THE PROVISIONS OF THE ICIPE INTELLECTUAL PROPERTY POLICY 2000

TITLE:

The ICIPE Intellectual Property Policy

One key factor dominated the decision on the title of the ICIPE Intellectual Property Policy 2000, and hopefully this conveys the intentions behind some of the more detailed elements of the Policy. This is the conscious use of the term ‘intellectual property’ as opposed to ‘intellectual property rights’, ‘patent’ or some similar wording. This recognises that the Policy has a potential impact on a broad range of information that may, or may not be, the subject of intellectual property rights. Indeed, the Centre’s default practice is established as being one of not seeking intellectual property rights, and thus limiting access to information and products, unless absolutely necessary. ‘Intellectual Property’ covers fields which include the bulk of the Centre’s research output as well as external issues such as local community knowledge. Consequently it is believed that the chosen title effectively embraces all of the various elements that the Policy includes, while also conveying it’s central objective.

I. PREAMBLE

The Preamble in any document is essentially a political statement. In a policy such as this, which inevitably has many grey areas, it plays two significant roles.

• The first element of this role is as a clear and concise statement of basic principles to which any reader can quickly turn. These principles can be used to interpret the substantive provisions of the Policy in the case of any doubt.
• The second element of this role is as a context for the Policy. There are always new situations that do not readily fit into the rules, and in these situations the Intellectual Property Management Committee can turn to the preamble as a tool for addressing the impact of the Policy on unforeseen circumstances.

Both of these roles can prove critical in the event of any disputes that might arise as a result of the Policy’s provisions. In general terms, the Preamble also provides evidence of ICIPE’s intention to uphold the spirit, as well as the letter, not only of the Policy itself, but of international instruments such as the International Labour Organisation’s Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the UN Convention on Biological Diversity. It also indicates ICIPE’s contribution to newly emerging ‘Standards of Best Practice’ in its areas of competence.

Recalling that ICIPE is a centre of advanced research located in a tropical developing country with the mandate to conduct mission-oriented research aimed at developing technologies to alleviate poverty and to ensure food security and good health for the peoples of the tropics;

Paragraph 1 of the Preamble is fairly straightforward in that it simply reiterates, in very broad terms, what the ICIPE is mandated to achieve. This is drawn from
existing ICIPE documentation but is altered a little to broaden the scope and stress the target beneficiaries. The effect of this, if it came to be an issue, would be to suggest, but not definitively prove, that activities outside of this scope were unwarranted as having no mandate.

**Recalling** further ICIPE’s commitment to the conservation and sustainable use of biological diversity and the fundamental role the governments and citizens of developing countries hold in the achievement of these objectives;

Some version of paragraph 2 is almost *pro forma* in any policy of an institution involved with agriculture, environmental issues, wildlife, tourism, etc. Thus, if ICIPE were to undertake activities that were considered to be anti-conservation or unsustainable, these could be problematic. This, of course, is highly unlikely. For the sake of space, the concepts of conservation, sustainable use, and the role of developing countries in these, have been combined.

**Recognising** the need to ensure that any technology eligible for intellectual property protection arising from research activities at ICIPE is made available to developing countries either freely or on the cheapest and most flexible terms possible;

Paragraph 3 frames ICIPE’s intended actions in terms of their dedication to providing useful advances for developing countries. This is likely to be the key paragraph of interest to donors and the Governing Council. Thus, any intellectual property protection obtained by ICIPE should not have any adverse effects on the interests of developing countries. The qualification suggesting that in some instances inventions might not be provided free is included to allow for the fact that bridging work of some form might be necessary, and that this could create some cost. If one were to just say ‘free’, ICIPE might be caught in a situation where it had to fund somebody’s access to an invention to an unacceptable level.

**Acknowledging** the need to encourage innovation and original research and other intellectual activities performed by any person working under the auspices of ICIPE, whose independently conceived work is aimed at providing new frontiers in knowledge;

Paragraph 4 iterates the concept that invention can be encouraged by recognition of that achievement. There may be personal financial implications to this concept, but of course ‘recognition’ can be a far broader concept. There is a multiplicity of options for recognising achievement, including award of prizes, support for research projects, etc.

**Cognisant** that the development and maximum accessibility of discoveries may occasionally require the obtaining of intellectual property rights and that such rights have the potential to result in benefits to both the governments and citizens of developing countries and to the research programmes of the ICIPE;

Paragraph 5 raises the possibility that the ICIPE may gain financial rewards from intellectual property. This has been dramatically toned down from the 1983 ICIPE Patent Policy in that the 1983 statement seemed to have a rather profit-seeking undertone; it was also inconsistent as it conflicted with a later statement in the Policy that required ICIPE not to enter into profit-gaining intellectual property
(IP) agreements. The decision here is based on the understanding that ICIPE expects to continue as a principally donor-funded institution. Most recent agreements and policies of major institutions avoid overly forthright statements and often go in the opposite direction. An example of this could be the position adopted by ILRI: “ILRI believes that its research will continue to be supported with public funds and that it should not look to profit from any of its products or genetic materials”. The ultimate effect of this Policy’s approach is that financial benefits, should they occur, must be incidental to, rather than the aim of, any research undertaken and that it will not be just ICIPE that benefits from such discoveries.

II. DEFINITIONS

For the purposes of this Policy:

The Definitions section is intended to clarify terms that tend to have ambiguous meanings or that are being used for a particular purpose in this Policy. The overall consequence is that whatever one personally thinks a word or term may mean is irrelevant while reading this policy. It means what the definition to be used is the one stated herein. Hence the phrase, “for the purposes of this Policy”. Where a definition is not provided, the default would be to the normal legal understanding of a word or phrase, usually (but not always), the common sense meaning. Thus the definition of ‘inventor’ does not actually address who is an inventor as this is comprehensively dealt with in a range of other documents and texts. The same principle has been used in this section as in the Preamble: essentially, that it is not desirable to create a comprehensive set of definitions, as this would become unwieldy and counter-productive. Rather, certain key terms that might be liable to create conflict have been defined.

1. Invention shall mean not only patentable inventions but also innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce.

The first definition dealt with is that of ‘invention’ since this is the basis of the whole Policy. The definition varies from that normally accepted, as the aim is to include anything that could be protected by any form of intellectual property. Very often one might choose to protect something with a trade secret because it is not sufficiently novel or non-obvious to constitute an invention. The reason for adopting this approach is that it makes for greater ease in the reading of the Policy. One does not need to give the full list of possibilities each time the issue comes up; it is simply placed in full in the definition and from then on, the term ‘invention’ suffices. An additional advantage is that this method adds to the all-embracing nature of the Policy by implication: it is safer for someone to assume that something is included, submit the Invention Disclosure and have it excluded, than to assume it is not covered.

2. Inventor shall mean inventor or inventors understood in the following two senses:
   a) the person, or persons, who first reduce an innovation, concept or other idea to practice; and,

Contd.
The Policy’s definition of ‘inventor’ has two significant elements. The first once again addresses the need for ease of reading in the rest of the Policy; it would be highly tedious to constantly repeat ‘inventor, or inventors’ or to add ‘(s)’ every time. Consequently, reading ‘inventor’ in the Policy can refer to either the singular or plural. The more substantive element is that two types of individuals in the innovation process are envisaged as potential inventors. This is a significant deviation from normal definitions of ‘inventor’. The first type is what is normally recognised in a definition of inventor: someone that reduces an innovation, concept or other idea to practice. This is basically the person who develops the information that constitutes the application for intellectual property protection.

The second type of individual recognised by this Policy are those who first create the idea behind an intellectual property protection (IPP) application. To limit the scope of this, it is required that this original ‘conceiver’ must have directed their idea to the same purpose as the ultimate IPP application. This basically takes the point of view that seeing new possibilities in an idea and then developing it in those new directions constitutes sufficient innovation to be independent invention, whereas building upon an existing idea in its original direction is not. Since this is a somewhat unorthodox approach, its primary significance may be solely in terms of recognition by the Centre and in receiving possible royalties, should profits be derived by the Centre. Note that an intellectual property office may refuse to recognise such a co-inventor.

A further point to note is the possible impact of this approach on the Policy’s position regarding indigenous and local community knowledge and resources. It is quite possible that the providers of such knowledge could be considered as co-inventors under this definition. Should this occur, it is expected that the benefit-sharing provisions for royalties will include the co-inventor from the inventor’s share and will recognise the community through the share allotted to them (the knowledge provider would not be expected to gain twice at the personal level). This approach has been adopted as it is felt that it adequately represents the Centre’s commitment to meeting standards of fairness of the highest level, even though this means exceeding the current requirements of law.

It should be clearly noted that the definition provided for ‘inventor’ is for internal purposes only, particularly as regards benefit-sharing provisions. Many legal jurisdictions will not accept such a definition, and thus individual applications for intellectual property rights, such as patents, would have to be crafted accordingly. This subject can be particularly controversial when considering indigenous and local community knowledge. Such knowledge, for it to be an issue under the terms of the Policy, will almost inevitably have been ‘reduced to practice’ in some manner. In most cases existing intellectual property laws and treaties do not recognise this. ICIPE is thus making a significant contribution to the rights of marginalised knowledge holders. Numerous commentators on questions relating to indigenous and local community knowledge have pointed out the need for such recognition, particularly as it relates to accusations of ‘biopiracy’.
A further point of controversy that may arise here in relation to indigenous and local community knowledge is that of its ‘community’ nature. Many commentators have posited that such knowledge should be considered as the exclusive property of communities and not of individuals. However, the approach taken here is based on the understanding that indigenous and local community knowledge is not static and defies such easy grouping. Certainly there is knowledge that rightfully belongs in the category of communal, but not public, property. At the same time many knowledge holders, whether they be farmers, herbalists or artists, undertake a great deal of experimentation as an integral part of their activities. The main argument that the results of such experimentation should still be considered as communal property rests on the idea that they are the result of the accretion of knowledge over generations. This Policy takes the approach that almost all inventions, whether formal or informal, are somehow dependent on the accretion of past knowledge. A scientist undertaking research in a state-of-the-art laboratory is normally using equipment, and often principles and procedures, developed by someone else and yet we do not question the validity of their creative products.

3. **Indigenous Knowledge and Resources** shall mean knowledge and resources that can be related to a particular community or locale, or group thereof, but that would not be considered to be in the public domain at an international level.

The definition of ‘indigenous knowledge and resources’ is designed to try and avoid some of the difficulties that plague this field. Rather than engage in the debate, the choice has been made to take a broad view and include most things that are not completely obvious and known. Thus, one is likely to conform to any national regimes that appear, while satisfying the requirements of existing international debate. The point of the public domain at the international level means that even if a resource, or knowledge associated therewith, is widespread at the national level, it will be considered under the terms of indigenous knowledge and resources. The justification for this is that the nation as a whole deserves recognition in such an instance. Overall this follows the approach taken in South Africa: any knowledge or resources originating in South Africa are considered indigenous.

4. **Intellectual Property** shall mean any rights that protect an invention from, or limit, unauthorised use by others than the right holder(s).

‘Intellectual property’ is also defined as a catch-all term. For instance, there is sometimes debate over the status of trade secrets law, as this is not strictly intellectual property since its legal philosophy is that of unfair competition. It should always be remembered that trade secrets do not actually protect the invention; they simply prevent somebody from acquiring it illegally. This should generally not be much of an issue, as standards are fairly well accepted. The ultimate reason for having this definition here is that IP is the reason for the Policy and thus it does no harm to state the obvious. It should be noted that the definition of intellectual property provided in the Policy depends upon the earlier definition of ‘invention’, a definition that uses the broadest possible interpretation.

The ‘right holder(s)’ has not been specifically defined, on the understanding that the resolution of questions involving forms of intellectual property right(s) and related ownership (see under Article IV and VIII) automatically identify the right holder (as distinct from the inventor).
5. **Associate** shall mean any postgraduate students, postdoctoral fellows, visiting scientists and any other individuals participating in research sponsored or hosted by ICIPE, or making significant use of ICIPE’s facilities, funds or other resources.

The term ‘associate’ has been developed due to the fact that ICIPE, like most academic/research centres, has a wide range of individuals attached to it for a variety of purposes. As with some of the previous definitions, it would be highly tedious to repeat all the various categories in each instance where it is of relevance, particularly as these individuals will generally be treated in the same manner. Basically, an associate is anybody working at, or with, ICIPE who is not actually employed by the Centre. Consultants may or may not be included as associates depending upon their specific activities. If they are based at ICIPE, or are making significant use of any of its facilities, then they are included. If they are not making direct use of any ICIPE facilities, then they are not included. In such instances, any intellectual property issues should be settled in the consultant’s contract, the easiest being to clearly state that they are being employed on a work-for-hire basis. A final point is that of ‘significant use’. Some institutions actually define this, but not many. It would seem that a generally accepted view would not include use of a computer for word-processing, telephone or a vehicle that one ordinarily had access to but would include any use of specialist equipment or restricted institutional research data.

**III. APPLICABILITY**

The ICIPE Intellectual Property Policy applies to all staff and associates of ICIPE.

The applicability section is intended to be as broad as possible; it is usually easier to include everybody and then create exceptions as and when necessary. This can avoid confusion at a later stage.

**IV. INTELLECTUAL PROPERTY PROTECTION**

This Article constitutes the heart of the Policy in that it iterates the situations in which ICIPE may seek intellectual property protection. The framing of things this way, rather than in terms of what may not be protected, is in itself an indication of the attitude taken towards intellectual property protection in general, i.e. that it is the exception rather than the rule. The ICIPE is thus voluntarily limiting its options as a means of achieving its objectives. This reinforces the Centre’s status as a non-profit organisation aiming for maximum accessibility to its research results.

The Director General may, on the advice of the Intellectual Property Management Committee, seek patent, or other intellectual property protection, for an invention in which the ICIPE has ownership, under the terms of Article VIII herein, according to the following criteria:

The introductory section of the Article leaves the power of decision making with the Director General but creates a level of transparency through the requirement that the Intellectual Property Management Committee has some input. At the very minimum, particularly considering the revised make-up of the Committee
to include all principal stakeholders, this will create some sort of record that can shed light on the Director General’s decision-making process in the event of a dispute. The ownership element is really just a pointer in that obviously one has to have ownership of an invention to be able to seek protection; in this Policy, questions are directly addressed.

1. Where intellectual property protection is considered advisable to ensure the maximum availability of any invention, and developments therefrom, to the governments and citizens of developing countries.

The first case in which intellectual property may be sought looks at situations where an invention is of immediate use to developing countries but that where a lack of protection could lead to either its alienation or, more likely, to the alienation of a derivative product. There have been sufficient horror stories of relatively minor improvements creating a protectable product, and this is a lot easier to prevent if one has a clear right of one’s own, rather than where the first invention is in the public domain. This reasoning is open to debate, however, as in theory there should be no real difference. On the more positive side, the clause covers situations where ICIPE produces an invention that it believes could be refined, or developed, but where it does not have the ability to undertake this work. In such a situation, the holding of an intellectual property right would give the Centre the opportunity to negotiate with an organization that did have the capacity and obtain rights to the new refinement or development. However, this would more strictly fall into the second category of inventions.

2. Where intellectual property protection is necessary to form partnerships, or undertake collaboration, for the carrying out of bridging work, or for trading to gain access to the intellectual property rights of others, that is vital to the availability of the invention to developing country governments and citizens.

The second category of inventions for which this Policy allows ICIPE to seek protection overlaps in part with the first. There are actually two categories in this section: The first allows for the protection of inventions for which additional work is required to make them applicable to developing country conditions; such work might include manufacturing processes. By protecting the invention, ICIPE creates an environment in which it could reach a deal with partners or collaborators while maintaining its own interests. The second element is what might be called ‘strategic protection’. This involves the protection of inventions as bargaining chips that might be of interest to private sector parties that hold intellectual property rights to which the ICIPE would like to gain access.

3. Where an invention is developed that has potential application in developed countries as well as in the developing world.

The final category of inventions that may be protected are those that have a wider application than the developing world. In the developed world, there is no need to provide them on preferential terms. The protected invention can then be used to gain either financial returns, or other benefits such as technology, that can be of use to developing countries.

While there is some possibility of revenues being generated in the second category of protectable inventions, it is likely that only the third category will be money
winners and thus be subject to the royalty provisions of this Policy. It should always be clearly borne in mind that these provisions only apply to funds generated as royalties or fees on intellectual property rights, something that is likely to be rare at best.

V. TRANSFER AND LICENSING OF INTELLECTUAL PROPERTY RIGHTS

The Transfer and Licensing of Intellectual Property Rights section is complementary to that on Intellectual Property Protection. The options available to ICIPE in transferring or licensing rights are tied to the reason it sought protection for them in the first place, which reinforces the restrictions present in Article IV. Again, this serves to send a message. The key point of interest here is the fact that there are certain rights that ICIPE cannot surrender. The linking of articles IV and V is intended to provide a degree of transparency that is rarely available in intellectual property policies; where ICIPE deviates from these norms it will have to be able to explain why.

The Director General shall, with the advice of the Intellectual Property Management Committee, have the authority to grant the transfer or licensing of ICIPE’s intellectual property rights subject to the following criteria:

1. Where intellectual property protection has been obtained according to Article IV(1), ICIPE shall not have the right to transfer such intellectual property rights to any third party subject to the following conditions:
   (i) ICIPE may transfer rights to the public domain; and,
   (ii) licenses shall be granted as of right either free or on the cheapest and most flexible terms possible to the governments and citizens of developing countries.

The first category addressed is where intellectual property rights have been sought defensively. Where this is the case, there is no real reason, barring exceptional circumstances, where one would wish to transfer the intellectual property rights to another party. Should exceptional circumstances occur, then it makes more sense to leave this to the Director General’s power to allow variations to the Policy. Where protection has been sought defensively, one obviously needs to allow use of the protected information by the target beneficiaries and thus there is the option to license the rights. To maintain ICIPE’s policy of maximum access to its inventions, any license so granted should be on the cheapest terms and with the fewest restrictions possible. This qualification to ‘free’ licence is included, as in some instances, it may be necessary to make a minimal charge for some purpose such as administrative, distribution or other costs. The sorts of developments envisaged as falling under this paragraph are those that do not require significant bridging work.

2. Where intellectual property protection has been obtained according to Article IV(2), ICIPE shall:

Contd.
The second category becomes a little more complex and, while giving general freedom to transfer or license, has some essential restrictions. The first of these, which also applies to the third category (below), creates a set of rights that are inalienable in any situation. This derives from the idea that any property right, whether real, personal or intellectual, is actually a ‘bundle of rights’ and that it is extremely rare for any party to hold the entire bundle. The government’s power of eminent domain over real property is a good example of this. This practice is fairly common, particularly in institutes of higher learning, as applied to intellectual property rights. What is done here is that when transferring or licensing its intellectual property rights, ICIPE does not have the power to transfer its rights to use the information internally, in effect retaining a royalty-free license. The Centre must also ensure that the transferee or licensee’s rights are circumscribed by an obligation to provide the information to developing countries on the easiest terms possible, as ICIPE itself is obliged to do. The enforcement mechanism is created in the fact that in the event of a transferee or licensee not adhering to these requirements, all rights would revert to ICIPE. Such a violation might be hard to check, but even that would be an unacceptable risk for a company. These restrictions follow the reasoning that intellectual property rights were only sought in the first place to allow for the undertaking of bridging work that is beyond the competence of ICIPE, or to trade for other rights. In this latter instance where the intellectual property rights are not actually very useful in the developing world, the requirements that they be made available should not be very harmful, as no one is likely to take advantage of the opportunity.

3. Where intellectual property protection has been obtained according to Article IV(3), ICIPE shall:
   (i) not surrender its right to use the information subject to intellectual property rights for internal educational and research purposes; and shall,
   (ii) ensure that any transfer or license contains terms requiring any future research and development work involving the information subject to intellectual property rights undertaken by the transferee, licensee or their successors to maximise the relevance of such work to developing countries.

The final category of restrictions applies to intellectual property rights that have potential application in the developed world, the most likely area for profits to occur. The requirements are the same as for the previous category but with the

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1This is the theory underlying governmental powers such as compulsory purchase. In Africa this is often even stronger, with the State being the ultimate title holder of all land.
addition that transferees or licensees undertaking further research and development work on the subject of the intellectual property right must undertake to ensure their relevance to developing world conditions. The phrasing of this does not actually make it mandatory that such work be applicable, as this may well prove to be impossible, but rather requires good faith and best efforts to that end. This is essentially an attempt at rectifying the situation, where not only do developing countries have insufficient access to technology, but what technology there is can often be useless in developing country conditions. These points circumscribe the underlying aim of this paragraph, which is to allow ICIPE to negotiate market rates of revenue with interested parties in the developed world. Any profits so derived could then be ploughed back into the Centre’s research activities.

VI. THE ICIPE INTELLECTUAL PROPERTY AGREEMENT

1. **All individuals subject to this Policy shall sign the ICIPE Intellectual Property Agreement (Schedule 1 hereto).**
2. **The Human Resources Department of ICIPE shall be responsible for ensuring the signing of the ICIPE Intellectual Property Agreement by its staff and associates, normally at the time of the individual’s initial association with ICIPE.**

This Article maintains ICIPE’s current practice of having an agreement, separate from employment contracts, to cover intellectual property issues. Being that this is fairly standard practice internationally, allows for a fair degree of flexibility, and emphasises the importance of IPR issues, no attempt has been made to alter it here. This Article is mostly administrative in that it assigns responsibility for the signing of agreements and requires everybody to sign, except in exceptional circumstances. It would not be appropriate to actually go into depth regarding the Agreement in the Policy; it should be a stand-alone document. On the basis that the Human Resources Department handles other staff contractual issues, it seems most appropriate to assign responsibilities to them.

3. **Where an individual subject to this Article has previous obligations under an alternative intellectual property agreement, this Article shall be subject to the terms of Article XVI.**

The one area of real interest here is the allowance for those subject to pre-existing intellectual property obligations. Obviously it is much easier to have such questions resolved in advance; any conflicting obligations must be harmonised. Apart from this problem of pre-existing obligations, there should not be any problems for short-term staff, consultants, visiting scientists and the like. The reason for this is that the Policy explicitly covers only activities undertaken, and results produced, using the Centre’s time, money or resources – all else is excluded. If the problem is one of a collaborative project in which the results will be shared, then the collaboration agreement should explicitly address these questions and thus override the Policy.

VII. DISCLOSURE OF INVENTIONS

Disclosure of inventions is one of the pillars of the Policy, in that if the Centre does not know early enough about an invention, the option of seeking intellectual
property protection, or preventing others from doing so, can often be lost. The aim is to have usable but comprehensive information as early as possible to allow for the maximum flexibility in decision making. The initiative has to lie with the scientists themselves, and the best approach to take is one of caution and request for all possibilities to be submitted for consideration as early as possible.

1. When it first becomes apparent that an invention, discovery or technical development has been made which might be subject to this Policy, the inventor shall immediately notify the Intellectual Property Management Committee by means of an Invention Disclosure.

The overall requirement is pre-emptive in that anything that might be covered by this Policy should be submitted for the Intellectual Property Management Committee’s consideration as early as possible in its life. This allows for planning as to whether protection should be sought, defensive publication should be undertaken, partners brought in, etc. This will increase workloads, but the Committee will bear most of this burden. It should be noted that such a practice can assist the scientist, in that priorities can be developed and thus a promising line of research could have more support and resources allocated to it.

2. An Invention Disclosure shall include, but not be limited to, the following information:
   (a) information about the inventor(s);
   (b) technical details of the disclosure;
   (c) detailed justification for believing that the disclosure constitutes a patentable invention;
   (d) information on any agreements entered into to facilitate the development of the invention;
   (e) facts concerning subsequent activities, undertaken and planned;
   (f) information regarding any resources, understood to include information, that contributed to the invention;
   (g) information the inventor(s) may have relating to other activities relating to the invention, at ICIPE or elsewhere; and
   (h) any other information that may prove useful in making a determination as to intellectual property protection.

The above paragraph deals with what should be included in an Invention Disclosure. There are two choices here: to develop some framework documents to be completed and submitted, or to require certain critical information in the manner most convenient for the research team in question. The latter approach has been adopted here although it is a close choice between the two. In developing a standard document, one runs the risk of missing, or failing to foresee, something that may prove critical. People are also generally hostile to more paperwork. At the same time, such documentation means that information is submitted in a form with which the Committee is familiar and that it is well organised, and of course, does not contain extraneous material. The risks of missing something important can be lessened by the inclusion of an ‘any other information’ request. The disadvantage of using a form is that people are less likely to be free flowing with this, and they might not realise what constitutes the critical information. In requesting certain documents and anything else that might be useful, one is more likely to get all the information. However, the disadvantage is that the information provided is likely to be in a less digestible form and is very likely to contain masses
of extraneous material. (A compromise would be to have a standard document as an initial submission which the Committee can use as an initial screen to decide whether to request further details. This approach has not been written in here due to concern about the fact that such a screen could unfairly discount something before it has been properly assessed, and because it introduces a further level of processing that increases everybody’s workload).

The actual details of what is requested are fairly self-explanatory and should cover all basic points. Documents such as laboratory notebooks, etc. have not been listed to avoid swamping the Committee with information that might not be necessary for an initial review. However, it should be noted that the Intellectual Property Agreement (Schedule 1 Item 5) requires that staff maintain all records such as laboratory notebooks, spectra, etc., so that in the event that the Committee decides to proceed with examining options for protection, it will have all the necessary information to hand.

3. Coincidental with each meeting of the Intellectual Property Management Committee, the Secretary of said Committee shall prepare for the Director General and the Committee a report listing the titles and a brief description of each Disclosure received since the last report.

The final element of this Article is mostly to do with information management, but also has an element of a check. The preparation of a report on all disclosures means that the Director-General can easily see what the Committee has not forwarded to him for consideration for protection. Equally, the document can be used as the basis for an ongoing process of auditing the Centre’s intellectual activities and output.

VIII. OWNERSHIP OF INVENTIONS

Ownership is the basis of any right to manage intellectual property. This Policy follows the general trend of research, academic and corporate organisations in that the default position is that the institution retains all rights. Some things that are dealt with in this Article automatically derive from this default ownership position, but have been addressed nevertheless to avoid any possibility of confusion.

1. Where any invention is produced by an employee or associate of ICIPE in the course of official duties, or making more than incidental use of ICIPE’s time and resources, and is not subject to any agreement expressly stating otherwise, all rights and obligations relating to such invention shall belong exclusively to ICIPE as a body corporate subject to the following conditions:

The first paragraph covers inventions to which ICIPE claims ownership. This category includes almost everything, barring situations where an alternative arrangement has been previously made, such as a sponsoring or collaboration agreement. Such agreements are seen as covered by the requirements of the introduction to Article VIII(1) and the terms of Article XIII(1). The other exclusion is implicit in the paragraph, and somewhat explicit in the statement regarding incidental use. (To be sure of avoiding confusion, this is specifically handled in the second paragraph.) The other point to note in the introduction to paragraph 1
is that ICIPE assumes all the rights and obligations so that it should not take the initiative in seeking and maintaining intellectual property rights on the part of the inventor for granted. On the basis of the Intellectual Property Agreement, the inventor does have an obligation to facilitate the Centre’s activities in this area, but there is no requirement that he/she be proactive in this.

(i) ICIPE shall be fully responsible for any and all expenses, fees and any other charges resulting from the application for, granting, or maintenance of, intellectual property rights.

(ii) Where an invention reaches the stage of commercialisation, ICIPE shall forward a share of royalties accruing to it to the inventor, and any contributing indigenous or local community, according to the arrangements outlined in Article X of this Policy.

(iii) Where an intellectual property right held by ICIPE under this clause is not being worked or licensed, the inventor may apply to the Director General to succeed to the intellectual property right, or for a license to work such intellectual property right, on terms to be mutually agreed between the inventor and the Director-General.

The first clause of paragraph 1 is obvious to most, but can be a controversial area and in extreme cases can affect the legal view of ownership. Accordingly, it is clearly stated that ICIPE will bear all costs, whether direct or indirect, involved with intellectual property protection of which it claims ownership. In some instances this may well include expenses incurred by the inventor as well as more orthodox fees and charges. The second clause is really just a reference in that it reminds the reader that even though ICIPE may claim ownership, it will not claim sole rights to any royalties that be derived. The third and final clause is quite common and is more of a principle than any sort of obligation. It simply states that ICIPE is not averse to inventors taking over intellectual property rights where the Centre has no use for them. Any succession or license would of course be subject to the requirements of Article V. Depending on the situation, ICIPE may decide to seek further rights or interests, or in the opposite direction, may opt to waive the recouping of some of its costs incurred when seeking the protection initially.

2. Where any invention is produced by an employee or associate of ICIPE without making more than incidental use of ICIPE’s time and resources, and is not subject to any agreement expressly stating otherwise, all rights and obligations relating to such invention shall belong exclusively to the inventor.

The second paragraph, as previously mentioned, makes explicit the fact that ICIPE will not claim rights to inventions produced by its employees or associates where it really has no right. The question of what constitutes ‘incidental use’ again arises, to the extent that some institutions choose to address it explicitly. This has not been done here as it can become rather maze-like with the listing of all sorts of abstract activities, or it is so vague as to be pointless. Suffice it to say that best practice is very important here and that one should think in terms of non-excessive use of everyday, non-specialist, materials and facilities constituting incidental use. If in doubt, all an inventor has to do is to get permission for the use of facilities he/she considers as incidental and there is no problem.
IX. INDIGENOUS KNOWLEDGE AND RESOURCES

Indigenous knowledge and resources is one of the most contentious areas in intellectual property today, so here the aim is to provide the greatest flexibility possible, while also guaranteeing the recognition of indigenous contributions. Since one of the most difficult points in the indigenous knowledge debate is that of its definition, the issue has been essentially avoided. The approach that has been taken, as previously mentioned, follows the South African model that considers all knowledge originating in that country to be indigenous. Knowledge that could be considered to be in the international public domain remains as an exclusion. Thus, if knowledge or resources are widespread within a particular state, such knowledge or resources will still fall within the bracket of indigenous. This may seem to be overly generous, but since the Policy is only really concerned with profits that may arise from intellectual property rights, not any use of the information protected by the ICIPE itself, the issue is rarely going to arise. The belief is also that this system of approaching indigenous knowledge allows for the recognition of community-based rights, something strongly called for by indigenous groups and NGOs. It is a de facto rather than de jure recognition, but given the field, this is more than almost all institutions offer and is probably also desirable in that it provides greater flexibility in implementation.

1. Where a research project is based upon more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale, ICIPE will undertake all best efforts to ensure that the prior informed consent of the relevant community, or residents of the locale, is obtained.

2. Where a research project is based upon more than incidental use of knowledge and/or resources that are found in a community or locale that is either not subject to clear delineation, or that is too large to allow for the feasible obtaining of prior informed consent, ICIPE will undertake all best efforts to obtain the prior informed consent of any relevant community-based organisations and government authorities.

The first issue dealt with in this Article is ‘prior informed consent’ (PIC) which, since the entry into force of the United Nations Convention on Biological Diversity, has come to be seen as the cornerstone of any approach to indigenous knowledge and resources due to its elements of recognition and respect. ‘Best efforts’ is introduced here on the basis that the obtaining of PIC can be a highly subjective and problematic business which should not be allowed to stifle the advancement of ICIPE’s aims and objectives. A balance is called for in all instances. The first requirement is fairly straightforward and, where researchers are operating normally, is somewhat inevitable: a community should be informed as to what sort of activities are going on in their area. The community should be informed of the nature of the project, who is conducting it and what the goals, both long- and short-term, are. This information is going to be limited in many cases by the type of research being undertaken, but certainly basic principles, targets and methods should be easy to communicate. The second paragraph brings in the idea that where the prior informed consent of the community is impractical, researchers should instead turn to any local representative organisations and/or authorities. Community based organisations (CBOs) can be broadly interpreted to include farmers’ co-operatives, women’s groups or other broad-based institutions.
3. Where an invention is developed that makes more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale, ICIPE will undertake all best efforts to ensure the applicability and availability of such invention to the relevant community or locale, understood to include the following:

(i) ensuring that any transfer or licensing of intellectual property rights by ICIPE includes an allowance for the relevant community or locale’s access to the invention on preferential terms; and,

(ii) establishing systems for any necessary training, distribution or other bridging mechanisms that may be required for the relevant community or locale to make full use of the invention.

The Article next progresses to the actual conduct of research and how its results should be treated. The real focus of this paragraph is the idea that wherever possible, results should be made available to any communities that provide raw materials or information contributing to such. This is on the basis of equity, but also to show the benefits of their contribution to the community. This should result in an increased interest in conservation and exploration of other potential assets the community may hold. Of course such a process goes much deeper than ICIPE’s contribution could possibly achieve, but provision of new technologies with the understanding that the communities participated in their creation is a good first step. The main requirements are that ICIPE undertakes to protect the community’s rights in the intellectual property realm and to do as much as possible to provide bridging work if required. The other requirement is included in the introductory section of the paragraph: ICIPE will consider the community’s situation, in terms of capacity, assets, etc., when directing the research. Given the nature of ICIPE’s research, this will generally be automatic, but in some instances it may result in extra obligations.

4. Where an invention that makes more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale is developed to the point that it has market application, ICIPE will undertake all best efforts where appropriate to:

(i) reach mutually agreed terms with the relevant community, or residents of the locale, as to future activities and/or actions regarding the invention; and,

(ii) ensure that the relevant community, or residents of the locale, are involved in any production and/or marketing of products relating to the invention. Any income that may be derived by the community or locale from such participation shall not be considered part of any royalties due under the terms of Article X.

The final area considered as regards the conduct of research and development is that where an invention becomes commercially viable. The first requirement is that the community should participate in the decision-making process, an element of which is achieved later in the Policy by the inclusion of representatives in the deliberations of the Intellectual Property Management Committee. This is certainly something that in some instances could prove problematic, but since the majority of ICIPE’s activities already have strong inclusive tendencies, should not be too difficult. It should be noted that this clause does not envision an entire community attending a committee meeting in Nairobi; as with any other negotiation or partnership, representatives can be considered competent. Great care should be
taken on this point, though, as the question of whether an individual, or individuals, truly represent their community can lead to problems if not handled sensitively. The second requirement is also something that is a feature of many ongoing ICIPE research projects: wherever possible communities should be involved in the production and marketing processes. On the one hand this increases recognition of their abilities and contributions, while on the other it creates opportunities for alternative income generation, something that has often been cited as being at the heart of effective poverty alleviation strategies. To maximise any benefits that may be derived by the community, it is made clear that income derived from such activities will not be considered as part of their share of any royalties that may accrue.

5. For knowledge and resources that are from a clearly definable geographic area or community or that are from a geographical area or community that is either not subject to clear delineation or that is too large to allow for the feasible distribution, then distribution of benefits accruing to local communities under Article X shall be undertaken according to the following guidelines:

(i) Where feasible, benefits shall be distributed equally between individuals and projects or organisations that benefit the community or locale as a whole. As far as possible individuals shall be assigned benefits on the basis of their relative contributions towards the provision of the knowledge and/or resources to ICIPE. Projects and organisations shall be determined in collaboration with representatives of the said community or locale.

(ii) Where distribution of benefits according to Article IX(5)(i) is either not feasible or is considered to be financially counter-productive, all benefits shall be forwarded to projects or organisations that are of general benefit to the community or locale.

(iii) Where distribution of benefits according to Article IX(5)(i) or (ii) is either not feasible or is considered to be financially counter-productive, all benefits shall be forwarded to a national level organisation with aims and objectives of relevance to the community or locale.

The second half of the Article is concerned with situations where royalties do accrue and consequently how they should be distributed. The first paragraph in this part sets out the procedures that will be followed where knowledge and resources can be traced to particular communities or areas. The actual level of benefits to be distributed is not addressed in this Article but is rather left to Article X that specifically addresses that question.

The procedures for distribution are structured in what is effectively a descending order of preference. Wherever possible the aim is to deliver royalties directly. This is qualified by looking for a mix of individuals and local organisations or projects. One needs to deliver some benefits to individuals, as this is the clearest indication to many people that they are actually gaining; in this instance, such an indication should contribute to reinforcing positive behaviour and developments. For the sake of equity and realistic incentive mechanisms, it is stated that the level of individual gains should be based on levels of contribution. This should not be taken too far, though, as it is widely recognised that a community contributes as a whole to the conservation and nurturing of its knowledge and resources over
successive generations. However, individual benefits can sometimes be awkward, as one can become involved with family and/or community dynamics and run the risk that what is delivered is not sufficient to create more than a temporary impact. Thus, organisations and local projects are also included. Funds can be concentrated to give a higher chance of an impact that is both longer term and of a broadly applicable nature to the community in question.

Since representatives of the community will have some input into decisions made regarding finances through participation in the Intellectual Property Management Committee, with the option for wider participation through a general requirement for participation, one should be able to focus on activities that the community appreciates and values. Where such a system of delivering benefits is not practicable, it is assumed that the problems are most likely to occur with delivery to individuals. This could result for any number of reasons, a commonly cited one being that through such distribution, dilution of benefits would result in excessive administrative costs. In this instance, focus is placed upon delivery to local projects or organisations on the same basis as in the previous clause.

It is unlikely that neither of the above processes of distribution will be possible, but should such a situation occur, this is provided for in the third clause. This allows for contributions to be made to national level organisations. Such organisations could be governmental or non-governmental, ranging from the Kenya Wildlife Service, for example, to an emergency relief organisation. The only requirement is that the organisation(s) chosen should be relevant to the interests of the community so that these can be furthered. While in some practical ways this is a desirable option, it is left as a last resort because it is likely to be fairly distant from the community and thus of only limited direct impact on them. Even if KWS, for instance, were to use the funds for a project specifically in the area, there would always be the possibility that this would not be seen as unusual since KWS has a fairly wide presence already.

6. Where knowledge and resources are to be found in a wide range of communities and/or geographical areas, for the purposes of this Policy, ICIPE shall:

(i) consider the origin of the knowledge or resource to be the community or geographical area that physically supplies such to ICIPE; or,

(ii) where such knowledge and/or resources are so widespread as to be within the public domain, any benefits accruing under Article X shall be distributed at a national level or regional level.

The final paragraph in this Article sets out the procedures that will be followed where it is not possible to trace knowledge and resources to particular communities or areas. A choice is provided here, as a range of possible dynamics is possible. The first option is to consider the community that actually provides a resource or knowledge as the sole source. This is attractive from a practical standpoint but leaves much to be desired in terms of equity, certainly from the point of view of the communities left out. Careful thought should be given before adopting this approach as it could open a barrage of criticism. The alternative option is once again to distribute at the national level, but this time there is no requirement for local relevance since there is no ‘local’. The advantage of this option is that it would be more difficult to criticise as regards who is left out, but the obvious disadvantage is that unless one is dealing with fairly significant sums, the value is likely to be insignificant.
X. Distribution of Royalties

The distribution of royalties is based upon what rapidly seems to be becoming a standard in academic institutions: a division, after costs, of one-third to the inventor(s) and two-thirds to the institution. The actual division varies in its complexity at various institutions. Some say that the institution’s two-thirds is shared with the inventor’s department, some that the inventor’s share goes to their personal research budget rather than directly to them, and others state that where there are multiple inventors, then some of the institution’s share is added to theirs.

In the private sector the general situation is such that, at the most, inventors may receive a one-off cash bonus or sometimes just a plaque or letter from the boss. Given the unlikely occurrence of this situation, it would seem that ICIPE can afford to be generous and follow the academic model; it is unlikely that the Centre will be looking at profits as any form of substantial funding in the foreseeable future.

The complications arise with the consideration of indigenous knowledge. There are no real precedents in this area, as the few deals that have been done have been either ad hoc or corporate. In the situation where knowledge of a resource and the resource itself were both used to achieve a development, the equitable thing seemed to be to divide any benefits equally. However, it would seem that the provision of only one or the other justifies a different approach. The figures given for these situations are abstract, which is why they are qualified with the statement that the exact figure should be mutually agreed on the basis of the relative contribution of the knowledge or resource to the development of the invention. Given the large number of potential situations, this in many ways is a better approach. It does require a good deal of trust, as it is a controversial, highly subjective, question. The best method developed thus far for handling benefit sharing seems to be a guaranteed minimum return and faith in best efforts.

Where financial benefits are derived by ICIPE from the transfer or licensing of intellectual property rights, ICIPE shall first recover any direct costs incurred, particularly any and all expenses, fees and any other charges resulting from the application for, granting or maintenance of the intellectual property rights. The remaining, net, benefits shall be distributed as follows:

The introductory paragraph to this Article is fairly straightforward and the only significant point is the question of recouping costs. This, as has been noted with some other features of the Policy, seems to be emerging as a normative standard. If one looks at the seeking of intellectual property rights as an investment on the part of developing countries, then it seems sensible that the facilitator does not make a loss in the process. Since the costs to be recouped are limited to direct costs incurred, there is no possibility of ICIPE making any sort of profit in this manner. Indeed, donor funds will be used not only for the production of the invention itself, but also for any administrative costs resulting from ICIPE’s internal management of the invention on its way to production. Direct costs are envisaged as limited to items such as legal bills, filing fees and the like.

1. Where there is no more than incidental use of indigenous knowledge and/or resources, any net benefits accruing to ICIPE, subject to any agreements made to the contrary, shall be distributed as follows:
The first paragraph addresses situations where the Policy’s provisions on indigenous knowledge and resources are not involved. This is fairly easy to address, although inevitably inventors are occasionally dissatisfied, as it is a straight employer-employee question. The reasons for adopting this division have been given earlier. The division of ICIPE’s share largely comes down to a question of management style and preference. If one adopts the division provided here, it is possible that particular departments will become relatively wealthy. This could create asymmetries that are prejudicial to departments that are either not product-oriented (such as biodiversity with its conservation and monitoring ethic) or that due to their nature have a lower chance of producing something that has incidental application to developed countries. The idea behind the approach here is that the share left at the Director General’s discretion can be used to address any such asymmetries.

2. Where there is more than incidental use of both indigenous knowledge and resources, any net benefits accruing to ICIPE, subject to any agreements made to the contrary, shall be distributed as follows:
   (i) Inventor: 33%
   (ii) Community or Locale: 33%
   (iii) ICIPE: 34%

The second paragraph covers situations where all possible stakeholders are involved to the full. It is assumed that where an invention is based upon not only a resource, but also community knowledge regarding it, then the subsequent work is more a question of refinement and development than actual creation. Thus, it is hard to define with certainty which element contributes significantly more than any other and all are recognised equally.

3. Where there is more than incidental use of indigenous knowledge only (and not resources), any net benefits accruing to ICIPE, subject to any agreements to the contrary, shall be distributed as follows:
   (i) Inventor: 33%
   (ii) Community or Locale: a minimum of 20%
   (iii) ICIPE: a maximum of 47%.

The relative shares of ICIPE and the community or locale shall be finalised by mutually agreed terms based on the relative contribution of the indigenous knowledge to the development of the invention.

The third paragraph considers the development of an invention using only indigenous knowledge. This is probably the least likely situation to occur, but possible scenarios could include research involving traditional methods and practices of crop management. A debatable situation might be the development of a synthetic product whose principles are based upon knowledge of how an insect behaves, reacts or the effect of some other resource. The reason this is considered to be debatable is that there seems to be a fairly strong argument that a resource plays a big role here and thus the provisions of the first paragraph should be followed. The reason that the contribution of knowledge has been
rewarded with a higher minimum share of royalties than that of a resource is based on the principle that knowledge is something that a community has invested in and developed. This personal attachment seems to justify a higher reward. The qualification that requires the actual shares going to ICIPE and the community to be mutually agreed upon has the potential to be difficult due to subjectivity. However, it is added on the basis that situations will inevitably vary case-by-case.

4. Where there is more than incidental use of indigenous resources only, any net benefits accruing to ICIPE, subject to any agreements to the contrary, shall be distributed as follows:
   (i) Inventor: 33%
   (ii) Community or Locale: a minimum of 10%
   (iii) ICIPE: a maximum of 57%.

The relative shares of ICIPE and the community or locale shall be finalised by mutually agreed terms based on the relative contribution of the indigenous resources to the development of the invention.

The final 4th paragraph is identical to the 3rd except that it deals only with resources rather than only knowledge and has different levels for the division of royalties. The reasons for this different division are mentioned in the discussion of paragraph 3.

XI. ACKNOWLEDGEMENT

ICIPE shall provide for, and endeavour to maintain in perpetuity, the right to recognition of the Centre, individual inventors and the suppliers of any and all indigenous knowledge or resources in any intellectual property rights that it holds, transfers or licenses.

Acknowledgement serves a variety of purposes. The most obvious is that any significant contribution to an invention should be recognised as such. Many calls have been made to include this in intellectual property requirements at the international level and it would seem to be a no-cost choice. The additional purpose served by acknowledgement has been suggested as the reason for the failure to adopt it: it acts as a check on unauthorised use by providing a method of tracking. The clause here establishes that all contributors will be equally recognised and that this right will be contractually maintained in the event of any transfer or license.

XII. PUBLISHING OF RESEARCH MATERIAL

Subject to Article XVI of this Policy, no individual subject to Article III shall publish, in any forum, information relating to research for which an Invention Disclosure has been submitted without the express written consent of the Chairman of the Intellectual Property Management Committee.

This Article only considers publishing as it relates to the obtaining of intellectual property rights. Premature publishing can destroy the right to patent protection in many jurisdictions and thus the requirement here is that inventors obtain express
permission to publish where an Invention Disclosure has been submitted. This does not in any way address the inventor’s longer-term rights to publish or questions of copyright ownership as certain for-profit corporations tend to do for competitive reasons. The qualification is present to stress the point that if there is a good reason why an individual does not wish to go along with this requirement, they can always apply for an exception. While Article XVIII on exceptions covers the whole Policy, it is useful to emphasise the point here so that restrictions are not interpreted as too draconian.

XIII. COLLABORATIVE AND SPONSORED RESEARCH PROJECTS

Collaborative research presents the possibility of other institutions’ policies being relevant to the products of the project. This Article establishes a default that the ICIPE controls, but allows for the reconciliation of policies where required. Ultimately this means that an agreement should be reached as to what policy will apply to any research. At the same time, the nature of ICIPE requires that there be certain principles which should not be compromised, and thus where the ICIPE Policy is not controlling, certain elements must be maintained. The heart of this Article is drawn from previous ICIPE documentation on how to approach these projects; it has been amended somewhat to provide a few more checks and to tie it into the overall Policy more clearly.

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<tr>
<th>All collaborative and sponsored research agreements entered into by ICIPE shall include the following elements:</th>
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<tr>
<td>1. The principles and modalities for the ownership of any intellectual property rights that may result from the project.</td>
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<tr>
<td>2. That all parties sharing ownership of intellectual property rights resulting from the project shall equally contribute towards any and all expenses, fees and any other charges resulting from the application for, granting or maintenance of such rights.</td>
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<tr>
<td>3. That all parties sharing ownership of intellectual property rights resulting from the project shall have the right to apply their own policies and practices as regards any rights, obligations and royalties deriving from such rights.</td>
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<tr>
<td>4. That the ICIPE shall apply the terms of this Policy to any intellectual property rights of which it receives ownership.</td>
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<tr>
<td>5. That where an Invention Disclosure is required by the terms of Article VII of this Policy, such disclosure shall be simultaneously provided to all collaborative partners. A disclosure provided under this paragraph shall be considered a confidential document and all receiving parties shall be equally responsible for its maintenance as such.</td>
</tr>
<tr>
<td>6. That the functions assigned to the Intellectual Property Management Committee under Article XVI of this Policy, where they concern subject matter relating to the collaborative or sponsored research project, shall be performed with the full participation of all partners and sponsors.</td>
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<tr>
<td>7. That the terms of Articles I, II, III, VII, IX, XI, XII, XVI and XIX shall govern the conduct of the collaborative research project.</td>
</tr>
<tr>
<td>8. That where issues arise which are not covered by the terms of the agreement, this Policy shall be applicable.</td>
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Paragraph 1 simply requires that future ownership issues be addressed. This can avoid disputes at a later date and generally makes situations clearer. The 2nd
paragraph is fairly straightforward as well, in that all rights holders will pay their share for obtaining those rights. The 3rd paragraph could be a little more complex, but on the one hand is possibly unavoidable and on the other may protect as many rights as it surrenders. The rights that it surrenders are that ICIPE will not have any control on how partners decide to deal with their rights. The positive side is that ICIPE as well will be free to distribute, license or transfer its rights as it wishes, so that any actions which a partner decides to take should not have any significant impact on the Centre’s aims and objectives.

The 4th paragraph restricts the ICIPE to applying this Policy to its rights. This could be assumed to be the case anyway, but it is always useful to be explicit if something might be ambiguous. The 5th paragraph is largely administrative in that it requires all partners to be informed if a potential discovery has been made. Its other element is that the responsibility for maintaining confidentiality goes with this right, something that is necessary for preventing information passing into the public domain or being filed by someone else in a ‘first-to-file jurisdiction’ (most of the world). The 6th paragraph is a partner to the 5th in that it broadens the rights of participation in the decision-making process regarding any potential invention. This should promote harmony in approach and will encourage partners to continue to see ICIPE as the focus of this decision-making process. The 7th paragraph is that which is intended to ensure that the basic principles of ICIPE should be preserved in a collaborative or sponsored project. If there are objections to these limitations, then some time should be spent examining why and if the project is really in ICIPE’s interest. The final paragraph (8) is the catch-all that provides for gaps in an initial agreement and ensures the primacy of ICIPE’s policies and practices.

XIV. EXTERNAL RESEARCHERS

1. **External researchers that are attached to ICIPE, or that make more than incidental use of ICIPE’s time and resources, shall be considered associates of ICIPE and thus subject to the terms and requirements of this Policy, subject to paragraph 2 of this Article.**

2. **Where an external researcher is already subject to the terms of the intellectual property policy of his or her parent institution, he or she shall inform ICIPE of such an obligation in a timely manner. ICIPE shall then proceed to either negotiate a waiver of the parent institution’s policy or to agree to the waiver of the terms of this Policy, except as to the requirements of Articles I, II, III, V, VII, IX, XI, XII, XIII, XVI and XIX and the overall aims and objectives of ICIPE under its Charter. Where issues arise which are not covered by the terms of the agreement, this Policy shall be applicable.**

External researchers present largely the same issues as collaborative and sponsored research projects, except that they do not usually have their own policies; rather, they may be bound by the policy of a parent institution. If the parent institution is insistent on the maintenance of its policies and practices, then the relationship should probably be considered as a collaborative arrangement instead. This Article focuses on the situation where ICIPE is reaching an agreement with an individual to be attached to the Centre. Thus, during their time at the Centre, the default position is that external researchers will be treated in the same manner as ICIPE staff. In the situation where a parent institution has a policy that binds the external
researcher, then one or the other policy has to govern the situation. If ICIPE decides to waive its Policy, then it is stated that there are certain elements which cannot be waived in reaching an agreement, much along the lines of the policy with collaborative and sponsored research projects. The one difference to these limitations is that they are extended to include the ICIPE Policy’s limits on transfers and licensing. The final element of the paragraph is once again a catch-all to ensure that any gaps will be filled by ICIPE’s policies and practices.

XV. Transfer of Biological Material and Related Information

Any and all transfers of biological material and related information to individuals, institutions or other legal persons not subject to the jurisdiction of ICIPE and the terms and conditions of this Policy shall be accompanied by a Material Transfer Agreement as provided by Schedule 2 hereto.

This Article is fairly self-explanatory with the more complicated questions arising in the Material Transfer Agreement (MTA) itself. The reason for the inclusion of this Article is that there seems to have been difficulties regarding the loss of recognition and rights in the transfer of material and information in the past. The Policy addresses this by establishing an agreement that sets a default position of maintaining all rights for ICIPE. This will obviously not always be the intention and where such instances occur, a project proposal or other similarly mutually agreed document can be used to override the MTA where necessary. It should be noted that the use of an MTA is not only to protect ICIPE’s interests, but is also part of the Centre’s obligations to those who provide it with biological material and/or related information according to the terms of the UN Convention on Biological Diversity.

XVI. Administration and Implementation

1. The Director General shall establish an Intellectual Property Management Committee.
2. The Intellectual Property Management Committee shall consist of five members nominated by the Director General from the ICIPE staff and chaired by a senior member thereof.
3. Where the Intellectual Property Management Committee is meeting for the discussion of matters pertaining to particular Invention Disclosures, it shall also include as members:
   (i) The inventor(s)
   (ii) Representatives of any collaborating institutions
   (iii) Representatives of a community or locale, where more than incidental use has been made of any knowledge and/or resource that can be related directly to that particular community or locale.
4. The Intellectual Property Management Committee may co-opt other members for specific meetings.
5. The functions of the Intellectual Property Management Committee shall be to:
   (i) Pursuant to Article IV herein, advise the Director General on the desirability and feasibility of obtaining intellectual property protection for an invention and on which of the grounds listed in Article IV such protection would be sought.
(ii) Advise the Director General on the necessity of bridging work to facilitate the availability of an invention, and pursuant to Article IV(2) herein, on the need to seek intellectual property protection to form partnerships for the carrying out of such bridging work.

(iii) Pursuant to Article V herein, advise the Director General on the transfer and licensing of any intellectual property held by ICIPE.

(iv) Pursuant to Article VII(1) herein, receive and evaluate all Invention Disclosures in a timely manner.

(v) Pursuant to Article VII(3) herein, coincidental with each meeting prepare and approve a report listing the titles and brief descriptions of all Invention Disclosures received since the last report.

(vi) Pursuant to Article VIII(1)(iv) herein, advise the Director General on any applications for the transfer, or licencing, of ICIPE’s rights to an inventor.

(vii) Pursuant to Article XII herein, grant permission, request and advise inventors concerning the publishing of material related to their inventions.

(viii) Pursuant to Article XVII(1) herein, advise the Director General as to any variations of this Policy or the ICIPE Intellectual Property Agreement.

(ix) Pursuant to Article XVIII(1) herein, advise the Director General as to the amendment of this Policy.

(x) Pursuant to Article XIX herein, act as a panel for the resolution of any disputes arising from the terms or implementation of this Policy and, where such action is unsuccessful, advising the Director General accordingly.

(xi) Advise the Director General on all matters relating to patent administration.

(xii) Provide advice and support to all staff and associates of ICIPE regarding this Policy.

The administration and implementation is little altered from the 1983 ICIPE Patent Policy except that the duties of the former Patent and License Advisory Committee have been amended to match the contents of this Policy. The name of the former committee has been altered to the ‘Intellectual Property Management Committee’ to more accurately reflect the role that the Committee is intended to play. Two substantive changes have been made: The first is that rather than nominating specific offices whose holders should participate, the approach of having a Committee of five chaired by a senior member of staff has been taken. The problem will lie in how the five should be selected and how some degree of continuity can be achieved versus a need to tailor the make-up of the Committee to specific situations.

The second change has been made in paragraph 3 and is the broadening of the Committee to allow for the participation of partners, sponsors, inventors and communities, as and when this may be relevant. This may in some ways be inconvenient as everything is no longer internal, but the decision to adopt this approach was based on the belief that the benefits of participation and transparency outweigh the disadvantages. There is no requirement that these members actually be present for a meeting, but only that they are involved in the process. An invitation and delivery of a report could be enough.
XVII. EXCEPTIONS

1. The Director General of ICIPE may, with the advice of the Intellectual Property Management Committee, agree to variations of this Policy and the ICIPE Intellectual Property Agreement by express written consent on a case-by-case basis.

2. Variations made under this Article will only be agreed to on the premise that they do not in any way prejudice the overall aims and objectives of ICIPE.

As with any policy, a way out is always useful, and for extraordinary situations the exceptions clause provides this. The ability to create exceptions is limited by two factors: The advice of the Intellectual Property Management Committee must be sought (for transparency), and there is a requirement that any variation must comply with ICIPE’s aims and objectives (the check).

XVIII. AMENDMENTS

1. As may be necessary from time-to-time, the Director General, with the advice of the Intellectual Property Management Committee, shall recommend amendments to this Policy for approval by the ICIPE Governing Council where such amendments are consistent with the existing aims and objectives of the Policy.

2. Any amendment made under this Article shall be subject to the principles of non-retroactivity.

Where exceptions provide a way out of extraordinary problems, amendments can be used to address systemic difficulties. The non-retroactivity clause provides an extra degree of security to staff, partners, collaborators and other interested parties and is fairly standard practice, just as it is also largely common sense.

There is a further check implicit in this Article: Although ICIPE, due to the nature of its employment contracts, may amend policies without the prior approval of its staff, it is legally obliged to notify staff on such amendments to be enforceable.

XIX. DISPUTES

Any dispute arising from the terms or implementation of this Policy shall be submitted to the Intellectual Property Management Committee for resolution. Where such practice is not successful, the dispute shall be considered under the terms provided in Part IV, Article 26 of the ICIPE Charter of the 27th November, 1986.

Dispute resolution is always important. Even though one does not expect to have to use it, one certainly wants to be sure that if it does become necessary, discussions take place in a forum that is familiar. This clause is basically just an extension of the normal ICIPE practice. The only variation is that any dispute shall first be submitted to the Intellectual Property Management Committee as the implementing body of this Policy. An additional reason for this first step is to try and resolve any dispute amicably before it becomes an acute problem.
XX. Transitional Provisions

1. Subject to the provisions of Article XVII, all departments and divisions shall ensure that their staff and projects comply with this Policy within a period of six (6) months of its entry into force.

2. During the six-month period any disputes arising from existing agreements shall be considered, to the extent possible, in the light of this Policy.

Transitional provisions are simply an acknowledgement that nothing happens immediately. The aim here is to make people think in terms of this Policy as soon as possible. Where interpretation is needed, one would look to this Policy and if a situation not covered by the 1983 ICIPE Patent Policy arises, then the new policy becomes applicable. As with the Intellectual Property Agreement, departments and divisions are responsible for compliance during this transition, but if there are difficulties it is once again stressed that exemptions can be sought. The six-month period will not affect all staff, as once the Intellectual Property Agreement is signed, then the Policy is binding upon that member of staff. A transitional period has been included because ICIPE has several field stations and other fairly far-flung staff who may not be able to reasonably sign the Agreement in the immediate future. Thus, six months is allowed before the Policy becomes generally binding, regardless of individual contracts, through the Policies and Procedures Manual.
SCHEDULE 1:  
THE ICIPE INTELLECTUAL PROPERTY AGREEMENT

The Agreement put forward here is a hybrid of the existing draft ‘Undertaking Respecting Intellectual Property and Related Proprietary Information’ that was provided by ICIPE. The aim of this Agreement is mainly to draw the attention of employees and associates to the Intellectual Property Policy, but it does include one or two other issues. It can also avoid some problems, in that, apart from being an employment contract, it is a signed and executed document, to ensure that staff are made adequately aware of intellectual property requirements.

I understand that the International Centre of Insect Physiology and Ecology (ICIPE) is governed in the handling of intellectual property by its official policy titled ‘The ICIPE Intellectual Property Policy’, which I have read and understood, and I agree to abide by the terms of that Policy. Pursuant to that Policy, and in consideration of my employment by ICIPE, the receipt of remuneration from ICIPE, participation in projects administered by ICIPE, access to or use of facilities provided by ICIPE, access to information provided by ICIPE, and/or other valuable consideration, I hereby agree as follows:

The introductory paragraph of the Agreement is simply a statement that the employee or associate knows of and agrees to the terms of the Intellectual Property Policy. The following introductory paragraph states that this Agreement is in furtherance of the Policy and that the Agreement is part and parcel of the activities of the employees or associates at ICIPE. The issue of consideration can be significant, in that it is a requirement for the formation of a contract. The employee or associate agrees to certain terms, but what does he/she get in return? If he/she gets nothing, then a court may declare the contract invalid for want of ‘consideration’. Here it is clearly stated that this Agreement is part of the employee’s or associate’s obligation to ICIPE in return for what ICIPE provides in terms of salary, fees or services.

1. That, subject to any agreement expressly stating otherwise, the Centre shall have ownership of all rights and obligations relating to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce that are produced in the course of official duties, or making more than incidental use of the ICIPE’s time and resources.

2. That I shall execute and deliver all documents and records and do any and all things necessary and proper on my part to effect the terms of paragraph 1 of this Agreement, provided that all such activities shall be undertaken at the expense of the ICIPE.

Paragraph 1 simply echoes the Policy’s statements on ownership in Article VIII. While the basic principle of ICIPE’s ownership is put forward here, there is not as much detail provided as in the Policy. The Agreement reiterates certain points of the Policy due to their significance, but leaves others to the Policy itself. Ownership
is obviously a fundamental point. The 2nd paragraph places an obligation on the employee or associate to provide all assistance that he/she can to ICIPE to ensure its rights of ownership. This is not stated in the Policy as it is not really a policy issue; rather, it is a contractual obligation of the employee or associate. Since ICIPE is the owner of the rights and must, according to Article VIII(1)(i) cover all expenses associated with its intellectual property rights, it is clearly stated that the employee will not be expected to cover any costs associated with this obligation. Typically these would consist of legal fees associated with the drawing up of documents for the transfer of rights.

3. That I shall immediately notify the Intellectual Property Management Committee, by the means set out in the ICIPE Intellectual Property Policy, when it first becomes apparent that an invention, discovery or technical development has been made in the course of official duties, or making more than incidental use of ICIPE’s time and resources.

4. That I shall maintain full confidentiality regarding all information that has been the subject of an Invention Disclosure. This requirement may be terminated by the express written consent of the Chairman of the Intellectual Property Management Committee or at such time that the information is clearly considered to be in the public domain, whichever may be the earlier.

In the 3rd paragraph the question of Invention Disclosures is reiterated due to its being a fundamental part of the Policy. This strengthens the requirement that the employee or associate notifies ICIPE as soon as possible of any possible invention. If the employee or associate passes on any information regarding the possible invention prior to informing the Intellectual Property Management Committee, he/she is clearly in breach of their obligations. The 4th paragraph leads on from the previous one, in that it covers the employee’s or associate’s passing of information subsequent to the submission of an Invention Disclosure to the Committee. Such provision of information is only allowed when the employee or associate has obtained express permission or when the information is already clearly in the public domain. The latter exception has been included so that ICIPE will not have to constantly give permission in perpetuity. If something has been granted official protection or has been placed in the public domain in some manner, there is no point in having to insist on continuing secrecy.

5. That I shall make and maintain adequate and current records of all information relating to any research undertaken in the course of official duties, or making more than incidental use of the ICIPE’s time and resources, in such form as written notes, tables, sketches, drawings, spectra, chromatograms, photographs, computer diskettes, computer software, databases and the like or reports relating thereto, which records shall be and remain the property of and available to the Centre at all times and which shall be surrendered to the Centre in the event of the cessation of our relationship.

6. That I shall undertake to preserve samples of all isolates, fractions, compounds or modifications of these that may be undertaken, all of which shall also be and remain the property of and available to the Centre at all times and which shall be surrendered to the Centre in the event of the cessation of our relationship.
The 5th and 6th paragraphs are only slightly amended from the earlier agreement and cover the preservation of information and materials regarding research. These are standard requirements in any scientific establishment.

7. That I am now under no consulting or other obligation to any third person, organisation or corporation in respect to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce, or intellectual property rights thereof which are, or could be reasonably construed to be, in conflict with this Agreement or the terms of the ICIPE Intellectual Property Policy.

NB. Where associates of the ICIPE have prior existing employment agreements that conflict with the terms of either this Agreement or the ICIPE Intellectual Property Policy, they should immediately contact the Intellectual Property Management Committee, as an alternative agreement may be necessary.

8. That I will not enter into any agreement that might create rights to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce, or intellectual property rights thereof which conflict with this Agreement or the terms of the ICIPE Intellectual Property Policy.

The 7th and 8th paragraphs cover the question of conflicting obligations. By agreeing to paragraph 8, the employee or associate is legally stating that they have no existing conflicting obligations. If it subsequently transpires that they do, then this will be a breach of their obligations and subject to sanction. Unless acting in bad faith, it is unlikely that any party would have a problem here, as one is likely to know if one has a prior obligation. The note stresses that the existence of a prior obligation does not preclude the reaching of an agreement with ICIPE, but rather that the matter simply needs to be accommodated. It is important to clear up any potential source of difficulty as soon as possible. The 8th paragraph partners the 7th in that it requires the employee or associate not to create a situation of conflict subsequent to their association with ICIPE.

9. That in the event of the cessation of my relationship with the Centre, I and my estate, heirs and assigns, shall continue to be bound by the terms of this Agreement and the terms of the ICIPE Intellectual Property Policy.

The final paragraph 9 allows for the continued application of this Agreement and Policy after an employee or associate has ceased to be associated with the Centre. Rather than employ a time frame here, the paragraph has been left open. The effect of this is that the Policy and Agreement will continue to cover any information or rights to which ICIPE has a claim. If the information or rights have no connection to ICIPE, then they will not be covered. This is preferable in that one might, for instance, opt to protect something as a trade secret. If this was the case and an employee or associate was subject to, say, a five-year time frame, at the expiration of that period they would no longer be bound and could reveal the secret. Such an eventuality is therefore precluded without any restriction of the
employee’s or associate’s future freedoms as regards their own activities. Consequently this creates a win-win situation in that it provides maximum protection for information to which ICIPE has a right, while it also allows for maximum freedom of operation for an employee at the end of their association with the Centre. The paragraph also prevents any successors of the employee or associate of ICIPE claiming that they are not bound by the Policy and Agreement’s restrictions.
SCHEDULE 2: AGREEMENT FOR THE TRANSFER OF BIOLOGICAL MATERIAL AND/OR RELATED INFORMATION

This model Agreement has been designed in direct response to the experience of ICIPE and of other similar research institutions. It should be used whenever any sample is sent from the Centre to any other institution. Its principal aim is to ensure that the rights of the Centre and its scientists are maintained unless specifically decided otherwise. However, it should be noted that the Agreement is equally significant in maintaining the rights of those who facilitate and support the Centre’s work by either contributing biological material or allowing research to be undertaken under their jurisdiction(s). It has been designed to require a minimum of work. A scientist wishing to transfer material out of the Centre only has to write in a few sentences in paragraph 1(a), attach a project proposal and have a signed copy returned by the proposed receiving party. This latter requirement could be fulfilled by fax and thus the entire exercise can be completed in a matter of minutes.

The experience of ICIPE thus far suggests that most of the problems that have arisen in the past are due to the fact that there was no framework for material transfer, rather than by actual malicious intent. The establishment of a default framework for these transactions should solve the majority of problems and thus provide adequate protection for the Centre, its benefactors and its intended clients.

WHEREAS ICIPE desires to provide the biological material and/or related information detailed hereunder on the terms and conditions hereinafter set forth, and
WHEREAS the Receiving Party is ready and willing to accept the biological material and/or related information on the said terms and conditions.
NOW THEREFORE the Parties hereby agree as follows:

The preambular paragraph lays out the basic intentions of the Agreement: ICIPE will provide the material and the receiving party agrees to abide by the terms and conditions of the Agreement. This is stating the obvious, but it can sometimes be useful to have an affirmative statement of acceptance.

1. Scope of Agreement
   (a) This Agreement covers the following biological material, related information and/or activities as these may be supplemented by any annex to this Agreement that is duly signed by the Parties hereto:

Paragraph 1(a) is intended to provide an outline of the purpose of the transfer. It is envisioned that a few sentences will be provided here that will tie the agreement to a project proposal, or some similar document, that can be signed and attached to the agreement as an annex. It would be important to mention what material
and/or information is being transferred, to whom and for what purpose. This is designed on the assumption that if a transfer is going to take place, there must be some idea of its purpose and thus probably some documentation.

**(b) Any activities involving the biological material and/or related information that are not expressly authorised by the provisions of this Agreement and any annexes hereto shall be considered as expressly prohibited. This shall be understood so as to include, but not be limited to, any activities involving transfer to third parties, activities aimed at commercialisation or the claiming of rights of any kind over biological material and/or related information not specifically addressed by this Agreement.**

Paragraph 1(b) avoids the possibility of misunderstanding and ambiguity—if an activity is not directly referred to in the Agreement then it is not permitted. Very often interpretations of some terms vary and thus activities may be unintentionally permitted. This sub-paragraph ensures that the Agreement will be based on plain English.

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**2. Maintenance of Ownership and Rights by ICIPE**

**(a) The ICIPE maintains ownership and all rights to the biological material and/or related information covered by this Agreement, understood so as to include ownership and rights to any derivatives thereof and information developed as a direct result of the provision of biological material and/or related information.**

Paragraph 2(a) establishes the default position that ICIPE maintains all rights, of whatever kind, to the material being transferred. It is recognised that this will rarely be the case, but the clause is designed to reverse the old practice of specifically mentioning what rights are maintained to a new position of only mentioning what rights are surrendered. This makes it easier for a scientist to have a legal complex understanding of what that means; he/she only has to understand what they are permitting the receiving party to do.

**(b) The terms and conditions of this article shall be subject to any express written agreement to the contrary that shall be attached as an annex hereto.**

Paragraph 2(b) ties in to 1(b) by allowing for the attachment of annexes that will override the general terms of the Agreement. However, the terms of these annexes must be explicit, as with all else in the Agreement, and must be signed by both parties. The most commonly expected annex is a project proposal or work plan; this would not require any amendment or addition.

**(c) The terms and conditions of this Article shall be subject to any third party ownership or possession of rights to the biological material and/or related information that is the subject of this Agreement. Where such third party rights exist, they shall be detailed in the annex to this Agreement along with evidence of the ICIPE’s legal authority to execute this Agreement.**

Paragraph 2(c) deals with the fact that the ICIPE may not always have exclusive rights to the material in its possession. Where this is the case it is important that
receiving parties have a clear understanding of the nature and limits of ICIPE’s rights. Consequently all third party rights must be iterated and since these might conflict with ICIPE’s ability to transfer rights, the legal basis for such action must also be iterated.

3. Rights and Obligations

(a) The rights and obligations of the Parties are strictly limited to the terms and conditions of the Agreement. Accordingly, the Parties shall not be entitled to any benefit, payment, subsidy, compensation or entitlement except as expressly provided in this Agreement.

Paragraph 3(a) is a standard clause limiting any claims to what is explicitly mentioned in the Agreement. Although this covers a wide range of potential payments and costs, it will be important to be clear in project proposals and the like as to which party will be responsible for transport costs, administrative fees and the like. It may be useful to think of this in terms of commercial practice where responsibility for such costs is normally handled in one of two ways:

- Free on Board (FOB). This means that the supplying party will bear all costs up to a particular point of collection nearby; this may be the gate of the supplying institution or some other intermediate point such as a port or airport.
- Carriage, Insurance and Freight (CIF). In this instance, the supplying party is responsible for all costs up to a specified delivery point close to the Receiving Party. This may be the gate of the receiving institution or some intermediate point such as a nearby port or airport.

The costs involved with the shipment of samples are not normally significant so this will not be a major consideration, but it is easier to clarify than assume.

(b) The Receiving Party shall be solely liable for claims by third parties arising from the Receiving Party’s own wilful or negligent acts or omissions in the course of performing this Agreement, and under no circumstances shall ICIPE be held responsible for any such claims by third parties.

Paragraph 3(b) is also a standard disclaimer. ICIPE cannot be responsible for events beyond its control or influence even though it may be the originator of the material. It should be noted that this would not cover an omission by ICIPE. An example might be if we were to transfer toxic material without mentioning that fact and then an employee of the receiving party was injured in some manner. Either the employee or the receiving institution could make a claim against ICIPE in such an instance. It is unlikely that this paragraph will often, if ever, be of relevance but it is advisable to have the indemnity nevertheless.

4. Consideration

(a) The Receiving Party’s use of the biological material and/or related information for the purposes stipulated in this Agreement shall constitute consideration provided by ICIPE.

‘Consideration’ is an important part of any contract, as without it the whole document could be considered void. As no payment is likely to be involved in most cases of material transfer, it is useful to clearly iterate that the use of the
material, regardless of the outcomes of that use, is considered to be a valuable asset by both parties. This asset constitutes consideration provided by ICIPE.

(b) The Receiving Party shall be considered to have provided adequate consideration by either of the following actions, unless expressly stated to the contrary in this Agreement or any annexes hereto:

(i) Providing ICIPE with rights to or rights of access to the results of any research involving the biological material and/or related information undertaken by the Receiving Party, subject to Article 1 and any annexes hereto; or,

(ii) Placing the results of any research involving the biological material and/or related information undertaken by the Receiving Party, subject to Article 1 and any annexes hereto into the public domain to the satisfaction of ICIPE.

Paragraph 3(b) deals with what consideration the receiving party will provide to ICIPE in return for the material. This is the minimum situation that can be overridden by the project proposal if necessary. The minimum requirement is that ICIPE is provided with the results of any research involving the material or that such results are placed in the public domain. The justification for this is that two of ICIPE’s main goals are the pursuance of research and the free dissemination of its results. Thus, access to results that might further the Centre’s research advances the first of these two goals, while placing information in the public domain advances both of them. 3(b)(ii) is qualified by stating that ICIPE must be satisfied with any steps taken to place information in the public domain, as this can frequently be done in a manner that is not entirely effective.

5. The ICIPE Intellectual Property Policy

(a) Except as may be explicitly provided for to the contrary, in this Agreement or any annexes hereto, this Agreement shall be subject to the terms and conditions of the ICIPE Intellectual Property Policy 2000.

(b) The Parties hereby certify that they have read and understood the provisions of the ICIPE Intellectual Property Policy 2000.

Paragraph 5(a) provides some context for the Agreement by attaching it to the wider requirements of the Policy. As with all else in the Agreement, this can be overridden by a project proposal or similar document such that situations can be handled on a case-by-case basis where necessary. The particular importance of this clause will be as relates to rights that ICIPE may not ordinarily transfer, such as the right to use information for internal purposes, and restrictions on intellectual property options.

Paragraph 5(b) ensures that Receiving Parties cannot claim ignorance of the Policy as a means of avoiding its requirements.

6. Duration

(a) Where relating to biological material, this Agreement shall remain in force until said biological material and any derivatives and/or related information thereof, is returned to the satisfaction of ICIPE.

(b) Where relating to information related to biological material, this Agreement shall be subject to any associated rights, such as copyright or trade secrets, which might be attached thereto.

Contd.
The main feature of paragraph 6 is that there are no explicit time limits in terms of months or years. This is impossible to do for a model agreement. However, some form of explicit duration is required for the formation of a contract and here it is achieved through relation to the use of the material and/or information that is the subject of the Agreement. It is also more appropriate to tie the duration to this material and/or information. It would be highly unsatisfactory for both parties if material were still in use at the termination of an agreement as this could create an unacceptable level of uncertainty.

7. Amendment or Variation of Agreement

Notwithstanding anything to the contrary contained in this Agreement, or any annexes hereto, this Agreement may be amended or varied to the extent mutually agreed by and between the parties hereto. Such agreement shall be stated expressly in writing and attached as an annex hereto.

This is again a standard clause that allows for the amendment of the Agreement provided both parties agree to such in writing.

8. Termination of Agreement

(a) This Agreement may be terminated by either Party at any time subject to the terms and conditions of Article 6 herein.

(b) In the event of the termination of this Agreement by either Party, such Party shall notify the other Party in writing, including details for such termination as are required to fulfil the terms and conditions of Article 6 herein.

All contracts must have a termination clause. This allows for termination at any time provided that the receiving party returns the material and/or information, and rights pertaining thereto, to ICIPE. This can of course be amended as ICIPE may wish to allow certain rights to the Receiving Party or may wish to form a subsequent agreement. It should be noted that termination clauses normally require some form of notice period and that in individual cases scientists may wish to insert something to that effect. Equally, ICIPE may wish to allow certain rights to the Receiving Party at the outset, such as the right to complete ongoing research or to claim certain specified intellectual property protection. These sorts of variation could be achieved either by amending this Agreement or, once again, by means of a project proposal annexed to the Agreement.

9. Dispute Resolution

(a) The Parties agree to make good faith attempts to negotiate the resolution of disputes arising pursuant to this Agreement.

(b) Where the Parties are unable to resolve any dispute arising pursuant to this Agreement within a period of three months, such dispute shall be resolved according to the terms and conditions of ICIPE Charter.

There must be some form of allowance for dispute resolution and this is particularly important where the question of ICIPE’s immunities and privileges
are concerned. The ICIPE Charter allows for dispute resolution through binding arbitration.

**10. Immunities and Privileges**

Nothing in this Agreement shall be understood or construed so as to constitute a waiver of ICIPE’s immunities and privileges as provided for under the ICIPE Charter or ICIPE’s Headquarters Agreement with the Government of Kenya.

This paragraph is principally a reinforcement of paragraph 9 in that it makes clear that the ICIPE should not in any way be interpreted to be waiving its immunities. Consequently any receiving party wishing to complain about ICIPE’s actions under the Agreement should seek redress through the Kenyan Ministry of Foreign Affairs or through the arbitration mechanism where an amicable solution cannot be found.