

**THE PROTECTION OF TRADITIONAL
KNOWLEDGE, GENETIC RESOURCES AND
EXPRESSIONS OF FOLKLORE ACT, 2016**

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS

Section

1. Short title
2. Interpretation
3. Extent of application and exemption
4. Extent of protections, benefits and principles

PART II

ADMINISTRATION

5. Administration of Act by Agency and Registrar
6. Functions of Registrar
7. Appointment of officers
8. Non-warranty and non-liability
9. Delegation of powers and duties of the Agency
10. Use of Agency seal
11. Register of Traditional Knowledge, Genetic Resources and Expressions of Folklore
12. Inspection of Register and furnishing of information
13. Industrial Property Journal

PART III

TRADITIONAL KNOWLEDGE

14. Eligibility for protection of traditional knowledge
15. Formalities and measures for protecting traditional knowledge
16. Beneficiaries of traditional knowledge
17. Rights of holder
18. Exercise of rights
19. Assignment and licensing
20. Extent of benefit-sharing
21. Acknowledgement of holder

22. Exceptions and limitations applicable to protection of traditional knowledge
23. Compulsory licence
24. Duration of protection of traditional knowledge
25. Access to traditional knowledge associated with genetic resources

PART IV

GENETIC RESOURCES

26. Ownership of genetic resources
27. Rights of traditional community
28. Assignments, licences, authorisation and access of genetic resources
29. Right to regulate access to genetic resources
30. Right to use
31. Protection of community rights
32. Conditions to access and export of genetic resources
33. Application and grant of access permit
34. Grounds for denial of access to genetic resources
35. Special access permit and multilateral treaties
36. Obligations of access permit holder
37. Exploration permit
38. Application for exploration permit
39. Grant of exploration permit
40. Obligations of exploration permit holder

PART V

ACCESS AGREEMENT AND BENEFIT SHARING

41. Access agreement
42. Benefit sharing
43. Types of benefits
44. Regulatory measures relating to access agreement
45. Monitoring of access agreements and research

PART VI

EXPRESSION OF FOLKLORE

46. Protection of expressions of folklore
47. Formalities and measures relating to protection of expressions of folklore
48. Beneficiary of expressions of folklore
49. Protection of expressions of folklore against unlawful acts
50. Exceptions and limitations for protection of expressions of folklore
51. Duration of protection of expressions of folklore
52. Licensing agreements
53. Benefit-sharing relating to expressions of folklore

PART VII

GENERAL AND ENFORCEMENT PROVISIONS

54. Evidence of certain entries and documents
55. Requests for information
56. Proceedings before Registrar
57. Registrar's powers in obtaining evidence
58. Refusing to give evidence
59. Rules of evidence or procedure
60. Time and place of sitting
61. Extension of time
62. Registrar to act as soon as practicable
63. Infringement of rights
64. Appeals
65. References to High Court
66. Assessors to appear in High Court
67. Responsibilities of traditional communities
68. Responsibilities of customs offices
69. Lodging and authentication of documents
70. Expenses relating to administration
71. General offences
72. General penalty
73. Regulations
74. Transitional provisions

SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 16 of 2016

Date of Assent: 6th June, 2016

An Act to provide for a transparent legal framework for the protection of, access to, and use of, traditional knowledge, genetic resources and expressions of folklore, which also guarantees equitable sharing of benefits and effective participation of holders; to recognise the spiritual, cultural, social, political and economic value of traditional knowledge, genetic resources and expressions of folklore of holders; to promote the preservation, wider application and development of traditional knowledge, genetic resources and expressions of folklore; recognise, protect and support the inalienable rights of traditional communities, individuals and groups over their traditional knowledge, genetic resources and expressions of folklore; to confer rights on traditional communities, individuals and groups and promote the conservation and sustainable utilisation of the country's biodiversity resources; to promote fair and equitable distribution of the benefits derived from the exploitation of traditional knowledge, genetic resources and expressions of folklore; to promote the use of traditional knowledge, genetic resources and expressions of folklore for the benefit of traditional communities, the country and mankind in general; to ensure that exploitation of traditional knowledge, genetic resources and expressions of folklore takes place with the prior informed consent of a traditional community, individual or group; to prevent the granting of patents based on traditional knowledge, genetic resources and expressions of folklore without the prior informed consent of a traditional community, individual or group; give effect to the African Regional Intellectual Property Organisation (ARIPO) Swakopmund Protocol on the Protection of

**Traditional Knowledge and Expressions of Folklore, 2010,
the World Trade Organisation Trade-Related Intellectual
Property Rights Agreement (TRIPS), 1994 and any other
relevant international treaty or convention to which
Zambia is a State Party; and to provide for matters
incidental to, or connected with, the foregoing.**

[7th June, 2016

Enactment ENACTED by the Parliament of Zambia.

PART I

PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, 2016, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Interpretation **2.** In this Act, unless the context otherwise requires—

“ access ” means the collection, acquisition, transfer or use of traditional knowledge genetic resources and expressions of folklore;

“ access agreement ” means an agreement to obtain access as specified in sections *forty-one*;

“ access permit ” means a permit granted by the Agency to access genetic resources in accordance with section *thirty-three*;

“ access permit holder ” means a person holding an access permit;

“ Agency ” means the Patents and Companies Registration Agency established in accordance with the Patents and Companies Registration Agency Act;

“ appropriate institution ” means any Ministry having responsibility for, or such public or statutory officer or body having powers under any other law over, the regulation, collection, use, compilation or dissemination of, traditional knowledge, genetic resources and expressions of folklore and includes a Government agency responsible for administering or having special technical expertise on a specific sector of traditional knowledge, genetic resources and expressions of folklore;

Act No. 15
of 2010

- “ARIPO” means the African Regional Intellectual Property Organisation;
- “benefits” means the value, privileges, consideration, profit or gain derived from the use of traditional knowledge, genetic resources and expressions of folklore, as the case may be;
- “benefit sharing” means the equitable and just sharing of benefits, whether monetary or non-monetary, from the utilisation of traditional knowledge, genetic resources and expressions of folklore;
- “biodiversity” means the variability among living organisms from all sources of ecosystems and the ecological complexes of which they are part and includes diversity within species, between species and of ecosystems;
- “biological resource” includes genetic resources, organisms or parts of these, populations or any other biotic component of an ecosystem with actual or potential value for humanity;
- “Board” means the Board of the Agency constituted in accordance with the Patents and Companies Registration Agency Act;
- “court” means a court of competent jurisdiction;
- “customary laws and practices” means the customary laws, values, norms, protocols and practices of a traditional community;
- “derivative” means a product extracted or developed from a natural resource and includes a plant variety, oil, resin, gum, medicine, chemical and protein;
- “exploitation” means
- (a) where the traditional knowledge is a product—
 - (i) manufacturing, importing, offering for sale, selling or using the product beyond the traditional context;
 - (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context; or
 - (b) where the traditional knowledge is a method or process—

(i) making use of the method or process beyond the traditional context; or

(ii) carrying out the acts referred to under paragraph (a) with respect to a product that is a direct result of the use of the method or process;

“exploration” means an activity to find out the existence or the status of a given genetic resource;

“exploration permit” means a permit granted by the Agency in accordance with section *thirty-nine*;

“exploration permit holder” means a person holding an exploration permit;

“expressions of folklore” means any form, whether tangible or intangible, in which traditional culture and knowledge is expressed, appears or manifests, and includes the following forms of expressions or combinations:

(a) verbal expressions, including stories, epics, legends, poetry, riddles and other narratives, words, signs, names and symbols;

(b) musical expressions, including songs and instrumental music;

(c) expressions by movement or incorporating movement, including dances, plays, artistic forms, rituals and other performances, whether or not reduced to a material form;

(d) tangible expressions, including productions of art, drawings, designs, paintings, body painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes, handicrafts, musical instruments and architectural forms; and

(e) any other output of creative and cumulative intellectual activity characteristic of a traditional community’s distinctive cultural identity and traditional heritage developed and maintained by that traditional community, individuals or groups who have the right or responsibility to do so in accordance with customary laws and practices;

“ex-situ” means a condition in which a genetic resource is found outside of its natural habitat or ecosystem;

- “fair competition” means any act of competition that is based on honest practices in industrial or commercial matters and includes various acts that do not mislead the public or cause confusion;
- “genetic resource” means any genetic material of a biological resource containing genetic information having actual or potential value for humanity and includes derivatives, fauna and flora of terrestrial, aquatic and any other origin which may be used by the holder to obtain specific practical outputs in any field of human activity or derivative;
- “holder” means a traditional community, an individual or a group, irrespective of the pattern of ownership, and who is the owner of the traditional knowledge, genetic resource or expression of folklore in a traditional and intergenerational context who has a right over or to whom traditional knowledge, a genetic resource or expression of folklore belongs to, in accordance with customary laws and practices;
- “innovation” means a product derived from a traditional method or process, whether documented, recorded or in oral form, which introduces a change and includes an alteration, modification or improvement or any component of a biological resource or gene, enhanced use or value through the application of traditional knowledge;
- “intergenerational” means being or occurring between or across generations;
- “in-situ” means a condition in which a genetic resource is found in its natural habitat or ecosystem;
- “plant variety” includes cultivar, clone, landrace, hybrid or strain;
- “practice” means a traditional method or process or way of doing things, with regards to traditional knowledge, genetic resource or expressions of folklore;
- “prior informed consent” means the giving by a prospective user of traditional knowledge, a genetic resource or expression of folklore, complete information to a traditional community, individual or group and based on the information, the prior understanding and acceptance by a traditional community, individual or group to use their traditional knowledge, genetic resource or expression of folklore in accordance with this Act;

Act No. 15
of 2010

- “protected area ” means a geographic area that is protected in accordance with any other law;
- “ Register ” means the Register of Traditional Knowledge, Genetic Resources and Expressions of Folklore established and maintained in accordance with section *eleven* and includes the Register as maintained in electronic form;
- “ Registrar ” means the person appointed as Registrar in accordance with the Patents and Companies Registration Agency Act, 2010;
- “sustainable use ” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biodiversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations;
- “Swakopmund Protocol ” means the ARIPO Protocol on the Protection of Traditional Knowledge and Expressions of Folklore which came into force on the 9th August, 2010;
- “traditional community ” means a human population living in a distinct geographical area in Zambia which is the creator or recognised, according to customary laws and practices, as the creator and custodian of a traditional knowledge, genetic resource or expression of folklore and the words “community” and “local community” shall be construed accordingly;
- “ traditional context ” means knowledge, practices, know-how, learning, skill, process and method which traditionally or through custom and culture was or is developed, sustained and passed on from generation to generation within a traditional community or by individuals or groups in the community, and which forms part of a community’s cultural or spiritual identity and includes agricultural, medicinal knowledge and biodiversity-related knowledge;
- “ traditional knowledge ” means any knowledge, not limited to a specific subject area, technical or medical field associated with genetic resources, originating from a traditional community, individual or group that is the result of intellectual activity and insight in a traditional context and where the knowledge is embodied in the traditional lifestyle of a traditional community or is codified in knowledge systems and passed on from one generation to another;

“ traditional knowledge systems ” means the traditional knowledge of a traditional community, including the contributions made by such a community to the conservation of the environment, food security and sustainable agriculture, improvement in the health of populations, progress of science and technology, preservation and safeguarding of cultural heritage, development of artistic skills and enhancing diversity of cultural content and expressions of folklore and other artistic expressions;

“traditional method or process” means discoveries, innovations, practices and technologies made or used by a traditional community, individual or group which are usually not recorded in written form or otherwise and transmitted orally from one generation to another; and

“ user ” means any person or agent who obtains access.

3. (1) Despite anything to the contrary, this Act shall not apply to—

(a) the access, use and exchange of traditional knowledge, genetic resources and expressions of folklore by an owner or among traditional communities, as the case may be; and

(b) the sale of produce of biological resources for direct consumption that do not involve the use of genetic resources.

(2) An appropriate institution shall not be required to obtain authorisations, in accordance with this Act, to exploit traditional knowledge, genetic resources or expressions of folklore except that a Ministry or an appropriate institution shall not transfer the traditional knowledge, genetic resources or expression of folklore to a third person, commercially exploit or export the traditional knowledge, genetic resource or expression of folklore unless the Agency so authorises.

(3) Despite the other provisions of this Act, the use of traditional knowledge, genetic resources or expressions of folklore for educational, research and experimental purposes shall be exempt from the provisions of this Act.

Extent of
application
and
exemption

Extent of
protections,
benefits
and
principles

4. (1) This Act protects—
- (a) a holder against infringement of the holder's rights in relation to traditional knowledge, genetic resources and expressions of folklore;
 - (b) traditional knowledge and expressions of folklore against misappropriation, misuse and unlawful exploitation;
 - (c) an equitable balance between the rights and interests of holders and users;
 - (d) genetic resources found in-situ and ex-situ against misappropriation and illegal exploitation; and
 - (e) improper grant and exercise of intellectual property rights in traditional knowledge, genetic resources and expressions of folklore.
- (2) A holder shall have the right to institute legal proceedings against any person who acts contrary to subsection (1) without the prior informed consent of the holder, including all other rights, remedies and actions available to a holder as specified in this Act.
- (3) This Act shall not be construed as limiting or defining the diverse and holistic conceptions relating to traditional knowledge, genetic resources and expressions of folklore in the traditional context but shall be construed and enforced taking into account the dynamic and evolving nature of traditional knowledge, genetic resources and expressions of folklore.
- (4) A holder shall enjoy the following benefits and may exercise the following rights:
- (a) register transboundary traditional knowledge and expressions of folklore in accordance with the Swakopmund Protocol;
 - (b) be able to record with the Agency their genetic resources;
 - (c) be able to protect their intellectual property rights relating to traditional knowledge and expressions of folklore;
 - (d) be able to register their traditional knowledge and expressions of folklore with ARIPO and obtain benefits arising from the commercial use of such knowledge and folklore;
 - (e) be able to use the alternative dispute settlement procedures at ARIPO to settle disputes arising from traditional knowledge and expressions of folklore shared by different traditional communities across national boundaries; and

(f) give prior informed consent for use of information relating to traditional knowledge and expressions of folklore licenced with ARIPO.

(5) The following principles and concepts shall apply to, and be a basis for, access and use of, traditional knowledge, genetic resources and expressions of folklore:

(a) recognition of the social, cultural, spiritual, economic, intellectual, scientific, ecological, agricultural, medical, technological, commercial and educational value of, and respect for, traditional knowledge systems, traditional knowledge, genetic resources and expressions of folklore;

(b) responsiveness to the actual needs of holders by empowering them to exercise due control over their traditional knowledge, genetic resources and expressions of folklore;

(c) repression of misappropriation of traditional knowledge and other unfair and inequitable uses;

(d) protection and promotion of tradition based creativity and innovation and the transfer of technology to the mutual benefit of society, holders and users;

(e) support of traditional knowledge systems;

(f) promotion of benefit sharing;

(g) promotion of the use of traditional knowledge for a bottom up approach to development;

(h) prior informed consent;

(i) fair competition;

(j) use of the patent system to protect innovation in traditional knowledge, genetic resources and expressions of folklore;

(k) use of distinctive signs, including trade marks, collective marks, certification marks and geographical indications; and

(l) recognition of customary laws and practices which define how traditional communities develop, hold and transmit traditional knowledge, including the custodianship of traditional knowledge, genetic resources and expressions of folklore.

PART II

ADMINISTRATION

- Administration of Act by Agency and Registrar
- 5.** (1) The Agency is responsible for the administration of this Act.
- (2) The Registrar shall exercise the powers and perform the functions assigned to the Registrar by this Act.
- Functions of Registrar
- 6.** Without prejudice to the generality of section *five* and subject to the other provisions of this Act, the functions of the Registrar are to—
- (a) raise awareness, educate, guide, monitor, register, enforce and perform other activities related to the protection of traditional knowledge, genetic resources and expressions of folklore;
 - (b) collect, analyse and disseminate to holders and users information on access;
 - (c) advise and assist holders in enforcing their rights;
 - (d) where a dispute arises between a traditional community and a community outside Zambia, regarding ownership of traditional knowledge, genetic resources, or expressions of folklore, where applicable refer the dispute to a regional or an international body for resolution upon exhaustion of local remedies;
 - (e) monitor and ensure that access is carried out in accordance with this Act;
 - (f) prepare model access agreements and, where necessary, collect from users benefits on behalf of holders and other beneficiaries; and
 - (g) maintain registers and publish journals as required under this Act.
- Appointment of officers
- 7.** The Board shall appoint assistant registrars and such number of examiners and other officers as may be necessary for carrying out the provisions of this Act and who shall, subject to the control of the Registrar, have all the powers conferred by this Act on the Registrar.
- Non-warranty and non-liability
- 8.** An examination, investigation or any act undertaken in accordance with this Act shall not warrant the validity of such examination, investigation or act and no liability shall be incurred

by any member of the Board, Registrar or any other officer of the Agency by reason of, or in connection with, any examination, investigation, act or other consequent proceeding.

9. The Agency may delegate its powers and duties to an appropriate institution where the Agency considers it necessary and expedient to do so for the better implementation of this Act. Delegation of powers and duties of Agency

10. The seal of the Agency, kept in terms of the Patents and Companies Registration Agency Act, 2010, shall be used for the purposes of this Act and the impression made for such purposes shall be judicially noticed. Act No. 15 of 2010

11. There shall be established and maintained, at the Agency, a Register of Traditional Knowledge, Genetic Resources and Expressions of Folklore in which shall be entered— Register of Traditional Knowledge, Genetic Resources and Expressions of Folklore

(a) a clear and concise description of the traditional knowledge, genetic resources and expressions of folklore;

(b) the particulars of the applicants for registration of protected traditional knowledge, genetic resources and expressions of folklore and the particulars of the holders;

(c) particulars of access, permits, authorisation, licences or assignments granted for the exploitation of traditional knowledge, genetic resources and expressions of folklore;

(d) notices of all matters which are required by or under this Act to be entered in the register; and

(e) such other matters as the Registrar considers appropriate.

12. (1) Subject to this Act, the Register shall, on payment of a prescribed fee, be open to inspection by the public during prescribed hours. Inspection of Register and furnishing of information

(2) The Register shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered in it.

(3) Subject to this Act, the Registrar shall, on request of any person and on payment of the prescribed fee, furnish copies of any document lodged in, or any other particulars from, the Register.

13. (1) The Registrar shall arrange for the periodic publication of an Intellectual Property Journal on traditional knowledge, genetic resources and expressions of folklore that are protected in accordance with this Act and any matter which the Registrar may consider desirable relating to such matters. Intellectual Property Journal

(2) The Registrar may sell copies of the Intellectual Property Journal at such price and in such manner as the Board may approve.

PART III

TRADITIONAL KNOWLEDGE

Eligibility for protection of traditional knowledge

14. (1) Traditional knowledge shall be protected in accordance with this Act if it fulfils the following conditions:

- (a) it is generated, preserved and transmitted in a traditional and intergenerational context;
- (b) it is distinctively associated with a traditional community, individual or group;
- (c) it is integral to the cultural identity of a traditional community that is recognised as holding the knowledge through a form of custodianship, guardianship or collective and cultural ownership or responsibility, whether formally or informally, by customary laws and practices.

Formalities and measures for protecting traditional knowledge

15. (1) The protection of traditional knowledge shall not be as a result of registration or any other formality but shall subsist automatically from the time the knowledge is or was created.

(2) Notwithstanding subsection (1) and the existence of the Register, the Agency may, in the interest of transparency, evidence and the preservation of traditional knowledge, and subject to relevant policies, laws and procedures and the needs and aspirations of holders, establish and maintain various registers or other records on traditional knowledge.

(3) The registers established, in accordance with subsection (2), may be associated with specific forms of protection and shall not comprise the status of undisclosed traditional knowledge or the interests of holders in relation to undisclosed elements of their knowledge.

(4) Where a traditional community and a community outside Zambia share the same traditional knowledge, the Registrar shall register the holder of the traditional knowledge in the Register and maintain relevant records.

(5) A registration effected, in accordance with this Act, shall have a declaratory function and shall not involve or require the documentation, recording or public disclosure of the traditional knowledge but such registration may serve as evidence in legal proceedings as to the identity and legal status of the traditional knowledge as registered.

- 16.** (1) The beneficiary of traditional knowledge shall be the holder. Beneficiaries of traditional knowledge
- (2) A benefit derived by a traditional community shall be put to the common benefit of the traditional community.
- 17.** A holder has the exclusive right to— Rights of holder
- (a) authorise the exploitation of the holder’s traditional knowledge; and
- (b) prevent anyone from exploiting the holder’s traditional knowledge without the holder’s prior informed consent.
- 18.** (1) A user of traditional knowledge shall obtain the prior informed consent from a holder or, where the holder so requires, from the Agency who shall act on behalf of the holder. Exercise of rights
- (2) The Agency shall, in complying with subsection (1), act in accordance with the traditional decision-making and governance processes of the traditional community concerned.
- (3) Where the Agency collects any benefits, when acting on behalf of a holder as specified in subsection (1), it shall transmit the benefits to the holder together with any written document from the user relating to the amount paid or other benefits granted.
- (4) A contract evidencing prior informed consent shall be in writing and shall specify all details of the consent, including the concrete acts permitted, the duration of the uses which have been permitted, the circumstances of the use and the conditions for the consent, such as equitable remuneration or benefit sharing.
- (5) The Agency shall ensure the legality of a contract, specified in subsection (4), and generally provide the required assistance to a holder.
- (6) The Agency shall approve a contract specified in subsection (4).
- (7) A contract which is not in writing and approved by the Agency is void.
- (8) Where a particular element of traditional knowledge is claimed to be owned by several holders, the Agency shall publicly notify an applicant requiring access so as to enable all holders to make their claims.
- (9) Where there is uncertainty or a dispute as to which traditional community is the holder of a particular traditional knowledge and from which prior informed consent is to be obtained, the matter shall be resolved in accordance with the customary laws and practices of the traditional communities involved.

(10) For the purposes of subsection (1), the Agency may, on request by the holders or on its own volition, act as mediator in any matter specified in subsection (9).

(11) This section shall not affect a contract entered into before the coming into force of this Act.

Assignment and licensing

19. (1) A holder shall have the right to assign and may conclude an access agreement, except that traditional knowledge belonging to a traditional community may not be assigned.

(2) Any access, authorisation, assignment or licence granted in respect of traditional knowledge, that is protected in accordance with this Act, shall be in writing and if not so done is void.

(3) An access agreement, for the purpose of subsection (2), shall be approved by the Agency and if not so approved is void.

(4) The Agency shall keep a register of all authorisation, licences and assignments granted in accordance with this section.

Extent of benefit-sharing

20. (1) The protection extended to a holder includes benefit sharing arising from the commercial or industrial use of the holder's traditional knowledge as determined by an access agreement between the holder and user.

(2) The Court may, in the absence of an access agreement, as specified in subsection (1), determine the extent of benefit sharing in accordance with section *forty-two*.

(3) The right to benefit sharing may include non-monetary benefits, such as contributions to community development depending on the material needs and cultural preferences expressed by the traditional community.

Acknowledgement of holder

21. A person who uses traditional knowledge beyond its traditional context shall acknowledge the holder, indicate its source and, where possible, its origin and use the traditional knowledge in a manner that respects the cultural values of the holder.

Exceptions and limitations applicable to protection of traditional knowledge

22. The protection of traditional knowledge shall not be prejudicial to the continued availability of the traditional knowledge within the traditional context for the practice, exchange, use and transmission of the traditional knowledge by its holder.

Compulsory licence

23. (1) Where traditional knowledge, which is protected in accordance with this Act, is not being sufficiently exploited by the holder or where the holder refuses to grant access subject to

reasonable commercial terms and conditions, the Minister may, in the interest of public security or public health, grant a compulsory licence to fulfill a national need.

(2) The Minister shall fix an appropriate amount of compensation where a compulsory licence has been granted in accordance with subsection (1).

24. Traditional knowledge shall be protected for as long as the knowledge fulfils the protection criteria referred to in section *fourteen*, except that where traditional knowledge belongs exclusively to an individual, the protection given, in accordance with this Act, shall last for twenty-five years following the exploitation by the individual of the traditional knowledge beyond its traditional context.

Duration of protection of traditional knowledge

25. Any authorisation or licence given in accordance with this Part to access traditional knowledge that is protected, in accordance with this Act, that is associated with genetic resources shall not imply an authorisation to access the genetic resources derived from that traditional knowledge.

Access to traditional knowledge associated with genetic resources

PART IV

GENETIC RESOURCES

26. The ownership of genetic resources vests in, and shall be held by, the President on behalf of the Zambian people.

Ownership of genetic resources

27. Subject to this Act, a traditional community has the following rights over its genetic resources:

Rights of traditional community

(a) the exclusive right to regulate access to its genetic resources;

(b) an inalienable right to use its genetic resources;

(c) the exclusive right to share the benefits arising from the utilisation of its genetic resources; and

(d) the right to assign and conclude access agreements.

28. (1) Any access, authorisation, assignment or licence granted in respect of genetic resources shall be in writing and if not so done is void.

Assignments, licences, authorisation and access of genetic resources

(2) An access agreement, for purposes of subsection (1), shall be approved by the Agency and if not so approved is void.

(3) The Agency shall keep a register of all access agreements, authorisations, assignments and licences granted in accordance with subsection (1).

Right to regulate access to genetic resources

29. (1) The rights of a traditional community to regulate access to its genetic resources shall include the following:

- (a) the exclusive right to give prior informed consent for access to its genetic resources;
- (b) the right to refuse consent when it believes that the intended access shall be detrimental to the integrity of its cultural or natural heritage;
- (c) the right to withdraw or place restriction on any prior informed consent given for access to its genetic resources where the consent is likely to be detrimental to its socioeconomic life or natural or cultural heritage; and
- (d) the right to demand the restriction or withdrawal of any prior informed consent given by the Agency for access to its genetic resources where it is found that the prior informed consent is likely to be detrimental to its socioeconomic life or natural or cultural heritage.

(2) The Minister may, by statutory instrument, prescribe the conditions and procedures under which prior informed consent for access to genetic resources may be given.

Right to use

30. (1) A traditional community has an inalienable right to use or exchange with other traditional communities its genetic resources for sustaining its livelihood systems in accordance with customary laws and practices.

(2) A legal restriction shall not be placed on the traditional systems of a traditional community for the use and exchange of genetic resources, except where the holder refuses to grant a licence on reasonable commercial terms and conditions.

(3) Where a genetic resource is not being sufficiently exploited by the holder or the holder refuses to grant a licence subject to reasonable commercial terms and conditions the Minister may, in the interest of public security or public health, grant a compulsory licence to fulfill a national need.

(4) Where a compulsory licence has been granted, in accordance with subsection (3), the Minister shall fix an appropriate amount of compensation in the absence of an access agreement between the parties.

Protection of community rights

31.(1) The rights of a traditional community over its genetic resources shall be protected in accordance with this Act.

(2) The publication or oral description of a given genetic resource, the presence of the genetic resource in a gene bank or other conservation centre or the fact that it is in use shall not affect the protection of the genetic resource or the rights of a traditional community over the genetic resource.

32. (1) Without prejudice to section *three*, a person shall not access genetic resources unless prior informed consent of the concerned traditional community is given and the person is in possession of an access permit.

Conditions
to access and
export of
genetic
resources

(2) A traditional community may enter into an access agreement with a user.

(3) Subject to this Act, the granting of an access permit shall not be construed to constitute a permit to access traditional knowledge associated with genetic resources.

(4) A traditional community shall obtain a fair and equitable share from benefits arising from the utilisation of its genetic resources.

(5) A permit holder shall, when collecting genetic resources, be accompanied by an authorised person from the Agency or an appropriate institution designated by the Agency.

(6) Except with the approval of the Agency, research based on a genetic resource, accessed in accordance with this Part, shall be carried out in Zambia with the participation of Zambian citizens designated by the Agency.

(7) Where the Agency approves the undertaking of research on genetic resources outside Zambia, the institution sponsoring or hosting the research shall give a letter of assurance to the Agency agreeing to comply with the obligations, terms and conditions imposed by the Agency.

(8) Without prejudice to section *three*, a person shall not export genetic resources unless that person is in possession of an export permit granted by an appropriate institution.

33. (1) Subject to section *thirty-four*, a person may apply, in the prescribed manner and form, to the Agency for a permit to access genetic resources.

Application
and grant of
access
permit

(2) The Agency shall, in consultation with the appropriate institution, examine the application in accordance with the terms, conditions and procedures specified in regulations issued under this Act.

(3) The Agency shall grant an access permit to an application if it is satisfied that the application meets the requirements of this Act.

Grounds for denial of access to genetic resources

34. The Agency may deny access to genetic resources and refuse to grant an access permit to the applicant where the—

- (a) access requested is in relation to the genetic resource of an endangered species;
- (b) access may have adverse effects on human health or the cultural, economic or spiritual values of the traditional community;
- (c) access may cause an undesirable impact on the environment;
- (d) access may cause a danger to, or loss of, ecosystems;
- (e) applicant intends to use genetic resources for purposes contrary to law, morality or any treaty to which Zambia is a State Party;
- (f) traditional community denies consent; or
- (g) applicant has violated the conditions of access or an access agreement.

Special access permit and multilateral treaties

35. (1) Despite section *forty-one*, the Minister may, without following the procedure provided for in this Act and on such terms, conditions and obligations as the Minister may impose, grant a special access permit to a Zambian individual or higher institution of learning for purposes of development and academic research.

(2) Access to genetic resources under a multilateral treaty to which Zambia is a State Party shall be made in accordance with the terms, conditions and procedures prescribed by statutory instrument.

Obligations of access permit holder

36. An access permit holder shall have the following obligations:

- (a) to deposit a copy of the access permit with the relevant appropriate institution in the district where the genetic resource is to be collected and show the access permit on request;
- (b) not to deplete planting stock or wild species or remove significant genetic varieties from the local gene pool during collection;
- (c) where the genetic resource is to be collected from a protected area, to observe the rules and regulations

governing the protected area;

- (d) to deposit, with the Agency or an appropriate institution that has been designated by the Agency, a sample of the genetic resource collected, any data collected and a description of the genetic resource that has been accessed;
- (e) to observe the type and quantitative limits of the genetic resource permitted to be accessed;
- (f) to submit to the Agency or appropriate institution designated by the Agency, regular status reports of the research and, where the genetic resource is to be collected repeatedly, to do or cause to be done an environmental and socioeconomic impact assessment on the effects of the access and submit a report on these;
- (g) to inform, in writing, the Agency, or the appropriate institution designated by the Agency, of the findings of the research and development based on the genetic resource or traditional knowledge that has been accessed;
- (h) not to transfer the genetic resource or the traditional knowledge that has been accessed to any other third party or use the same for any purpose other than the purpose originally intended without first notifying and obtaining the written authorisation of the Agency;
- (i) to return any unused genetic resource to the traditional community at the end of the research or development or upon termination of the access agreement;
- (j) not to transfer to a third party the access permit or the rights and obligations for access without obtaining the prior written consent of the Agency or relevant appropriate institution and to observe the terms and conditions of the access agreement;
- (k) where the person seeks to acquire intellectual property rights over the genetic resource or part of the genetic resource that has been accessed, negotiate a new access agreement with the traditional community, except where this was included in the initial access agreement;

(l) recognise the locality where the genetic resource or traditional knowledge has been accessed in an application for protection of the product developed from the genetic resource;

(m) share the benefits derived from the utilisation of the genetic resource that has been accessed with the traditional community; and

(n) respect the customary laws and practices of the traditional community and any written laws relating to sanitary control, biosafety, plants and seeds and protection of the environment.

Exploration permit

37. Without prejudice to section *four*, a person shall not explore genetic resources unless the person is in possession of a valid exploration permit granted by the Agency.

Application for exploration permit

38. (1) A person may apply for an exploration permit by lodging an application, in the prescribed form and manner, with the Agency.

(2) An application for an exploration permit shall specify the—

(a) purpose of the exploration;

(b) the types of genetic resources to be explored;

(c) the locality where the exploration is to be conducted; and

(d) the time schedule for the exploration.

Grant of exploration permit

39. (1) The Agency shall, on receipt of an application, lodged in accordance with section *thirty-eight*, in consultation with the relevant appropriate institution and the holder, grant an exploration permit to the applicant.

(2) An exploration permit shall specify the—

(a) types of genetic resources to be explored;

(b) locality where the exploration shall take place;

(c) time schedule for the exploration; and

(d) the terms and conditions which the Agency considers necessary to impose in relation to the exploration.

(3) Where the Agency grants an exploration permit, it shall assign an officer or designate an appropriate institution to accompany the team or individual undertaking the exploration.

Obligations of exploration permit holder

40. An exploration permit holder has the following obligations:

- (a) to deposit a copy of the exploration permit with the relevant appropriate institution in the district where the exploration is to be undertaken;
- (b) to strictly observe the terms and conditions specified in the exploration permit;
- (c) to present, on completion of the exploration, to the Agency, or an appropriate institution designated by the Agency, a detailed report and plan of the exploration undertaken;
- (d) to show, on request by an appropriate institution or person having an interest in the property in which the exploration is being undertaken, the exploration permit;
- (e) to respect local customs, traditions, values and property rights in the locality where the exploration is being undertaken; and
- (f) to observe and comply with the Laws of Zambia.

PART V

ACCESS AGREEMENTS AND BENEFIT SHARING

- 41.** (1) Access to traditional knowledge and genetic resources shall, subject to the other provisions of this Act, be effected by way of an access agreement between the holder and permit holder. Access agreement
- (2) An access agreement shall contain the—
- (a) identity of the parties to the agreement;
 - (b) type and quantitative description of the genetic resource permitted to be accessed;
 - (c) description of the traditional knowledge permitted to be accessed or associated with the genetic resource to be accessed;
 - (d) locality where the genetic resource is to be collected or the person providing the genetic resource;
 - (e) institution with which the sample of the genetic resource or the description of traditional knowledge that has been accessed is to be deposited;
 - (f) intended use of the traditional knowledge or genetic resource;
 - (g) relationship between the access agreement and existing or future access agreements on the same genetic resource or traditional knowledge;

- (h) relevant institution designated by the Agency that is to participate in the collection of the genetic resource and monitor the implementation of the access agreement;
- (i) benefits the traditional community is to obtain from the use of the traditional knowledge or genetic resource;
- (j) duration of the access agreement;
- (k) dispute settlement mechanisms; and
- (l) obligations and privileges the access permit holder shall have under the access agreement.

(3) An access agreement may provide for collaborative research on genetic resources to be undertaken with any person, institution or the Agency.

Benefit sharing

42. (1) The nature and amount to be shared by a holder in the benefits derived from the exploitation of genetic resources or traditional knowledge shall be as provided in section *twenty* or may be determined on a case by case basis.

(2) The non-monetary benefits to be derived by a holder from the exploitation of genetic resources or traditional knowledge shall be specified in an access agreement taking into account the nature of benefits, except that the benefits derived by a traditional community from the utilisation of a genetic resource or traditional knowledge shall be put to the common benefit of the traditional community.

Types of benefits

43. The benefits to be derived by a holder from the exploitation of genetic resources or traditional knowledge shall include any or a combination of the following:

- (a) the license fee;
- (b) upfront payment;
- (c) milestone payment;
- (d) royalty;
- (e) research and development funding;
- (f) joint ownership of intellectual property;
- (g) employment opportunity;
- (h) participation of Zambian nationals, the Agency or appropriate institution designated by the Agency in the research, and development based on the genetic resource or traditional knowledge;

- (i) priority to supply raw materials of the genetic resource required for the production of products derived from the genetic resource;
- (j) access to products and technologies derived or developed from the genetic resource or traditional knowledge;
- (k) training, both at institutional and traditional community levels, to enhance local skills in genetic resources or traditional knowledge, and their conservation, evaluation, development, propagation and use;
- (l) provision of equipment, infrastructure or technological support; or
- (m) any other benefits as may be appropriate in relation to the genetic resource or traditional knowledge.

44. (1) The Agency may, in consultation with the appropriate institution, alter an access agreement and limit the size of the genetic resource to be accessed or put any other limitation, as appropriate, where it is recognised that access shall result in genetic erosion, degradation of the environment or violation of the cultural values of a traditional community or any other circumstances which cannot be easily averted.

Regulatory
measures
relating to
access
agreement

(2) The Agency shall, in consultation with the relevant appropriate institution and the holder, suspend or terminate an access agreement and prohibit access to the traditional knowledge or genetic resource, where—

- (a) an access permit holder has violated or fails to comply with any provision of this Act or the terms and conditions of an access agreement;
- (b) access causes risk or damage to genetic resources, the environment; or
- (c) affects the public interest.

(3) Where the Agency decides to alter, suspend or terminate an access agreement, in accordance with subsection (2), it shall communicate its decision to the holder and access permit holder.

45. (1) The Agency or an appropriate institution designated by the Agency shall monitor the execution of all access agreements through the following mechanisms:

Monitoring
of access
agreements
and research

- (a) inspections;
- (b) periodic progress and status reports by access permit holders;

(c) regular reports by any person or individual interested in the preservation, conservation or use of genetic resources, traditional knowledge and the environment; and

(d) any other mechanisms considered by the Agency or an appropriate institution.

(2) An access permit holder, institution or individual taking part in the collection of, and research based on, genetic resources and monitoring the implementation of an access agreement shall submit periodic reports to the Agency or an appropriate institution designated by the Agency on the collection, the progress of the research and the findings relating to the research.

(3) The Agency shall inform the holder of the progress of the research, findings from the search or utilisation of the genetic resources accessed and the benefits shared from the research or the utilisation of the genetic resources.

PART VI

EXPRESSIONS OF FOLKLORE

Protection
of
expressions
of folklore

46. The following protections shall apply to expressions of folklore, irrespective of the mode or form of expression:

(a) the output of creative and cumulative intellectual activity such as collective creativity or individual creativity where the identity of the individual is unknown; and

(b) characteristics of a traditional community's cultural identity and traditional heritage which has been developed, maintained or used by the community in accordance with customary laws and practices.

Formalities
and
measures
relating to
protection
of
expressions
of folklore

47. (1) The protection of expressions of folklore shall not be as a result of registration or any other formality but shall subsist automatically from the time the expression of folklore is, or was, created.

(2) Despite subsection (1), the Agency may, for purposes of evidence, take measures for the protection of expressions of folklore that may require certain categories of expressions that have been notified to the Agency, particularly those with special cultural or spiritual value or significance or that are sacred in character.

(3) A notification to the Agency, made in accordance with subsection (2), shall have a declaratory function and shall not in itself constitute a right or require the documentation, recording or public disclosure of the expression of folklore.

(4) Where a traditional community and a community from outside Zambia share the same expression of folklore, the Registrar shall register the holder of the expression of folklore within the Republic and maintain a record of such holding in the Register.

48. The beneficiary of an expression of folklore shall be the traditional community—

Beneficiary
of
expressions
of folklore

(a) to whom the custody and protection of the expression of folklore is entrusted in accordance with customary laws and practices; and

(b) who maintains and uses the expression of folklore as a characteristic of its traditional cultural heritage.

49. (1) An expression of folklore shall be protected against misappropriation, misuse and unlawful exploitation.

Protection
of
expressions
of folklore
against
unlawful
acts

(2) Despite the generality of subsection (1), the following acts are prohibited, except with the prior informed consent of the traditional community:

(a) in respect of expressions of folklore other than words, signs, names and symbols—

(i) the reproduction, publication, adaptation, broadcasting, public performance, communication, distribution, rental, making available to the public and fixation of the expression of folklore or any derivative of the expression of folklore;

(ii) any use of the expression of folklore or adaptation of the expression of folklore which does not acknowledge, in an appropriate manner, the traditional community as the source of the expression of folklore or any derivative of the expression of folklore;

(iii) any distortion, mutilation or other modification of, or other derogatory action in relation to, the expression of folklore; and

- (iv) the acquisition or exercise of intellectual property rights over the expression of folklore or adaptations to the expression of folklore;
 - (b) in respect of words, signs, names and symbols, any use of the expression of folklore, derivative of the expression of folklore or acquisition or exercise of intellectual property rights over the expression of folklore or derivative which disparages, offends or falsely suggests a connection with a traditional community or brings a traditional community into contempt or disrepute.
- (3) The following acts are prohibited in relation to the use and exploitation of expressions of folklore:
- (a) any distortion, mutilation or other modification of, or other derogatory action in relation to, an expression of folklore;
 - (b) false, confusing or misleading indications or allegations which, in relation to goods or services, refer to, draw upon or evoke the expression of folklore of a traditional community or suggests any endorsement by, or linkage with, that community; and
 - (c) use or exploitation for gainful intent without equitable remuneration or benefit sharing on terms determined and agreed with the traditional community or, in default, as determined by the Agency in consultation with the traditional community.

Exceptions
and
limitations
for
protection of
expressions
of folklore

- 50. (1)** The protection of expressions of folklore shall—
- (a) be such as not to restrict or hinder the normal development, use, exchange, dissemination and transmission of expressions of folklore, within the traditional context, by members of the traditional community as determined by customary laws and practices;
 - (b) extend only to uses of expressions of folklore taking place outside the traditional context, whether or not for commercial exploitation; and
 - (c) be subject to exceptions which relate to non-commercial uses, such as education, research, personal or private use, criticism, review, reporting of current events, legal proceedings, the making of recordings and reproductions for inclusion in an archive or inventory exclusively for the purposes of safeguarding cultural heritage and other incidental uses.

(2) The uses of expression of folklore referred to in subsection (1) shall be compatible with fair competition and practice, acknowledgment of the traditional community as the source of the expression of folklore and not be offensive to the traditional community.

51. An expression of folklore shall be protected against all acts of misappropriation, misuse or exploitation for as long as the expression of folklore fulfills the protection criteria set out in section *forty-six*.

Duration of protection of expressions of folklore

52. (1) A holder of an expression of folklore shall have the right to conclude a licensing agreement.

Licensing agreements

(2) An authorisation, assignment or licence granted in respect of an expression of folklore shall be granted in accordance with a licensing agreement or is void, except that an expression of folklore belonging to a traditional community may not be assigned.

(3) A licensing agreement, drawn up for the purpose of subsection (2), shall be approved by the Agency or the agreement is void.

(4) Despite subsections (1), (2) and (3), the Agency may grant authorisation to exploit expressions of folklore.

(5) Where the Agency grants an authorisation in accordance with subsection (4)—

(a) the authorisation shall comply with the scope of protection provided for the expression of folklore and shall in particular provide for benefit sharing;

(b) any uncertainty or dispute with which a traditional community is concerned, shall be resolved, as far as possible, in accordance with customary laws and practices; and

(c) any monetary or non-monetary benefits arising from the use of the expression of folklore shall be transferred, by the Agency, directly to the traditional community.

(6) The Agency shall keep a register of all licencing agreements approved by the Agency in accordance with this section.

53. (1) The owner of an expression of folklore shall be entitled to the sharing of benefits arising from the commercial or industrial use of the expression of folklore as determined by mutual agreement between the owner and the user.

Benefit sharing relating to expressions of folklore

(2) The court may, in the absence of a mutual agreement, as specified in subsection (1), determine the benefit sharing.

(3) The right to benefit sharing may extend to non-monetary benefits such as contributions to community development, depending on the material needs and cultural preferences expressed by a traditional community.

PART VII

GENERAL AND ENFORCEMENT PROVISIONS

Evidence of certain entries and documents

54. (1) A certificate purporting to be signed by the Registrar and certifying that an entry, which the Registrar is authorised by or under this Act to make, has or has not been made, or that any other thing which the Registrar is so authorised to do, has or has not been done, shall be *prima facie* evidence of the matters so certified.

(2) A copy of any entry in the Register or any other register maintained in accordance with this Act or any document or an extract from the Register or any such register or document, certified by the Registrar shall be admitted in evidence without further proof and without production of the original.

Requests for information

55. Subject to this Act, the Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any document which is open to public inspection and which is lodged in the register or any other register, maintained in accordance with this Act, or furnish a certificate in respect of the document.

Proceedings before Registrar

56. (1) The Registrar has the power to hold proceedings for purposes of the determination of a dispute under this Act.

(2) Subject to this Act, evidence in any proceedings before the Registrar shall be given by affidavit, except that the Registrar may, if the Registrar considers it appropriate in any particular case, take oral evidence on oath in lieu of, or in addition to, the evidence given by affidavit and may allow a witness to be cross-examined on the affidavit or oral evidence.

(3) In all proceedings before the Registrar, the Registrar has power to award to any party such costs as the Registrar may consider reasonable and to direct how and by what party they are to be paid.

(4) Where there is no agreement as to costs, the costs shall be taxed by the High Court and payment may be enforced in the same manner as if they were costs allowed by the High Court.

- 57.** The powers, rights and privileges of the Registrar in proceedings before the Registrar under this Act shall be the same as those conferred upon commissioners by the Inquiries Act and the provisions of that Act shall, with the necessary modification, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before the Registrar. Registrar's powers in obtaining evidence
Cap. 41
- 58.** Except where there is reasonable cause to do so, any person appearing before the Registrar who refuses to be sworn or to make an affirmation or refuses to answer any question lawfully required to be answered or fails to produce any document or thing that is required to be produced, commits an offence. Refusing to give evidence
- 59.** The Registrar shall not, in the discharge of any function or exercise of any power, be bound by the rules of evidence or by rules of procedure of any court and may conduct proceedings in such manner as the Registrar considers appropriate and admit any evidence, written or oral, whether or not such evidence would be admissible in civil or criminal proceedings. Rules of evidence or procedure
- 60.** The Registrar may fix the time and place at which proceedings held before the Registrar may take place. Time and place of sitting
- 61.** If, due to circumstances beyond the control of a person, a relevant act that is required, by this Act, to be done within a prescribed time is not or cannot be done within that time, the Registrar may, on application by the person, extend the time for doing the act. Extension of time
- 62.** Where the Registrar is required, as provided in this Act, to do any act or thing and no time or period is provided within which the act or thing is to be done, the Registrar is to do the act or thing as soon as practicable. Registrar to act as soon as practicable
- 63.** Any action or proceeding relating to the infringement of a right provided for in this Act shall be brought before the High Court. Infringement of rights
- 64.** (1) Where a person is not satisfied with the decision of the Registrar, the person may appeal against the decision to the High Court. Appeals
- (2) Subject to this Act, an appeal against a decision of the Registrar shall be brought within three months after the date of the receipt of the decision or within such further time as the High Court may allow.

References
to High
Court

65. When any matter, that is to be decided by the Registrar, appears to involve a complex point of law, the Registrar may, after giving notice to the parties, refer the matter to the High Court for determination and the Registrar shall act in accordance with the decision of the High Court.

Assessors
to appear in
High Court

66. In any proceeding before the High Court, the court may call assessors who are experts in intellectual property or the relevant field.

Responsibilities
of traditional
communities

67. A traditional community shall—

- (a) prohibit any person who does not belong to the traditional community from using its traditional knowledge, genetic resources and expressions of folklore beyond their traditional context without prior informed consent;
- (b) prohibit any person who does not belong to the traditional community from exploring, exploiting, accessing, collecting or taking genetic resources from its locality without prior informed consent; and
- (c) require any person who does not belong to the traditional community and who is accessing genetic resources from its locality to produce an access permit and, where the person fails to do so, inform the Agency or any other appropriate institution immediately.

Responsibilities
of customs
offices

68. A customs officer shall—

- (a) inspect and verify that a genetic resource being exported is accompanied by an export permit granted by an appropriate institution;
- (b) require any person who is leaving the country and who is transporting or is in possession of genetic resources, to produce the necessary permits issued by the Agency or appropriate institution;
- (c) seize any genetic resource that a person intends to export without an export permit and immediately report the matter to the nearest appropriate institution and the Agency;
- (d) seize any material incorporating traditional knowledge, genetic resources or expressions of folklore that a person intends to export without the necessary permits granted by the Agency or appropriate institution; and

(e) ensure that a statement is written on the package of a biological resource product, that is being exported, indicating the use of the genetic material contained in the product.

69. (1) Any application, notice or document authorised or required, in accordance with this Act, to be lodged, made or given at the Agency, to the Registrar or to any other officer may be delivered by hand or sent by registered post or lodged electronically.

Lodging and authentication of documents

(2) An authentication shall not be required in respect of any document lodged at the Agency.

70. All monies necessary for the administration and implementation of this Act shall be paid out of monies appropriated for the purpose by Parliament.

Expenses relating to administration

71. Any person who—

General offences

(a) provides false information in an access or exploration application or in the course of the monitoring of an access permit, access agreement, licensing agreement or exploration permit;

(b) changes the purpose of access specified in an access agreement without obtaining the approval of the Agency or appropriate institution;

(c) accesses genetic resources or traditional knowledge without obtaining an access permit;

(d) explores genetic resources without obtaining an exploration permit;

(e) does not belong to the traditional community but uses or exploits traditional knowledge, genetic resources or expressions of folklore beyond their traditional context without prior informed consent;

(f) makes or causes to be made a false entry in a register or the Register, or any document purporting it to be a copy of an entry in the register or Register or produces or tenders or causes to be produced or tendered in evidence any such document, knowing the entry or document to be false;

(g) alters or defaces or partly removes, erases or obliterates any document issued by the Registrar;

(h) makes or submits a false statement or representation, whether orally or in writing, to the Registrar or Agency

knowing the same to be false;

- (i) having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act and who on becoming aware that such statement or representation was false, fails to advise the Registrar forthwith of such falsity;
- (j) after having been sworn, willfully gives false evidence before the Registrar knowing such evidence to be false or not knowing or believing it to be true;
- (k) aids, abets, counsels or procures the commission of an offence or is in any way directly or indirectly a party to the commission of an offence; or
- (l) otherwise breaches any other provision of this Act;

commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

General
penalty

72. A person who contravenes any provision of this Act where no specific penalty has been provided shall be liable, on conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

Regulations

73. (1) The Minister may, by statutory instrument, make regulations prescribing anything which is required to be prescribed and generally for the better carrying out of, or giving effect to, the purposes of this Act.

(2) Without derogating from the generality of subsection (1), regulations made by the Minister may provide for—

- (a) administrative requirements or any necessary details for the implementation of this Act and any relevant international treaty or convention to which Zambia is a State Party;
- (b) procedures for applications for any permit or licence required under this Act;
- (c) forms to be used for purposes of this Act;
- (d) fees to be charged for purposes of this Act;
- (e) benefit sharing;
- (f) development, improvement or the use of new types of genetic resources; and

(g) preventive mechanisms aimed at protecting traditional knowledge, genetic resources and expressions of folklore.

74. The transitional provisions set out in the Schedule shall apply for purposes of this Act. Transitional provisions

SCHEDULE

(Section *seventy-four*)

TRANSITIONAL PROVISIONS

1. (1) Any access agreement made prior to the commencement of this Act shall be revised and harmonised with this Act. Previous access

(2) Any access authorised prior to the commencement of this Act shall be suspended and the process for access as provided in this Act shall be followed.

2. Any exploitation and dissemination of traditional knowledge being undertaken prior to the commencement of this Act shall, subject to equitable treatment of the rights and interests acquired by third parties through prior use in good faith, be continued under this Act and shall, within six months of the commencement of this Act, comply with this Act. Previous exploitation and dissemination of traditional knowledge

3. Any use of expressions of folklore that existed prior to the commencement of this Act shall, subject to equitable treatment of the rights and interests acquired by third parties through prior use in good faith, be continued and shall, within six months of the commencement of this Act, comply with this Act. Previous use of expressions of folklore
