

NOTICE 243 OF 2015

DEPARTMENT OF SCIENCE AND TECHNOLOGY

**PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF INDIGENOUS
KNOWLEDGE SYSTEMS BILL, 2014**

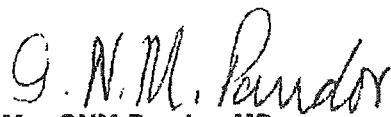
I, Naledi Pandor, Minister of Science and Technology, hereby publish the Protection, Promotion, Development and Management of Indigenous Knowledge Systems Bill, 2014, for public comment.

Members of the public and interested parties are invited to submit written comments on this Bill within 60 days from the date of publication of this Notice to the Director-General: Department of Science and Technology, for the attention of Ms S Pango, at one of the following addresses:

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Mrs GNM Pandor, MP

Minister of Science and Technology

BILL

To provide for the protection, promotion, development and management of indigenous knowledge systems; to provide for the establishment and functions of the National Indigenous Knowledge Systems Office; to provide for the management of rights of indigenous knowledge holders; to provide for the establishment and functions of the Advisory Panel on indigenous knowledge systems; to provide for access and conditions of access to knowledge of indigenous communities; to provide for the registration, accreditation and certification of indigenous knowledge holders and practitioners; to provide for the facilitation and coordination of indigenous knowledge systems-based innovation; and to provide for matters incidental thereto.

Preamble

Recognising that the liberation of South Africa and its people from centuries of racially discriminatory colonial rule and domination and the establishment of a constitutional democracy was, is and will remain a historic achievement of all our people;

Emphasising that the Constitution of the Republic of South Africa enshrines the founding values of human dignity, the achievement of equality, non-racism and non-sexism as well as a bill of rights that entrenches inalienable rights and freedoms to or of human dignity, equality, education, culture, religion, languages, research, creativity, environment and property, among others;

Noting that the Republic of South Africa as a sovereign democratic state has taken its rightful place in the family of sovereign states and is committed and obliged to observe international treaties, covenants as well as international law;

Realising that the Government of the Republic of South Africa is committed to the economic, cultural and social upliftment and well-being of its people, free of discrimination;

Taking into account that in the exercise of its sovereignty, South Africa has enacted and continues to enact legislation that underpins the protection, promotion and development of indigenous knowledge systems and indigenous knowledge;

Wishing to encourage the use of indigenous knowledge in the development of novel, socially and economically applicable products and services;

Accepting that indigenous innovation is a unique approach to social innovation that informs and underpins the work of indigenous communities;

Accepting the vital role that women play in the generation, transmission, conservation and sustainable use of indigenous knowledge, and the necessity to prioritise and strengthen their development and full participation in all aspects of indigenous knowledge systems at all levels in order to enable them to achieve equality and economic self reliance;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND INTERPRETATION

1. Definitions
2. Interpretation

CHAPTER 2

APPLICATION AND OBJECTS OF ACT

3. Application of Act
4. Objects of Act

CHAPTER 3

NATIONAL INDIGENOUS KNOWLEDGE SYSTEMS OFFICE

5. Establishment of the National Indigenous Knowledge Systems Office
6. Functions and duties of NIKSO
7. Administration of NIKSO
8. Establishment of the Advisory Panel on indigenous knowledge systems
9. Role of Advisory Panel

CHAPTER 4

PROTECTION OF INDIGENOUS KNOWLEDGE SYSTEMS

10. Subject matter of protection
11. Eligibility criteria for protection
12. Scope of protection
13. Term of Protection

14. Beneficiaries of rights

CHAPTER 5

ACCREDITATION AND CERTIFICATION

15. Purpose of accreditation and certification
16. Role of NIKSO in relation to accreditation and certification
17. Application for accreditation of indigenous knowledge holders and indigenous knowledge practitioners

CHAPTER 6

DOCUMENTATION, RECORDING AND MANAGEMENT OF INDIGENOUS KNOWLEDGE

18. The role of NIKSO in relation to documentation and recording of indigenous knowledge

CHAPTER 7

COMMERCIAL UTILISATION OF INDIGENOUS KNOWLEDGE PRODUCTS, SERVICES AND PROCESSES

19. The role of NIKSO in relation to product development, commercialisation, services and processes

CHAPTER 8

MANAGEMENT OF RIGHTS

20. Access to indigenous resources
21. Benefit sharing
22. Mediation Committee

CHAPTER 9
GENERAL PROVISIONS

23. Transborder arrangements
24. Exceptions and limitations relating to access of indigenous knowledge systems
25. Offences and complaints
26. Penalties
27. Regulations
28. Consistency with the general legal framework
29. Transitional arrangements
30. Short title and commencement

CHAPTER 1

DEFINITIONS AND INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—

“**access**” includes the acquisition and use of indigenous knowledge and indigenous knowledge systems by non-holders as authorised by NIKSO in terms of this Act;

“**accreditation**” means a formal quality assurance process by which NIKSO grants or delegates authority to qualifying entities for the purpose of overseeing programme provisions, the assessment of learners and the recognition of indigenous knowledge practitioner mentors or instructors within a community of practice according to applicable, predetermined and published standards;

“**beneficiary**” means the indigenous communities in possession of the indigenous knowledge, cultural expression, and knowledge associated with natural resources, as well as individuals who are recognised by the indigenous communities that hold the knowledge;

“**benefit sharing**” includes the fair and equitable sharing of benefits that accrue from access to indigenous knowledge, which includes participation in scientific research, fair and equitable sharing of research and development results and commercial and other benefits derived from indigenous knowledge, access to and transfer of technology, priority access to results and benefits accruing from the access to any indigenous knowledge or indigenous knowledge systems;

“**Certification**” means the formal procedure by which NIKSO grants or delegates authority to the communities of practice to assess and verify the qualification of indigenous knowledge holders and indigenous knowledge practitioners in accordance with pre-determined requirements;

“**commercial utilisation**” occurs when the indigenous knowledge and any process relating to it or product embodying it is made available for sale on the open market;

“**community of practice**” means a group of people who share the same understanding and methodology on a given practice, craft or a profession, which evolves naturally or is created based on people's engagement in a process of collective learning in a shared domain of human endeavour;

“**Constitution**” means the Constitution of the Republic of South Africa;

“**country of origin**” means the country which possesses the indigenous knowledge resources *in situ* conditions, including those taken from *in situ* sources and found *ex situ*;

“**cultural identity**” means the identity of a group or culture, or of an individual as far as he or she is influenced by one's belonging to a group or culture;

“**Department**” means the Department of Science and Technology;

“**effective date**” means the date of coming into operation of this Act;

“**ex situ**”, in relation to conservation, means the preservation of components of biological diversity outside their natural habitats;

“**genetic resources**” means material from any biological source where units of heredity operate or have a function with actual or potential economic value;

“**indigenous community**” means any recognisable community of people originated in or historically settled in a geographic area or areas located within the borders of the Republic, as such borders existed at the date of commencement of the Intellectual Property Laws Amendment Act, 2013, characterised by social, cultural and economic conditions which distinguish them from other sections of the national community, and who identify themselves and are recognised by other groups as a distinct collective;

“**indigenous cultural expressions**” means those expressions that result from the creativity of individuals, communities, groups and societies, and that have cultural content, including but not limited to-

- (a) phonetic or verbal expressions (such as stories, epics, legends, popular stories, poetry, riddles and other narratives; words, signs, names and symbols);
- (b) musical or sound expressions (such as songs, rhythms, and instrumental music, the sounds which are the expression of ritual);
- (c) expressions by action (such as dances, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports, puppet performances and other performances, whether fixed or unfixed);
- (d) tangible expressions, (such as material expressions of art, handcrafts, handmade carpets, architecture, and tangible spiritual forms and sacred places); and
- (e) adaptations of expressions referred to in the above categories;

“**indigenous knowledge**” means tangible and intangible aspects of the whole body of knowledge that has been held, used, refined and transmitted by the indigenous communities collectively or as individual custodians of such knowledge as part of expressing their cultural identity and includes but is not limited to -

- (a) knowledge of and management of biological resources and ecosystems;
- (b) literary, performing and artistic works (arts and culture);
- (c) all items of moveable cultural property;
- (d) all items of immovable cultural property;
- (e) indigenous institutions, philosophies, governance matters and languages;
- (f) scientific, technical and spiritual knowledge;
- (g) indigenous environmental resources; and
- (h) indigenous communities' heritage;

“**indigenous knowledge holders**” means the primary sources of community knowledge, consisting of individuals in the community, that are not necessarily elders, who exemplify the accumulated knowledge, values and life ways of the local culture;

“**indigenous knowledge networks**” means different indigenous knowledge projects, institutions, systems and stakeholders;

“indigenous knowledge practitioners” means individuals and groups involved in the social practice of indigenous knowledge systems in the communities of practice;

“indigenous knowledge resources” means the totality of tangible and intangible resources that includes indigenous innovations, indigenous cultural expression and indigenous knowledge associated with natural resources;

“indigenous knowledge systems” refers to a combination of knowledge systems encompassing technology, cosmology, spiritual, social, economic and philosophical learning, or educational, legal and governance systems which manifest as indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with the utilisation of natural resources;

“in situ” in relation to conservation, means the preservation of components of biological diversity in their original or natural habitats;

“moral rights” means a special set of rights that are owned by the indigenous communities by virtue of their role as the authors or creators and includes the right to prevent unauthorised alterations and changes to the indigenous knowledge and not to have it accessed in a manner that discredits the owners of the knowledge;

“Minister” means the Minister responsible for Science and Technology;

“Natural resources” means any materials and components that can be found within the environment and may exist as a separate entity such as genetic resources, fresh water, air, and mineral deposits with actual or potential use or value;

“NIKSO” means the National Indigenous Knowledge Systems Office, established by section 5;

“NQF” means the South Africa National Qualifications Framework developed by the South African Qualifications Authority in the context of the SAQA Act;

“prescribed” means prescribed by regulations;

“prior art” means any information that has been disclosed to the public in any form about an invention before the filing date of the application for intellectual property, whether by way of written or oral disclosure;

“prior informed consent” means the consensus of majority members of the concerned indigenous knowledge holders of a community to be determined in accordance with provisions recognised by their respective customary laws and practices, free from any external manipulation, interference or coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;

“registration” means a formal process of acknowledgment and endorsement by NIKSO of an individual's demonstration of specific competencies and compliance with the stipulated requirements for admission to the register of designation under the purview of NIKSO;

“registers” means official documents including databanks reflecting information of indigenous knowledge and indigenous knowledge systems and details of holders thereof, kept by NIKSO;

“**register of designations**” means a compilation of names, levels of competencies and titles of indigenous knowledge holders and indigenous knowledge practitioners;

“**regulations**” means regulations made in terms of this Act;

“**sacred information**” means information that is considered to be incorruptible and infallible and is respected protected, held and defined by the indigenous and local community;

“**this Act**” includes the regulations;

“**SAQA**” means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and

“**user**” means any person legitimately using the indigenous knowledge for commercial or non-commercial purposes.

Interpretation

2. When the Court interprets the provisions of this Act it must, where appropriate and necessary-
 - (a) consider customary law, in as far as it is consistent with the Constitution;
 - (b) apply any reasonable interpretation which is consistent with customary law, international law and South Africa's international obligations; and
 - (c) give effect to the constitutional principles that underpin and promote indigenous knowledge and culture.

CHAPTER 2

APPLICATION AND OBJECTIVES OF ACT

Application of Act

3. (1) This Act applies to all persons in the Republic in relation to all matters relating to indigenous knowledge systems or matters incidental thereto, as defined in this Act.
- (2) This Act applies to all indigenous knowledge resources which-
 - (a) existed before the commencement of this Act, or
 - (b) were created on or after the commencement of this Act.

Objectives of the Act

4. (1) The objectives of this Act are to-
 - (a) protect the knowledge of indigenous communities from illicit use and misappropriation;

- (b) acknowledge prior art in the examination of the novelty and inventiveness of patents granted for inventions made or developed on the basis of the knowledge of the indigenous communities of the Republic;
- (c) promote public awareness and understanding of indigenous knowledge for the wider application and development of the knowledge of indigenous communities;
- (d) promote the strengthening and development of the potential of the indigenous communities and of the machinery traditionally used by them to share and distribute collectively generated benefits under or in terms of this Act;
- (e) promote the commercial utilisation of indigenous knowledge for commercial and non-commercial development of new products, services and processes;
- (f) create legal recognition for the cataloguing, documentation and recording of knowledge held by the indigenous communities; and
- (g) establish accreditation and certification mechanisms for the recognition of indigenous knowledge holders and indigenous knowledge practitioners.

CHAPTER 3

NATIONAL INDIGENOUS KNOWLEDGE SYSTEMS OFFICE

Establishment of NIKSO

5. (1) There is hereby established within the Department a non-juristic entity to be known as the National Indigenous Knowledge Systems Office.

Functions and duties of NIKSO

6. (1) The functions and duties of NIKSO are to-
- (a) protect indigenous knowledge systems and restore the recognition of indigenous knowledge systems relating to and owned by the indigenous communities of the Republic;
 - (b) facilitate redress of indigenous communities in the rights and benefits of which they have been deprived without recognition or commercial benefit;
 - (c) facilitate and coordinate the development and innovation of indigenous knowledge systems;
 - (d) manage the national recordal and documentation system, registration, accreditation and certification of indigenous knowledge holders and indigenous knowledge practitioners;
 - (e) mobilise indigenous communities through education and awareness campaigns to enable them to recognise and value indigenous knowledge systems for cultural and economic benefit;

- (f) establish accreditation and certification mechanisms for the recognition of indigenous knowledge holders and indigenous knowledge practitioners; and
 - (g) carry out any prescribed functions; and
 - (h) determine and impose fines on violators of the Act.
- (2) In performing its functions NIKSO must develop and implement an effective regulatory framework for the protection, promotion, development and management of indigenous knowledge systems.

Administration of NIKSO

7. (1) The Minister must appoint a suitably skilled and qualified person as the Head of NIKSO.
- (2) The appointment of the Head of NIKSO must be made after following a transparent and competitive selection process.
 - (3) The Head of NIKSO is responsible for the administration and general management and control of the day-to-day functioning of NIKSO, subject to any directions and instructions issued by the Minister.
 - (4) The Head of NIKSO must report to the Minister on all matters relating to the functioning of NIKSO.
 - (5) The staff of NIKSO will consist of such number of employees as may be appointed by the Minister, in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994), or received on secondment from the Department or any organ of state, as are necessary to enable NIKSO to perform its functions.

Establishment of Advisory Panel

8. (1) The Minister may establish an Advisory Panel, consisting of not more than 10 individuals who are recognised by their institutional members by virtue of their qualifications, skills and experience on matters relating to the objects of this Act, to advise NIKSO on any or all matters relating to its functions and responsibilities in terms of the Act.
- (2) The Advisory Panel will be convened by NIKSO, as and when the need arises.
 - (3) The members of the Advisory Panel and expert committees will only be remunerated for time spent on the business of NIKSO, in accordance with the rates determined by the Minister, subject to National Treasury guidelines.
 - (4) The term of office of the members of the Advisory Panel will be determined by the Minister, which term may not exceed three years.
 - (5) A member of the Advisory Panel may be reappointed for a further term not exceeding three years.
 - (6) The Minister may terminate the membership of any member of the Advisory Panel for reason of incapacity, gross incompetence or any valid reason.

- (7) The Advisory Panel may constitute and appoint expert committees on any issue pertaining to the objects of the Act.
- (8) The administrative and secretarial support to the Advisory Panel and expert committees will be provided by NIKSO.

The role of the Panel

9. The Advisory Panel must-
 - (a) provide expert and strategic advice to NIKSO in relation to the protection, promotion, development and management of indigenous knowledge systems; and
 - (b) assist with the mobilisation of indigenous communities for purposes of pursuing specific activities conducted by NIKSO.

CHAPTER 4

PROTECTION OF INDIGENOUS KNOWLEDGE SYSTEMS

Subject matter of protection

10. (1) The Act protects the following:
 - (a) Indigenous knowledge.
 - (b) Indigenous cultural expressions.
 - (c) Indigenous knowledge associated with natural resources.
- (2) Protection under this Act will apply to any right or application derived from the utilisation of indigenous knowledge associated with natural resources.

Eligibility criteria for protection

11. The protection contemplated in section 10 extends to indigenous knowledge; indigenous cultural expressions and indigenous knowledge associated with the utilisation of natural resources that are-
 - (a) passed on from generation to generation and between generations in indigenous communities;
 - (b) the result of the creative intellectual activity of indigenous communities;
 - (c) associated with the cultural and social identity of indigenous communities; and
 - (d) maintained, used or developed as part of the cultural or social identity of indigenous communities.

Scope of protection

- 12.(1) In relation to their indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources, beneficiaries will have exclusive rights to-
- (a) enjoy, control, utilise, maintain, develop, preserve and protect their indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources;
 - (b) authorise or deny access to and use of their indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources;
 - (c) receive a fair and equitable share of benefits arising from the commercial use of indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources based on mutually agreed upon terms;
 - (d) prevent misappropriation and misuse, including any acquisition, appropriation, utilisation or practice of their indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources without their prior informed consent and the establishment of mutually agreed terms;
 - (e) prevent the use of indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources without acknowledgement and attribution of the source and origin of the knowledge and its holders where known; and
 - (f) ensure that the use of indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources respects the cultural norms and practices of the holders.
- (2) In the application for intellectual property rights involving the use of their indigenous knowledge, indigenous cultural expressions and indigenous knowledge associated with natural resources, NIKSO must require the mandatory disclosure of –
- (a) the identity of the knowledge holders;
 - (b) the country of origin, and
 - (c) evidence of compliance with prior informed consent and benefit sharing requirements in accordance with the Act.

Term of protection

13. The protection of indigenous knowledge will last as long as the indigenous knowledge satisfies the criteria of eligibility for protection in terms of the Act.

Beneficiaries of rights

14. (1) A beneficiary is any individual or individuals, family or families recognised by the indigenous community or communities as the individual or individuals, family or families to whom the custody or protection of the indigenous resources are entrusted in accordance with the customary law and practices of that indigenous community or indigenous communities, and may include indigenous knowledge holders and indigenous knowledge practitioners.
- (2) The state will be the custodian of indigenous knowledge rights in the event a beneficiary has not been identified.

CHAPTER 5

ACCREDITATION AND CERTIFICATION

Purpose of accreditation and certification

15. (1) The purpose of accreditation and certification is to provide a system for the recognition, standardisation and professionalisation of indigenous knowledge holders and indigenous knowledge practitioners' skills, experiences, teaching, learning and practices.

(2) The system referred to in 15(1) is to-

- (a) affirm indigenous knowledge as a knowledge domain on its own merit;
- (b) recognise and acknowledge the professional status of indigenous knowledge holders and practitioners;
- (c) recognise the institutions, governance structures, approaches to quality assurance, rules and codes of practice inherent in this system;
- (d) provide guidelines for the development of the accreditation and certification approach which complies with the SAQA and NQF prescripts;
- (e) create a single integrated national matrix for learning achievements which incorporates indigenous knowledge systems;
- (f) promote social and cognitive justice by facilitating access to, as well as mobility and progression within, education and training career paths; and
- (g) provide for the protection of the public through the establishment of competency standards and quality assured practices.

Application for accreditation and certification of indigenous knowledge holders and indigenous knowledge practitioners

16.(1) Any community of practice may apply to NIKSO, in the prescribed manner and form, to be accredited as an agent to certify the indigenous knowledge practitioners' competencies for admission to the register of designations.

(2) NIKSO must –

- (a) evaluate every application for accreditation and certification in accordance with prescribed procedures; and
- (b) issue a certificate of accreditation or certification to applicants that meet required criteria, specifying any conditions applicable to the accreditation and certification.

17. (1) NIKSO must-

- (a) define certification and accreditation procedures for the different communities of practice aligned to the NQF, in consultation with SAQA;
- (b) develop norms and standards for accreditation of indigenous knowledge systems;
- (c) revise the norms and standards of accreditation in line with national developments in education and foster improvement in the quality of certification processes with the

support of certification bodies recognised by the South African Qualifications Authority;

- (d) ensure that a register of designation is available to the public, as prescribed; and
 - (e) seek mutual recognition of the accreditation systems regionally and internationally.
- (2) The Minister may prescribe conditions for development and approval of norms and standards for accreditation of indigenous knowledge systems.

CHAPTER 6

DOCUMENTATION, RECORDING AND MANAGEMENT OF INDIGENOUS KNOWLEDGE

Documentation and recording of indigenous knowledge

18. (1) NIKSO must create and maintain systems for documenting and recording indigenous knowledge.
- (2) The Minister may prescribe conditions of storage, access, transmission, management and security of the documented and recorded indigenous knowledge.

CHAPTER 7

COMMERCIAL UTILISATION OF INDIGENOUS KNOWLEDGE PRODUCTS, SERVICES AND PROCESSES

Product development, commercialisation, services and processes

19. (1) Where relevant, NIKSO will facilitate and coordinate indigenous knowledge systems activities related to the commercial utilisation of indigenous knowledge products, services and processes;
- (2) The Minister must establish mechanisms to promote partnerships for innovation and product development, coordinate funding, develop market strategies and promote the commercial utilisation of products, services and process.

CHAPTER 8

MANAGEMENT OF RIGHTS

Access to indigenous knowledge systems

20. (1) Any person who intends to have access to indigenous knowledge systems for the purpose of scientific, commercial and industrial applications must submit an application to NIKSO for consent, in the prescribed manner and form.
- (2) The consent contemplated in subsection (1) can only be granted by NIKSO after consultation with the relevant indigenous community.
- (3) Any person who is aggrieved by NIKSO's decision or the conditions pertaining to such access must within 60 calendar days of such decision declare a dispute and refer it for resolution in terms of section 22.

Benefit sharing

21. (1) In case of access to indigenous knowledge systems for the purpose of commercial or industrial application, a benefit-sharing agreement between the community and the third party must be concluded.
- (2) The benefit sharing agreement must contain terms that ensure due reward for such access, and guarantee equitable distribution of any benefits deriving therefrom.
- (3) NIKSO may assist indigenous communities in concluding benefit-sharing agreements with third parties.

Mediation Committee

22. (1) NIKSO must constitute a mediation committee consisting of members of NIKSO as well as members of the relevant community invited by NIKSO on a case-by-case basis.
- (2) The mediation committee must investigate matters of dispute of ownership of indigenous knowledge and disputes contemplated in terms of section 20(3).
- (3) In facilitating the resolution of disputes involving indigenous communities, the mediation committee must consider, among other things, customary laws applicable to the relevant community.
- (4) The mediation committee must consider and reach a decision within 30 calendar days after the date of receipt of such a dispute.
- (5) Any party to the matter before the mediation committee referred to in section 22 (1) may appeal to a court of law against any decision of such committee.

CHAPTER 9**GENERAL PROVISIONS****Transborder arrangements**

23. (1) Indigenous knowledge resources originating from foreign jurisdictions will, in accordance with this Act, be given the same protection given to indigenous knowledge resources originating in the Republic, provided that they are the result of reciprocal international agreements with such foreign jurisdictions
- (2) In instances where the same indigenous knowledge resources or indigenous knowledge associated with the indigenous knowledge resources are found or shared by one or more indigenous communities in a foreign jurisdiction, NIKSO will cooperate with the relevant foreign authority, with a view to facilitating the conclusion of prior informed consent and benefit sharing agreements.
- (3) For the purposes of the protection, use and commercial utilisation of indigenous knowledge resources emanating from indigenous knowledge from foreign jurisdictions, these resources will enjoy the same benefits as South African indigenous knowledge resources set out in this Act in accordance with provisions of Article 11 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity .

Exceptions and limitations relating to the access of the indigenous knowledge resources

24. (1) No prior informed consent in the use of the indigenous knowledge resources is required for any of the following:
- (a) Face-to-face teaching.
 - (b) Criticism or review.
 - (c) Reporting news or current events.
 - (d) Judicial proceedings.
 - (e) Academic purposes.
 - (f) Any use that is incidental to the above purposes.
 - (g) In the event of national emergencies and natural disasters, provided that beneficiaries are compensated for the use of their indigenous knowledge.
- (2) A user of the indigenous knowledge resources mentioned in the circumstances contemplated in subsection (1) must make sufficient acknowledgement of the indigenous knowledge holders by mentioning them or the geographical place from which the indigenous resources originated.

Offences and complaints

25. (1) A person is guilty of an offence if that person-
- (a) makes non-customary use of the indigenous knowledge resources, whether or not such use is of a commercial nature, if the indigenous community owners have not given their prior informed consent to that use;
 - (b) acts or makes an omission in relation to an indigenous knowledge resource that is inconsistent with the moral rights of the indigenous and local community owners of that indigenous knowledge resource, and the indigenous and local community owners have not given their prior informed consent to the act or omission;
 - (c) is not a registered holder of indigenous knowledge and he or she enters into a commercial arrangement with another party for the exploitation of such indigenous knowledge to the exclusion of the indigenous and local community from which such indigenous knowledge originates;
 - (d) utilises for commercial or non-commercial purposes indigenous knowledge or an indigenous knowledge system without obtaining the relevant authorisation by NIKSO;
 - (e) furnishes or gives false information in or with regard to any application made in terms of the Act;
 - (e) wilfully obstructs or hinders an investigation or verification process undertaken in terms of the Act; or
 - (f) refuses, or fails to comply with a lawful order, direction or demand made by NIKSO.
- (2) Indigenous communities possessing collective knowledge may bring infringement actions against any persons who violate their rights as contemplated in subsection (1).
- (3) An infringement action can also be instituted by indigenous communities possessing knowledge where there is an imminent danger of the violation of their rights.
- (4) An indigenous or local community may file a complaint with the Court to revoke a registration over intellectual property right on indigenous resources that had been registered unfairly or contrary to the provisions of this Act.

Penalties

26. The violations shall be punished as provided for in the Act, with the following penalties:
- (a) Written warning by NIKSO as advised by the mediation committee.
 - (b) A fine as determined by a court.
 - (c) Seizure of all products and suspension of the sale derived from the indigenous resource as determined by a court.
 - (d) Embargo of the activity as determined by a court.
 - (e) Loss or reduction of funding incentives and benefits granted by the government.
 - (f) Loss or suspension of the right to receive financing from an official funding institution.
 - (g) Prohibition from entering into contracts with the government departments up to five years.

Regulations

27. The Minister may make regulations regarding any matter pertaining to-
- (a) the protection, promotion, development and management of indigenous knowledge or indigenous knowledge systems; or
 - (b) any matter which may or must be prescribed to realise the objects of this Act.

Consistency with the general legal framework

27. Protection under this Act takes account of, and operates consistently with, other international and regional instruments, and international laws.

Transitional arrangements

28. Any acquisition, appropriation or use of indigenous knowledge, indigenous cultural expressions, indigenous knowledge associated with natural resources carried out prior to the entry into force of this Act must comply with the provisions of this Act within 12 months from the effective date.

Short title and commencement

29. This Act is called the Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act, 2014 and comes into operation on a date determined by the President by proclamation in the *Gazette*.