

## Report of the Portfolio Committee on Trade and Industry on the Intellectual Property Laws Amendment Bill, dated 6 March 2013

The Portfolio Committee on Trade and Industry, having reconsidered the *Intellectual Property Laws Amendment Bill [B8B-2010]* (Introduced in the National Assembly as a sec 75 Bill) and the President's reservations on the constitutionality thereof (Announcements, Tablings and Committee Reports, 26 September 2012), [and having conferred with the Select Committee on Trade and International Relations], reports as follows:

1. In a letter dated 19 September 2012, the President of the Republic informed the National Assembly that he had reservations about the constitutionality of the *Intellectual Property Laws Amendment Bill [B 8B-2010]* (National Assembly—sec 75) and that, consequently, he was referring the Bill back to the National Assembly for reconsideration in terms of section 79(1) of the Constitution.

2. The President's reservations relate to the following:

(a) Concern had been expressed that the Bill should be tagged as a money Bill. However, the President has satisfied himself that it is not.

(b) The provisions of the Bill affect certain matters listed in Schedule 4 of the Constitution (which are not necessarily the main subject matter of the Bill), in particular, traditional leadership and cultural matters, and should therefore be dealt with in terms of section 76 of the Constitution.

(c) The Bill ought to have been referred to the National House of Traditional Leaders in terms of section 18(1) of the Traditional Leadership and Governance Framework Act, 2003 ("TLGF" Act No. 41 of 2003).

3. The Committee, having considered the President's reservations, reports as follows:

(a) The Committee concurs with the President's view that the Bill is not a money Bill and therefore does not fall under section 77 of the Constitution, 1996.

(b) With respect to the President's reservations that provisions of the Bill substantially affect certain matters listed in Schedule 4 of the Constitution, in particular traditional leadership and cultural matters, and should therefore be dealt with in terms of the section 76 of the Constitution, the Committee requested an opinion from the Joint Tagging Mechanism (JTM). The JTM concurred with the President's reservation and the Committee agrees that the Bill should be dealt with in terms of section 76 of the Constitution as it affects **cultural matters** in a substantial manner.

(c) The Committee has taken note of the President's reservations that section 18(1) of the Traditional Leadership and Governance Framework Act, 2003 has not been complied with. However, the Committee believes that section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, has been substantially complied with in that input from the National House of Traditional Leaders (NHTL) was solicited and written and verbal submissions were received by the Committee from the NHTL. The Committee therefore believes that section 18 (1) of the Act was complied with and that no further referral is necessary.<sup>1</sup>

4. Minority views expressed on the following aspect of the report.

The Committee has reached a different opinion than the President's with respect to compliance with section 18(1) of the Traditional Leadership and Governance Framework Act, 2003. This decision was on the basis of a legal opinion which states that the "only difference" between the "peremptory formalities required by the statute" is that the Bill was referred to the NHTL by the Chairperson of the portfolio committee rather than the Secretary of Parliament. The facts are different. The Chairperson did not "request" comments in terms of section 18(1) of the Act but "invited" its comments. Hence the NHTL did not meet formally and deliberate formally as a collegial body.

5. After deliberations the Committee recommends: That -

5.1 the decision of the House, on 21 November 2011, to pass the Intellectual Property Laws Amendment Bill [B8B-2010] as a section 75 Bill be rescinded;

5.2 the Bill [B8-2010] referred to in 5.1. above be referred to the Joint Tagging Mechanism for re-classification;

5.3 notwithstanding 5.1 above, the Bill [B8-2010] passed by the House now be regarded as duly introduced and referred to the Portfolio Committee on Trade and Industry for consideration and report; and

5.4 the Committee incorporates in its work the proceedings and all the previous work of the Committee up to the Second Reading of the Bill.

The DA and IFP objected to the Committee's decision in 3c above.

Report to be considered.