

Protection, Promotion, Development and Management of Indigenous Knowledge Systems Bill, 6 of 2016 - Due date for written comments 15 December 2016

Comments submitted, on 15 December 2016, to: The Chairperson
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Introduction

As academic, author and publisher, I wish to comment on the above-mentioned Bill in the hope of providing important perspectives on the practical implications of some of the clauses. While I support the principles for the preservation of indigenous knowledge underlying the Bill, my motivation with these comments is to avoid unforeseen consequences that may impact negatively and indeed work against the stated objectives of the Bill, with no benefits to anyone.

The personal background information given below is to demonstrate that my work and outputs in IKS has been perfectly aligned with the aims and objectives of the new Bill. As a result, I am seriously concerned about the impact that the Bill will have in preventing academics, authors and publishers from doing their work in recording indigenous knowledge for the general benefit of society.

Throughout my career, I have actively promoted the protection, development and promotion of indigenous knowledge resources, in particular as they relate to the classification of indigenous plants and their varied uses. Of special importance are the oral-traditional knowledge systems of the descendants of San and Khoi people. This knowledge is rapidly fading as a result of changing lifestyles and a lack of systematic documentation. Much of my current work (with several post-graduate students) is to record indigenous plant use knowledge as a matter of great urgency, in order to prevent this precious cultural heritage from being lost forever. The knowledge is mostly found amongst elderly persons who are typically illiterate and do not have the capacity or opportunity to document the information. By giving proper recognition to all contributors in a systematic way (as is required by the ethics of publishing and international best practises), we not only acknowledge their contributions but also help to inspire a new appreciation of the potential value of cultural traditions amongst the younger generation. A substantial part of Khoi and San traditional knowledge has indeed already been irretrievably lost. This is a loss of international importance, because the San and Khoi systems provide humanity with the only direct link to the origins of knowledge and the ancestral knowledge systems that have evolved in southern African over the last ca. 160 000 years. Any impediment to our meagre efforts to capture and publish this intellectual treasure will results in further losses of international scope and impact.

These comments and explicit proposal for changes to the Bill come from an **academic** (teacher, plant scientist and researcher) that was recently (2013) appointed by the DTI and NRF as a National Research Professor in Indigenous Plant Use (Tier 1). The aim of this research chair, based at the University of Johannesburg, is to maximise the societal benefits to be derived from indigenous plants and their uses, as well as to protect, promote and systematically document traditional plant use knowledge. As promoter of 30 senior postgraduate students during my career (seven of whom are now professors), my duty has always been to build research capacity and intellectual leadership, especially amongst persons of previously disadvantaged groups. As Chairman of the Indigenous Plant Use Forum (IPUF), re-elected annually since 1996, I have organised 19 national conferences with the explicit aim of "promoting the cultural, socio-economic and scientific benefits to be derived from the sustainable use of the southern African flora". The annual symposia are unique, multicultural and

multi-disciplinary events that serve as a meeting point for academics, indigenous intellectuals, anthropologists, resource managers, conservationists, policy makers, entrepreneurs and anyone interested in the sustainable use of the southern African flora. The success of IPUF is evident from the fact that participation by black African delegates to the IPUF conferences grew from less than 30% in 1995 to more than 70% in recent years.

These comments also come from an **author** of more than 300 peer-reviewed scientific papers in ISI-accredited journals and 19 books, including ca. 43 editions and reprints, several international co-productions and translations. The aim of scientific papers and books is to contribute to the global system of knowledge and to contribute to the global impact of African research outputs. The driving force behind the writing of books is not to earn extra money but to preserve and promote traditional knowledge as a contribution to the cultural heritage of South Africa. The aim is to ensure that future generations have access to this important information, so that they can maximize the socio-economic benefits that can be derived from accurate, properly documented and synthesized traditional plant use knowledge. Through the books I also hope to inspire and promote, amongst all South Africans, an appreciation for the profound value and depth of traditional knowledge about the uses of plants. This is in parallel to a more general aim of contributing to a better understanding of the diverse South African flora (as unique geographical advantage) and the need to conserve and sustainably utilise this resource to the benefit of all.

These comments also come from a part-time **publisher**, a member of Briza Publications. This small publishing house focusses mainly on full-colour academic and semi-popular books about nature (plants and animals). The reality is that very few books (especially full-colour academic books) are commercially viable and almost invariably require substantial sponsorship to allow them to be published. The cost to benefit ratio of academic books are heavily biased against the author and publisher; funds that are generated through book sales are rarely sufficient to cover the costs of full colour printing, marketing, distribution, modest author royalties and maintaining the human resources and physical infrastructure needed to operate as a publisher. The retention of such books on the market is all the more important in view of the critical role that the unique South African flora can play in providing future commercial opportunities in a wide range of highly competitive and increasingly sophisticated industries.

If the Bill were to be interpreted to constrain writing and publishing on South African indigenous knowledge, it will disincentivise books about South African indigenous knowledge being published in the country, thereby denying the South African public access to high quality published information about plants, which in turn may well have knock-on effects on innovation and job creation in a wide range of applications, from agriculture and tourism to biotechnology and public health, to name only a few.

My comments, in a nutshell:

- (1) The exception for “academic purposes” in clause 26(4)(e) is too narrow. The exception should specifically include publishing and republishing of works that consist of or include indigenous knowledge resources. Section 28(2), importing criminal sanctions for unauthorised uses, must similarly exempt uses allowed by the exceptions in clause 26(4).
- (2) The Bill should protect continued use and protection of intellectual property rights consisting of or containing indigenous knowledge resources that came into existence before enactment.

(3) The definition of primary knowledge holder is problematic. Most of the contributors to my research obtained their knowledge verbally from other individuals. This is a practical aspect which must be taken into account when considering the formulation of the definition and in any regulations turning on this definition.

I will be happy to provide further information or assist with this process in any way that may be useful.



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