The Traditional & Natural Health Alliance (SA)

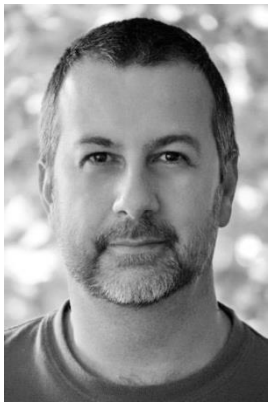
PRESENTATION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON SCIENCE AND TECHNOLOGY

ON THE

THE PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF INDIGENOUS KNOWLEDGE SYSTEMS BILL [B6-2015]

26 January 2017

PRESENTED BY:



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INTRODUCTION

The Traditional & Natural Health Alliance (TNHA) supports progressive legislation to protect and promote Indigenous Knowledge Systems in South Africa. Our organization represents over 1,650 individual Traditional Health Practitioners and various national and regional associations which represent them.

For many decades the intellectual property of *bona fide* Traditional Health Practitioners and Indigenous Communities has been exploited, or in better terms, biopirated by the local academic, pharmaceutical and biotechnology sectors without due recognition or acknowledgement of their valuable contributions, or appropriate financial compensation such as through perpetual royalty payments to the cultural groups from whom the knowledge was illicitly gained.

This knowledge was in many cases expropriated with unethical, covert and dubious means, tantamount to the same outright theft of cultural knowledge as was historically evidenced in the wholesale colonial theft of the land and livestock by refuges from Europe in exchange for worthless glass beads and broken mirrors, however this current planned theft of knowledge poorly hidden within the IKS Bill is being effected by an orchestrated self-serving grouping, without the benefit of the glass beads, mirrors or cattle being conferred on the traditional practitioners.

The TNHA is of the informed understanding that this IKS Bill, if passed in its current form, will catalyse a second wave of exploitation, theft and expropriation of indigenous knowledge and traditional healing systems by the State and its research academia, under the thinly veiled guise of promoting and protecting indigenous and cultural rights which has been practiced for millennia by the Traditional African healing systems.

This myopic Bill is intentionally creating excessively onerous requirements that will alienate the real owners of the healing systems from any future participation in their own cultures and knowledge, while directly benefitting the transnational pharmaceutical drug companies who have the financial depth for meeting the requirements of this misguided and deceptive IKS Bill.

The devastation of this vibrant and important sector of our Nation will have massive negative social, economic and health impacts extending continuously into the far future. The explosion in the disease states of the People when they are separated from being able to attend to their own health through using traditional herbs and the impact on the Fiscus of having to bear the costs of these mushrooming sick people has not at any level been considered.

Major tribal authorities have not been appropriately and objectively consulted on the impacts of this IKS Bill and the critical negative implications of this Bill on their people. We are aware that neither the Bakgatlla Ba Kgafela or the Bafokeng have been consulted, and they have reacted in shock to discover the imminence of this invasive and alienating legislation.

It is entirely mischievous for the Department to have consulted a few minor individuals with dubious mandate, and consider their legal obligations to have been fulfilled. The same mischief applies to the claim that Traditional Healers and stakeholders have been included, and it seems that legitimate stakeholders have been excluded by design.

We call for the immediate termination of this planned and flawed IKS Bill, and an appropriate team of experienced practitioners and stakeholders become engaged in managing and structuring the challenge of genuinely protecting our Cultural knowledge and rights, most especially from self-serving Academia and Transnational corporations.

The burning question arises throughout the reading of this IKS Bill: Exactly WHO is intended to benefit from this Bill, and why are the terms and principles structured to favour corporations and institutions, while alienating the legitimate cultural holders?

It is clearly NOT the traditional holders of the knowledge who are intended to benefit, and who will almost entirely become criminalised and driven out of their ancient practices through the planned passing of this error-ridden Bill, while it is clearly structured in alignment with reductionist mechanical definitions of medicines being inflicted on the world by Western medicine paradigms, which modality denigrates the greater understanding of Health understood within traditional systems.

It is very well known that all traditional and natural practitioners use multiple modalities and spiritual practices in their healing arts, and no single plant, mineral or material is considered to be the “golden panacea” to heal diseases.

They understand intricately the multi-dimensional interactions between Body-Mind-Spirit, while Western modalities have reduced being Human to Body only.

The clear fact is that no single individual or group can possibly lay claim to holding the rights of a single plant or method, as this is cultural knowledge across multiple components and groups, and handed down from generation to generation.

Registering an IKS claim would require by definition that the applicant/s would have to prove to be the originators, inventors and exclusive owners of the knowledge or system. This is an impossible

contradictory stipulation and this mischievous Bill was clearly designed with this understanding of near impossibility in mind.

Our submission pivots around the axis of indigenous medicinal plant usage, as well as the proposed regulation of Indigenous Knowledge Practitioners.

INDIGENOUS PLANT-BASED MEDICINE

Southern Africa possesses a remarkable diversity of indigenous plants, coupled with rich cultural traditions on the use of plants for medicine. Despite huge strides in provision of health care, many rural areas still do not have easy access to Western primary health care and veterinary services.

Even where clinics and pharmaceutical medicines are readily available, a large proportion of the population uses African Traditional Medicines together with, or in preference to, Western orthodox medicine.

OUR RICH AND UNIQUE BIODIVERSITY

The concept of biodiversity encompasses the number and variety of organisms inhabiting a specified geographic region. Owing to its diverse range of climatic and topographic conditions, South Africa possesses a wealth of plant species. It is considered to have the richest temperate flora in the world, with a floristic diversity of about 24 000 species and intraspecific taxa in 368 families. With only 2.5% of the world's land surface, it contains more than 10% of the world's vascular plant flora.

South Africa has a flourishing diversity of cultures, with 11 official languages and a long history of medicinal plant use Studies of varying cultural practices, together with methods of traditional healing using the extensive array of available plants, are yielding valuable information to pharmaceutical and biotechnology researchers

AFRICAN TRADITIONAL MEDICINE

Globally, natural products and their derivatives represent +/- 50% of all pharmaceutically produced drugs in clinical use today. Plants were originally the major source of medicine, and there is currently a resurgent interest in natural medicines as a source of new remedies and bioactive compounds.

This phenomenon is reflected in South Africa. South Africa has contributed to worldwide medicines with natural teas and remedies such as Cape Aloes (Aloe ferox), Rooibos (Aspalathus linearis), South African Pelargonium (Pelargonium sidoides), Buchu (Agathosma betulina), Sceletium (Sceletium

tortuosum), Honeybush (Cyclopia intermedia), and Devil's Claw (Harpagophytum procumbens) to name a few.

There are an estimated 220 000 traditional health practitioners practicing in South Africa. They are known by different names according to the different cultures, for example "inyanga" and "isangoma" (Zulu), "ixwele" and "amaquira" (Xhosa), "nqaka" (Sotho), "bossiedokter" and "kruiedokter" (Afrikaans).

There is often a basic general knowledge of medicinal plant use among the elderly members of the community.

A 2008 survey in Durban (KwaZulu-Natal) indicated that over 80% of the black population relies on both Western and traditional health care systems, and this figure is likely to be reflected country-wide.

The market for medicinal plants is vast, and it has been estimated that 20 000 tonnes of plant material are traded in South Africa each year. A 2013 research study estimates 700k tons https://www.hindawi.com/journals/jchem/2013/205048/). Conservative estimates reveal that traditional healers and indigenous medicinal pant harvesters and traders comprise a major portion of a R4 Billion informal economy.

WHAT IS BIO-PROSPECTING AND ETHNO-PIRACY?

BIOPIRACY is the commercial development of naturally occurring biological materials (ethnobiological); such as, plant substances or genetic cell lines, by a technologically advanced country or commercial industry, without fair compensation to the peoples or nations in whose territory the materials were originally discovered.

BIO-PROSPECTING is one form of ethnopiracy which includes the collecting and testing plants and the collecting of indigenous knowledge from traditional healers and traditional communities to help in discovering and exploiting genetic or biochemical resources with the primarily economic purposes of producing new drugs, crops, industrial products, etc.

INADEQUATE PUBLIC COMMENT PERIOD

Our organization has attempted to consult widely with our members and other stakeholders on the technical aspects of the Bill, however the short timeframe afforded for public comment officially announced on the 28th of November has been problematic.

The period given for public comment was limited to only 12 working days.

Parliamentary Portfolio Committees should take steps to afford the public a reasonable opportunity to participate effectively in the law-making process. Usually, thirty (30) days are public notice period is afforded for comments on Bills, after notices are published in the media.

The comment period also cut off prior to the December holidays starting on the 16th of December 2016. During that time many of the stakeholders travelled to stay with their families in rural communities across the country, and therefore were unreachable.

Notwithstanding, we have reached out as far as we possibly could in responding to this call to comment, and were graciously afforded an extension by this committee's secretary.

We would have hoped that the official comment period would have been extended to all stakeholders and the public in order to provide meaningful and adequate feedback to this Committee.

As you are aware, various constitutional challenges have been successful in striking down legislation in recent years, due to inadequate public participation in the law-making process. We would hope that this Bill does not end up with the same fate.

INADEQUATE CONSULTATION BETWEEN THE DEPARTMENT AND TRADITIONAL HEALTH PRACTITIONERS AND INDIGENOUS COMMUNITIES

When we first approached individual Traditional Health Practitioners and their associations in November last year, the vast majority had no prior knowledge of the existence of this Bill, or the broad regulatory framework which they would fall under if passed into law.

It appears the Department of Science and Technology did not consult widely with those communities and traditional health practitioners whose practices will be prescribed, and Scopes of Practice potentially restricted by this intended legislation.

We also note that of the estimated 200 national traditional health practitioner associations operating in South Africa, only a small handful were co-opted by selective invitation into the pre-drafting phase of the Bill.

One organization in particular was represented on the IKS Committee of the DST and has still not relayed information about the Bill to its broad membership. This organisation has grown dissatisfied with the slow progress in the Department of Health's establishment of the Traditional Health Practitioners Council, and has strategically aligned itself with the DST in an attempt to establish another statutory registration mechanism for traditional health practitioners, as indigenous knowledge practitioners under this Bill. The DST has seemingly hand-reared this purportedly large group; has allegedly been supporting it financially; and in turn used it for the window dressing of sector consultation. This organisation claims to have over 73 000 members, but the truth of the matter is that it only represents about +/- 3000 paying members, many of whom practice outside the borders of South Africa.

We are equally displeased with the DST's lack of open engagement with the Traditional Health Practitioners Council, a statutory health council established in terms of Act 22 of 2007. Only in the final stages of tying up the loose ends of the draft Bill, were they consulted.

It is understood that this Council have rejected key provisions in this Bill, citing the duplication of statutory mandate, yet this Bill has progressed to public hearings without resolution being found.

This is unacceptable, as the Traditional Health Practitioners Council was established after decades of struggle by grass roots activists after hundreds of years of exclusion of traditional health practitioners from the healthcare system by the colonial and apartheid regimes.

Those directly affected by this Bill, namely traditional health practitioners and indigenous communities, did not receive any communication about this Bill in their official languages. The text of the Bill is very technical in nature, and should have been unpacked through the means of information leaflets and consultative workshops across the country in both urban and rural communities. This did not occur.

We feel that consultation on this Bill has been disproportionately debated with local academia involved in bioprospecting and various overlapping government departments, while disadvantaging those who will ultimately be governed by it at the grass roots. The Bio Economic Strategy Programme currently being rolled out by the DST focuses more on big business than safeguarding the sacred traditions of our people.

HISTORICAL BIOPRIACY IN SOUTH AFRICA AND THE SECRET DATABASES

Since the 1940's there has been an ever growing interest in bioprospecting for plant-derived chemicals derived from Southern African indigenous flora. Chemicals that can be utilised in their isolated form, or more recently, in their synthesised form in pharmaceutical drugs.

The academic fields of ethno-botany and pharmacognosy peaked in the late 1950's and 1960's, when foreign drug companies identified South Africa as a rich source of potential leads for novel drug development. So prolific were these scientific endeavours that voluminous research publications with thousands of entries on indigenous plant usage were published.

With the advent of laboratory synthesis of what are termed modern orthodox drugs in the 1960's, the pharmaceutical industry largely abandoned bio-prospecting around the world. South Africa was no exception.

With crippling sanctions imposed on the South African drug industry, and the withdrawal of many foreign pharmaceutical companies during the apartheid era, most companies which had been bioprospecting disappeared, along with their jealously guarded research.

One company, Noristan Laboratories, operating under licence from Nordmark-Werke GmbH in Germany decided to donate their extensive electronic database containing thousands of bioprospecting records to the public in 1986, and handed it over to the University of Cape Town's Pharmacology Department, headed by the then Chairman of the Medicines Control Council, Professor Peter Folb.

With this valuable database, Folb quickly got to work in establishing a Traditional Medicine Research Unit named TRAMED. Leads obtained from the Noristan database were followed up on with vigorous screening for novel chemicals which could be used to develop TB and HIV medications.

The TRAMED database was expanded upon three times over the next decade.

Despite this database being donated to the public and that public funding was used to conduct research on leads derived from this database, it has NEVER been allowed to be accessed by the public of Traditional Health Practitioners.

Since the late 1990's most local university pharmacology departments have established traditional medicine research centres and have jealously guarded their research and kept potential drug

development leads under lock and key. It is worthy to note that few of these institutions will be able to identify the indigenous knowledge holders who led them to these discoveries as record keeping of their sources never featured high on their agenda.

Bioprospecting has traditionally taken place in the form of contacting traditional health practitioners in mainly rural communities and coaxing out their communal intellectual knowledge on medicinal plant usage with paltry payments in the form of food parcels, blankets or small cash incentives. We have even heard of benefit sharing offers being made, which never materialised.

TRADITIONAL MEDICINE DATABASES MUST NATIONALISED

It is no longer acceptable that State research institutions, which have used taxpayers money for bioprospecting programs, cling to their databases as if they belong to them exclusively.

This cumulative knowledge is a national asset.

Research should be collated and released to Traditional Health Practitioners who utilise them in service to the vast majority of our public under custodianship of the Traditional Health Practitioners Council. This data should be used to publish a South African Traditional Medicine Pharmacopoea, in a similar way China nationalised their indigenous medicines and codified it under their Traditional Chinese Pharmacopoeia. In China today, the public can choose either Western or Traditional Medicines when they visit State clinics and hospitals.

This national asset can be used to foster rational prescribing, while also protecting the public by identifying poisonous plants which reportedly kill and poison thousands of South Africans (mainly children) each year.

It is unacceptable that the State has turned a blind eye on countless deaths and poisonings from poisonous plants used in muti by unsuspecting citizens, while it spends hundreds of millions of Rand on bioprospecting and Bio Economic Strategies.

THIS BILL LAGALISES STATE-SANCTIONED BIOPIRACY

Our organisation is deeply concerned that the Department of Science and Technology, in collaboration with State owned bioprospecting institutions will wait for the twelve month period for indigenous communities to lodge their usage claims (Section 33 of the Bill), and then utilise the National Indigenous Knowledge Office to offer their decades of bioprospecting research to foreign pharmaceutical and biotechnology industries without benefit sharing with the communities they derived their leads from.

In fact, most universities in South Africa are itching for this Bill to pass, so that they can unlock the research databases they have been quietly compiling and jealously guarding for decades. Multinational drug companies and biotech companies are already lining up to partner with our bio-prospecting universities. Some big names in the multinational drug industry including Pfizer, Novartis, Boeringer Ingelheim etc have already pledged support for DSTs much publicised Bio Economic Strategy Programme, and which hinges on this Bill.

This Bill will position these state research institutions into poll position to conduct research on behalf of the highest bidding drug companies and biotech firms, or through consortiums they will set up to manufacture and market these innovations themselves.

This Bill, if passed into law in its current from, will not protect indigenous knowledge vested in Traditional Health Practitioners and Indigenous Communities as much as it will create a multi-Billion Rand franchise for State institutions to commercialise and monopolise indigenous plant usage in partnership with the pharmaceutical and biotechnology industries.

This Bill will usher in neo-colonialism all over again, as well as disproportionately enrich monopoly capital.

INADEQUATE TIME FOR COMMUNITIES TO LODGE CLAIMS

Section 30 of the Bill only provides 12 months after its passing into law, for indigenous communities to lodge their IKS licence claims. This short timeframe is grossly inadequate, and only serves those who will benefit from lodging claims (the State) thereafter.

CURTAILING THE PRACTICE OF TRADITIONAL HEALTH PRACTITIONERS

The IKS Bill will severely restrict the estimated 220 000 Traditional Health Practitioners from using many common indigenous plant-based medicines which could end up being licenced for exclusive commercial exploitation by licence holders and their drug and biotech company partners.

This Bill mandates that all Traditional Health Practitioners in South Africa must register with the NIKSO as accredited 'Indigenous Knowledge Practitioners' and be vetted by IKS Agents who will determine their eligibility to register.

There is no indication in the Bill who these Agents will be, what qualifies them to assess other Traditional Health Practitioners, and what criteria will be used to determine if a healer is eligible to register.

Any Traditional Health Practitioner who wishes to utilise IKS will have to be registered. Unlicensed Indigenous Knowledge Practitioners' will be committing a criminal offence if they, for gain, dispense plants for uses which are licenced (monopolised) in terms of the Bill.

Traditional Health Practitioners have vested rights in the common law to continue to use these plants without restriction, unless they cause harm and regulated accordingly.

Section 28(2) of the Bill states – *"Any person who uses intellectual knowledge without authorisation shall be guilty of an offence and liable on conviction to imprisonment not exceeding 3 years or R30 000 fine, or both. "*

Section 28(3) of the Bill states – *"Any person who falsely professes to be a certified indigenous knowledge practitioner shall be guilty of an offence and liable on conviction to imprisonment not exceeding 3 years or R30 000 fine, or both. "*

Traditional Health Practitioners are required to register with the Traditional Health Practitioners Council of South Africa ("THPCSA"), in terms of the Traditional Health Practitioners Act (Act No. 22 of 2007).

An Interim Council has been set up to begin registering Traditional Health Practitioners and to draft and gazette regulations to give affect to the Act, such as Scopes of Practice, Code of Ethics, etc.

The Act confers the right of registered Traditional Health Practitioners to compound and dispense traditional medicines as defined in the Act.

This Bill is in conflict with the Traditional Health Practitioners Act, and undermines vested rights which traditional healers fought long and hard for since the dawn of our young democracy.

There is no justifiable reason for this Bill to include Indigenous Knowledge Practitioners or place restrictions on the carrying out of their sacred professions. The assessment of Traditional Health Practitioners eligibly to practice traditional medicine and dispense African Traditional Medicines has been pre-qualified by application of the Traditional Health Practitioners Act.

We demand therefore that all references to the accreditation and registration of Indigenous Knowledge Practitioners must therefore be removed from the Bill.

MISLEADING PROMISES OF TRADITIONAL MEDICINE REGISTRATION

At previous hearings of this committee which we have attended, the DST have stated that this Bill will enable Indigenous Communities to licence, beneficiate and sell products derived from their indigenous innovations. This may be true for artistic expressions and general household goods.

However, for therapeutic skincare and medicinal products manufactured from plants will be subject pre-market authorisation in the form of registration under the Medicines and Related Substances Act (Act 101 of 1965).

Herbal remedies or medicines are subject to registration in a similar fashion to pharmaceutical drugs.

The South African Health Products Regulatory Authority (SAHPRA), which will replace the Medicines Control Council on the 1st of April this year, will not allow manufactured indigenous plant based medicines to be sold without first being assessed for their safety, quality and efficacy.

Indigenous Communities will have to either spend up to twenty million Rand on building a licenced pharmaceutical manufacturing facility, or have contract manufacturers manufacture on their behalf.

They will also have to licence all their distribution channels. Safety and quality testing costs hundreds of thousands of Rand and clinical research conducted to substantiate health claims made for the products can run into the tens of millions of Rand. They will also be forced to hire pharmacists as responsible persons on a fulltime basis, adding to the costs of doing business.

Because natural products in their unsynthesised form cannot be patented like novel pharmaceutical drugs, there is little incentive to innovate these products in their natural form. Only patent protection allows companies to profit after R&D cost recovery.

Only large multinational pharmaceutical companies will be able to benefit from developing medicinal products under the provisions of this Bill and the Medicines and Related Substances Act.

THIS BILL HAS THE POTENTIAL TO FOSTER TRIBALISM

Although Section 30 of the Bill allows for a mechanism to split benefit-sharing between two or more indigenous communities identified as sharing indigenous knowledge innovation, it may become practically impossible for either group to establish their *bona fides* to claims.

There are many plant species used for medicinal purposes which are common to more than one geographical region and overlap many separate communities and even tribes. Because of the potential monetary windfalls which may result from claims and benefit-sharing agreements, the potential for disagreements over ownership will be unavoidable.

Already we have learned that various Khoisan communities consider all indigenous plant usage in historical Khoisan regions as their property, while Nguni tribes in those same regions beg to differ.

This Bill will be divisive and run roughshod over two decades of inclusive nation building.

SUMMARY

For all the reasons detailed in this submission, and many more not included for the sake of sticking to salient issues, we cannot in good conscience, or respect for our ancestors and future generations support this Bill in its current form.