*, stating its intention to ratify/accede to such agreement and inviting written comments.

#### **Attendance at meetings, etc.**

6. (1) Where any person attends any sub-regional regional or multilateral environmental meetings, workshops and training on behalf of [Country] such person shall, within twenty-eight days after such attendance submit a report containing particulars of the proceedings at the meeting, workshop or seminar and recommendations, including follow-up activities that may be appropriate to the interests of [Country], to the Committee.

(2) The Committee shall submit the report mentioned in paragraph (6) (1) to Cabinet.

#### **Reports to Parliament.**

7. The Cabinet may report to [Parliament] once a year regarding MEAs to which [Country] is a party and such report may include details on –

- (a) participation at multilateral meetings concerning MEAs;
- (b) progress in implementing MEAs;
- (c) preparations undertaken in respect of MEAs;
- (d) the efficacy of coordination mechanisms; and
- (e) legislative measures that have been undertaken and the timeframe within which it is envisaged that their objectives will be achieved.

## SECOND SCHEDULE (sec. 25)

### PROJECTS AND ACTIVITIES THAT REQUIRE A DETAILED ENVIRONMENTAL ASSESSMENT

Electrical power plants

Ports and harbour projects, pier construction, dredging and harbour maintenance

Marina construction

Airport and road construction

Oil refineries and transshipment terminals

Sewerage projects and solid waste disposal

Tourism facilities

Dams and water irrigation systems

Structural shoreline protection

Changes in land use

Industrial parks

Chemical manufacture, storage and transport

Intensive agriculture, forestry, fisheries projects (including aquaculture)

Any project or activity which have a significant impact on biological diversity