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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**Portfolio Committee on Trade & Industry**

# **Briefing on the Policy & Bill on the Protection of Indigenous Knowledge Systems Using the Intellectual Property System**

23 January 2008



## Purpose & Background

- To present the Policy and the Bill on the Protection of Indigenous Knowledge (IK) through the Intellectual Property (IP) System.
- In 2005 Parliament passed the Patents Amendment Act that deals with the protection of traditional knowledge through the patent system. This is not the case in other domains of IP.



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## Purpose & Background

- In December 2007 Cabinet approved the Policy and Bill for public consultation.
- Cabinet further recommended that before the Policy and Bill are published for wider consultation, departments of Science and Technology (DST), Environmental Affairs and Tourism (DEAT), Arts and Culture (DAC), Health (DOH), Provincial and Local Government (PLG), Agriculture (DA) and Water Affairs and Forestry (DWAF) should be consulted.
- The consultation process with the departments will end on 28 February 2008, where-after Policy and Bill will be published for public consultation.



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## Discussion

- Indigenous Knowledge Systems (IKS) is defined as: *“traditional and local knowledge developed by and within distinctive indigenous communities”* and *“manifests itself in areas ranging from cultural and religious ceremonies, agriculture and health interventions”* (Policy on IKS, 2004)



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## Discussion

- Protection of IKS debated at multilateral forums such as World Intellectual Property Organisation (WIPO), World Trade Organisation (WTO), Food and Agriculture Organisation (FAO), United Nations Education & Scientific Conference (UNESCO), United Nations Environment Programme (UNEP), and United Nations Conference on Trade and Development (UNCTAD).



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## Discussion

- However, no agreement at WTO & WIPO on legally binding instruments;
- Convention on cultural rights of indigenous people (UNESCO);
- Treaty on plants and genetic resources concluded and provides for protection of indigenous/traditional knowledge (FAO). Agricultural legislation needs to be aligned, hence consultation with Agriculture Department.



## Discussion

- Convention of Biodiversity (CBD) administered by (UNEP) instructs member states to protect IP associated with traditional knowledge (TK). The CBD encourages that member states should have “paternity” over genetic and biological resources, hence consultation with DEAT.
- Some of the work of UNESCO can be protected by the Policy and the Bill, but others fall outside the scope of orthodox IP system and other appropriate systems may be employed.



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## Discussion

- Individual countries such as Brazil, India and Peru and regional organisations such as the Pacific region, Andes Nations, African Organisation (AU) are legislating and concluding treaties;
- South Africa already offers some protection, but there is a need for a more holistic review of TK protection through the IP system.





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## Rationale for Review

- If indigenous knowledge is not protected, the economic value that is generated from that knowledge does not flow to the original inventors and custodians of knowledge and only to those who commercially exploit. This happens in the:
  - Cultural sector
  - Pharmaceutical sector
  - Agricultural sector
  - Medical or health sectors.



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## Rationale for Review

- Misappropriation of traditional knowledge is taking place and depleting these resources without benefiting owners.
- No system to identify use of indigenous knowledge and ensure that permission is sought from owners of IK.



## Discussion

- Prevent registration (Defensive protection) of IP rights that draw on indigenous knowledge without such acknowledgement and benefit sharing
  - Disclosure and examination in Designs Act; Copyright Act; Performers Protection Act; Trade Marks Act (Bill on the 4 Acts drafted); Plant Varieties/Breeders Act (consequential amendment?); Patents Act (already amended).
  - There must be benefit sharing arrangements with owners of traditional knowledge systems and users.



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## Discussion

- Creation of National Council to advise Minister & IP Registrar. Members of Council to be appointed after consultation with relevant Ministers.
- Business enterprises such as section 21 companies, close corporations and trusts can be formed by communities.
- Government will form a national trust that should manage the IP whose owners are not known.



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## Discussion

- Databases of these types of IP will have to be formed.
- Interdepartmental Task Team and Inter-parliamentary Committees need to coordinate implementation of the Policy and the legislation and input into regional and international processes.
- National and international policy as well as trade policy needs to be informed by the Policy and the legislation.



## Discussion

- Create opportunities for local/indigenous communities to protect knowledge by collective registration of IP rights:
  - Already exists in Trademarks Act (Collective/certification marks/Geographic indicators); Performers Protection Act and Patents Act. Rooibos and Honey Bush teas, patents associated with the Hoodia and Sutherlandia plants can fall in this category. Mbube and other folkloric music may fall under the Performers Act and Copyright Act. Owners of TIP (Traditional Intellectual Property) will benefit.



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## Discussion

- Need to provide in Designs Act & Copyright Act and to adapt existing provisions in Trademarks Act (Bill provides for that).
- Education and awareness creation by CCRD & CIPRO as well as other government departments, e.g. Agriculture and DAC.



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**Thank you**

**QUESTIONS?**





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