



**CRAFTING VISIONARY BIODIVERSITY
LAWS:**

**COSTA RICA'S BIODIVERSITY
LAW 1998**

**- A BEST POLICY IN IMPLEMENTING THE UN
CONVENTION ON BIODIVERSITY**

**A PAPER PRESENTED AT THE CENTRAL AMERICA
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COSTA RICA



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The mission of the CISDL is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law. The CISDL is an independent legal research centre that collaborates with the McGill University Faculty of Law and also works with a network of developing countries' faculties of law. The CISDL is engaged in six primary areas of sustainable development law research including: trade, investment and competition law; natural resources law; biodiversity and bio-safety law; climate change and vulnerability law; human rights and poverty eradication in sustainable development law; and health and hazards in sustainable development law. As a result of its ongoing legal scholarship and research, the CISDL publishes books, articles, working papers and legal brief in English, Spanish and French. The CISDL hosts academic workshops, dialogue sessions, legal expert panels, law courses and seminar series and conferences. It provides instructors, lectures and capacity building materials for developing country governments and international organizations in national and international law in the field of sustainable development, and works with countries to develop national laws to implement international treaties in these areas.

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List of Acronyms

ABS	Access to Genetic Resources and the Fair and Equitable Sharing of Benefits resulting from their Utilization, 1
BL	Biodiversity Law
CBD	Convention on Biological Diversity, occasionally referred to as “the Convention”
CONAGEBIO	National Commission for the Management of Biodiversity
COP	Conference of the Parties
GMO	Genetically modified organism
ILA	International Law Association
INBio	The National Biodiversity Institute
IPR	Intellectual property rights
MEET	Ministry of Environment, Energy and Telecommunications
NGOs	Non Governmental Organizations
SINAC	National System of Conservation Areas

Executive Summary

Future Justice is about putting the values that are essential to our survival at the heart of every law and every policy. Helpful in doing so are the seven principles for sustainable development law presented at the 2002 Johannesburg World Summit on Sustainable Development. The World Future Council (WFC) and Centre for International Sustainable Development Law (CISDL) use these principles as the basis for their research and in the evaluation of different laws and policies. This paper surveys the Costa Rica's biodiversity laws and highlights exceptional provisions as examples of Future Justice in law. It also applies those principles to laws and policies on biodiversity to help explain to decision-makers how to develop visionary biodiversity laws and the key elements to those laws.

Countries have worked to implement the provisions of the *Convention on Biological Diversity*¹ (CBD) since its adoption and entry into force in 1992/1993. Because the CBD is a framework treaty with mainly aspirational goals, it has been difficult to objectively measure whether parties have implemented its provisions by law, policy or other measures. Given the global community's failure to meet the 2010 Biodiversity Target, it appears that states did not do nearly enough to implement the terms of the CBD in substance and effect. From the perspective of future justice, the global extinction of biodiversity is utterly detrimental to the rights of future generations. It is clear that all countries need guidance on how to achieve conservation, sustainability and intergenerational equity in law.

Ongoing negotiations since the adoption of the CBD have led to greater clarity on how its terms should be interpreted. Greater legal clarity to the provisions of the CBD has been brought by the adoption of three Protocols: the *Cartagena Protocol on Biosafety*² (Cartagena Protocol) and its *Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress*³ (Nagoya-Kuala Lumpur Protocol), and the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits resulting from their Utilization*⁴ (Nagoya ABS Protocol) as well as with the adoption of several Guidelines on topics such as Biodiversity and Tourism,⁵ Indigenous Peoples,⁶ Invasive Alien Species,⁷ Sustainable Use,⁸ Biodiversity Impact Assessment,⁹ and the Ecosystem Approach¹⁰. Designing biodiversity laws and policies to benefit future generations will require a holistic implementation of the vision of the CBD.

The first section provides an analysis of Costa Rica's Biodiversity Law 1998 where key measures that implement these principles of justice are highlighted. It follows with a description on how to develop exemplary biodiversity laws and outlines which elements should be included in a future just biodiversity law.

The paper contains an appendix listing the parties to the CBD and Cartagena Protocol, and the signatories to the Nagoya and Nagoya-Kuala Lumpur Protocols in Central America and the Caribbean as well as Mexico.

1. Costa Rica's Biodiversity Law*

Costa Rica now lies third in the Global Environmental Performance Index¹¹ in part because of the success of its *Biodiversity Law 1998*¹² (BL). An earlier paper commissioned by the WFC came to a number of conclusions as to why the BL is novel and visionary.¹³ The BL creates a legal framework in line with the principles and themes outlined in the CBD, beginning by setting one of its goals as promoting the conservation and sustainable use of biodiversity and ensuring the fair and equitable sharing of benefits derived therefrom.¹⁴ The law aims to respond to this goal in an integrated and inter-related manner. This includes recognising the inherent value of nature, generally applicable principles of law, objectives, and criteria for applying the law.¹⁵ It covers both the concept of tangible elements of biodiversity, as defined by the CBD, and intangible elements such as individual or collective knowledge, innovation and practices. It puts into effect sustainable development principles, like the precautionary principle. Other elements include the expansion of the pre-existing payment for environmental services program. The law also establishes a participatory system by creating regional councils in each conservation area, integrated by five elected members of different sectors from that geographical area. It establishes regulations regarding access to genetic resources and incorporates principles such as cultural denial, and recognizes different systems of intellectual property, e.g. farmers' rights and *sui generis* community intellectual rights. For this reason, the law prevents non-genetically modified plants, animals and microorganisms from being patented or made subject to intellectual property rights (IPR).

The law's objective is the conservation of biodiversity and the sustainable use of biological resources as well as the equitable distribution of the benefits and derived costs of the use of its elements. The legal framework has the following guiding elements:

- ⇒ Equity in access and in the distribution of benefits derived from the use of the elements (genetic and biochemical) of biodiversity,
- ⇒ Respect for human rights, especially the rights of groups that are marginalized because of their culture or socio-economic condition,
- ⇒ Sustainable use of biodiversity, in order to respect the development options of future generations,
- ⇒ Biosecurity in the broadest sense, including technological, environmental, alimentary and sanitary aspects, and
- ⇒ Democracy as a guarantee of greater citizen participation in decision-making.¹⁶

To undertake the administration of the law, it establishes an administrative body within the Ministry of Environment, Energy and Telecommunications (MEET) to oversee both the National System of Conservation Areas (SINAC) and National Biodiversity Administration Committee (CONAGEBIO).¹⁷ Overall duties of SINAC and CONAGEBIO include the administration of national wild protected areas,¹⁸ ensure environmental safety,¹⁹ the conservation and the sustainable use of the ecosystems and species,²⁰ the regulations on access to genetic resources,²¹ intellectual property rights,²² education and public awareness and research and transfer of technology,²³ environmental impact assessment,²⁴ incentives²⁵ and administrative procedures and sanctions.²⁶ CONAGEBIO is a national independent commission which oversees and formulates policies on access to genetic and biochemical elements and protection of

* WFC would like thank Vivienne Solís Rivera and Patricia Madrigal Cordero from Coope SoliDar R.L., Costa Rica, for their precious contribution during the evaluation process of Costa Rica's Biodiversity Law 1998, as well as for their comments on this paper.

associated knowledge, as well as coordinating these policies with the relevant institutions. It also formulates and coordinates the policy for access to elements of biodiversity and associated knowledge, ensuring a suitable transfer of science and technology and the distribution of benefits. As a multi-stakeholder organization, it consists of governmental bodies such as the MEET (which oversees it); the Ministries of Foreign Trade, Health and Agriculture; the Institute of Fishing and Aquaculture (IFA); the National Commission of University Presidents; Indigenous and farmers' organizations; the National Union of Chambers; the Costa Rican Federation for the Conservation of the Environment (FECON), which represents NGOs, and the Director of National System of Conservation Areas.²⁷

The law gives force and support to SINAC and conceptualizes a participatory system through the creation of regional and, eventually, local councils in each conservation area, integrated by five elected members of different sectors from that geographical area. It establishes regulations regarding the access to genetic resources and incorporates principles such as cultural denial, and recognizes different systems of intellectual property, e.g. farmers' rights and *sui generis* community intellectual rights. For this reason, the law excludes non-genetically modified plants, animals and microorganisms from IPRs.

The Costa Rican system for the protection of traditional knowledge is based on the following premises:

- ⇒ The legal access provisions ensure prior informed consent and the sharing of benefits related to traditional knowledge. The Technical Office, and eventually the National Biodiversity Commission itself, has the authority to control, authorize, and review (Art 63, 65, 66, 72, among others) this issue.
- ⇒ Prior consent and sharing of benefits is a combination of access mechanisms, contracts or licenses and a *sui generis* approach based on registers.
- ⇒ The existence and validity of various forms of knowledge and innovation and the need to protect them using appropriate mechanisms (Art. 77), be they patents, trade secrets, copyrights, plant improvement rights, *sui generis* community intellectual rights, etc. have been recognized (Art. 78).

The legislation is oriented towards the protection of knowledge by means of a registry system. The collective knowledge of indigenous peoples and their rights of access to genetic resources, among others, need to be acknowledged. Thus an inventory of *sui generis* intellectual community innovations and practices will be made for which communities request protection (Art. 84). However, these registry systems have been criticized for the difficulties that they can cause. The following are the main criticisms against these systems: (i) the need to define "access to information"; (ii) the control exercised over said information; (iii) the possibility that communities that are not involved in the access grant prior consent to use the knowledge registered under the name of others; and (iv) restrictions placed on the access to information.

To define the scope, nature, and requirements of these rights a participative consultative process has been started with the indigenous and peasant communities.²⁸ This process will determine the manner in which intellectual rights of the community will be used, who will hold the title and who will receive the benefits (Art. 85).

Biosafety

The Biodiversity Law establishes provisions regarding genetically modified organisms in chapter III under the title "Guarantees of Environmental Safety". It establishes that to avoid present and future damage to human, animal or plant health, or to the integrity of ecosystems, regulations establish mechanisms and procedures for access to elements of biodiversity for the purposes of

research, development, production, application, release or the introduction of exotic or genetically modified organisms into the environment. The state is required to avoid all risk or danger which threatens the permanence of ecosystems and should also prevent, reduce or repair environmental damage that threatens life or deteriorates its quality. The civil liability of title holders or people responsible for the management of GMOs and any damage caused is set out in the *Organic Law of the Environment*,²⁹ the *Civil Code*³⁰ and other applicable laws. Criminal responsibility is set out in the existing legal regulations.

Any person who proposes to use GMOs created inside or outside Costa Rica in the agricultural sector for import, export, experimentation, research, transport, release into the environment, reproduction or commercialization must obtain prior permission from the Phytosanitary Protection Service (SPS). All natural or legal persons, domestic or foreign, that carry out genetic manipulation must register with the Technical Office of CONAGEBIO.

Any person can participate in the permitting process, give observations and submit documents in writing. They can also request the repeal or revision of any permit granted. The Technical Office can, Based on technical, scientific or security grounds, modify or repeal any permit granted. In the face of imminent harm, emergencies or failure to comply with official requirements, the Technical Office can seize, confiscate, destroy or return the GMOs.

Access and Benefit Sharing

The *Biodiversity Law* applies to elements of biodiversity under State sovereignty, and processes and activities carried out under State jurisdiction or control. Article 6 establishes that the biochemical and genetic properties of the elements of wild or domesticated biodiversity are part of the public domain. The State regulates the exploration, research, bioprospecting, and use of elements of biodiversity, as well as the use of all genetic and biochemical resources, through access standards established in Chapter V of the Law. All research or bioprospecting programs on the genetic or biochemical material of biodiversity that are carried out in Costa Rican territory require an access permit, unless they fall into one of the exceptions provided by Article 4 of the Law.³¹

These exceptions include access to human genetic resources, the non-profit exchange of genetic and biochemical resources and the traditional associated knowledge resulting from the traditional practices of indigenous peoples and local communities, and research by public universities (the University of Costa Rica has established its own control and regulations relating to non-profit research on elements of biodiversity). All other sectors, including the pharmaceutical, agricultural, crop protection, biotechnology, ornamental, and herbal industries, which use the genetic properties of biodiversity are subject to the Law and must follow the access procedures.

The definitions of access and bioprospecting in the Law restrict its scope to genetic resources in public or private lands, terrestrial or marine environments, under *ex situ* or *in situ* conditions, and indigenous territories. The rules of indigenous peoples should be taken into account for access in their traditional territories, as should their *sui generis* community intellectual rights. Communities and indigenous peoples have the right to oppose access to their resources and associated knowledge for cultural, spiritual, economic or other reasons.

The access procedure is set out in two chapters of the Law. The competent body that grants access in the first place is the Technical Office of CONAGEBIO. CONAGEBIO is entrusted with preparing access and benefit-sharing policies and can revoke the rulings of the Technical Office on access issues. The main duty of the Technical Office is to process, reject, and monitoring applications to access biodiversity, and coordinate with the Conservation Areas, the private sector, indigenous peoples, and peasant communities on actions that relate to access. It is responsible for organizing and updating a register of access applications to the components of biodiversity, *ex situ* collections, and the natural and legal persons who work on genetic manipulations. The Technical Office must also collect and update regulations related to the fulfillment of treaties and guidelines on biodiversity issues.

Chapter V defines the requirements and procedures to access genetic and biochemical components and the protection of the associated knowledge. CONAGEBIO is expected to act as the mandatory consultative body for all application procedures for the protection of intellectual rights related to biodiversity. The Law regulates the basic requirements for access, which include prior informed consent (PIC), benefit-sharing, the protection of associated knowledge, and the way in which the activities will contribute to conservation. Chapter V also establishes the legal procedures to be followed, the Registry of access rights, and the protection of confidential information.

The Law also regulates the terms of access permits including their limitations and characteristics, the information required in a permit application, the authorization of agreements with individuals seeking access to genetic and biochemical components by the Technical Office, and the possibility of agreements with universities and other duly registered centers. It stipulates that, in addition to the payment of administrative expenses, up to 10 percent of the royalties must go to the Conservation Area, private owner, or indigenous territory. The Technical Office must always be consulted in processes where IPRs are granted for components of biodiversity, and its decision on these matters is binding.³² Lastly, the BL establishes the grounds for the protection of traditional, indigenous and community knowledge and for the establishment of a participatory process for the determination and registration of these *sui generis* intellectual community rights. This is supported by a system of fines for illegal access³³ and a framework for sanctions.

Article 11.3 of BL and Article 14 of the Executive Decree No. 31514, General Rules for the Access of Genetic and Biochemical Elements and Resources of Biodiversity (2003) (“ABS regulation”) establishes the following criteria based on the public environmental interest, which are valid for the evaluation or approval of the request:

- Development options for future generations,
- Food safety and sovereignty,
- Conservation of ecosystems,
- Protection of human health,
- Improvement of citizens’ quality of life,
- Gender issues, and
- Intellectual property rights not affecting key agricultural products and processes for the nourishment and health of the country’s inhabitants. This criterion also includes protection for the resources of local communities and indigenous populations.

Article 24 ABS regulation allows the imposition of total or partial restrictions on access to the resources to ensure their conservation and sustainable use. These restrictions are issued by the TO in the resolution for approving the access. In this way it can prohibit access, set limits, and regulate the methods of collection in the application of the precautionary principle mentioned in BL’s Article 11.2. To establish complete or partial restrictions some of the elements that will be considered are:

- The danger of extinction of the species, subspecies, races and varieties;
- Causes of scarcity and endemic conditions;
- Vulnerability or fragility conditions in the structure or function of the ecosystems;
- Adverse effects on human health, the species, and the ecosystems or on essential elements of the autonomy or cultural identity of peoples and communities;
- Strategic genetic resources or geographical areas qualified as such; and

- The prohibition of access for military purposes or for denaturalization of the resources.

Most of the bioprospecting in the country has been conducted by the National Biodiversity Institute (INBio). INBio was created in 1989 as a non-governmental, non-profit association and was declared by the Costa Rican government to be a public interest. Its mission is to promote a new awareness of the value of biodiversity and thereby achieve the conservation and use of biodiversity to improve quality of life. In 1991, INBio developed the concept and practice of "bioprospecting" as one answer to the need for sustainable use of Costa Rican biodiversity to benefit society.

INBio has a formal agreement with the MEET that allows it to carry out specific national inventory activities and use of the biodiversity in the country's protected areas and all the necessary permits are obtained from the proper authorities to carry out its research activities. Research is carried out in collaboration with investigation centers, universities and national and international private companies by means of research agreements that include key elements, such as:

- Access: limited in time and quantity;
- Equity and compensation: research budget, benefit-sharing (royalties and milestone payments, etc.), technology transfer, training;
- Non-destructive activities;
- Up-front payment for conservation.

The agreements specify that ten percent of the research budget and 50 percent of the future royalties or milestones are to be given to the MEET to be reinvested in conservation. The research budget supports the scientific infrastructure in the country as well as added-value activities for the conservation and sustainable use of the biodiversity. INBio has signed over 40 bioprospecting agreements. Several permits have been granted to the Technical Office of CONAGEBIO. More than 120 permits have been granted between 2005 and 2009, mostly for basic non-commercial research but some were also for commercial research.³⁴

Analysis and lessons learned

The Costa Rican experience provides some of the most relevant examples of achievements and obstacles in regulating access to genetic resources, intellectual property, and traditional knowledge. The BL was selected for further analysis largely because of its contribution to the development of Costa Rica's capacities in conserving biodiversity. The biodiversity prospecting program contributes several million U.S. dollars in income and makes important contributions to technology, capacity-training, equipment, the National System of Conservation Areas, and more importantly, to the creation of national capacities and negotiation capacities. Although this last aspect stands out as the most important in relation to acquired benefits, it is important to point out that ecological tourism contributes around \$700 USD million per year, making bioprospecting's return seem relatively small with respect to the amount of money obtained.

The ABS regulations of some countries have demonstrated how this type of focus can result in the lack of compliance with the objectives of the CBD. In this respect, some regulations to date have concentrated more on controlling than on promoting access. These types of laws evoke high transaction costs and complicated bureaucratic procedures that lead to hindering access applications, without which it is not possible to speak about benefit sharing. The BL has created the necessary legal guarantees, and an ABS regime that is sufficiently flexible and transparent.

Unfortunately, in most of the countries the evolution of legal regulations on access to genetic resources has been separated from the definition of national policies on conservation and sustainable use of biological diversity. As a result, the contribution of monetary as well as non-

monetary benefits barely touches upon the conservation process. The BL has established a connection between ABS and conservation. The regulations on access are based on the idea of conserving biological diversity, its sustainable use and the fair distribution of its benefits. The law also demonstrates a concern for equity by establishing the equitable sharing of benefits as a fundamental principle. The law calls for both equitable treatment of indigenous peoples and the design and implementation of a *sui generis* system for the protection of traditional knowledge. Poverty eradication is not mentioned *per se*, but in principle benefits accruing from the different ABS initiatives could serve this purpose. However, to date the implementation of the ABS provisions of the BL has created few benefits for small farmers and indigenous peoples. Most benefits are in the form of creation of technological capabilities, research results and associated information and monetary benefits. It has also promoted the participation of stakeholders that had no voice in the past and has strengthened the governance schemes to allow the participation of indigenous peoples, peasants and civil society.

In regards to broader benefits for biodiversity, some of the lessons learned include:

- ⇒ The BL is one of the most comprehensive laws aiming for the full implementation of the CBD. The BL addresses most of the relevant provisions of the CBD, allowing the country to develop further regulations and instruments for the implementation of the general and sometimes conditional provisions of the Convention.
- ⇒ The BL provides a balance between conservation, sustainable use and fair and equitable sharing of benefits arising from the utilization of genetic and biochemical resources. These three objectives are clearly linked in the text of the BL.
- ⇒ Equity, protection and rights of indigenous peoples and local communities and participation in the decision-making process (including the right to participate and over their knowledge) are features presented throughout the BL.
- ⇒ Expanded and progressive interpretation of several CBD provisions, such as the inclusion of biochemicals in the ABS scope and the inclusion of exotic/invasive species in the biosafety framework.
- ⇒ Incentives and technology transfer provision are incorporated in the Law.
- ⇒ The BL introduces a set of guiding principles and objectives for interpretation and implementation, including the precautionary approach, conservation, and sustainable use.
- ⇒ Strong institutional development was put in place to secure the conservation and sustainable use of biodiversity as well as fair and equitable benefit sharing.
- ⇒ Awareness raising and education have a considerable importance and weight in the BL design.

At the same time, one of the weaknesses of the BL are the amendments in the IPR/Biodiversity section due to the laws on IPR implementing the Free Trade Agreement between Central America, Dominican Republic and the United States (CAFTA). Furthermore, in practical terms almost all the ABS initiatives so far focus on collecting genetic material on protected or private areas as well as in marine portions of the country. Very few ABS initiatives have been proposed and carried out in indigenous territories, and therefore no benefits have directly accrued to this population.

The legislative processes, such as drafting, approval and implementation of laws, create a space for learning and strengthening of capacities, and allows for a real change in management and not necessarily just in the law itself.³⁵ Participatory processes in an area of great national importance such as biological diversity are also important, and to this extent, the development process of the Biodiversity Law in Costa Rica has been highly participatory, which resulted in a wide range of institutions that supported the implementation. The process of drafting a law is an opportunity to

promote awareness, to position the issue in the political agenda, and to strengthen people to demand their rights.

2. Designing Future Just Biodiversity Laws

A. Promoting Future Justice

Today's world needs laws which support a just and sustainable world and protect future generations. The Future Policy Award of the World Future Council celebrates "policies to change the world" - those exemplary policies which support better living conditions for current and future generations. The award aims to raise global awareness of visionary policies and speed up policy action in the interests of present and future generations. The celebrated policies are chosen from those which rank highest against the World Future Council's Seven Principles for Future Just Lawmaking. Such policies should safeguard the rights of future generations and secure Future Justice.

The Future Policy Award is the first international award to celebrate policies rather than people. Each year the World Future Council chooses one topic on which policy progress is particularly urgent. In 2010, the Award celebrated the International Year of Biodiversity by recognizing national and regional laws and policies that protect, monitor and regulate biodiversity, thus contributing to a more just and sustainable world. Nominations were received from WFC Councillors and international organizations that highlighted laws in Amazonas State, Argentina, Australia, Brazil, Costa Rica, Ecuador, Ethiopia, Japan, Namibia, Norway, the Philippines, Tuscany, and Venezuela. The Gold Award went to Costa Rica's *Biodiversity Law 1998* which represents a milestone of excellence in meeting the goals of the UN Convention on Biodiversity. The Silver Award went to Australia's *Great Barrier Reef Marine Park Act 1975 & Environment Protection and Biodiversity Conservation Act 1999*. Other laws commended included those of Japan, Namibia and Bhutan.

B. Features of a Future Just Biodiversity Law

The authors identified the following as key elements required in different aspects of preparing and implementing a future just biodiversity law:

Fundamentals of Drafting the Law

- ⇒ Assess the nation's biodiversity and biological resources, identify current impacts on domestic and transboundary biodiversity and ecosystems, locate drivers of biodiversity loss and evaluate the possibilities for halting biodiversity loss.
- ⇒ Establish clear goals in advance to inform and inspire the provisions of biodiversity laws and policies. The development of goals provides relevant guidance for the selection and drafting

of instruments and mechanisms for inclusion in laws in accordance with a country's vision and priorities.

- ⇒ Ensure that a broad set of stakeholders, including government officials from the key government ministries (i.e., environment, agriculture, forests, transport, fisheries, trade, finance, and economics) and representatives from indigenous, academic, peasant, civil and private sectors, participates in drafting the biodiversity law.
- ⇒ Identify domestic policy areas and laws that are counterproductive for biodiversity. Such areas need to be addressed in the biodiversity law or accordingly modified or repealed through other laws or instruments.
- ⇒ Identify existing international obligations, including relevant CBD COP decisions and guidelines, and existing domestic laws and policies in place relating to biodiversity.
- ⇒ Undertake a legal analysis of the issues to be addressed vis à vis the rest of the existing legal framework, including through the identification of loopholes and areas where enabling clauses are needed to allow future development of regulations and policies.

Substantive Aspects of the Law

- ⇒ Establish strong governance over components of biological diversity by establishing national, regional and local biodiversity commissions/units with participatory, transparent, and accountable decision-making.
- ⇒ Integrate biodiversity into all policies and actions and include linkages to other policies, such as those concerning climate change, forestry, land use, agriculture and marine management.
- ⇒ Establish balance and linkages between measures undertaken to fulfil CBD objectives on conservation, sustainable use and access and benefit sharing arising out of the utilization of genetic resources.
- ⇒ Implement all relevant biodiversity related obligations (International Treaty on Plant Genetic Resources for Food and Agriculture, Ramsar, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Migratory Species) in a synergistic manner, including by obtaining appropriate information on relevant COP decisions and other developments.
- ⇒ Ensure the comprehensiveness of the biodiversity law, so that the content and scope covers most relevant CBD provisions, taking into consideration the existing legal framework governing biodiversity.
- ⇒ Outline the roles and responsibilities of all relevant stakeholders, including government, business and citizens, in halting and reversing biodiversity loss in the interest of current and future generations.
- ⇒ Recognize the key role of indigenous peoples and local communities in biodiversity management and conservation and empower them to participate in decision-making.
- ⇒ Establish *in-situ* and *ex-situ* biodiversity conservation measures, including protected area management, while giving due consideration to the rights of indigenous and local communities.
- ⇒ Create schemes that enable, integrate and reward the sustainable use of biodiversity, such as payment for ecosystem services, forest certification schemes, etc.
- ⇒ Develop an appropriate set of instruments to monitor compliance with the general objectives of the biodiversity law, addressing key topics such as invasive species and biodiversity loss.

- ⇒ Protect, promote and ensure fair and equitable benefit sharing from the use of traditional knowledge, innovations and practices pertaining to biodiversity.
- ⇒ Include the following interpretive principles for statutory interpretation and implementation:
 1. Precautionary Principle: If there is a risk of serious or irreversible damage to biodiversity, lack of knowledge shall not be used as a reason for postponing or not introducing management measures.
 2. Ecosystem approach: Any pressure on an ecosystem shall be assessed on the basis of the cumulative environmental effects on the ecosystem now and in the future.
 3. Preventive approach: Preventing harm by limiting activities like the use of chemicals and alien invasive species to prevent deleterious effects to biodiversity.
- ⇒ Implement an access and benefit-sharing regime meeting that meets both the terms of the *Nagoya ABS Protocol* and the *United Nations Declaration on the Rights of Indigenous Peoples*.
- ⇒ Establish safeguards to protect biodiversity from the risks of genetically modified organisms, respecting the provisions of the *Cartagena Protocol on Biosafety* and the *Nagoya- Kuala Lumpur Supplementary Protocol on Liability and Redress*.
- ⇒ Develop mechanisms for awareness raising, education, incentives and technology transfer, such as communication, education and training programmes in schools and universities to increase knowledge, valorization, skills and experience necessary to address biodiversity challenges.
- ⇒ Create mechanisms for public participation and access to justice in the development and implementation of the biodiversity law, including instruments to provide feedback from different stakeholders and legal standing for environmental harm.
- ⇒ Include information mechanisms, including research measures needed to ensure timely and up to date information on the state and trends of biodiversity in co-ordination with international and regional bodies to adjust to new challenges and inform decision-makers and the public.

Key Tools for Implementation, Monitoring and Revision

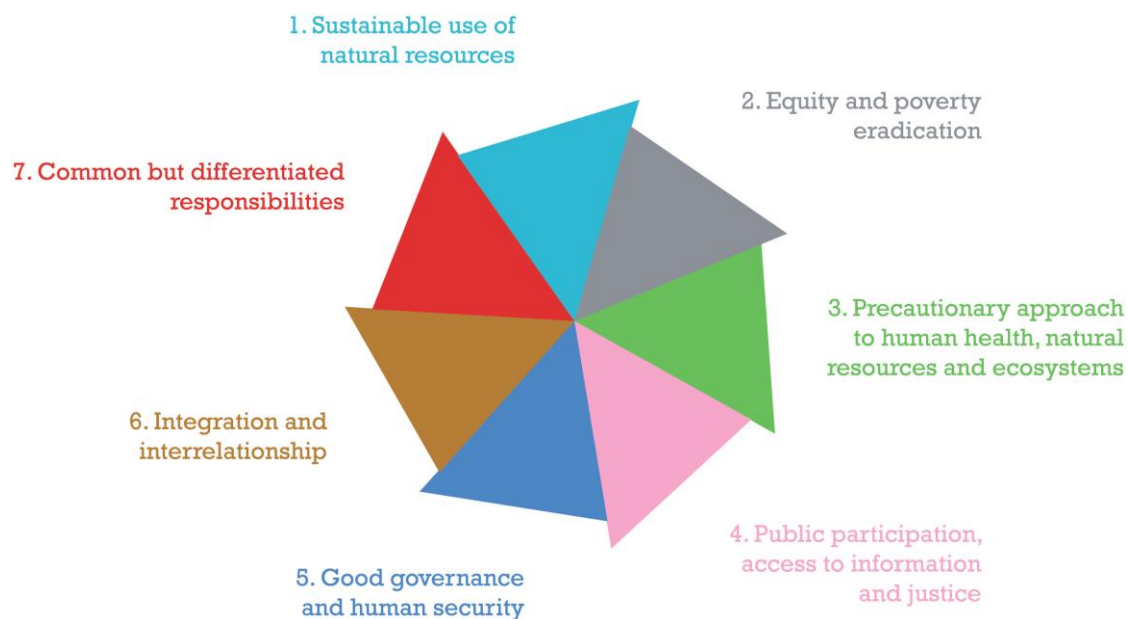
- ⇒ Create innovative financing mechanisms that are integrated laws or policies to ensure the effective long term implementation of the law and related CBD objectives. These mechanisms can serve the following strategic objectives:
 - Promoting payment for ecosystem services;
 - Undertaking environmental fiscal reforms including innovative taxation models and fiscal incentives;
 - Exploring opportunities presented by promising innovative financial mechanisms such as markets for green products, business-biodiversity partnerships and new forms of charity markets for green products;
 - Integrating biodiversity and ecosystem services into the development of new and innovative types of international development finance, taking into account the costs of conservation.³⁶
- ⇒ Establish strong legal measures and an appropriate institutional structure with the power to oversee implementation. Sanctions and penalties should be created for non-compliance because strong governance can ensure the sustainable use of biological diversity.

- ⇒ Create a review or update process for the law or policy and collect information on progress in implementation of the law and the status of biodiversity.
- ⇒ Ensure the participation of a broad set of stakeholders in implementation, monitoring and revision of the biodiversity law, including government officials from key government ministries and representatives from indigenous, academic, peasant, civil and private sectors.
- ⇒ Develop and implement targets in line with the five goals of the Strategic Plan for Biodiversity 2011-2020 and its 20 Aichi Biodiversity Targets.³⁷

C. Guiding principles

Future Just Laws must embody the highest standard of sustainability, respect for human rights, and respect for the environment. They should, in both intention and effect, work to defend the interests of future generations in a pragmatic manner based on principles of justice and sustainability. Out of the international processes on sustainable development over the past 40 years and the hundreds of international treaties signed in recent years, a body of rules of international law is now emerging to defend the rights and needs of future generations and to promote sustainability. From these global and local policy-making processes can be distilled seven principles which, together, make up a starting point for criteria to select ‘best practice’ laws and policies that can protect the interests of future generations.

The 70th Conference of the International Law Association elaborated these seven principles in the “Declaration of Principles of International Law Relating to Sustainable Development” (the ILA Principles) in 2002 as a definitive tool to inform the formulation of law and policy. The ILA Principles provide the most current benchmark of important principles of international law on sustainable development. The principles, many of which were present in the Brundtland Report (1987) and the 1992 Rio Declaration, are the central principles of most international treaties related to sustainable development. They were adopted by decision-makers at the 2002 World Summit on Sustainable Development (WSSD) and provide a valuable compilation of principles against which laws and policies on biodiversity can be assessed. They are shown in the following diagram³⁸ and are discussed in greater length below.



The seven principle methodology assists in crafting policies and laws that show a truly integrated approach to sustainability, foster respectful cooperation, equitable participation, and fair sharing of resources and benefits of economic, scientific and technological progress. This is particularly appropriate given that the ILA Principles are consistent with the 2002 *Johannesburg Plan of Implementation* of the *World Summit on Sustainable Development*. The Principles help to focus decision-makers' attention on expected outcomes as well as on governance structures and processes conducive to their effective implementation.³⁹

1. Sustainable use of natural resources

Countries have the duty to sustainably use their natural resources, particularly when those resources span national boundaries. The duty is of particular relevance to biodiversity law because biodiversity is a 'common concern of humankind'. The principle stems from the sovereign right of States to manage their own natural resources combined with their responsibility to ensure that activities within their jurisdiction or control do not cause significant environmental damage elsewhere. The sustainable use of natural resources should contribute to the development of peoples, with particular regard for indigenous peoples, and to nature conservation and environmental protection.

Art. 10 of the CBD elaborates this duty in the context of biodiversity by requiring each Party to, as far as possible and as appropriate:

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

The analytical questions that can be posed by decision-makers for this principle include:

- 1.1 Does the law/policy help to ensure that the Earth's scarce resources will be used in a more sustainable way?
- 1.2 Does it help to address a common concern of humankind?
- 1.3 Does it respect natural areas, artefacts and traditional knowledge, all of which are the common heritage of humankind?

2. Equity and poverty eradication

The principle of inter-generational and intra-generational equity is central to the attainment of Future Justice and sustainable development. While the present generation has a right to use and enjoy the resources of the Earth, it is also under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit – in its broadest meaning – of future generations. The right to development must be implemented so as to meet developmental and environmental needs of present and future generations in a sustainable and equitable manner. This includes exercising the duty to co-

operate for the eradication of poverty, as well as the duty to co-operate for global sustainable development and the attainment of equity in the development opportunities of developed and developing countries.

The analytical questions that can be posed by decision-makers for this principle include:

- 2.1 Does the law/policy help to address pressing poverty and human rights challenges?
- 2.2 Does it demonstrate respect among generations, by including provisions that take into account the needs and aspirations of future generations of life?
- 2.3 Does it promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination, respect for the rights of indigenous peoples and local communities, eradication of poverty and less discrimination among species?

3. Precautionary approach to health, natural resources and ecosystems

The precautionary approach to human health, natural resources and ecosystems requires that where there are threats of serious or irreversible damage, lack of full scientific certainty is not used as a reason for postponing cost-effective preventative measures. This requires States, international organizations and non-governmental actors, in situations of scientific uncertainty, to avoid activities that may cause significant harm. It includes ensuring accountability for harm caused, planning based on clear criteria and well-defined goals, consideration of all possible means to achieve an objective when completing an environmental impact assessment, and establishing an appropriate burden of proof on the proponent of activities which may cause serious long-term or irreversible harm. Decision-making processes should always endorse a precautionary approach to risk management and the adoption of appropriate precautionary measures in particular. Precautionary measures should be based on up-to-date and independent scientific judgment and be transparent.

The analytical questions that can be posed by decision-makers for this principle include:

- 3.1 Does the law/policy promote prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm?
- 3.2 Does it place the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture?
- 3.3 Where there is insufficient scientific evidence, does it ensure that those most affected by a project can set the acceptable level of risk or threat?

4. Public participation, access to information and justice

The principle of public participation, access to information and access to justice requires States to ensure that individuals have access to appropriate, comprehensive and timely information concerning sustainable development that is held by public authorities and the opportunity to participate in decision-making processes as well as effective access to judicial and administrative proceedings including forms of redress and remedy. It is a basic condition for responsive, transparent and accountable governments, the active engagement of civil society organizations ensuring the vital role that women have in sustainable development. Public participation is based on the effective protection of the human right to hold and express opinions and to seek, receive and impart ideas. This is dependent upon access to appropriate, comprehensible and timely information held by governments and industry on economic and social policies regarding the sustainable use of natural resources and the protection of the environment. Such access should not impose undue financial burdens upon the applicants and gives due consideration to privacy rights and the protection of business confidentiality. Empowerment depends on access to

effective judicial or administrative procedures to challenge measures and claim compensation, including non-discriminatory access for those in other countries that are affected by transboundary harm.

The analytical questions that can be posed by decision-makers for this principle include:

- 4.1 Does the law/policy provide for public consultation and genuine engagement, in both its design and implementation?
- 4.2 Does it specifically provide for transparency and access to information for concerned citizens, local communities, and others who might be affected?
- 4.3 Does it provide avenues for appeal and redress for citizens, communities and others?

5. Good governance and human security

The principle of good governance and human security commits States and international organizations to adopt democratic and transparent decision-making procedures and financial accountability, to take effective measures to combat official or other corruption, to respect the principle of due process in their procedures, and to observe the rule of law and human rights. Civil society and non-governmental organizations also have a right to good governance by States and international organizations, while non-state actors should be subject to internal democratic governance and to effective accountability. Furthermore, good governance requires full respect for the principles of the Rio Declaration, the full participation of women in all levels of decision-making, and corporate social responsibility and socially responsible investments for a fair distribution of wealth among and within communities.

The analytical questions that can be posed by decision-makers for this principle include:

- 5.1 Does the law/policy establish adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions?
- 5.2 Does it promote peaceful resolution of conflict, and help to ensure that human beings are able to live in freedom from fear, and freedom from want?
- 5.3 Does the law/policy include provisions to ensure that its intentions are not thwarted by corruption, bribery or unethical conduct, and provide appropriate penalties for abuse of rights or for mis-implementation?

6. Integration and interrelationship

The principle of integration and interrelationship provides the context for international law on sustainable development by emphasizing the interdependence between economic development, social and human rights, and environmental priorities in international law. The Rio Declaration on Environment and Development states that "[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." The 2002 Johannesburg World Summit on Sustainable Development overtly recognised that human rights and social development priorities also constitute an integral part of this balance. To respect this principle, States may seek to resolve overlaps or perceived conflicts between economic, social and environmental concerns either through the activation of existing institutions or the establishment of new ones that can balance the competing goals. It is essential that sustainable development be implemented at all sectors of society and governance.

The analytical questions that can be posed by decision-makers for this principle include:

- 6.1 Does the law/policy integrate social justice and environmental protection into economic development plans and projects?

- 6.2 Does it ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary?
- 6.3 Does it provide or enhance benefits for the environment, and the society?

7. Common but differentiated responsibilities

The principle of common but differentiated responsibilities is a manifestation of general principles of equity. States and other relevant actors have a common responsibility for the achievement of global sustainable development and protection of the environment, but each stakeholder's differing circumstances must be taken into account when examining their contribution towards those goals. All States are under a duty to co-operate in the achievement of global sustainable development and the protection of the environment; and international organizations, corporations (including in particular transnational corporations), non-governmental organizations and civil society should also be a part of this global partnership. Corporations owe further responsibilities pursuant to the polluter-pays principle.

Differentiation, while principally based on the contribution that a State has made to the emergence of environmental problems, must also take into account the economic and developmental situation of the State, in recognition of the special needs and interests of developing countries and of countries with economies in transition, particularly least developed countries and those affected adversely by environmental, social and developmental considerations. Developed countries bear a special burden of responsibility in reducing and eliminating unsustainable patterns of production and consumption and in contributing to capacity-building in developing countries. In particular, developed countries should play a leading role and assume primary responsibility in matters of relevance to sustainable development.

The analytical questions that can be posed by decision-makers for this principle include:

- 7.1 Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations, and provide avenues to redress such inequalities where possible?
- 7.2 Is the law/policy appropriate and well-adapted to the society or region's present level of technology, scientific knowledge, human/financial resources, cultural values and traditions?
- 7.3 Does the law/policy avoid placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them?

Conclusions

The Convention and its Protocols provide a mandate for countries to develop laws and policies on the conservation and sustainable use of biodiversity, access and benefit sharing relating to genetic resources, the use of traditional knowledge relating to genetic resources, and biosafety. Countries have encountered some success and many obstacles in fully implementing its terms. This is mainly due to the complexity of implementing the Convention's terms in a clear and coherent fashion that functions alongside other existing laws and policies.

The objective of this paper is to assist countries in implementing these terms in a holistic and future just manner by laying out guiding principles and key features, as well as by undertaking an analysis of the biodiversity legislation of Costa Rica and identifying the successes in the implementation of the CBD and its protocols. As discussed in this paper, designing future just and sustainable laws on biodiversity is possible and can be simplified through the application of

principles of international law on sustainable development and best practices derived from national experiences of their implementation. The analysis of the Costa Rican Biodiversity Law indicates that one of the successful approaches to the conservation of biodiversity, sustainable use of its components and ABS is through adopting a comprehensive law that aims to address all three of the objectives of the CBD. The 1998 Biodiversity Law of Costa Rica stands for a legislative instrument that enjoys the proper characteristics to be transferred to other Central American and Caribbean countries, with proper consideration of the legal and social particularities, due to the similarity of the context of biodiversity in this region. As such, it serves as a guiding model for these countries that have decided to address the challenges of biodiversity in a sustainable manner for their societies.

The authors identified key aspects of a future just biodiversity law in Section 3 above. These were distilled from their experience in the field of biodiversity law, various country case studies and the application of principles of international law on sustainable development. For those countries looking to prepare new legislation or revise existing legislation, the following were identified as fundamental: assessment of biodiversity and biological resources, including identifying impacts on biodiversity and ecosystems, drivers of biodiversity loss and possibilities for halting loss of biodiversity; establishing clear goals in advance to inform and inspire the provisions of laws and policies on biodiversity, thus providing guidance for the selection and drafting of instruments and mechanisms; ensuring that all relevant stakeholders are involved, including those from key government ministries, civil society and indigenous and local communities; identifying policy areas and laws that negatively affect biodiversity; identifying existing international obligations, including relevant COP decisions, as well as existing laws and policies on biodiversity; and undertaking a legal analysis of issues in light of the existing legal framework.

The substantive aspects of a future just biodiversity law should include: establishing strong governance over the components of biodiversity; integrating biodiversity into all policies and actions and establishing linkages between policies; establishing balance between measures undertaken to fulfil the three CBD objectives; implementing all relevant biodiversity related obligations in a synergistic manner; ensuring the comprehensiveness of the law; outlining the roles and responsibilities of all relevant stakeholders; recognizing the key role of indigenous peoples and local communities; establishing both *in-situ* and *ex-situ* conservation measures; creating incentive schemes for the sustainable use of biodiversity and ecosystems; developing instruments to monitor compliance; protecting, promoting and ensuring the sharing of benefits relating to the use of traditional knowledge, innovations and practices; including the precautionary principle, ecosystem approach and preventive approach as interpretive principles; implementing an ABS regime that meets the terms of the Nagoya Protocol and UN Declaration on the Rights of Indigenous Peoples; establishing safeguards to protect biodiversity from the risks posed by genetically modified organisms in accordance with the Cartagena Protocol and Nagoya-Kuala Lumpur Supplementary Protocol; developing mechanisms for awareness raising, education, incentives and technology transfer; creating mechanisms for public participation and access to justice; and including information mechanisms in co-ordination with international and regional bodies to adjust to new challenges and inform decision-makers and the public.

Lastly, tools must be put in place to ensure implementation, monitoring and revision of the law when necessary. The tools identified include: creating innovative financing mechanisms to ensure the long term success of the law and related CBD objectives; establishing strong legal measures and a suitable institutional structure with the power to oversee implementation, including sanctions and penalties for non-compliance; creating a review or update process that includes collecting information on progress in implementation and the status of biodiversity; ensuring the participation of a broad set of stakeholders in implementation, monitoring and revision; and developing targets and implementing measures to further the five goals of the CBD Strategic Plan for Biodiversity 2011-2020 and meet its 20 Aichi Biodiversity Targets.

In conclusion, we urge all countries engaged in reversing the loss of biodiversity to adopt ambitious legal and policy measures that effectively safeguard the environment, respect human rights, and embody the highest standards of sustainability. The principles, examples and analysis provided in this paper provide a starting point and should serve as guidance to those countries seeking to engage meaningfully with one of the most complex issues of our time. Valuable lessons can be learned from the experiences of other countries in implementation, but no universal formula can be applied because countries will need to assess how the information provided can be best applied given their particular social, economic and ecological context. That remains to be determined by national decision-makers, preferably through an open and transparent process which engages with all segments of society in a respectful manner. Only by engaging its people can any nation hope to forge a future that secures the rights of future generations.

Appendix

STATUS OF CBD AND PROTOCOLS⁴⁰

PARTIES TO CBD AND BIOSAFETY PROTOCOL & SIGNATORIES TO SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS AND ABS PROTOCOL

CENTRAL AMERICA, THE CARIBBEAN AND MEXICO

(“P” = Parties, “S” = Signatories, “-” = neither parties, nor signatories)

<u>Country</u>	<u>CBD</u>	<u>Biosafety</u>	<u>Liability</u>	<u>ABS</u>
Antigua and Barbuda	P	P	S	S
Bahamas	P	P	-	-
Barbados	P	P	-	-
Belize	P	P	-	-
Costa Rica	P	P	-	S
Cuba	P	P	-	-
Dominica	P	P	-	-
Dominican Republic	P	P	-	S
Ecuador	P	P	-	S
El Salvador	P	P	-	-
Grenada	P	P	-	S
Guatemala	P	P	-	S
Haiti	P	S	-	-
Honduras	P	P	-	-
Jamaica	P	S	-	-
Mexico	P	P	-	S
Nicaragua	P	P	-	-
Panama	P	P	S	S
Saint Kitts and Nevis	P	P	-	-
Saint Lucia	P	P	-	-
Saint Vincent and the Grenadines	P	P	-	-
Sao Tome and Principe	P	-	-	-
Trinidad and Tobago	P	P	-	-

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- ¹ *Convention on Biological Diversity*, 1760 UNTS 79; 31 ILM 818 (entered into force 29 December 1993). Online at <http://www.cbd.int/doc/legal/cbd-un-en.pdf> [hereinafter “CBD”].
- ² *Cartagena Protocol on Biosafety*, 29 January 2000, 2226 U.N.T.S. 208 (entered into force 11 September 2003) [hereinafter “Cartagena Protocol”].
- ³ *Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety*, 15 October 2010, Annex to UN Doc. UNEP/CBD/BS/COP-MOP/5/17. Online: http://bch.cbd.int/protocol/NKL_text.shtml. [Hereinafter “Nagoya-Kuala Lumpur Protocol”].
- ⁴ *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, 29 October 2010, UN Doc. UNEP/CBD/COP/DEC/X/1. Online: cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf [Hereinafter “Nagoya Protocol”].
- ⁵ Guidelines on Biodiversity and Tourism Development, COP Decision VII/14.
- ⁶ Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, COP Decision VII/16; and The Tkarikwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, COP Decision X/42.
- ⁷ Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species, COP Decision VI/23.
- ⁸ Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, COP Decision VII/12.
- ⁹ Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment, COP Decision VIII/28.
- ¹⁰ The Ecosystem Approach, COP Decision VII/11.
- ¹¹ Environmental Performance Index 2010, Online: <http://epi.yale.edu/>.
- ¹² Ley N° 7788 - Ley de Biodiversidad, Online: www.ccad.ws/documentos/legislacion/CR/L-7788.pdf.
- ¹³ Jorge Cabrera Medaglia and Olivier Rukundo.
- ¹⁴ Law N° 7788, *supra* 12, at Article 1.
- ¹⁵ *Ibid.* at Articles 8-11
- ¹⁶ Solís Rivera, Vivienne; Madrigal Cordero, Patricia, *Costa Rica’s biodiversity law: sharing the process*. Journal of International Wildlife Law & Policy, Volume 2, No. 2 (1999) pp. 259-265, p. 260. Online: <http://www.jiwlp.com/contents/CRarticle.PDF>.
- ¹⁷ Law N° 7788, *supra* 12, at Article 13.
- ¹⁸ *Ibid.* at Articles 22 to 43.
- ¹⁹ *Ibid.* at Articles 44 to 48. Includes biosafety and exotic species.
- ²⁰ *Ibid.* at Articles 49 to 61.
- ²¹ *Ibid.* at Articles 62 to 76.
- ²² *Ibid.* at Articles 77 to 85.
- ²³ *Ibid.* at Articles 86 to 91.
- ²⁴ *Ibid.* at Articles 92 to 97.
- ²⁵ *Ibid.* at Articles 98 to 104.
- ²⁶ *Ibid.* at Articles 105 to 113.
- ²⁷ *Ibid.* at Article 15.
- ²⁸ *Ibid.* at Art. 83.
- ²⁹ Ley N° 7554 - Ley Orgánica del Ambiente, Online: <http://www.ccad.ws/documentos/legislacion/CR/L-7554.pdf>.
- ³⁰ Código Civil De Costa Rica, Online: http://www.casadelosriscos.com/documentos/codigo_civil_costa_rica.pdf.
- ³¹ Costa Rica Biodiversity Law, Articles 62 and 69.
- ³² However, this consultation process has been diminished by a regulation to the article 80, enacted as part of the implementation package of the CAFTA-DR Free Trade Agreement.
- ³³ Costa Rica Biodiversity Law, Article 112.
- ³⁴ See <http://www.conagebio.go.cr>.
- ³⁵ Solís R., Madrigal C., *supra* 16, p. 265.
- ³⁶ The strategic objectives are part of Goal 4 of the Strategy for Resource Mobilization adopted in CBD COP Decision IX/11.
- ³⁷ CBD COP Decision X/2.
- ³⁸ World Future Council, Seven principles for future just law making: How to develop policies that build future justice. Online: http://www.worldfuturecouncil.org/fileadmin/user_upload/papers/Justice_leaflet_Web_RGB_LD_-_AS.pdf.

³⁹ Maja Göpel, “Formulating Future Just Policies: Applying the Delhi Sustainable Development Law Principles” (2010) 2 Sustainability 1694. Online: <http://www.mdpi.com/2071-1050/2/6/1694/>; Marie-Claire Cordonier Segger and Rajat Rana, “Selecting Best Policies and Law for Future Generations: Legal Working Paper and Worked Examples” Online: http://www.worldfuturecouncil.org/fileadmin/user_upload/papers/Best_Policy_Principles080508.pdf.

⁴⁰ Current as of 01 November 2011. Source: <http://www.cbd.int/convention/parties/list/?tab=2>