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INITIATIVES FOR PROTECTION OF RIGHTS OF HOLDERS OF TRADITIONAL  
KNOWLEDGE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

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## INITIATIVES FOR PROTECTION OF RIGHTS OF HOLDERS OF TRADITIONAL KNOWLEDGE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES\*

“Culture under colonial domination is a contested culture whose destruction is sought in a systematic fashion. It very quickly becomes a culture condemned to secrecy.” Franz Fanon: *The Wretched of the Earth*

### ***Introduction***

It is against the background of three hundred and fifty years of colonial domination that the initiatives currently being undertaken in South Africa around the issue of the promotion and protection of Indigenous Knowledge Systems need to be viewed. The past fifty years of our country's history have seen indigenous culture, knowledge, technologies and, indeed, wisdom, being subjected to one of the most systematic programmes of destruction yet undertaken by human beings. Indeed, as revelations at the Truth and Reconciliation Commission indicate, this programme was inhuman in the extreme in its destructive intent.

The apartheid government embarked on a programme of destruction of indigenous knowledge, and at the same time instituted laws that denied schoolchildren access to modern science and technology: Africans were deemed fit for nothing more than certain forms of labour - manual labour that would service the most basic needs of apartheid's technocratic society.

This society developed a range of Scientific Councils and Institutes, many of which served the apartheid state: among these were the Council for Scientific and Industrial Research, the Agricultural Research Council, the Medical Research Council, the Human Sciences Research Council, the Council for Mining Technology, the Geosciences Council. Collaborative research was conducted at exclusively white universities. Black schoolchildren and students were ghettoised in townships and so-called “Bush Colleges” - universities on the periphery of urban areas, or deep in the rural areas of South Africa. These institutions were

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\* This document reflects the opinion of the author and not necessarily that of the World Intellectual Property Organization (WIPO).

part of the overall plan of underdevelopment, whereby black people in South Africa were excluded from the broader society and disabled from participating in global culture.

While it is true that South Africa contributed to world knowledge and can be proud of certain achievements in the field of Western science and technology, many of these achievements and activities were entirely disconnected from indigenous technologies. For this reason, the Parliamentary Portfolio Committee on Arts, Culture, Science and Technology discussed what could be done to rectify this legacy, and then embarked on an Indigenous Knowledge Systems Programme in collaboration with the now transformed CSIR. This Programme was conceptualised within the broad framework of what has come to be known as African Renaissance.

### ***African Renaissance***

It is against the background of colonial and apartheid underdevelopment and the distortion and denial of indigenous identity that the Programme initiated by the Deputy-President, the “African Renaissance”, has emerged. South Africa finds itself in the situation today where an opportunity for renewal and expansion, for the extension of knowledge as well as innovation, exists.

The ideals expressed in the notion of “African Renaissance” promote the rebirth of the African people and the forging of a new identity as South Africans emerge from the dark ages of colonialism and apartheid. In his “I AM AN AFRICAN” address delivered on the occasion of the adoption of the new Constitution in Parliament in 1995, the Deputy-President redefined what it means to be an African as South Africa re-enters the world and the new millennium. He made specific reference to those thoughts, technologies and activities that are “the unique creation of African hands and minds”. It is here that the complex of traditional knowledge, indigenous people and local communities becomes a focal concern. And so, as a member of the legislature in South Africa, it is with the protection of the rights of the holders of traditional knowledge, and with the indigenous people and local communities in which such knowledge is embedded, that I have a particular concern.

Indigenous knowledge and technologies that were denied, destroyed and suppressed in the past will form the basis of our rebirth. The old ideology saw science as a “laboratory activity” and defined technology within a very broad framework, defining indigenous people as being “without science and technology”. However, indigenous knowledge, folklore and technologies have the potential to assist in the rebirth of our nation. A Programme is currently under way to harness this potential, and the very institutions that were created to maintain apartheid - the Science Councils and the black universities - have been brought into the process in a massive, visionary exercise of transformation whose outcome will be the economic empowerment of South Africa’s rural poor.

A partnership is under way where the indigenous communities are viewed, not as “deprived” or “backward”, but as equal partners. The intended outcome is not for these societies to appropriate the scientific procedures and sophisticated technologies of the industrialised sector of South Africa’s complex society. Instead, there is a process of mutual learning where the community is regarded as the repository of hidden or lost knowledge. At all times, it is the community that should be the prime beneficiary in the partnerships established. They perceive themselves as part of a process and therefore voluntarily participate, and so relationships of trust are created. People’s identities are recognised, respected and rewarded as a crucial aspect of African Renaissance.

The ideals of African Renaissance are accompanied by a macro-economic policy: Growth, Employment and Redistribution (GEAR). The aims of this policy are empowerment and sustainable development. The *promotion* of Indigenous Knowledge and technologies is central to the achievement of the aims of this policy

### ***Indigenous Knowledge Systems***

The term, “Indigenous Knowledge”, widely used in recent decades, signifies a realisation that technology is not the exclusive property of industrialised societies, but that indigenous cultures are also inventors and custodians of technology. There is a movement away from an authoritarian technology transfer approach towards Indigenous Knowledge as a base for

development. This realisation has entered the public domain. In the June 29, 1998, edition of TIME magazine, a reader, Patrice Owiafe writes:

“Africa can improve economically only by reviving Indigenous Technology that was lost, and by making improvements to this base. African nations need to tackle issues of technological and economic self-reliance, and their people need to select leaders who can spearhead these areas.”

In South Africa, the people's leaders in government have indeed spearheaded a process that will lead to economic self-reliance - the details of which will soon become evident. We have harnessed and promoted the new consciousness that is emerging among our people who experienced one of the most destructive and oppressive systems of subjugation ever devised by colonial powers. This new consciousness is manifested in an appreciation of cultural heritage as part of the process of forging a new identity in the 21st century.

Culture is understood as a *communal* intellectual creation - an Indigenous Knowledge System. This is an important factor, particularly when considerations of restitution or compensation arise.

There have been two significant world conventions that impact on Indigenous Knowledge: the World Trade Organisation (WTO) summit and the Rio Summit on Biodiversity. The former, which is concerned with globalisation and trade liberalisation, sees knowledge as belonging to the public domain. It views Indigenous Knowledge in terms of Intellectual Property which should be protected within the Intellectual Property Rights regime, based on Western notions of individual ownership. The Rio declaration, on the other hand, focuses on communal ownership. Accordingly, knowledge is viewed as being owned by the local community in whose customs, practices and traditions it is embedded. Such knowledge is often, however, spread across political boundaries because of Africa's colonial history.

The indigenous knowledge debate is reaching prominence in South Africa. An important factor is the re-emergence of marginalised indigenous populations who are claiming back the land with its natural resources. These communities are currently building and improving on

their African cultural, technological, artistic, linguistic and traditional healing heritage. Indigenous knowledge has the potential to create wealth in local communities. This requires a re-focusing of existing activities, especially at local government level, and necessitates that civil society be substantively and consistently represented and consulted in the identification and definition of Indigenous Knowledge in South Africa.

Indigenous Knowledge Systems encompass a broad range of activities and practices. Apart from elements of the traditional artistic heritage such as stone and wooden artefacts, weaving, musical instruments, beadwork, and architectural forms, it includes fermentation techniques, food processing and medicinal plants. Here, the issue of bio-diversity assumes central importance. The question of the *protection* of such knowledge from exploitation now becomes a central concern.

### ***The Indigenous Knowledge Systems Programme***

The twin issues that emerge from the above is that Indigenous Knowledge in South Africa needs to be both promoted and protected. Currently, Indigenous Knowledge in South Africa enjoys no legal protection. The present government in South Africa aims to reverse the legacy of apartheid that not only distorted and destroyed Indigenous Knowledge, but also made it vulnerable to exploitation, with no regard to restitution or compensation. A major concern is to assist in the transformation of such knowledge into small, medium and micro-enterprises that will be of direct economic benefit to the practitioners and owners of knowledge.

The “National System of Innovation” was adopted by the South African government as a policy framework in Science and Technology. The Green Paper, “Preparing for the 21st Century”, ascribes a key role for the National System of Innovation as follows:

“To devise more direct ways to improve the quality of life for ordinary citizens”.

A Report of the Portfolio Committee states:

‘A specific goal of the National System of Innovation must be to use science and technology to empower those who have been disadvantaged or marginalised and to entrench this goal in its structures and functions.’ ”

It has as its goal the harnessing of knowledge for national economic advancement within the context of African Renaissance and the democratisation process; it also encourages the maximum participation of all sectors of the economy, including joint ventures and strategic partnerships between big business and rural entities. Since some products may find their way into international markets, patenting will be necessary.

Against this background, the following process has unfolded: in 1995, in my capacity as Chairperson of the Portfolio Committee on Arts, Culture, Science, Language and Technology, I introduced Indigenous Knowledge as a critical component in the restructuring and democratisation of the South African Science and Technology System. The IKS project is a component of the Year of Science and Technology declared for 1998, thus contributing to the African Renaissance.

The Programme began as a pilot project on Indigenous Technologies. In December 1996 and 1997, the now transformed Council for Scientific and Industrial Research requested the University of the North to initiate a pilot project on Indigenous Technologies. Since then the project has been extended to include the following universities: University of Fort Hare, University of Transkei, University of Quaqwa, University of Venda, University of the North-West, University of Zululand, Vista University (Mamelodi campus), and UNISA. These formerly black - or historically-disadvantaged - universities are well-placed to enable the interaction of researchers with local communities, since they are located in rural areas or townships (with the exception of UNISA, a correspondence university that caters to many students in rural areas and townships).

The audit was completed in June 1998, and has unearthed a number of technologies, including fermentation processes, soil and water conservation, medicinal plants, pest control, traditional tanning and arts and crafts. Traditional foods and beverages such as sorghum beer and wine and fermented milk could stimulate rural enterprise. Among the foods is a toad that

often emerges in the Northern Province after heavy rain. It is a sought-after delicacy that is also rich in protein. Its local name is *matlametlo*. It is not farmed at present, but, with the assistance of the animal husbandry research department at the University of the North, for example, toad farming and the preparation and distribution of its products could have a positive economic outcome in terms of job creation and the tourist industry. In our Portfolio Committee Report we stated:

“The pilot study exceeded the expectations of the organisers and has provided a good platform for more extensive programme design and further pilots.”

A further positive effect of the audit conducted by the CSIR is that it afforded students the opportunity to interact with communities, and to develop research methods and a research ethos in institutions where this has, for historical reasons, not always happened.

The results of the audit are evidence of the persistence of rural technologies in forgotten and destitute areas, and are an encouraging indication of the resourcefulness and creativity of rural communities. The following declaration was issued by the Department of Arts, Culture, Science and Technology:

“The Department of Arts, Culture, Science and Technology has followed the initiative on indigenous technologies with keen interest. The fact that the Parliamentary Portfolio Committee on Arts, Culture, Science and Technology, the CSIR, tertiary institutions and communities are involved seems an ideal way of getting our science and technology working.

The Department is supportive of the Programme which for the first time in our country audits the technologies that exist in African rural communities and as a result the Department is developing a framework within which the Programme will be pursued. More important, the value of the Programme as a vehicle for promoting science, engineering and technology as well as the possibilities that some of the technologies can be developed into small businesses is greatly appreciated.”



In October 1997 the Portfolio Committee on Arts, Culture, Science, Language and Technology set up a variety of structures to protect and promote Indigenous Knowledge and Technology. The “think tank” is a Technical Team whose membership (approximately 20-strong) includes experts in various relevant fields: the law, the environment and tourism, human and social sciences, agricultural sciences, trade and industry, policy formulation and legislation. Ad hoc members are drawn in as and when needed to provide assistance and support, for example in the area of publicity campaigns.

A fundamental concern has at all times been the inclusion, at every level, of communities. Close relationships and liaisons have been established with traditional leaders, one of whom sits on the Technical Team. Other traditional leaders are represented on the National Steering Committee and at other levels. A related concern is that of translation and here, the question of orality is receiving attention. At a recent seminar, the question of plant names was discussed, and it was agreed that indigenous plant names are in themselves a source of knowledge. Western taxonomical systems favour Latin (and English or Afrikaans in South Africa). However, if indigenous knowledge is viewed as a System that includes language and folklore, then it is clear that the scientific method of labelling will need to include the unearthing of indigenous names.

The Portfolio Committee is assured of expert advice as it proceeds to set legislation in place via a White Paper that will call for broad public input. Integral to this process is the holding of a Workshop to which relevant stakeholders will be invited. The Programme will be structured in such a way that the voices of rural practitioners will be audible throughout: their participation will be integral and integrated. The Workshop is scheduled to be held in September, and it will coincide with Heritage month, when various activities will publicise our people’s rich cultural heritage. The venue will be the University of the North-West, a rurally located, historically disadvantaged university with close access to indigenous people.

As a follow-up to the Workshop, a Regional Conference will be held, to which international experts will be invited. The purpose of focusing on the region is to address the importance of collaboration with neighbouring countries, since legal protection will only be effective if there is cooperation and a sense of common purpose. The Workshop and the

Conference are integral aspects of the policy-formulation phase of the Programme. A policy framework is a necessary aspect of drawing up legislation that will make provision for the promotion and protection of indigenous community intellectual property rights.

While the major stakeholders are, of course, rural communities, significant partners in the whole endeavour are the Science Councils and the Universities - institutions which have undergone transformation since apartheid, and which are currently being employed to achieve the broad goals of African Renaissance and Nation-building. In addition to the support given by the Council for Scientific and Industrial Research, the Agricultural Research Council recently invited members of the Technical Team to attend a group seminar where work on indigenous technologies was discussed. This seminar was held in order to draw up a report of the Council's activities in the field of Indigenous Knowledge. A broad range of research activities that are conducted in collaboration with communities will be included in the report. Similar reports have been elicited from other Science Councils. It is hoped that these will provide the basis for mutually-advantageous activities as scientific experts and rural technologists form partnerships for the broader good of our society as we move into the 21st Century.

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