

Annex 2 | *Relevant Law*

Protection of Traditional Knowledge and Expressions of Cultural Act
National Cultural Property (Preservation) Act

Protection of Traditional Knowledge and Expressions of Cultural Act 2010

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2010.

A BILL for AN ACT

entitled

Protection of Traditional Knowledge and Expressions of Culture Act 2010,

Being an Act to protect and promote the traditional knowledge of the people of Papua New Guinea and the expressions of culture for the benefit of present and future generations, and for related purposes.

MADE by the National Parliament to come into operation upon certification by the Speaker of the National Parliament.

PART I.-PRELIMINARY.

Division 1. - Compliance with Constitutional Requirements.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution* (Qualified Rights), namely-

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to stand and vote for public office conferred by Section 50 of the *Constitution*; and
- (e) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (f) the right to the freedom of movement conferred by Section 52 of the *Constitution*, is a law that is made for the purpose of giving

effect to the national interest, and public safety and public welfare.

(2) For the purposes of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*, the purpose of protecting and maintaining the cultural properties of the people of Papua New Guinea is a public purpose.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

2. Interpretation.

In this Act unless the contrary intention appears—“Authority” means the Cultural Authority designated under Section 6; “authorized user agreement” means a written agreement entered into under Division 3 or 4 of Part 4; “customary use” means the use of traditional knowledge or expressions of culture in accordance with customary laws and practices of the traditional owners; “derivative work” means any intellectual creation or innovation based upon or derived from traditional knowledge or expressions of culture; “derogatory treatment” in relation to traditional knowledge or expressions of culture, includes any act or omission that results in a material distortion, mutilation or alteration of the traditional knowledge or expressions of culture that is prejudicial to the honour or reputation of the traditional owners, or the integrity of the traditional knowledge or expressions of culture; “moral rights” are the rights mentioned in Section 18; “prescribed” means prescribed by the Regulations made under this Act; “sacred-secret” means any traditional knowledge or expressions of culture that have a secret or sacred significance according to the customary law or the practices of the traditional owners concerned; “traditional cultural rights” are the rights mentioned in Section 13(2) and (3); “traditional knowledge” includes any knowledge that generally-

- (a) is or has been created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and
- (b) is or has been transmitted from generation from generation to generation; and
- (c) is regarded as pertaining to a particular traditional group, clan or community of people in Papua New Guinea; and
- (d) is collectively originated and held;

“traditional owners” of traditional knowledge or expressions of culture means-

- (e) the group, clan or community of people; or
- (f) the individual who is recognized by a group, clan or community of people as the individual owner; or
- (g) the family which is recognized by a group, clan or community of people as the family owner, in whom the custody or protection of the traditional knowledge or expressions of culture is entrusted in accordance with the customary law and practices of that group, clan or community; “this Act” includes the Regulations.

3. APPLICATION OF ACT.

(1) This Act applies to-

- (a) the State; and
- (b) all natural persons, whether resident in the country or not; and
- (c) all corporations, whether incorporated or carrying on business in the country or not.

(2) The provisions of this Act shall apply to all matters relating to traditional knowledge and expressions of culture in the country.

Division 2. - Objectives and Principles.

4. OBJECTIVES OF THE ACT.

The objectives of this Act are-

- (a) to provide for the protection of traditional knowledge; and
- (b) to provide for the protection of expressions of culture; and
- (c) to promote the expressions of culture; and
- (d) to protect the owners, holders and users of traditional knowledge
- (e) to safeguard traditional knowledge and expressions of culture; and
- (f) to provide a means for carrying into effect obligations under any international treaty or convention relating to traditional knowledge and expressions of culture to which Papua New Guinea is a party.

5. Principles Relevant to the objectives of the act.

To achieve the objectives of the Act, all persons exercising functions, powers, and duties under the Act shall recognize and take into account the following principles-

- (a) the protection of rights of traditional knowledge owners,

- holders and users; and
- (b) the promotion of the full expressions of culture; and
- (c) the active and full participation of traditional owners of traditional knowledge in the development of the country.

PART II. – ADMINISTRATION.

Division 1. - Cultural Authority.

6. DESIGNATION OF CULTURAL AUTHORITY.

The National Executive Council may on the advice of the Minister designate the body responsible for the identification, protection and management of cultural properties as the Cultural Authority for the purposes this Act.

7. objectives of the cultural authority.

The objects of the Authority are-

- (a) to provide protection for traditional knowledge owners holders and users of traditional knowledge
- (b) to encourage, promote and strengthen traditional knowledge and expressions of culture; and
- (c) to provide for the regulation of the use of expressions of culture; and
- (d) to establish working relationship and collaboration with the government agencies responsible for culture; and
- (e) to collaborate with non-governmental organizations and international agencies involved in the protection, promotion, safeguarding, development and preservation of traditional knowledge and expressions of culture; and
- (f) to do all things that may be deemed necessary to implement the policy and provisions of this Act.

Division 2. - Functions and Powers of the Cultural Authority, etc.

8. FUNCTIONS OF THE AUTHORITY.

(1) The functions of the Authority include-

- (a) to advise the Minister on any matters relating to the objects of this Act; and
- (b) to receive and process applications under Part 4; and
- (c) to coordinate the negotiations and execution of authorized

- user agreements between potential users and owners of traditional knowledge and expressions of culture; and
- (d) to monitor compliance with authorized user agreements and to advise traditional knowledge owners of any breaches of such agreements; and
 - (e) to develop protocols for:-
 - (i) access to traditional knowledge and expressions of culture; and
 - (ii) use of traditional knowledge and expressions of culture; and
 - (iii) management of traditional knowledge and expressions of culture; and
 - (f) to strengthen the role of traditional knowledge owners in society; and
 - (g) to liaise with regional bodies in relation to matters under this Act; and
 - (h) to maintain links with international organizations that deal with traditional knowledge and expressions of culture issues in other countries; and
 - (i) to promote research on traditional knowledge and Expressions of culture; and
 - (j) to do all that may be deemed necessary to implement the policy and provisions of this Act.

(2) The Authority may in writing delegate or withdraw all or any of its functions under this Act to

- (a) a competent national agency; or
- (b) a Provincial Government; or
- (c) a Local-level Government.

9. Powers and duties of the authority.

(1) The powers and duties of the Authority are-

- (a) to formulate and issue technical and procedural rules in relation to:
 - (i) the protection; and
 - (ii) the promotion; and
 - (iii) the preservation; and
 - (iv) safeguarding, of traditional knowledge and expressions of culture; and
- (b) to issue permits and licences required under the Act; and
- (c) to protect the owners, holders and users of traditional knowledge and expressions of culture; and
- (d) to promote the lawful expressions of culture; and

- (e) to safeguard the traditional knowledge and expressions of culture; and
- (f) to prosecute offences under this Act; and
- (g) to enforce the provisions of this Act.

(2) The Authority has the power to do all things necessary to be done in connection with the performance of its powers and duties under the Act and any other enactment.

Division 3. - Committees.

10. ESTABLISHMENT OF COMMITTEES.

- (1) The Authority may establish such Committees as the Authority considers necessary for the purposes of the Act.
- (2) The Authority may–
 - (a) appoint persons (including members of the Authority) to be members of the Committees; and
 - (b) prescribe the powers, functions and procedures of the Committees.
- (3) A member of a Committee shall be paid such fees and allowances as are determined under the *Board (Fees and Allowances) Act 1955*.

PART III.- TRADITIONAL CULTURAL RIGHTS.

11. HOLDERS OF TRADITIONAL CULTURAL RIGHTS.

The traditional owners of traditional knowledge or expressions of culture are the holders of the traditional cultural rights in the traditional knowledge or expressions of culture

12. MEANING OF CULTURAL RIGHTS.

- (1) Traditional rights are the rights set out in Subsections (2) and (3).
- (2) The following uses of traditional knowledge or expressions of owners in accordance with Section 25(1) or 26(3)-
 - (a) to reproduce the traditional knowledge or expressions of culture; and
 - (b) to publish the traditional knowledge or expressions of culture; and

- (c) to perform or display the traditional knowledge or expressions of culture in public; and
- (d) to broadcast the traditional knowledge or expressions of culture to the public by radio, television, satellite, cable or any other means of communication; and
- (e) to translate, adapt, arrange, transform or modify the traditional knowledge or expressions of culture; and
- (f) to fixate the traditional knowledge or expressions of culture through any process such as making a photograph, film or sound recording; and
- (g) to make available online or electronically transmit to the public (whether over a path or a combination of paths, or both) traditional knowledge or expressions of culture; and
- (h) to create derivative works; and
- (i) to make, use, offer for sale, sell, import, or export traditional knowledge or expressions of culture or products derived from traditional knowledge or expressions of culture; and
- (j) to use the traditional knowledge or expressions of culture in any other material form, if such use is a non-customary use (whether or not of a commercial nature).

(3) To avoid doubt, the traditional owners are entitled to use traditional knowledge or expressions of culture in the ways mentioned in Subsection (2) in the exercise of their traditional cultural rights.

(4) Subsection (2) does not apply to the use of traditional knowledge or expressions of culture for any of the following-

- (a) face to face teaching; or

- (a) criticism or review; or
- (b) reporting news or current events; or
- (c) judicial proceedings; or
- (d) incidental use.

(5) A user of traditional knowledge or expressions of culture mentioned in paragraphs (4)(a) to (d) must make sufficient acknowledgement of the traditional owners by mentioning them or the geographical place from which the traditional knowledge or expressions of culture originated.

13. MATERIAL FORM NOT REQUIRED.

Traditional cultural rights exist in traditional knowledge and expressions of culture whether or not that traditional knowledge or those expressions of culture are in material form.

14. DURATION.

Traditional cultural rights continue in force in perpetuity.

15. TRADITIONAL CULTURAL RIGHTS INALIENABLE.

Traditional cultural rights are inalienable.

16. ADDITIONAL RIGHTS.

The traditional cultural rights in traditional knowledge and expressions of culture are in addition to, and do not affect, any rights that may subsist under any law relating to copyright, trademarks, patents, designs or other intellectual property.

17. DERIVATIVE WORKS.

- (1) Any copyright, trademark, patent, design or other intellectual property that exists in relation to a derivative work vests in the creator of the work or as otherwise provided by the relevant intellectual property law.
- (2) If a derivative work, traditional knowledge or expressions of culture are to be used for a commercial purpose, the authorised user agreement must-
 - (a) contain a benefit sharing arrangement providing for equitable monetary or non-monetary compensation to the traditional owners; and
 - (b) provide for identification of the traditional knowledge or expressions of culture on which the derivative work is based in an appropriate manner in connection with the exploitation of the derivative work by mentioning the traditional owners or the geographical place from which it originated; and
 - (c) provide that the traditional knowledge or expressions of culture in the derived work will not be subject to derogatory treatment.

PART IV.- MORAL RIGHTS.

18. MEANING OF MORAL RIGHTS.

- (1) The traditional owners of traditional knowledge or expressions of \

culture are the holders of the moral rights in the traditional knowledge or expressions of culture.

- (2) The moral rights of the traditional owners of the traditional knowledge or expression of culture are
 - (a) the right of and expressions of culture; and
 - (b) the right not to have ownership of traditional knowledge or expressions of culture falsely attributed to them; and
 - (c) the right not to have their traditional knowledge and expressions of culture subject to derogatory treatment.
- (3) The moral rights of traditional owners in their traditional knowledge and expressions of culture exist independently of their traditional cultural rights.
- (4) Moral rights continue in force in perpetuity and are inalienable, and cannot be waived or transferred.

PART V.- OBTAINING FREE, PRIOR, INFORMED AND FULL CONSENT FROM TRADITIONAL OWNERS.

Division 1. - General.

19. PROCEDURE FOR OBTAINING FREE, PRIOR, INFORMED AND FULL CONSENT.

This Part sets out the procedure for obtaining the free, prior, informed and full consent of the traditional owners to use their traditional knowledge or expressions of culture for a non-customary use (whether or not of a commercial nature).

Division 2. - Applications for use and identifying traditional owners.

20. APPLICATION.

- (1) A prospective user of traditional knowledge or expression of culture for a non-customary use (whether or not of a commercial nature) shall apply to the Authority to obtain the free, prior, informed and full consent of the traditional owners of the traditional knowledge or expressions of culture

- (2) The application shall-
 - (a) be in the prescribed form; and
 - (b) specify the way in which the applicant proposes to use the traditional knowledge or expressions of culture; and
 - (c) state clearly the purpose for which that use is intended; and
 - (d) be accompanied by the prescribed fee.
- (3) The Authority shall finalise the application in accordance with this Part within a period not exceeding three months.
- (4) In the event that the Authority does not finalise the application within the period mentioned in Subsection (3), the traditional owners are deemed to have not consented to the proposed use.

21. PUBLIC NOTIFICATION.

- (1) The Authority shall-
 - (a) give a copy of the application to those persons (if any) who it is satisfied are the traditional owners of the traditional knowledge or expressions of culture to which the application relates; and
 - (b) publish a copy of the application in a newspaper having national circulation stating how interested persons may obtain a copy of the application; and
 - (c) where appropriate, broadcast details of the application on radio or television stating how interested persons may obtain a copy of the application.
- (2) Any person who claims to be a traditional owner of the traditional knowledge or expressions of culture to which the application relates must advise the Authority either in writing or orally within 28 days after the application is published or broadcasted (whichever is the latter).
- (3) The Authority shall record in writing the details of any oral or written advice given under Subsection (2).

22. IDENTIFICATION OF TRADITIONAL KNOWLEDGE OWNERS.

- (1) Where the Authority is satisfied that it has identified all the traditional owners it shall make a written determination containing such details as to identify the traditional owners.

- (2) The Authority shall-
 - (a) publish a copy of the determination in a newspaper having national circulation; and
 - (b) where appropriate, broadcast details of the determination on radio or television.

23. UNCERTAINTY OR DISPUTE RELATING TO OWNERSHIP.

- (1) Where the Authority is not satisfied that it has identified all of the traditional owners or that there is a dispute relating to ownership, the Authority shall refer the matter to the persons concerned to be resolved according to customary law and practice or such other parties.
- (2) When all of the traditional owners have been identified in accordance with customary law and practice or such means as have been agreed to, the traditional owners must advise the Authority, and the Authority shall make a written determination containing such details as to identify the traditional owners.
- (3) The Authority shall-
 - (a) publish a copy of the determination in a newspaper having national circulation; and
 - (b) where appropriate, broadcast details of the determination on radio or television.

24. WHERE THERE IS NO TRADITIONAL OWNERS OR NO AGREEMENT RELATING TO OWNERSHIP.

- (1) Where the Authority is satisfied that-
 - (a) no traditional owners can be identified; or
 - (b) no agreement has been reached on ownership within the period mentioned in Section 20(3) after the application was made, the Authority may, after consultation with the Minister, make a determination that the Authority is the traditional owner of the traditional knowledge or expressions of culture concerned for the purposes of this Act.
- (2) Where the Authority enters into an authorised user agreement, any monetary or non-monetary benefits arising under the agreement must be used for-
 - (a) the protection; or
 - (b) the promotion; or
 - (c) the safeguarding; or

- (d) the preservation, of traditional knowledge and expressions of culture; or
- (e) for cultural development purposes.

Division 3. - Authorised user agreements.

25. APPLICATION TO BE REJECTED OR NEGOTIATIONS FOR AGREEMENT.

- (1) The traditional owners shall decide whether-
 - (a) to reject the application; or
 - (b) to accept the application and enter into negotiations for a written authorised user agreement in relation to the application.
- (2) The traditional owners must advise the Authority either in writing or orally of their decision.
- (3) The Authority shall advise the applicant in writing of the traditional owners' decision.

26. PROPOSED AGREEMENT TO BE REFERRED TO CULTURAL AUTHORITY.

- (1) Before entering into an authorized user agreement, the traditional owners must refer the proposed agreement to the Authority for its comments on the proposed terms and conditions of the agreement.
- (2) The Authority may request the applicant and the traditional owners to meet with it to discuss the proposed agreement if the Cultural Authority is, after reviewing the proposed agreement, satisfied that-
 - (a) the traditional owners do not have sufficient information to make a full and informed decision about the proposed terms and conditions of the agreement; or
 - (b) the proposed terms and conditions of the agreement do not adequately protect and safeguard the traditional knowledge or expressions of culture of the traditional owners.
- (3) The traditional owners may accept, reject or modify any comments made by the Authority in relation to the proposed agreement.

27. TERMS AND CONDITIONS.

An authorized user agreement should include terms and conditions about the following-

- (a) sharing of financial and other benefits arising from the use of the traditional knowledge or expressions of culture; and
- (b) compensation, fees, royalties or other payments for the use; and
- (c) whether the use will be exclusive or non-exclusive; and
- (d) duration of the use to be allowed and rights of renewal; and
- (e) disclosure requirements in relation to the use; and
- (f) the possible sharing by the traditional owners of any intellectual property rights arising from the use of the traditional knowledge or expressions of culture; and
- (g) access arrangements for the traditional owners; and
- (h) education and training requirements; and
- (i) controls on publication; and
- (j) specify whether the rights arising under the agreement can be assigned; and
- (k) the choice of law in relation to disputes under the agreement; and
- (l) respect for moral rights of the traditional owners.

28. FREE, PRIOR, INFORMED AND FULL CONSENT IN AN AUTHORISED USER AGREEMENT.

- (1) Where a prospective user and the traditional owners enter into an authorized user agreement, the traditional owners are deemed to have given their free, prior, informed and full consent to the proposed use.
- (2) The traditional owners must inform the Authority and forward to it a copy of the final agreement.
- (3) The Authority shall keep a register of authorized user agreements which must be in such form and contain such information as the Authority determines.

29. WHERE NO AUTHORIZED USER AGREEMENT REACHED.

- (1) Where the traditional owners and the applicant cannot agree on the terms and conditions of an agreement in relation to the application, the traditional owners must advise the Cultural Authority either in writing or orally.
- (2) The Authority shall advise the applicant in writing that the traditional owners have rejected the proposed authorized user agreement.

- (3) The Authority must record in writing the details of any oral or written advice given under Subsection (1).

Division 4. - Applications not made under this Part.

30. PROCEDURE FOR APPLICATIONS.

- (1) Nothing in this Act prevents a prospective user of traditional knowledge or expressions of culture from obtaining the free, prior, informed and full consent of the traditional owners without applying to the Cultural Authority under Section 20.
- (2) The prospective user shall inform the Authority that the prospective user has sought and obtained the free, prior, informed and full consent of the traditional owners.
- (3) The prospective user shall provide the Authority with a copy of the proposed authorized user agreement between the prospective user and the traditional owners for comment and advice about other prospective traditional owners.
- (4) Subject to Subsection (5) the prospective user shall provide a Copy of the signed authorized user agreement to the Authority to be entered in the register within 28 days after the agreement is signed between the parties.
- (5) If a copy of the authorized user agreement is not provided to the Authority for registration the authorized user agreement is null and void and of no effect.
- (6) Where a prospective user and the traditional owners enter into an authorized user agreement the traditional owners are deemed to have given their free, prior, informed and full consent to the proposed use.
- (7) The prospective user cannot contract out any obligation under an authorized user agreement.

PART VI. - ENFORCEMENT.

Division 1. - Offences.

31. OFFENCES IN RELATION TO TRADITIONAL CULTURAL RIGHTS.

Where-

- (a) a person makes a non-customary use of traditional knowledge or an expressions of culture (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their prior and informed consent to that use, the person is guilty of an offence.

Penalty: A fine not exceeding K2500.00 or a term of imprisonment not exceeding six months or both.

32. OFFENCES IN RELATION TO MORAL RIGHTS.

Where-

- (a) a person does an act or makes an omission in relation to traditional knowledge or an expression of culture that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or expression of culture; and
- (b) the traditional owners have not given their prior and informed consent to the act or omission, the person is guilty of an offence.

Penalty: A fine not exceeding K5000.00 or a term of imprisonment not exceeding twelve months or both.

33. OFFENCES IN RELATION TO SACRED-SECRET MATERIAL.

Where a person uses sacred-secret traditional knowledge or an expression of culture other than in accordance with a customary use the person is guilty of an offence.

Penalty: A fine not exceeding K3000.00 or a term of imprisonment not exceeding six months or both.

34. OFFENCES IN RELATION TO IMPORTATION AND EXPORTATION.

(1) Where-

- (a) a person imports an article or other thing into Papua New Guinea that relates to traditional knowledge or expressions of culture of another country; and
- (b) the person knew, or ought reasonably to have known, that the article or thing would have contravened the traditional cultural rights or the moral rights of the traditional owners had it been created in Papua New Guinea,

the person is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or a term of imprisonment not exceeding two years or both.

(2) Where:

- (a) a person exports traditional knowledge or an expression of culture and the export is a non-customary use (whether or not such use is of a commercial nature) and;
- (b) the traditional owners have not given their prior, informed and full consent to the export of the traditional knowledge or expressions of culture, the person is guilty of an offence.

Penalty: A fine not exceeding K7,000.00 or a term of imprisonment not exceeding two years or both.

Division 2. - Civil actions.

35. CIVIL CLAIMS.

(1) Where-

- (a) a person makes a non-customary use of traditional knowledge or an expression of culture (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their free, prior, informed and full consent to that use, the traditional owners may institute proceedings against that person in a court of competent jurisdiction seeking all or any of the relief set out in Section 36.

(2) Where-

- (a) a person does an act or makes an omission in relation to traditional knowledge or an expression of culture that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or expression of culture; and
- (b) the traditional owners have not given free, prior and informed consent to the act or omission, the traditional owners may institute proceedings against the person in a court of competent jurisdiction seeking all or any of the remedies set out in Section 36.

36. REMEDIES.

- (1) The Court may grant all or any of the following remedies in relation to proceedings instituted under Section 35-
 - (a) an injunction; or
 - (b) damages for loss resulting from the unauthorized use; or
 - (c) a declaration that the traditional cultural rights of the traditional owners have been contravened; or
 - (d) an order that the defendant make a public apology for the contravention; or
 - (e) an order that any false attribution of ownership, or derogatory treatment of the traditional knowledge or expression of culture cease or be reversed; or
 - (f) an order for an account for profits; or
 - (g) an order for the seizure of any object made, imported or exported contrary to this Act; or
 - (h) such other orders as the Court considers appropriate in the circumstances.

- (2) The Court in deciding what relief is to be granted may take into account all or any of the following-
 - (a) whether the defendant was aware or ought reasonably to have been aware of the traditional cultural rights and moral rights of the traditional owners; and
 - (b) the effect on the honour or reputation of the traditional owners resulting from the unauthorized use; and
 - (c) anything done by the defendant to mitigate the effects of the unauthorized use; and
 - (d) any cost or difficulty that may have been associated with identifying the traditional owners; and
 - (e) any cost or difficulty in ceasing or reversing any false attribution of ownership, or derogatory treatment, of the traditional knowledge or expression of culture; and
 - (f) whether the parties have undertaken any other action to resolve the dispute.

Division 3. - Defences and other matters.

37. DEFENCES.

It is a defence to an offence against Section 33 and 34, or an action under Section 35 (1) or (2), if a determination has been published under Section 17 and the traditional owners specified in that determination have given their free, prior, informed and full consent to the use in question.

38. OTHER MECHANISMS TO RESOLVE DISPUTE.

Nothing in this Part prevents the traditional owner or the other person concerned from attempting to resolve a dispute using all or any of the following-

- (a) mediation; or
- (b) alternative dispute resolution procedures; or
- (c) customary law and practices.

39. OTHER RIGHTS OF ACTIONS AND REMEDIES.

This Part does not affect any rights of action or other remedies, whether civil or criminal, provided for under any other law.

PART VII.— TRANSITIONAL ARRANGEMENTS.

40. PROCEDURE FOR TRANSITIONAL ARRANGEMENTS.

(1) Subject to Subsections (2) and (3), this section applies to a person if, immediately before the commencement of this Act, the person was making a non-customary use of traditional knowledge or an expression of culture.

(2) The provisions of this Act do not apply to the person during the period of 60 days (“the application period”) starting on the commencement of this Act.

(3) During the application period, the person must apply under Part 4 to the Authority to obtain prior, informed and full consent from the traditional owners to continue to use the traditional knowledge or expression of culture.

(4) If the person does not apply to the Authority in accordance with Subsection (3), the Act applies to the person on and after the end of the application period.

(5) If a person has applied to the Authority in accordance with Subsection (3),

the Act continues not to apply to the person until the traditional owners reject the application or enter into an authorized user agreement with the person, whichever occurs first.

PART VIII. - MISCELLANEOUS.

41. REGULATIONS.

The Minister may make regulations prescribing all matters-

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act

42. RECOGNITION OF OTHER LAWS.

In accordance with reciprocal arrangements, this Act may provide the same protection to traditional knowledge and expressions of culture originating in other countries or territories as is provided to traditional knowledge and expressions of culture originating in the country.

**National Cultural Property (Preservation) Act
1965**

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

"the Commission" means the National Cultural Commission established under the *National Cultural Commission Act 1994*;

"the Museum" means the National Museum and Art Gallery originally established as the Papua New Guinea Public Museum and Art Gallery established under the *Public Museums and Art Galleries Act* (Chapter 158) (repealed) and continued in establishment by Section 18 of the *Cultural Development Act 1986* and by the *National Museum and Art Gallery Act 1992*;

"national cultural property" means any property, movable or immovable, of particular importance to the cultural heritage of the country, and in particular (but without limiting the generality of the foregoing) includes—

- (a) any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of any of the peoples of the country, past or present; and
- (b) any mineral specimen or fossil or mammal remains of scientific or historic interest to the country; and
- (c) any other collection, object or thing, or any collection, object or thing of a class, declared to be national cultural property under Section 4; and
- (d) any collection of national cultural property;

"proclaimed cultural property" means any national cultural property the subject of a notice under Section 5;

"the regulations" means any regulations made under this Act;

"this Act" includes the regulations;

PART II.—ADMINISTRATION.

2. Delegation.

- (1) The Commission may, by instrument under their seal, delegate to a person all

or any of their powers and functions under this Act (except this power of delegation).

- (2) A person aggrieved by an act of, or a decision on a matter by, a delegate of the Commission may require that the matter be referred to the Commission, and in that event the act or decision shall not be deemed to be the act or decision of the Council until confirmed by them.

3. Exemptions.

The Head of State, acting on advice given after receiving a report from the Commission, may, by notice in the National Gazette, exempt—

- (a) any collection, object or thing; or
- (b) any collection, object or thing of a specified class; or
- (c) a person, body or authority,

from all or any of the provisions of this Act, subject to such conditions as are specified in the notice.

4. Declaration of national cultural property.

The Head of State, acting on advice given after receiving a report from the Commission, may, by notice in the National Gazette, declare—

- (a) any collection, object or thing; or
- (b) any collection, object or thing of a specified class,

to be national cultural property.

5. Proclaimed cultural property.

The Head of State, acting on advice given after receiving a report from the Commission, may, by notice in the National Gazette, declare any national cultural property to be proclaimed cultural property for the purposes of this Act.

PART III.—NATIONAL CULTURAL PROPERTY GENERALLY.

6. Compulsory acquisition of movables.

- (1) The Head of State, acting on advice given after receiving a report from the Commission, may, by notice to the owner or the person in charge or apparently in charge of any movable national cultural property, compulsorily acquire the property on behalf of the State.
- (2) Where any national cultural property is acquired under Subsection (1), the State is liable to pay to the owner compensation in such amount as is agreed on between the Head of State, acting on advice, and the owner or, in default of agreement, as is

determined by action in a court of competent jurisdiction or, if the State and the owner so agree, by arbitration.

7. Compulsory acquisition of immovables.

The purpose of this Act and of the preservation of and protection of national cultural property generally is a public purpose within the meaning of the *Land Act 1996*.

8. Power to prohibit or restrict acquisition, etc.

- (1) The Head of State, acting on advice given after receiving a report from the Council, may, by notice in the National Gazette, prohibit or restrict the acquisition or transfer of any national cultural property specified in the notice.
- (2) A person who acquires or transfers any national cultural property in contravention of a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

9. Destroying national cultural property.

- (1) A person who, without lawful and reasonable excuse (proof of which is on him) wilfully destroys, damages or defaces any national cultural property, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

- (2) A person who, by force, threats, fraud, misrepresentation, undue influence or in any other manner, obtains the destruction, damaging, defacing, confiscation or yielding up of any national cultural property is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months.

10. Power of examination, etc.

- (1) Subject to this section, for the purposes of this Act the Commission or a person authorized by the Commission for the purpose may, at any reasonable time and with or without assistants—
 - (a) enter on and search any land, building, aircraft, vessel or vehicle on or in which there is reasonable cause to believe that any national cultural property or suspected national cultural property is or may be; and
 - (b) require a person to furnish information concerning, or to produce for inspection, any national cultural property or suspected national cultural property in his possession or under his control; and
 - (c) seize and detain for further examination any national cultural property or suspected national cultural property.

- (2) A person who—

- (a) hinders or obstructs the Commission or a person authorized by the Commission in the exercise of their or his powers under Subsection (1); or
- (b) refuses or fails without lawful and reasonable excuse (proof of which is on him), to furnish information or to produce any property when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K10.00.

- (3) The power of entry and search conferred by Subsection (1)(a) shall not be exercised except under a warrant in the prescribed form issued by a justice on being satisfied as to the matter specified in that paragraph.
- (4) Unless earlier acquired under this Act, any property seized and detained for examination under Subsection (1)(c) shall be returned to the person or place from whom or from which it was seized as soon as may reasonably be after the seizure, and where the property has suffered damage as a result of the seizure or examination or during the detention, the State is liable to pay to the owner compensation assessed in the same manner as under Section 6(2).

11. Photographs, etc.

- (1) The Council may require the person having or appearing to have the custody or control of any national cultural property to allow the Council or a person authorized by them for the purpose to take or make a sketch, photograph, model, copy or facsimile of that property, and for that purpose may require the loan of and may remove the property.
- (2) The cost of taking or making a sketch, photograph, model, copy or facsimile referred to in Subsection (1) shall be borne by the Commission.
- (3) A person who hinders or obstructs the Commission or a person authorized by the Commission in the exercise of their or his powers under Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

PART IV.—PROCLAIMED CULTURAL PROPERTY.

12. Registration.

The Commission shall, as far as practicable, maintain, in such manner and form as they determine, a register of all proclaimed cultural property, whether within or outside the country.

13. Notification of whereabouts, etc.

Where any national cultural property is declared to be proclaimed cultural property under Section 5, the owner and the person in whose custody or control the property

is at the date of the declaration, and any other person into whose possession or control the property subsequently comes, must—

- (a) immediately notify the Commission in the prescribed form, giving the prescribed particulars of the nature, situation and condition of the property; and
- (b) immediately notify the Commission from time to time of any change in the situation or condition of the property; and
- (c) in the case of a collection that is proclaimed cultural property—give to the Commission at least one month's written notice before breaking up the collection or disposing of any part of it; and
- (d) make the property available at all reasonable times for examination by the Commission or a person authorized by them for the purpose.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K20.00.

14. Repair, etc.

The Commission may, out of moneys lawfully available, repair, renovate or preserve, or contribute to the repair, renovation or preservation of, any proclaimed cultural property.

PART V.—PROHIBITED EXPORTS AND IMPORTS.

15. Export of national cultural property.

- (1) A person who, without the written consent of the Commission, exports or removes from the country any national cultural property, is guilty of an offence.

Penalty: A fine not exceeding K400.00.

- (2) A consent for the purposes of Subsection (1) may be given, in relation to any national cultural property or to a class of national cultural property, by notice in the National Gazette.
- (3) A consent under this section may be made subject to such conditions as the Commission think proper, including a condition that the owner of the national cultural property or some other person provide, to the satisfaction of the Commission and free of charge, any sketch, photograph, model, copy or facsimile that the Commission may require.

16. Prohibited exports.

Any national cultural property exported or attempted to be exported in contravention of Section 15 or of the conditions of any consent under that section is a prohibited export within the meaning of the *Customs Act 1951*.

17. Prohibited imports.

- (1) Where the Head of State, acting on advice, is satisfied that arrangements have been made or will be made under the law in force in some place outside the country under which any national cultural property that is a prohibited export from the country under Section 16 is a prohibited import into that place, the Head of State, acting on advice, may, by notice in the National Gazette, declare that the provisions of this section apply in relation to that place.
- (2) Where the Comptroller of Customs is satisfied that—
 - (a) a collection, article or thing is imported or brought into the country from a place in relation to which this section applies; and
 - (b) the export of the collection, article or thing, or of collections, articles or things of a class to which the collection, article or thing belongs or apparently belongs, from that place was prohibited under the law of that place for reasons essentially similar to the reasons for the prohibition of export contained in this Act; and
 - (c) the export was in contravention or was apparently in contravention of that law, that collection, article or thing is a prohibited import within the meaning of the *Customs Act* 1951 until such time as the Comptroller of Customs is satisfied that the laws in force in the place from which it was exported have been complied with, or their application to the collection, article or thing has been waived by competent authority.
- (3) A collection, article or thing that is a prohibited export by virtue of Subsection (2) may, if the Head of State, acting on advice, so directs, be seized, without compensation, by the State and forwarded to the appropriate authorities in the place from which it was exported.

PART VI.—MISCELLANEOUS.

18. Saving of other powers.

The powers and functions of the Commission under this Act are in addition to, and not in derogation of or substitution for, the powers and functions of the Commission under any other law.

19. General appeal.¹

Subject to Section 6(2), a person aggrieved by a decision of the Commission under this Act may, within the prescribed time and in the prescribed manner, appeal to the Head of State, acting on advice, whose decision is final.

20. Discoveries of certain things to be reported.

- (1) A person who discovers—
 - (a) a cave or other place in which ancient remains, human or other, are to be found; or

- (b) a carving, painting or other representation on rock or in a cave; or
- (c) a deposit of ancient pottery or historical remains; or
- (d) a place used in former times as a ceremonial or burying ground, must immediately give to the Commission particulars of the discovery.

Penalty: A fine not exceeding K40.00.

Default Penalty: A fine not exceeding K2.00.

- (2) It is a defence to a charge under Subsection (1) if the defendant proves—
- (a) that he did not know that the subject-matter of the charge was a matter or thing referred to in that subsection; or
 - (b) any other lawful and reasonable excuse.
- (3) A person who, without lawful and reasonable excuse (proof of which is on him), wilfully or negligently defaces, damages, uncovers, exposes, excavates or otherwise interferes with a place or object referred to in Subsection (1) without the written consent of the Commission, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

21. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K40.00, and default penalties of fines not exceeding K2.00, for offences against the regulations.