



Office of the Chairperson

Portfolio Committee on Education; Culture, Sport and Recreation

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NEGOTIATING MANDATE

To : The Chairperson: Select Committee on Communications and Public Enterprises

Name of the Bill : Protection, Promotion, Management and Development of Indigenous Knowledge Bill

Number of the Bill : [B6B-2016]

Date of Deliberation : 07 June 2018

Vote of the Legislature :

The Portfolio Committee on Education; Culture, Sport and Recreation (the Committee), after considering the Protection, Promotion, Management and Development of Indigenous Knowledge Bill [B6B-2016] confers on the permanent delegate representing the Mpumalanga Provincial Legislature in the NCOP, the mandate to negotiate in favour of the Bill without any proposed amendments.

HON TS KHOZA
CHAIRPERSON: PORTFOLIO COMMITTEE
ON EDUCATION; CULTURE, SPORT AND RECREATION

07/06/2018

DATE

**REPORT OF THE PORTFOLIO COMMITTEE ON EDUCATION; CULTURE, SPORT AND RECREATION ON THE CONSIDERATION OF THE PROMOTION, PROTECTION, MANAGEMENT AND DEVELOPMENT OF INDIGENOUS KNOWLEDGE BILL [B6B-2016]
– PUBLIC HEARINGS CONDUCTED ON 23 MAY 2018**

1. INTRODUCTION

The **Promotion, Protection, Management and Development of Indigenous Knowledge Bill [B6B-2016]** (the Bill) was referred to the Mpumalanga Provincial Legislature (the Legislature) by the National Council of Provinces (NCOP) in accordance with Rule 201 (1) and (2) of the Rules and Orders of the Legislature for consideration and report back to the House.

The Speaker of the Legislature referred the Bill to the Portfolio Committee on Education; Culture, Sport and Recreation (the Committee) for further processing, formulation of mandates and report back to the House in accordance with Rule 185 of the Rules and Orders of the Legislature (the Rules).

In terms of section 118(1) of the Constitution of the Republic of South Africa, 1996, the Legislature has a mandate to facilitate public involvement in the legislative and other processes of the Legislature and its parliamentary committees. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public and other stakeholders on the above-mentioned Bill.

2. BACKGROUND

The Department of Science and Technology (DST) consulted with national government departments in all nine provinces on the draft Bill and received a number of responses, indicating a significant level of awareness and engagement with the process. Thereafter the Minister of Science and Technology tabled the Bill in Cabinet. The Bill was then published on 20 February 2015, in the *Government Gazette* for public comments, whereupon more comments were received from interest groups ranging from government departments, research institutions, academic institutions and the public. A review team comprising international and local experts was established to consider the DST response to comments received; the team met from 9-13

June 2015. Thereafter a revised Bill was drafted for introduction into the Parliamentary process by the Minister of Science and Technology, which was done on 12 April 2016 in the National Assembly. The Bill was referred to the Joint Tagging Mechanism (JTM) on 25 May 2016, and in terms of Joint Rule 160, it was classified as a section 76 Bill.

On 02 June 2016 Parliament referred the Bill for comment to the National House of Traditional Leaders, as the Bill is within the ambit of section 18(1) of the Traditional Leadership and Governance Framework Act, 2003 (No.41 of 2003). The input of the National House of Traditional Leaders was received on 27 June 2016.

On 17 August 2016, the Portfolio Committee on Science and Technology held a joint workshop with the Select Committee on Communications and Public Enterprises to consider the global and national context, as well as the work done by the Department of Science and Technology with regard to its IK programme. A number of departments made presentations to the Portfolio Committee. On 1 March 2017, the Portfolio Committee had a joint meeting with the Portfolio Committee on Trade and Industry, which resulted in a resolution to establish an inter-departmental task team to work through overlapping areas in the IPLAA and the IK Bill.

From 27-31 March 2017, the Portfolio Committee undertook an oversight visit to Oudtshoorn (Southern Cape), Durban (Kwazulu-Natal) and Moruleng (North West Province) with the primary focus on IK. A re-drafted Bill was approved by the Portfolio Committee on 13 September 2017 and it was approved for concurrency by the National Assembly on 14 November 2017.

3. OBJECTS OF THE BILL

The objects of the Bill are to provide for:

- the protection, promotion, development and management of indigenous knowledge;
- the establishment of a National Indigenous Knowledge Systems Office (NIKSO);
- the functions of NIKSO;
- the management of rights of indigenous knowledge communities;
- the establishment and functions of the Advisory Panel on indigenous Knowledge;
- access and conditions of access to knowledge of indigenous communities;
- the recognition of prior learning;
- facilitation and coordination of indigenous knowledge-based innovation; and
- to provide for matters incidental thereto.

4. METHOD OF WORK

The Committee interacted with the Bill as follows:

- a. The Bill was referred to the Legislature on 15 November 2017. Subsequently it was referred to the Committee on 21 November 2017. The Bill was then published on the Legislature website and social media platforms.
- b. On 18 May 2018 the Committee was briefed on the Bill by the Department of Science and Technology (DST) in Secunda, Govan Mbeki Local Municipality Council Chamber in line with the programme of the NCOP Select Committee on Communications and Public Enterprises. The Committee received and noted the apology of Hon AJ Nyambi who could not attend the briefing due to other urgent NCOP commitments.
- c. The Committee duly resolved, in terms of Section 118 (1) of the Constitution, to conduct public hearings on the Bill on Wednesday, 23 May 2018 in all three districts of the Province, from 10h00 – 13h00 as follows:

| District | Venue | Attended |
|--------------|--|----------|
| Ehlanzeni | Nkomazi Local Municipality - Jeppes Reef Community hall | 288 |
| Gert Sibande | Mkhondo Local Municipality – Kwa Mahlobo Tribal Authority | 122 |
| Nkangala | Dr. JS Moroka Local Municipality – Ga Morwe Community Hall | 263 |

- d. Subsequently the Committee considered and adopted its draft report and negotiating mandate on the Bill on 07 June 2018.

5. BRIEFING ON THE BILL AND COMMITTEE INTERACTION WITH THE DEPARTMENT OF SCIENCE AND TECHNOLOGY

At the briefing, the DST senior officials provided an overview on the background and objectives of the Bill. A clause by clause explanation of the Bill was provided of all 34 clauses of the Bill and. The DST also elaborated on the socio-economic impact of the Indigenous Knowledge (IK) Bill in relation to its objectives.

It was explained during the briefing that the Bill addresses the following concerns:

- Bio-piracy
- Promotes registration of Indigenous Knowledge (IK)
- Recognises prior learning of IK practitioners
- Benefit sharing for communities
- Facilitates research and development on IK
- Creates mechanisms for dispute resolution for communities

The briefing was attended by the Legal Sections of the Legislature and the Department of Culture, Sport and Recreation, the custodian of indigenous knowledge in the Province.

Other stakeholders invited to the briefing session and public hearings were as follows:

- ❖ Department of Cooperative Governance and Traditional Affairs (COGTA);
- ❖ Department of Economic Development and Tourism;
- ❖ Mpumalanga Tourism and Parks Agency (MTPA)
- ❖ Provincial Treasury;
- ❖ Department of Health;
- ❖ Department of Agriculture, Rural Development, Land Administration and Environmental Affairs;
- ❖ Provincial House of Traditional Leaders (HTL);
- ❖ South African Local Government Association (SALGA);
- ❖ Office of the Auditor-General;
- ❖ Office of the Public Service Commission;
- ❖ Gert Sibande District Municipality;
- ❖ Nkangala District Municipality;
- ❖ Ehlanzeni District Municipality;
- ❖ Mkhondo Local Municipality;
- ❖ Govan Mbeki Local Municipality;
- ❖ Nkomazi Local Municipality;
- ❖ Dr JS Moroka Local Municipality

The Committee welcomed the presentation on the Bill and raised the following issues:

- a. It was appreciated that the Bill addressed the issue of bio-piracy, which in essence robbed communities of revenue due to them.

- b. The Committee sought clarity about whether the Bill would empower the Member of the Executive Council (MEC) responsible for indigenous knowledge in the Province to appoint a provincial structure.
- c. Clarity was sought about the commencement of the 12 month period stipulated in the Bill.

The MEC for Culture, Sport and Recreation welcomed the Bill and indicated that the Department was in support of what the Bill sought to achieve. All other stakeholders present at the briefing were in support of the objectives of the Bill.

5.1. Input by Legal Services

The Legal Section of the Legislature indicated that they had perused the Bill and found that it was aligned to the Constitution of the Republic of South Africa, further noting with appreciation that the Bill had been tagged as Section 76, thereby protecting the Province's interests. The consultation with the national House of Traditional Leaders was further appreciated.

The DST responded to the issues raised by the Committee as follows:

- a. The National Indigenous Knowledge Systems Office (NIKSO), once established, will have capacity to deal with the issue of bio-piracy. There will also be indigenous knowledge systems documentation centres throughout all the provinces to assist with operational matters in this regard. Furthermore, any person wanting to use a particular community's indigenous knowledge should enter into a benefit sharing agreement with that community.
- b. The DST stated that the NIKSO at a national level would be supported by provincial indigenous knowledge documentation centres.
- c. It was clarified to the Committee that the 12 month period stated in the Bill would come into effect from the date the Bill becomes an Act.

The Committee noted that the Bill seeks to develop the socio-economic context of communities in the Province as it provides them with opportunities to generate income from their indigenous knowledge.

6. PUBLIC INVOLVEMENT

The PPPU (Public Participation and Petitions Unit) of the Legislature facilitated public education workshops prior to the public hearings. The workshops were held at the same venues where the public hearings were to take place. The objectives and main content of the Bill were discussed with the stakeholders in attendance, whereby they were also educated about the processes of the Legislature and the significance of the legislation at hand.

- a. An open invitation to the public hearings and a call for public comments on the Bill was published in three regional and one national print media publications as follows:
 - Mpumalanga News
 - Uthingo Mail
 - Nkomazi Mirror
 - Daily Sun

Interested and affected stakeholders were invited to submit written comments on the Bill on or before 06 June 2018. No written comments were received.

- b. The Bill was uploaded onto the Legislature website and the electronic version of the Bill was also emailed to interested and affected stakeholders.
- c. Prior to the public hearings, the Committee facilitated public education workshops on the Bill in the same communities targeted for public hearings. The Bill was explained to those in attendance.
- d. Public hearings were then held on 23 May 2018 in all three districts.
- e. The Chairperson of the Committee conducted a radio interview on 23 May 2018 informing communities about the Bill and urging them to submit their inputs.

6.1. Stakeholder input during the public hearings

The Committee Members deployed at the different public hearings engaged the communities as required by Section 118(1) of the Constitution, explaining the importance of public involvement in the Legislature's processing of the Indigenous Knowledge Bill.

At each public hearing, the Committee ensured that the Bill was explained to stakeholders in their own language, that they understood the objectives and impact of the Bill and that their questions were adequately responded to.

The following issues were raised at the public hearings:

Dr JS Moroka Local Municipality

- The community raised a question about where indigenous knowledge can be registered. It was indicated to them that there were ten (10) indigenous knowledge documentation centres in the country. The DST further explained that before any indigenous knowledge can be recorded, a steering committee from the community is set up. Recorders that serve in the 10 centres are from the community and the steering committee identifies and approves the indigenous knowledge practitioners. Furthermore, indigenous knowledge practitioners in specific fields are identified by the communities themselves, depending on their competency level. The DST will work with the South African Qualifications Authority (SAQA) to identify levels of competency and thereby ensure that practitioners get accredited with the relevant qualification (certificate, diploma, degree).
- Clarity was sought on Clause 9 of the Bill, within the meaning of Section 25 of the Constitution, in reference to the subject matter under protection. The issue was that “*property*” was used in a very broad sense and that it needed to be more clearly defined. The response to this comment was that the Bill made a clear distinction between tangible versus intangible property, in relation to intellectual property.
- Clause 12 of the Bill deals with the custodianship of indigenous knowledge which vests in the trustee of that community, who has the responsibility to protect the rights of the community. The concern raised was in the context of benefit sharing between the community and the traditional leadership. The response to this comment indicated that it was the responsibility of the community to nominate a trustee, be it traditional leadership or an independent person.
- Clause 14 of the Bill in relation to political interference in the accreditation of assessors and the application process. The concern of the community was that they need to be protected from political interference in these processes. The response to this concern was that the registration, assessment and certification of indigenous knowledge assessors is a

non-political process. The assessors are community experts and based on their recommendations, NIKSO will issue certificates to the them.

- A community member from Ward 8 raised a question about the monitoring of NIKSO once the Bill comes into effect. It was indicated that NIKSO will reside within the Department of Science and Technology as a Special Services Delivery Unit.
- A question was raised by a community member from Ward 11 about knowledge associated with indigenous trees. It was indicated to the community that knowledge of the particular tree must be registered/recorded.
- In relation to minerals located in an indigenous community, the DST officials explained that the Bill seeks to protect the knowledge behind the minerals.
- The community requested more awareness and information sharing about the Bill.
- A community member from Ward 16 also commented on a local film that was being made in portrayal of Nelson Mandela's life, in relation to protection of indigenous knowledge.
- The Chairperson allowed the various government departments in attendance to make their inputs. These departments included the Department of Co-operative Governance and Traditional Affairs and the Department of Agriculture, Rural Development, Land Administration and Environmental Affairs. They were both in support of the Bill.
- The community unanimously supported the Bill.

Mkhondo Local Municipality

The community welcomed the Bill and hoped that it would restore a culture of dignity and a sense of identity to indigenous communities. The Bill was supported unanimously.

Nkomazi Local Municipality

The community appreciated that they had been given an opportunity to play a role in adding value to the Bill. They raised concerns regarding the Tenbush land. Concerns were also raised about how the correctness of indigenous knowledge would be affirmed and what impact the Bill

would have on the practices of traditional healers, including traditional healers from foreign countries. The community's concerns were addressed and the Bill was unanimously supported.

7. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

- a) After examining the Bill and considering the inputs from stakeholders, the Committee concluded that the Bill does not pose any challenges to the principles of the Constitution of the Republic of South Africa.
- b) No proposed amendments on the Bill were received from the public hearings process nor from any written submissions.
- c) After considering all the inputs, the Committee is in support of the Bill.
- d) The Bill is very progressive in what it seeks to achieve in terms of the importance of indigenous knowledge in the process of job creation, skills development and economic development in the Province and the country at large.
- e) **The public participation process was fruitful; the people in attendance at all three public hearings understood the content and significance of the Bill as they engaged robustly with the Committee and then unanimously supported the Bill.**

8. CONCLUSION

The Portfolio Committee on Education; Culture, Sport and Recreation after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to negotiate in favour of the Bill without any proposed amendments.

9. RECOMMENDATION

The Committee recommends that the House confer the necessary mandate upon the Permanent Delegate representing the Province of Mpumalanga in the NCOP to **negotiate in favour of the Promotion, Management and Development of Indigenous Knowledge Bill [B6B-2016]** taking into account the Committee's observations in this report.



HON. TS KHOZA, MPL

**CHAIRPERSON: PORTFOLIO COMMITTEE ON
EDUCATION; CULTURE, SPORT AND RECREATION**

07/06/2018

DATE