

Unity in Diversity

Enquiries: Adv. M Tshabalala
Tel: 012 336 5771
Cell: 0827770092
Email: moniccat@coqta.gov.za

Mr N K Bell
Bills Office
Parliament of the Republic of South Africa
P.O.Box 15
Cape Town
8000

Dear Mr Bell

**SUBJECT: COMMENTS BY THE NATIONAL HOUSE OF TRADITIONAL LEADERS
ON THE INTELLECTUAL PROPERTY LAWS AMENDMENT BILL**

The above matter refers.

Attached herewith, comments by the National House of Traditional Leaders on the Intellectual Property Laws Amendment Bill.

Background

The National House of Traditional Leaders has studied the Bill and deliberated upon it, and it is the view of the House that there is a need for the recognition and protection of indigenous knowledge system in South Africa. Traditional Leaders are the custodians of the customary values of the communities, and therefore traditional leaders and their communities should be involved in the processes.

Traditional leaders should be the access point to the communities in respect of indigenous knowledge, That is, access to the communities will have to involve discussions with traditional leadership structures. Traditional leaders and their communities are the guardians of their indigenous knowledge and they must protect that knowledge.

As Africans, traditional leaders have tacit knowledge which can be adequately used for the development of communities. The ancestors and great grandparents never had explicit knowledge, but they managed to develop their own environment with the tacit knowledge they had. They were innovative in whatever they do. Those are practices that can be considered indigenous knowledge and some cut across different communities, while others are confined to specific communities. An example could be that of a situation whereby an infant survives without a mother to suckle from. When a mother dies during child birth, the child will be fed through some leaves from a milky tree called Ndleve in shangaan. They inject the watery milk substance of the tree

around the women's breasts, which then enables them to develop and produce milk. It is important for researchers to, when conducting research on indigenous knowledge practices, consult traditional leadership.

Comments

Traditional work (Section 5)

The definition of "traditional work" as a literacy work, an artistic work or a musical work which is recognized by an indigenous community as a work having an indigenous origin and a traditional character will cause conflict among communities if that is left on them to determine. What may be determined as traditional work in one community may not be so in another community. It is therefore the view of the House that a determination should be made in this regard.

National Council for Traditional Intellectual Property (section 40A)

The House supports the establishment of the Council and recommends that traditional leaders should form part of the National Council for Intellectual Property, whose function is to advise the Minister on any matter concerning indigenous knowledge.

National database (section 40C)

The National House of Traditional Leaders supports the development of a database however these must protect the contents that recognize the ownership of communities. It is the concern of the House that the disclosure of indigenous knowledge will lead to exploitation. The database must therefore assist in identifying the beneficiaries of indigenous knowledge and where they are located.

National Trust Fund for Traditional Intellectual Property (section 40D)

The amendments propose the establishment of the trust fund, and there is also a provision (section 40D (4)) for the payment of income and royalties to be paid into the fund for the benefit of indigenous and local communities in the prescribed manner. The National House of Traditional Leaders is concerned that the manner on how the income and royalties should be paid into the fund is not prescribed, and that the ownership of any copyright in the traditional work will belong to the trust fund for traditional intellectual property and not for the community. It is the view of the House that ownership of any copyright in the traditional work must belong to the community.

Kinds Regards


Dr W M Makgalancheche
CEO NHTL

Date: 10.04.2013