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**NEGOTIATING MANDATE**

**TO:** The Chairperson of the Select Committee on Communications and Enterprise  
Hon. E Prins

**NAME OF BILL:** Protection, Promotion, Development Management of Indigenous Knowledge Systems

**NUMBER OF BILL:** [B6B-2016]

**DATE OF DELIBERATION:** 08 June 2018

**VOTE OF THE LEGISLATURE:** The Gauteng Provincial Legislature supports the principle and detail of the Bill and therefore votes in favour of-

- Protection, Promotion, Development Management of Indigenous Knowledge Systems [B6B-2016]

  
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**HON. J. Pekane**

Chairperson of Sport, Recreation, Arts and Culture Committee

GAUTENG PROVINCIAL LEGISLATURE

Date:

12/06/18



**GAUTENG**  
**LEGISLATURE**  
Your View — Our Vision

**SPORT, RECREATION, ARTS AND CULTURE PORTFOLIO COMMITTEE**  
**NEGOTIATING MANDATE ON THE:**  
**PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF INDIGENOUS**  
**KNOWLEDGE BILL [B6B-2016]**

**08 June 2018**

**1. INTRODUCTION**

The Chairperson of the Sport, Recreation, Arts and Culture Portfolio Committee, Hon. J. Pekane, tabled the Committee's Negotiating Mandate on the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016].

**2. PROCESS FOLLOWED**

The Speaker, on 16 March 2018, formally referred the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016] Section 76, to the Portfolio Committee on Sport, Recreation, Arts and Culture referred to as the Committee, for consideration in terms of Rule 245 (1) read with 246 (1), 247 and 248.

On the 11 May 2018, the Permanent Delegate from the National Council of Provinces (NCOP), Honourable Mlambo gave a briefing to the Committee on the Bill. This was followed by a presentation by the National Department of Science and Technology on the detail of the the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016].

On the 17 May 2018, the committee received a legal opinion and research analysis on the Bill.

In fulfilling its constitutional mandate to facilitate public participation in processing this Bill, the Committee published adverts in the following newspapers:

- ✓ Daily Sun, 24<sup>th</sup> May 2018
- ✓ Sowetan, 24<sup>th</sup> May 2018
- ✓ The Star, 25<sup>th</sup> May 20108

This was to enable the Committee to request members of the public and stakeholders to make comments on the Bill. Following that, the Committee convened three public hearings in the following areas:

- Tuesday, 22 May 2018- Atteridgeville Community Hall, Tshwane
- Tuesday, 28 May 2018 – Greenhills Stadium – Randfontein - Westrand
- Thursday, 31 May 2018 – Johannesburg City Hall, Johannesburg

Subsequent to that, the Committee received the views of the Gauteng Department of Sport, Recreation, Arts and Culture Executive on matters related to the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016].

The Portfolio Committee deliberated and adopted the Negotiating Mandate of the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016] in a meeting that convened on Friday, 08 June 2018.

### **3. PRINCIPLES AND DETAILS OF THE BILL**

The Bill seeks to provide for the protection, promotion, development and management of indigenous knowledge; to provide for the establishment and functions of the National Indigenous Knowledge Systems Office; to provide for the management of rights of indigenous knowledge communities; to provide for the establishment and functions of the Advisory Panel on indigenous knowledge; to provide for access and conditions of access to knowledge of indigenous communities; to provide for the recognition of prior learning; to provide for the facilitation and coordination of indigenous knowledge-based innovation; and to provide for matters incidental thereto. The clause by clause summary are as follows:

#### **Clause 1**

This clause provides for the definitions used in the Bill.

#### **Clause 2**

This clause provides for the application of the Act to all persons in the Republic, in relation to all matters pertaining to indigenous knowledge.

#### **Clause 3**

This clause provides for the objectives of the Bill.

**Clause 4**

This clause Allows for the establishment of the National Indigenous Knowledge Systems Office (NIKSO) within the Department.

**Clause 5**

This clause provides for its duties, powers and functions of NIKSO.

**Clause 6**

This clause empowers the Minister to appoint a suitably skilled and qualified person as the Head of NIKSO, who is responsible for the administration and general management of NIKSO.

**Clause 7**

This clause Allows for the establishment of an Advisory Panel comprising of representatives of relevant government departments, indigenous knowledge holders, industry, and specialists in the discipline of practice of Indigenous Knowledge.

**Clause 8**

This clause identifies the role of the Advisory Panel, which is to advise NIKSO on strategic issues around indigenous knowledge and assist with the mobilisation of indigenous communities for purposes of pursuing specific activities conducted by NIKSO

**Clause 9**

This clause provides for the subject matter under protection, within the meaning of section 25 of the Constitution. In addition, the sub-clause provides for indigenous knowledge as property vested in the relevant indigenous community.

**Clause 10**

This clause provides for the duration of protection of the subject matter which will persist for as long as the eligibility criteria set out in clause 11, are met.

**Clause 11**

This clause delineates the eligibility criteria for protection of the subject matter, namely, indigenous knowledge which has been passed on from generation to generation within an indigenous community, has been developed within an indigenous community, and is associated with the cultural and social identity of that indigenous community.

**Clause 12**

This clause affirms custodianship of indigenous knowledge eligible for protection vests in the trustee of that indigenous community, who holds the indigenous knowledge in trust on behalf of the indigenous community and is responsible for and accountable to the indigenous community for the protection of their rights.

**Clause 13**

This clause provides for indigenous communities holding indigenous knowledge to have the exclusive right to any benefits arising from its commercial use, be acknowledged as its source, and limit any unauthorised use of the indigenous knowledge.

**Clause 14**

This clause outlines the purpose of the accreditation of assessors, and sets out an application process.

**Clause 15**

This clause provides for persons wishing to register their qualifications as an indigenous knowledge practitioner and be so certified and recorded in the Register of Designations.

**Clause 16**

This clause provides for the establishment of a Register of Designations where persons other than the indigenous community or an individual within that indigenous community may access information.

**Clause 17**

This clause provides for the establishment of a Registration Office for indigenous knowledge.

**Clause 18**

This clause provides for the appointment of a suitably skilled and qualified person as the Curator of indigenous knowledge who will be responsible for the control of the Registration Office.

**Clause 19**

This clause provides for the creation and maintenance of a system of registration of indigenous knowledge by NIKSO, and for the Minister to prescribe procedures and conditions for storage, access, transmission, management and security of the registered indigenous knowledge.

**Clause 20**

This clause provides for a trustee to apply to the Curator for the registration of indigenous knowledge. Under this sub-clause the Curator may approve or deny the application subject to any conditions or limitations, or reject the application if it does not meet the criteria set out in Clause 11.

**Clause 21**

This clause provides for the Curator to make the Register available for inspection to the public. However, documents relating to the registration of indigenous knowledge may only be made available, if the person seeking access enters into a prescribed non-disclosure agreement.

**Clause 22**

This clause provides for a certificate issued by the Curator, in respect of any record, is presumed evidence of the content thereof and action authorised therein, unless proven otherwise.

**Clause 23**

This clause provides for the Register to be a constructive notice in any proceedings regarding the rights registered in respect of indigenous knowledge.

**Clause 24**

This clause provides for an interested person applying to amend the Register in the prescribed manner, upon application and after granting the indigenous community an opportunity to make representations in response to the application the Curator must amend the Register. In addition, an entry in the Register must be amended in accordance with any finding by a court.

**Clause 25**

This clause Provides for the facilitation and coordination by NIKSO of all indigenous knowledge activities, which relate to the commercial utilisation of indigenous knowledge products, services and processes.

**Clause 26**

This clause provides for access to and use of Indigenous Knowledge.

**Clause 27**

This clause provides for the Minister to appoint members of the Dispute Resolution Committee on an ad hoc basis to resolve any dispute arising from this Bill.

**Clause 28**

This clause provides for offences and penalties arising from the unauthorised use of indigenous knowledge for commercial purposes.

**Clause 29**

This clause sets out the process and conditions for the protection of indigenous knowledge resources originating from foreign jurisdictions and in instances where indigenous knowledge originates in one or more indigenous communities in foreign jurisdictions.

**Clause 30**

This clause provides for multiple claims to indigenous knowledge. In this context, any remuneration payable under a benefit sharing agreement must be apportioned equally among the trustees.

**Clause 31**

This clause grants the Minister power to make regulations on any matter pertaining to the protection, promotion, development and management of indigenous knowledge and other incidental or ancillary matters.

**Clause 32**

This clause pertains to the Bill in relation to other laws.

**Clause 33**

This clause provides for compliance within 12 months from the effective date in relation to the continued use of indigenous knowledge, which was done prior to the coming into force of this Act.

**Clause 34**

This clause provides for the short title and commencement.

**4. OBJECTIVES OF THE BILL**

The primary objective of the Bill is to:

- protect indigenous knowledge of indigenous communities from unauthorised use, misappropriation and misuse,
- To regulate the fair and equitable distribution of benefits from its commercial use. And;
- Provide mechanisms for the accreditation of assessors and the certification of practitioners.

**5. OVERVIEW OF THE PUBLIC HEARINGS**

Public hearings were attended by stakeholders and members of the public who engaged on all matters related to the Bill. A summary of all stakeholders' submissions is highlighted below:

## **6. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARINGS**

As part of its functions and obligation in line with the Constitution, the Committee held public hearings where written and oral submissions were made for consideration. The Committee received oral and written submissions from various institutions including: Traditional Healers Organisations, The African Cultural Heritage Trust and Zindala Zombili Productions. Two (2) written submissions were received from the public. Herewith below is the summary of submissions received:

- ✓ The need to have suitably skilled, knowledge holders in the Administration of NIKSO and majority should be IKS practitioners.
- ✓ The Department should establish an independent oversight unit comprised of IKS elders and key NGO's to monitor and evaluate the various functions of NIKSO. This is because there is a potential risk that over time, NIKSO will become dominated by academics at the expense of the very IKS practitioners that it is meant to serve.
- ✓ Rural development, Traditional Leadership and national NGO's should be adequately represented on the Advisory Panel. The IKS Practitioners should have more seats on the Advisory Panel than non-practitioners.
- ✓ The bill should also promote and protect indigenous music such as instrument design, selection of materials, specialised tools, methodology of construction and different styles of playing, the rhythm and notes.
- ✓ The current "public domain" classification of indigenous music should be changed to "traditional composition" so as to generate revenue for the communities from which the IKS originated.
- ✓ Relevant national NGO's representing the different disciplines of practice should be consulted to write the accreditation criteria, propose assessors that are IKS practitioners to oversee the accreditation process. The same process should be followed for the appointment of a Curator. The Curator must be an IKS practitioner.
- ✓ NIKSO should conduct ongoing consultation with elders and NGO's representing skilled practitioners, particularly those that live in rural areas as that is where IKS is alive and well.
- ✓ Clause 26 of the bill should empower and protect an individual knowledge holder who wish to enter into any license agreement and not only the community. This is because some of the knowledge may be family owned. Such a person must work with the trustee (who is publicly accountable to the community and directly elected by the community and not NIKSO).



- ✓ This Bill should not be used as a tool to tax indigenous knowledge practitioners and practitioners involved in the business of IKS products manufacturing pay more than they are already expected to pay.
- ✓ Under clause 28: A 5 years jail imprisonment should be applied for any person who will knowingly make commercial use of indigenous knowledge in a manner which is not in accordance with an agreement entered with the indigenous community. This will demonstrate to companies, institutions and individuals involved in biopiracy the seriousness of protecting, promotion, control and the management of indigenous knowledge.
- ✓ In terms of access to and use of indigenous knowledge, a period for declaring a dispute when aggrieved by a NIKSO decision or the conditions imposed with regard to access should be extended to 90 days than 60 days. This is to allow an ordinary knowledge holder to travel from their respective rural villages to Gauteng to submit their grievance to the NIKSO office.

## **7. POSITION BY THE GAUTENG PROVINCIAL DEPARTMENT OF SPORT, ARTS, CULTURE AND RECREATION**

In line with the GPL Rule 250 (3) (a) the Committee sought the views of the Gauteng Department of Sport, Arts, Culture and Recreation on the Bill.

The department supports the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016]. The following was also raised by the Department in support of its position:

### **➤ Provision for the development of Provincial IKS Policies for the protection of IKS**

Chapter 4 (9) of the Bill speaks of the protection of Indigenous Knowledge and its subject matters. IKS as a discipline has been marginalized through the years. As a result, knowledge and customs have come under threat of diminishing due to a lack of preservation. The development of Provincial IKS Policies would ensure the protection of IKS as it would regulate the identification and protection of IKS in all the 9 provinces of the country.

The provincial IKS policies will be specific to communities and the different customs and landscapes they establish themselves within. The provincial policies would in addition to this, call for the establishment of IKS advisory bodies in order to provide expert and strategic advice to MEC's and Provincial Legislatures with respect to protection, promotion, development and management of IKS in provinces.

➤ **The Integration of IKS into basic education learning in primary and high school curriculum**

As part of the objectives to develop IKS in the in country the Bill currently feeds into the educational sphere by introducing a Bachelor of IKS as a degree course at University level. Although this contributes a great deal to the development of IKS; the same should be done at primary and high school level. The introduction of IKS into the basic education curriculum is key as it would sensitize learners on the topic of IKS its significance, the need for its protection and all-important introduction of Intellectual Property Rights associated with it. Intellectual Property in IKS plays a crucial role as it introduces communities to the possibilities of socio-economic change and development using their IK.

➤ **The inclusion of a detailed Implementation plan for the application of the National IKS Bill.**

The enforcement and application of the discussed in Chapter 2 should be accompanied by a detailed implementation plan detailing all departments affected by the Bill and their particular roles and responsibilities to make the implementation of the Bill highly effective. This centralization of IKS work is therefore key when trust needs to be gained from communities. The efforts to protect and develop IK will make a great deal of impact when efforts and resources are combined to introduce a comprehensive framework for the management of IKS in the country.

The province also endorses the centralized accreditation of IK practitioners and the different categories of accreditation mentioned within the Bill in Chapter 5 (14, 15). Currently, the accreditation is limited to one category which is health care. Practitioners in the other areas of IKS still do not get recognition for the work that they do e.g. in farming, climatology, governance etc.

➤ **Gauteng Province's position on the Bill**

As prescribed by Chapter 6 (16); the National Indigenous Knowledge Systems Office (NIKSO) allows for the establishment of Provincial IKS Documentation Centres (IKSDC). In August 2016 SACR signed a Memorandum of Agreement with the Department of Science and Technology and successfully established its Provincial IKSDC in the Sokhulumu Community, Bronkhorstspuit in the Tshwane Municipality. The project was launched in partnership with the Amandebele a Nzuzu Traditional Council under the Chieftaincy of iNkosi Ndabezitha M.T. Mahlangu uMkhandlu weSibili.

## **8. SOCIO-ECONOMIC FINANCIAL IMPLICATIONS**

There are no financial implications because NIKSO is already in existence and it is envisaged that it will continue to operate in its current budget.

**9. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE**

The Portfolio Committee on Sport, Recreation, Arts and Culture supports the principle and details of the Protection, Promotion, Development and Management of Indigenous Knowledge Bill [B6B-2016] Section 76