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SUBJECT: COMMENTS BY THE NATIONAL HOUSE OF TRADITIONAL LEADERS ON THE DRAFT PROTECTION OF TRADITIONAL KNOWLEDGE BILL

Background

In terms of Rules of 241(10 and 241(2) of the National Assembly, Wilmot Godfrey James, MP gave notice that he intends introducing the Protection of Traditional Knowledge Bill in the National Assembly shortly, and invites interested parties and institutions to submit written representations on the said Bill to the Secretary of Parliament.

Comments

The National House of Traditional Leaders has studied the Bill and deliberated upon it and make the following comments:

Definitions (section 1)

We recommend that the following definitions be included in the Bill:

‘Traditional community’ should be defined as a traditional community recognised as such in terms of section 2 of Traditional Leadership and Governance Framework Act 41 of 2003, as amended.

“Traditional Council means a council established in terms of section 3 of Traditional Leadership and Governance Framework Act, 41 of 2003.

“Traditional Leader” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position, and is recognized in terms of the Traditional Leadership and Governance Framework Act, 41 of 2003.

Establishment of registration Office for Traditional Knowledge (**Section 18**)

The Traditional Leadership and Governance Framework Act 41 of 2003, as amended, establishes and recognizes traditional leader structures including amongst others, Traditional Councils. The House therefore propose that Traditional Councils be placed as authentic and legally recognized registration offices for traditional knowledge.

Registrar of Traditional Knowledge (**Section 19**)

It is the view of the House that the Traditional Leader in the area of jurisdiction of the traditional community from which an item of traditional knowledge emanates, and which stands to benefit from the commercial exploitation of the item, should be appointed as the registrar of traditional knowledge.

Composition of Council (**Section 34(3)**)

The National House recommend that the Minister should also consult the Provincial and National Houses of Traditional Leaders when appointing members of the National Council for Traditional Knowledge.

National Trust Fund for Traditional Knowledge (**section 36 and 37**)

The National House of Traditional Leaders is of the view that it is not necessary to have this structure. Traditional communities are able to manage their own funds through their traditional councils for their own benefit. Each Traditional council has its own trust fund opened on behalf of the community with the traditional leader holding the money on behalf of the traditional community. Government should assist the traditional communities with funds to commercialize their traditional knowledge.

Composition of The National Council for Traditional Knowledge (**section34**)

The House supports the view that the National House of Traditional Leaders and the Provincial Houses of Traditional Leaders should form part of the National Council for Traditional Knowledge.

Ownership and transmission of traditional knowledge right (**section38**)

The owners of traditional knowledge rights should vest in the holders of traditional knowledge which is the traditional communities or their traditional leader, who shall be entrusted with the custody and protection of traditional knowledge in accordance with the practices of that community. The House feels that ownership of traditional knowledge should not vest in the community proxy.

Moral rights (**section 41**)

The inclusion of the moral rights and remedies for infringement in the Bill is commendable as it will enable traditional communities to protect their works and their reputation.

Regulations (**section 45**)

Sub-section 45(b) on the Minister making regulations to the Trust Fund should be deleted. as a result of comments made on section 36 above.