

Report of the Portfolio Committee on Trade and Industry on the Intellectual Property Laws Amendment Bill [B 8 – 2010] (National Assembly – sec 75), dated 19 October 2011:

The Portfolio Committee on Trade and Industry, having considered the subject of the *Intellectual Property Laws Amendment Bill* [B 8 – 2010] (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, presents a redraft of the Bill [B 8B – 2010].

A. Process followed by the Committee on the Intellectual Property Laws Amendment Bill

1. The Bill was submitted in terms of Joint Rule 159 on 28 January 2010.
2. The Bill was then introduced and referred to the Committee on 21 April 2010.
3. The Committee's initial engagement was on the Indigenous Knowledge Protection Policy using the Intellectual Property System on 17 February 2010.
4. Subsequently, it had an initial briefing on the Intellectual Property Laws Amendment Bill from the Department of Trade and Industry (DTI) on 19 May 2010.
5. Due to the complexity of the Bill, the Committee engaged Prof Coenraad Visser, an expert on indigenous knowledge and intellectual property, for a workshop on 2 June 2010. The workshop covered the (i) international experience regarding protection of traditional or indigenous knowledge systems; (ii) South African experience; (iii) issues being raised about the proposed Bill and the validity of these concerns; and (iv) way forward for the public hearings.
6. Then the Committee embarked on an international study tour to Geneva from 19 to 23 July 2010. The tour included engagements with the World Intellectual Property Office (WIPO) and International Centre for Trade and Sustainable Development (ICTSD) on intellectual property matters. ICTSD also agreed to host a workshop on the Intellectual Property Laws Amendment Bill in Parliament.
7. The Committee consulted several organisations regarding their views of the Bill including the National Economic Development and Labour Council (NEDLAC) and the Department of Science and Technology (27 July 2010), and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (28 July 2010).
8. On 5 August 2010, the Committee held a public meeting in Mthatha, Eastern Cape, on the Intellectual Property Laws Amendment Bill, where the Congress of Traditional Leaders of South Africa (CONTRALESAs) and the surrounding community were invited to share their concerns regarding the Bill.
9. A working group on intellectual property was convened, which included four members of the Committee, support staff and experts from the DTI and the State Law Adviser. The working group began meeting in September 2010.
10. The ICTSD Workshop was held on 7 to 8 September 2010, covering (i) Introduction and background: Concepts and global debate; (ii) Lessons learnt from WIPO-related debates; (iii) Protection of traditional knowledge related to biodiversity and South's Africa experience: Lessons, Opportunities and Challenges; and (iv) the SA Intellectual Property Amendments Bill: Salient issues, open discussion.
11. Although the closing date for the initial advertisements for public hearings was in May 2010, given the complexity of the Bill, the Committee decided to first acquaint itself with the Bill and the intellectual property field before embarking on the hearings. Thus the hearings were held on 19 and 20 October, as well as 3 November 2010. The DTI provided their response to public hearings on 10 November 2010.
12. Due to the urgency of the companies legislation, the intellectual property process was halted and deliberations were reconvened on 27 May 2011. The first meeting of this second phase focused on the functioning of the current intellectual property system, followed by deliberations from 1 to 15 June 2011, which culminated in a decision to redraft the Intellectual Property Laws Amendment Bill as introduced on 10 June 2011. The DTI also briefed the Committee on the Bill on 14 June 2011 on issues raised prior to the redraft.
13. The redrafted Amendment Bill was submitted by the working group on 27 July 2011 and deliberations continued from 28 July to 14 September 2011.
14. The Bill was formally considered and adopted on 16 September 2011.

B. Minority views were expressed on the following aspects contained in this report:

1. JTM Classification of Bill

The Committee was of the opinion that the Bill was correctly classified as a section 75 Bill. The IFP disagreed and was of the opinion that the Bill should have been classified as a section 77 (money) Bill.

2. Non-referral to National House of Traditional Leaders

Included in the decision on classification by the JTM was the view that the Bill did not have to be referred to the National House of Traditional Leaders (NHTL). The Committee agreed with this view. The DA, IFP and FF Plus disagreed, and were of the view that the Bill should have been referred to the NHTL in terms of section 18(1) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003).

3. Approval of Bill

- 3.1. After deliberation, the Committee decided to present a redraft of the Bill to the House. The DA, IFP and FF Plus disagreed, and were of the opinion that the Bill should be rejected and that the DTI should submit a new *sui generis* Bill, dealing solely with Indigenous Knowledge.
- 3.2. The FF Plus proposed an amendment to the preamble that would open the door to a later overarching *sui generis* Bill, which, although the Committee supports further development on protection of Indigenous Knowledge, was rejected by the Committee because it is implicit in the preamble. The DA and IFP supported the amendment of the FF Plus.
- 3.3. All clauses of the redrafted Bill were agreed to by the Committee, although not one of them enjoyed the full support of all parties represented in the Committee.

The Committee recommends accordingly.

Report to be considered.