

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM ON THE INTELLECTUAL PROPERTY LAWS AMENDMENT BILL [B8B-2010]

1. INTRODUCTION

The Speaker of the Mpumalanga Provincial Legislature referred the **Intellectual Property Laws Amendment Bill [B8B – 2010]** (the Bill) to the Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism (the Committee) for further processing and report to the Legislature in accordance with Rule 185 of the Rules and Orders of the Mpumalanga Provincial Legislature.

The Committee was tasked to process this piece of legislation before 21 August 2013 and provide the delegation representing the Province of Mpumalanga Permanent in the National Council of Provinces (NCOP) with the necessary mandate to vote on behalf of the Province in relation to the Bill.

2. BACKGROUND

The need to protect indigenous knowledge (IK) was triggered by international debate particularly in the area of copyright and intellectual property, which includes folklore. The protection of IK has been central to the World Intellectual Property Organisation (WIPO) - UNESCO efforts to protect intellectual property since 1982. In 1999, on the basis of the international work of the WIPO-UNESCO, the government of South Africa initiated the formulation of the Policy on Indigenous Knowledge Systems (IKS) through the Department of Arts, Culture, Science and Technology. Protection of IK through the IP system became a division of the IKS, which was subsequently adopted by Cabinet in 2004.

In the 2007/8 financial year, the Department of Trade and Industry tabled the Policy on the Protection of Traditional Knowledge through the IP system, in order to recognise the intrinsic

value of IK and as a way to protect indigenous communities from exploitation, whilst also aiming to improve their livelihoods.

3. OBJECTIVES OF THE BILL

The objectives of the Bill are:

- (a) To provide for the recognition and protection of certain manifestations of indigenous knowledge as a species of intellectual property; to this end to amend certain laws so as to provide for the protection of relevant manifestations of indigenous knowledge as a species of intellectual property, namely —
- the **Performers' Protection Act (1967)** to provide for the recognition and protection of performances of traditional works;
 - the **Copyright Act (1978)** to provide for the recognition and protection of indigenous works; to provide for the establishment of a National Council in respect of indigenous knowledge; to provide for National Databases for recording indigenous knowledge and to provide for the recording of indigenous works; and to provide for the establishment of a National Trust Fund for Indigenous Knowledge;
 - the **Trade Marks Act (1993)** to provide for the recognition of indigenous terms and expressions and for the registration of such terms and expressions as trademarks; to create for this purpose a further part of the trade marks register; to provide for the recording of indigenous terms and expressions; and to provide for further protection of geographical indications;
 - the **Designs Act (1993)** to provide for the recognition and registration of indigenous designs; to create for this purpose a further part of the designs register;
- (b) To introduce statutory provisions to provide for the establishment of a National Council in respect of indigenous knowledge, a National Database for the recording of indigenous knowledge and a National Trust and Trust Fund for purposes of indigenous knowledge; and
- (c) To provide for matters incidental thereto.

4. METHOD OF WORK

The Bill was tabled in the Office of the Speaker in the Mpumalanga Provincial Legislature on 05 June 2013 and the Honourable Speaker referred the Bill to the Committee on 14 June 2013 for consideration and report back to the House. Thereafter the Committee was briefed on the Bill by the NCOP on 02 August 2013. The Committee resolved, in terms of Section 118 (1) of the Constitution, to conduct public hearings on the Bill.

The public hearings took place on 08 August 2013 in the three districts of the Province. The Committee interacted with the identified communities and stakeholders on the impact of the Bill and to solicit the public opinion on the Bill. The Committee then met on 14 August 2013 to consider its report on the public hearings and to adopt its negotiating mandate on the Bill, which was duly forwarded to the NCOP. Subsequently, the Committee received feedback from the NCOP on the consideration of the negotiating mandate. There were no amendments made by the Select Committee on Trade and Internal Relations. Thereafter the Committee met on 13 September 2013 to adopt its final mandate on the Bill. The final mandate on B8B-2010 was duly processed to the NCOP in line with the Mandating Procedures of Provinces Act, 2008.

5. BRIEFING BY THE NCOP

- a. Hon AJ Nyambi, the Permanent Delegate representing Mpumalanga in the NCOP for the Bill briefed the Committee on 02 August 2013. He was accompanied by the Director: Commercial Law and Policy from the Department of Trade and Industry (the DTI) in the Consumer and Corporate Regulation Division, Ms Meshendri Padayachy.
- b. The following provincial stakeholders were invited to the briefing session:
 - Department of Economic Development, Environment and Tourism (DEDET);
 - Mpumalanga Tourism and Parks Agency (MTPA);
 - Department of Culture, Sport and Recreation (DCSR);
 - Department of Education (DOE);
 - South African Local Government Association (SALGA); and
 - Mpumalanga House of Traditional Leaders (MHTL)

5.1. Overview of the Bill

In his overview of the Bill, Hon Nyambi emphasized the following points:

- There is a need for the existing intellectual property laws of the country to be amended to make provision for the legal protection of indigenous knowledge (IP).
- The Bill is a progressive move towards advancing the respect for indigenous communities in South Africa.

5.2. Presentation by the Department of Trade and Industry (DTI)

After his overview, Hon Nyambi requested the Director from the DTI to make a brief presentation to the Committee on the more technical aspects the Bill. The Committee noted the following issues from the presentation:

- Essentially the Bill seeks to use the intellectual property (IP) system to recognise and legally protect our indigenous knowledge (IK) or “folklore” at a commercial level. Such folklore includes literary and artistic works, indigenous terms, expressions and designs. These are currently protected by the Copyright Act, 1978, which is out dated.
- The Bill thus provides for a legal mechanism to prevent the commercial exploitation of such IK. In this way the indigenous communities and individuals will be fairly compensated in the event their rights as the legal owners of such IK are infringed.
- Indigenous communities will be enriched by the financial proceeds derived from the use of their IK and this will contribute to sustainable use of their resources.
- The creation of the national database for IK license holders will have financial implications, but this cost will be budgeted for by the Companies and Intellectual Property Commission (CIPC). The Bill will also put into effect a National Council, a National Trust and a Trust Fund in terms of the Copyright Act, which will all exist to manage royalties from the commercial use of traditional IK.

- South Africa's rich biodiversity must be protected in an integrated and coordinated approach; thus the country will also benefit from the commercial use of some of our national products such as rooibos, honey bush and biltong.

5.3. Interaction during the briefing

The Committee interacted with Hon Nyambi and the DTI on the Bill. The following comments, concerns and clarity-seeking questions were raised by the Committee:

- a. The Committee shared the sentiments expressed in the Bill, about the importance of protecting traditional IK and in particular, that of the Province. The view was expressed that not only was it unacceptable for South Africa's IK to be exploited by other countries, but that exploitation of indigenous communities within the country was unconstitutional.
- b. The DTI acknowledged the comment raised by the Committee about the considerable length of time that has been taken to tag the Bill [B8b – 2010] as a section 76 legislation.
- c. Assurance was sought by the Committee on whether there would be any financial implications for Mpumalanga Province in the setting up of the National Trust. The DTI reiterated that funding for this will be provided in the budget of the Companies and Intellectual Property Commission (CIPC).
- d. The Committee had no objections to what the Bill was seeking to achieve, acknowledging that the Bill was progressive for the development of the indigenous communities in the province and the related socio-economic benefits were welcomed.
- e. The Committee raised a concern that the Bill only referred to consultation with the House of Traditional Leaders in the KZN and North West Provinces. The DTI assured the Committee that Mpumalanga had also been consulted; however, the Committee requested the DTI to investigate their records and officially confirm to the Committee whether Mpumalanga had been consulted. If so, then the Province's name should also be reflected on page 37 of the Bill.
- f. The Committee emphasized the importance of the MHTL being well-informed and educated about the provisions of the Bill and thus requested the DTI to workshop the MHTL with regard to the implications of the Bill.

6. PUBLIC CONSULTATION PROCESS

6.1. Public Hearings

The Committee facilitated public consultation on the Bill; the public hearings on the Bill were scheduled to take place on 08 August 2013 from 09:00 – 13:00 as follows:

DISTRICT	VENUE
Ehlanzeni	Bushbuckridge Local Municipality, Acornhoek (Merriam Mogakane Hall)
Gert Sibande	Chief Albert Luthuli Local Municipality, Carolina (Silobela Community Hall)
Nkangala	Victor Khanye Local Municipality, Delmas (Botleng Extension 3 Community Hall)

The Committee invited the following stakeholders to be part of the public hearings:

- Community members;
 - South African Institute of Intellectual Property Lawyers (SAIIPL);
 - South African Federation against Copyright Theft (SAFACT);
 - South African Local Government Association (SALGA);
 - Mpumalanga Provincial House of Traditional Leaders (MHTL);
 - Speakers, all councillors, municipal managers, ward committees and CDW's of the three local municipalities;
 - LED sections of the three local municipalities;
 - Disaster Management sections of the three local municipalities;
 - Department of Economic Development, Environment and Tourism
 - Mpumalanga Tourism and Parks Agency;
 - Lowveld Kruger Chamber of Business Tourism;
- a) An open invitation to the public hearings and a call for public comments on the Bill was published in the regional print media, which ensured broad coverage of the Province. Interested and affected stakeholders were invited to submit written comments on the Bill on or before 16 August 2013.

- b) The advertisement appeared in the following publications during the week of **05 – 08 August 2013**:
- Bushbuckridge News (Bushbuckridge area)
 - Mpumalanga News (whole province)
 - The Lowvelder (whole province)
 - Streek News (Delmas/Witbank area)
 - Daily Sun (whole province)
- c) The Bill was also uploaded onto the Mpumalanga Provincial Legislature website www.mpuleg.gov.za, as indicated in the newspaper advertisements; an electronic version of the Bill was also emailed to interested and affected stakeholders.
- d) The Committee Members who were deployed at the various venues engaged the public by explaining that the reason for the Legislature conducting public hearings was to involve the public in its legislative processes, according to Clause 118(1) of the Constitution of the Republic of South Africa.
- e) After explaining to the public the main objectives of the proposed Bill and its implications for the Province, the Committee Members then interacted with the public on the Bill.
- f) At each public hearing, the Committee ensured that the stakeholders in attendance understood the main objectives of the Bill were to ensure that indigenous knowledge was protected and that the affected communities and individuals should benefit financially from the commercial use of traditional indigenous knowledge.

Stakeholder inputs during the public hearings

The Committee noted the following inputs which were made during the public hearings:

- At the **Ehlanzeni (Bushbuckridge Local Municipality)** public hearing, the community was **unanimous that the Bill must be adopted**. The comments made by the stakeholders present related mainly to the following:
 - a. This Bill will protect the people's indigenous knowledge.

- b. This Bill will ensure that people's ideas and knowledge cannot be stolen without giving recognition to the owner thereof.

- At the **Nkangala District (Victor Khanye Local Municipality)** public hearing in Delmas, the questions and comments raised related to the following:
 - a. The National Trust should be independent of government structures;
 - b. What would be the composition and appointment of the members of the National Council for Indigenous Knowledge and the National Trust Fund;
 - c. The appointment of the members of these structures should embrace public participation principles and should be free of nepotism;
 - d. What would be the specific linkages between the structures that will be established and the creative arts industry;
 - e. What would be the specific registration process to be followed for traditional institutions;

- The **Gert Sibande District (Chief Albert Luthuli Local Municipality)** public hearing in Carolina could not proceed at the scheduled time, due to some administrative communication challenges with the municipality. However, the stakeholders arrived about an hour after the scheduled time and they were addressed by some councilors. What transpired thereafter was a public education workshop on the Bill, with the DEDET and Legislature officials also in attendance. The DEDET participated in briefing the public about the Bill. It was noted that some constructive comments were made by the public. In summary, though, the public in attendance at the workshop supported the Bill unanimously.

6.2. Written comments on the Bill

6.2.1. Department of Economic Development, Environment and Tourism (DEDET)

The Committee noted that the DEDET supported the Bill with no amendments.

6.2.2. Department of Culture, Sport and Recreation (DCSR)

The Committee noted that the DCSR had expressed concern about the need to involve the provincial and local spheres of government in the National Trust Fund, which is to be established in terms of section 28(l) of the Copyright Act. Nevertheless, the DCSR expressed its support for the Bill.

7. COMMITTEE OBSERVATIONS

- a) After examining the Bill and considering the inputs from stakeholders, the Committee concluded that the Bill favours the preservation of the cultural heritage of indigenous communities, protects them from exploitation and also favours their sustained existence through economic development.
- b) The Committee welcomed the Bill and commended it for its constitutionality. It was, however, noted that the processing of the Bill to the provinces was long overdue.
- c) The amendments to the existing intellectual property laws will provide some welcomed moral and financial relief to the families of indigenous artists who were not recognised for their work during or after their lifetime.
- d) The Committee recommends that the composition of the National Council for Indigenous Knowledge, which will be not less than 15 members appointed by the Minister, should be representative of the indigenous communities in all provinces of the country. Furthermore, the Committee recommends that the necessary training should be provided to communities for the successful implementation of the legislation.

- e) The Committee is of the view that the DTI did not consult thoroughly with the Mpumalanga Province House of Traditional Leaders and thus awaits formal confirmation from the DTI regarding the extent of the consultation with the MHTL. The Committee recommends that the DTI should workshop the MHTL on the provisions of the Bill and its implications for the indigenous communities.
- f) The public participation process indicated that the public unanimously supported the objectives of the Bill {B8B – 2010}.

8. CONCLUSION

The Committee supported the Bill at the negotiating and final mandate stages and therefore recommends that the Permanent Delegate representing the Province of Mpumalanga in the NCOP be conferred with a mandate to vote in favour of the **Intellectual Property Laws Amendment Bill [B8B - 2010]**.

HON. RC MAHLOBOGOANE (MPL)

DATE

**CHAIRPERSON: PORTFOLIO COMMITTEE ON
AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM**