Legal Protection for Indigenous Knowledge using the National Recordal System





INTRODUCTION

- Overview of the IK Bill
- Specific clauses relating to Registration
- Video of the NRS
- The NRS system
- IP and Documentation





Focus of the Bill

The Bill addresses the following concerns:

- Bio piracy
- Misappropriation
- Promotes registration of Indigenous Knowledge
- Recognises prior learning of practitioners
- Benefit sharing for communities
- Facilitates research and development
- Creates mechanisms for dispute resolution for the communities





Clause 17: Registration office

 Provides for the establishment of a Registration Office for indigenous knowledge.

Clause 18: Curator

 Provides for the appointment of a Curator of indigenous knowledge who will be responsible for the control of the Registration Office.

Clause 19: **Registration Maintenance**

 Provides for the creation and maintenance of a system of registration of indigenous knowledge by NIKSO,



Clause 20: Registration of IK

 Provides for a trustee to apply to the Curator for the registration of indigenous knowledge. Under this sub-clause the Curator may approve or deny the application subject to any conditions or limitations, or reject the application if it does not meet the criteria set out in Clause 11.

Clause 21: Inspection of Register

 Provides for the Curator to make the Register available for inspection to the public. However, documents relating to the registration of indigenous knowledge may only be made available, if the person seeking access enters into a prescribed non-disclosure agreement.





Clause 22: Certificate

 Provides for a certificate issued by the Curator, in respect of any record, as evidence of the content

Clause 23: Register as Notice

 Provides for the Register to be a constructive notice in any proceedings regarding the rights registered in respect of indigenous knowledge.





Clause 24: Amendment of Register

 Provides for an interested person applying to amend the Register in the prescribed manner, upon application and after granting the indigenous community an opportunity to make representations in response to the application the Curator must amend the Register. In addition, an entry in the Register must be amended in accordance with any finding by a court.

Clause 25: Commercial Utilisation

 Provides for the facilitation and coordination by NIKSO of all indigenous knowledge activities, which relate to the commercial utilisation of indigenous knowledge products, services and processes.



Clause 26: Licence Application

- Affords opportunities for any person who intends to use indigenous knowledge for commercial purposes to apply in the prescribed manner for a licence authorising the use of that indigenous knowledge; and
- Enter into a licence agreement with the trustee of the relevant indigenous community for the use of that indigenous knowledge.
- In addition, the sub-clause provides for exceptions and limitation relating to access to the indigenous knowledge including acknowledgement by users of indigenous knowledge or the geographical location from which the indigenous resources originated.



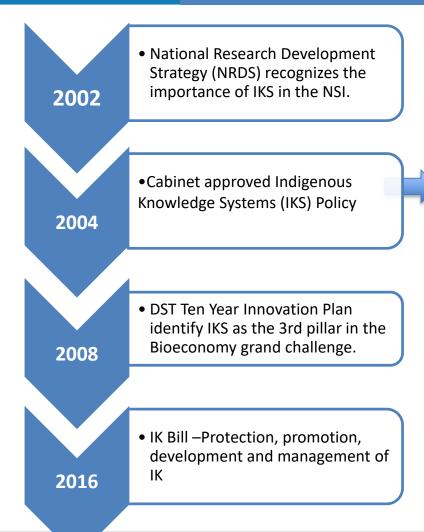


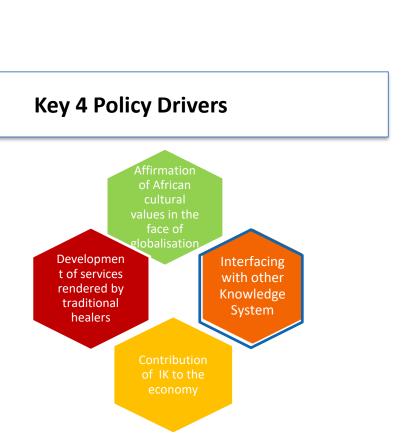
NATIONAL RECORDAL SYSTEM





Ther Policy landscape









The National Recordal System

A proudly South African initiative that records, documents, preserves and protects indigenous knowledge for the benefit of the communities of South Africa.

- The NRS records unrecorded IK in various multi-media formats.
- Collects grassroots community knowledge in local languages
- Supported by the National Indigenous Knowledge Management System (NIKMAS).

Objectives

- Preservation
- Protection
- Promotion of IK and Communities:
- Development of IK and communities
- Management of IK

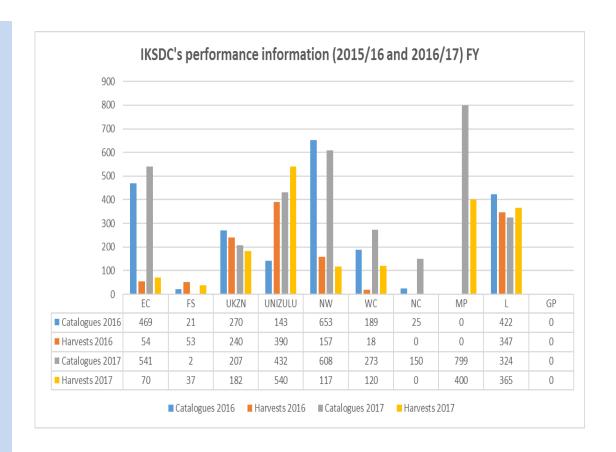




Theme NRS landscape and status

The NRS is being implemented through Indigenous Knowledge Systems Documentation Centres. (IKSDCs). IKSDCs are provincial hubs in which knowledge of local people can be documented, recorded, verified, stored, managed and promoted. Currently IKSDC have been established all the 9 provinces:

- •Eastern Cape
- •Free State
- Gauteng
- •KwaZulu-Natal
- Limpopo
- •Mpumalanga
- Northern Cape
- North West
- Western Cape



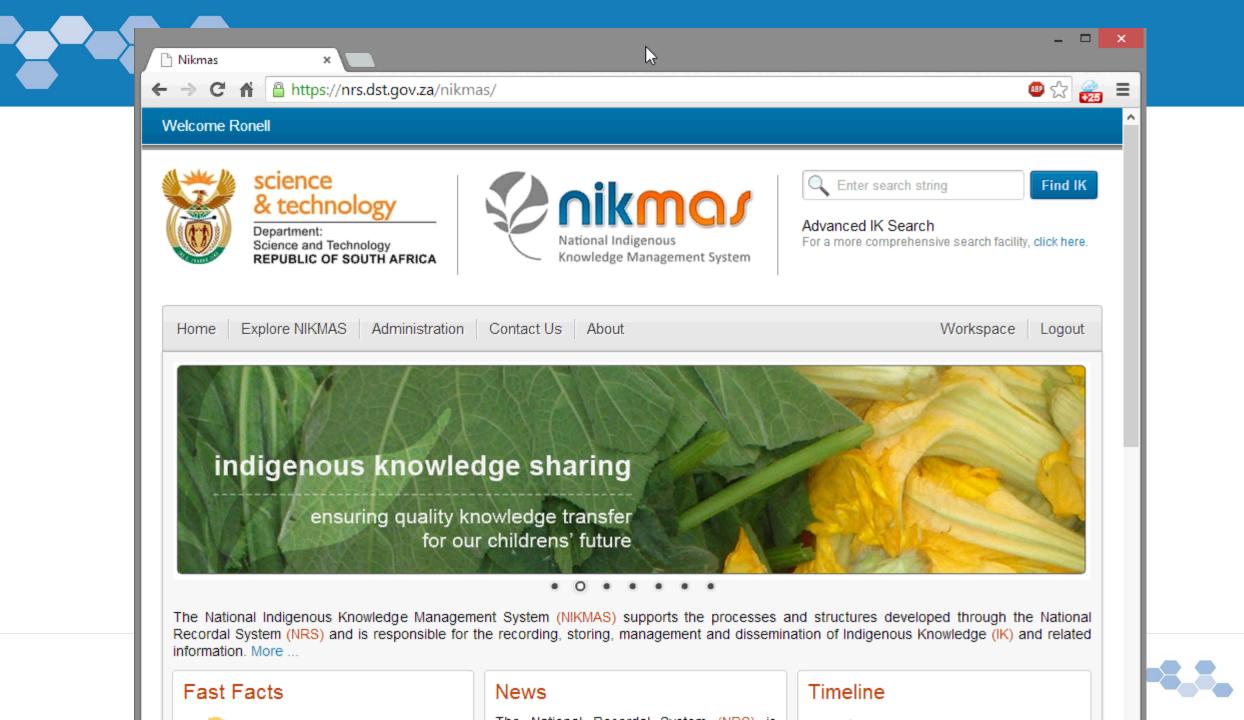




Theme Pharmacopeia

- The Pharmacopoeia is a database with information on the use, quality, efficacy and safety of traditional African medicines in South Africa.
- Draws on published resources on plants, its botanical distribution and its uses for medicinal purposes
- Holds 185 commonly used South African plants including fynbos including monographs, 1536 journals articles, 269 South African theses, and conference papers.
- Links to, and harmonized with international standards -International Classification of Diseases (ICD-10) and the WIPO International Patent Classification (IPC) referencing system.
- Each plant linked to the South African National Biodiversity Institute (SANBI) website to provide current information on the conservation status of each plant.







IP Protection of IK using the NRS



Residives Protection

- The NRS establishes legal rights.
- Documentation of the information/knowledge puts the public on notice that the registrant has legal rights.
- The documentation in the NRS has positive rights.
- Panama established a special registry through legislation designed to help communities gain property rights over traditional knowledge. Rights over TK under this law are not recognized until knowledge is registered in the national Collective Register for Intellectual Property administered by the Dirección Nacional de Derechos de Auto.
- Peru has a sui generis regime for traditional knowledge that establishes registers to preserve and safeguard TK, and to provide the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOPI) information necessary to defend the interests of communities. indigenous peoples.



DEFISIVE MECHANISM

- The NRS is particularly useful for defensive protection of IK.
- The NRS also seeks to protect IK from biopiracy or any other acts of misappropriation using the patent system. This will be placed in online for access in formats useful to patent examiners. Information simply stored in NRS, even if publicly accessible, may not be searchable or useable to patent examiners.
- As a defensive anti-appropriation strategy, the NRS will serve as a hub to the South African patent office as well as international patent offices.
- In essence, the NRS will be used by patent examiners to search for prior art in order to determine whether the claims of a patent application are novel and inventive.
- Presently, our Patent Office practices a formal or depository system that offers only simple prior art searches. The implication is that since there is no examination of the substantive novelty and inventiveness of patent applications prior to the granting of patents in the country.
- NRS will equally be important for prior art searches by patent attorneys before the filing of patent application in SA in order to minimise the chances of revocation of the resulting patent.

