

Contesting Space and Time: Intellectual Property Rights and the Indigenous Knowledge Systems Research in South African Universities¹

by

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Abstract

For historical and structural reasons, research in South Africa has largely been a ‘powerful’ affair, and remains so to this day. The ‘powerful’ monopoly of research skills could be attributed to the fact that conditions at ‘powerful’ institutions were favourable and still are. When one looks at the IPR (Intellectual Property Rights) and IKS (Indigenous Knowledge Systems) Research – the question of power remains, and probably will always. The current IKS Research in South Africa vividly displays a lack of space. The indigenous epistemology world has been invaded and occupied apparently without any ethical consideration. Is there any regard for ethical implications in this boundary ‘jumping’? Is there any ‘conversation’ that takes place in occupying this space? Is there any ‘conversation’ at all; which jargon is used in the ‘conversational’ discourse? This paper looks critically at the concept and practice of power at the expense of the powerless in the context of IKS Research in South African Universities.

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1. Introduction

I enter into this debate on *African Universities in the 21st Century* from the standpoint of both Indigenous Knowledge Systems (IKS) and African Divination perspectives. Research interest as regards Indigenous epistemologies has become a centre of debate in most South African Universities. At first the interest to further IKS research and the promotion thereof was seriously taken up by the CSIR that involved a number of tertiary institutions. The CSIR attempt was kick started in 1998 and was replaced by the new research structure namely, the National Research Foundation (NRF) (cf. a combination and reconfiguring of the Centre for Science Development (CSD) and the (FRD). The NRF looked at a number of research *foci* included in them was the promotion and research on Indigenous epistemologies. The programme to support and promote research in IKS was started in the first quarter of 2000. The establishment of the IKS Focus Area was made possible by the allocation of a ring-fenced amount of R10 million by the Department of Arts, Culture, Science and Technology (DACST) to the NRF. The programme provides funding for research undertaken by individuals and teams at tertiary institutions, science councils (SCs) and other research-based organisations, Non-governmental Organisations (NGO's) and communities in South Africa. Under the new funding framework it operates as the IKS Focus Area. The IKS Focus Area has six sub-themes or sub-focus areas, namely,

- a. The nature of Indigenous Knowledge (IK), Indigenous Knowledge Systems (IKS) and Indigenous Technology (IT)
- b. Traditional medicine and Health
- c. Indigenous food systems
- d. Socio-cultural systems
- e. Arts, crafts and materials
- f. Cross-cutting and supportive issues in IK, IKS and IT.

Research According to the NRF 's stance on IKS, it is maintained that,

“We have to understand indigenous knowledge (IK) and its role in community life from an integrated perspective that includes both spiritual and material aspects, as well as the complex relation between them. At the same time, it is necessary to understand and explore the potential contribution of IK to local development. The protection of IK and its use for the benefit of its owners and the communities where it is practised, require research. Research into IKS, however, should ideally be carried out with the participation of the communities in which it originates and is held (www.nrf.ac.za/funding/guide/iks.stm).

One notes the noble intensions behind the NRF 's efforts in terms of IKS research. However, it becomes important for one to mention the fact that research, at least in some South African Universities, has largely been a 'powerful' affair, and remains so to this day. The powerful monopoly of research skills could be attributed to the fact that conditions at 'powerful' institutions were favourable and still are favourable to those institutions. As Seepe (in *Tribute Magazine*, 2001:52) partly concludes,

“The exclusion of blacks in research can be linked to issues of epistemology, and the political and cultural location in which the research process takes place. We err if we consider the research debate within the social sciences and humanities as simply an issue of skills, techniques and procedure”.

Further, in this regard, Le Grange (2001:139) strongly argues that,

“What is referred here is a concern about epistemological justice in that disparate epistemologies have not been equally adopted in or compared equitably within participatory action research processes. This is an important concern because Western epistemologies continue to dominate “other” ways of knowing.

In this very same context is the research on Indigenous Knowledge Systems (IKS). It is the opinion of the author of this article that the current IKS Research in South Africa displays a lack of space. The indigenous epistemological space is invaded and occupied apparently without any ethical consideration.

One wonders whether there is any regard for ethics and philosophic consideration in this boundary ‘jumping’. It is within this context of contestation that this paper is presented to look critically at the concept and practice of power at the expense of the powerless in the context of IKS Research in most South African Universities. The author aims to make use of his personal experience in engaging and *disengaging* this discourse of power as regards the IKS research.

2. Broadening the horizons

After the second White Paper on International Development, the Commission on Intellectual Property Rights was set up to look at how the global rules and practices on intellectual property rights might *better serve the interests of poor people and developing countries* (my emphasis). This overall aim is better encapsulated in the message from the Secretary of State for International Development, Clare Short (2001. www.iprcommission.org/index.asp) that,

“We believe that a basic framework of intellectual property (IP) law is important in developing countries in order to attract foreign investment and modern technology. It is also necessary to encourage research to provide drugs for the diseases of poverty and to make possible tiered pricing. But the key question that needs to be addressed is whether the world’s IP arrangements help or hurt poor people”.

Further, in 1982 the World Intellectual Property Organisation (WIPO) in collaboration with UNESCO by a Working Group agreed that, **a.** adequate legal protection of folk-knowledge was desirable; **b.** such legal protection could be promoted at the national level by model provisions for legislation; **c.** such model provisions should be so elaborated as to be applicable both in countries where no relevant legislation was in force and in countries where existing legislation could be further developed; **d.** the said model provisions should also allow for protection by means of copyright and neighbouring rights where such forms of protection could apply; and **e.** the model provisions for national laws should pave the way for sub-regional, regional and international protection of folk-knowledge (WIPO/GRTKF/IC/2/8).

Perhaps to crown it all, recently (15-16 December 2001), the author attended the launch of the National Centre for Traditional Healing and Reconciliation at the Vlakplaas, Pretoria in South Africa. The launch was both directed and facilitated by the Indigenous Knowledge Systems Secretariat. One of the prime aims of this project, it is stated in the objectives of creating the Centre, is to create, encourage and support IKS Small, Micro, and Medium Enterprises (SMMEs).

The above-mentioned efforts both locally and internationally are noted. However, it becomes imperative to mention at this stage that what pervades all these attempts (and many others) is the dominant language of *economics*. All mention the fact that all IKS attempts should be economically viable in order to sustain poor communities. The other closely connected concept in this context is the language used, which claims to conceptualise this economic viability or sustenance. The language used belongs to the centre-space and ‘speaks for’ the margin-space. In this regard, it is the centre that speaks ‘on behalf of’ and claims to take into cognisance potencies that exist in the margin-space. One can demonstrate this better by citing one proposal that was sent to the NRF for funding of IKS collaborative project between the University of the North and the University of Natal (Pietermaritzburg).

In this proposal, the hypothesis states that,

“This study is that African belief systems demonstrate the nature and usefulness of certain medicinal plants and animals. The assumption is that many of these beliefs are embedded and therefore unsaid. It is the task of the research to uncover them and demonstrate their significance. The study is based on the further assumption that the medicinal plants themselves are merely surface indicators of deeper socio-cultural realities. As signifiers they are gateways through which researchers may access these realities and try to understand their social significance” (Joint Proposal submitted to the NRF by A Balcomb, M A Masoga, S T Kgatla and L Ngoetjana: 3 July 2001).

The above-stated hypothesis indicates that the research respondents will be tuned to speak for the research study. This clearly indicates how power directs and misdirects at times. The author (Masoga) was directly involved in the above-mentioned collaborative research project. He (author) became aware, having consulted with his research *interlocutors*, of the power dynamics involved in the mentioned research process. The following are some of the excerpts taken from a two-hour interview² that the author had with *Ngaka* (Sepedi for diviner-healer) Maamushi, one of the diviner-healers in the Limpopo Province, dd. 23 October 2001 (cf. translated from Sepedi into English). The interview focussed around the NRF collaborative research project indicated earlier on.

Masoga: What do you think about the subject of beliefs, and their social implications for medicinal plants?

Maamushi: There is a problem with the use of the concept: medicinal plants as well as ‘belief systems’ behind medicinal plants. The idea of medicinal intervention (*mekgwa ya go thusha motho*) should rather be used instead of medicinal plants conceptualisation. This is because there is a wide variety of plants that could be used for specific interventions. The intervention is important, not the plant. Similarly the term ‘belief system’ should be replaced by the term ‘social reality’ (*seo bophelo e leng sona*). You young researchers suffer from western way of looking at things. You come to us with words and expect us to give you the African equations of them. That is simply wrong!! You have got to change the manner in which you conduct your research. African belief systems must have a holistic approach. Plants cannot be viewed in isolation from the spirit world. They are also connected with the animal world - both domestic and wild. All are part of an environment that is composed of the forces of air, water, fire and earth! Healing in such a world is always physical, psychological, spiritual and social!

The above-mentioned conversation between the author and *Ngaka* Maamushi points to a number of significant areas, in terms of the IKS research. Firstly, the research respondents have their own space that they do not wish invaded without following the prescribed protocol. This margin-space is considered by its occupiers to be central in their life and philosophy. Secondly, the margin-space of these respondents has its specialised language that should be learned in order for one to begin to understand it. Thirdly, one is strongly cautioned not to be too much of a reductionist. James Cox’s views on methodological conversion make sense to the author. He (Cox) maintains that,

“We can understand those who are different from ourselves without confessionally endorsing their world views. Yet, we do affirm methodologically what they affirm thereby experiencing what they experience” (1966:166).

2 The interviewee, *Ngaka* Maamushi gave permission for the publication of the interview. Permission was granted partly because the author is himself an initiated diviner-healer.

This explanation or perspective clarifies confessional conversion as opposed to methodological conversion. As Cox (1996:168) maintains that,

“Confessional conversion surreptitiously moves the study of religion away from science into theology”.

In this case methodological conversion allows one to suspend the rules of autonomous rationality and abide by the rules of religious faith while at the same time playing the rules of scientific rationality (Cox 1996:168). Cox uses the term *dia-topical* hermeneutics as opposed to *inter-polational* approach.

Obviously, attempts to protect and promote IKS end up exposing who ‘real ab-users’ are, i.e; those who are concerned about the protection of IKS. This translates into a power game and invasion of the space that is occupied by the ‘powerless’. One cannot avoid noticing the variables: centre-space and margin-space. It is the opinion of the author (Masoga) that most South African Universities are trapped in the centre-space and its specialised operations.

In this context, one area of struggle is to overcome the obvious gap between the periphery (margin-space) and the centre (centre-space). One would be tempted to propose that there should be a partnership between centre and periphery that ultimately goes beyond the two dichotomies. The challenge remains: Is it possible for the centre to move to the periphery? The concern calls for ‘genuine’ conversation between the centre-space and the margin-space. This concern notes power as both concept and practice in the whole process. Glossing over it would not resolve the endemic condition. Grappling and acknowledging its serious implications in the process offers one the opportunity to devise new and innovative strategies in dealing with it.

3. A case for the Conversational Approach

So far we have noticed how power as both concept and practice plays a central role in the IKS research and the IPR. The paper proposes conversational approach (qualitative research of ethnographic nature) in addressing the asymmetry propensity that exists between the centre-space and margin-space. The IK research should offer both the centre and periphery a space to converse and converge. No IK research and IPR are research enough until they wrestle with the question of power relations. The idea of forging an interface (Serote:1998) between the centre and periphery does not at all help or come to any solution of the problem we are all facing. It is necessary for displaced discourses to occupy their space and converse with centralized discourses. The jargon dialogue as indicated elsewhere (Grenier:1998) will not suffice. Conversational research mode should be considered as one of the options in narrowing the gap that exists between the two discourses (margin-space and centre-space). This will hopefully handle discursive borderlines and open up a possibility for the many institutions of conversation.

Conversation allows openness, presence, honesty, life, honest critique and tapestry. In this process, the opportunity arises for ‘trained’ researchers to gain deeper insight of the realities of the margin-space discourse. Firstly, the margin-space occupiers bring popular critique into the centre scholarship. Regardless of their (margin-space occupiers) un-orderliness, they diverse, and their discourse addresses and impacts on countless life issues. In the process, issues raised are *problematizations* which under-gird lives and of common people and are absent from institutionalised published institutions. Whereas the latter (centre-space) capitalises on systems from which only they themselves or a few others benefit. Secondly, the conversational approach is of presence. The margin-space is all about life and opens one to the reality of face-to-face presence and contact. The voices echoed in it, present one with a mirror of life and presence. There is no place for multiplicity of absences, or its empty promises and elusiveness. This, definitely, offers the centre-space an opportunity to be immersed in the conversation of presence and contact: real presence and real contact. Thirdly, honesty guides this nuance of research. Indeed, one cannot borrow integrity, but integrity should belong somewhere. The margin-space produces and masters its own research dispositions. It can sometimes mislead the non-margin-space occupier to under-estimate echoes from this research context. Fourthly, it is communal and co-operative in essence. It connects the *dis-connected*, and opens up stifled channels of energy. It clears up blocked conversations and jumps and deconstructs existing boundaries, ultimately re-ordering these channels and boundaries linking and connecting them for purpose of advancing the dignity and integrity of all involved. Lastly, open-honest critique is guaranteed in this proposed process. It is inevitable that the IKS research and IPR constitutes a tapestry of bravery and outspokenness, on the

other hand, also honest narration of failure and cowardice. Margin-space discourse seeks the bravery of the significant, oppressed and silenced, but also reports failure. In this case, the discourse takes place in public and not in terms of conceptualised, ritualised and intellectualised discourses that incarcerated and silenced the prophetic and life-giving voice. If listened to closely, and within its given space it (voice), is definitely not intimidated by any type of power. Margin-spaces have stories about life, for life, against life, in life and on life. We live and converse about our life. It is in this process that we actualise our humanity. Silence constitutes a serious backdrop in life, but forced silence is more acute and endemic than preferred silence. There is a need to begin to understand the criticality that the marginal space possesses. Who determines its naïve and pre-critical reference? Who owns and controls the jargon ‘critical’ and ‘sobriety’?

As Le Grange maintains,

“Those of us who regard ourselves as Western researchers should take up the responsibility of exploring ways in which we might work together with indigenous peoples in local knowledge spaces. In Africa we are faced with the tension between universal claims of global science on the other hand the equally compelling claims to recover the African past”.

It is a fact that these expressions and many others are formulated and controlled from some powerful space, that of the centre-margin. One notes that another challenge from the central-space would be problematic of the margin-space not having the appropriate jargon necessary for lobbying, which is also used by the powerful in chambers of power where its fate is discussed. Then whose task is this? Who is capable of carrying out this task? This brings the author to organic researchers of IKS. The organic researchers should be formerly be produced by the margin-space and advanced to the centre-space to learn the ropes of the centre-space, and their sole responsibility is the margin-space. They have a task to advance the margin-space to become itself. To be sure, there is need to have organic researchers to be empowered by the margin-space and with the mandate of the margin-space. There should always be an ongoing relation between the organic researcher and the organic margin-space. Power is shared and power is critically negotiated in this context of organic research. The process allows creative tension and struggle. Ultimately, the ongoing agony itself offers growth, understanding, creativity, criticality, empowerment, and openness. The key question is: who are IKS researchers accountable to? What is their *locus operandi*? Surely, not to the ivory towers that are considered the citadel of excellence. Honest and critical IKS organic researchers should be based within the organic margin context, or organic margin pan if you will. An organic margin-space allows freedom of movement, but it is also closed in order to allow the existence of system, its integrity and space. This will ensure that there is no ongoing negative tension in determining the interface between. In this regard the creative centre will emerge, determined and controlled by the organic margin-space.

In short, there is need for local critical mind space (cf. mapping local knowledge) in looking at the IPR and the Indigenous epistemologies research. The glossary to be used in this process should be locally oriented – directed and controlled by custodians of local knowledge and wisdom. Further, there is a need to suspend, for a while, dominant language formulations and to allow local perspectives or voices to become dominant in the debate on IPR and IKS research. As indicated earlier on, it is not helpful to use dominant discourses in protecting local discourses.

In conclusion, this paper raised a voice that might disturb those coming for the first time into the world of IKS research. First, it should be noted that questions and issues raised should become issues and questions of contention for doing IKS research and IPR. The relatively good researchers are those who ‘agonize’ in their attempts to collect and contribute ‘new’ – if there is such a thing as ‘new’ ideas and information to the *corpus* of knowledge. Second, researchers in the field of IKS should be reminded to tread carefully in the area of epistemology. They have to form a ‘rapport’ of ‘trust’ in engaging ‘local research participants’ – because it the latter’s space; they own and direct it. Who can claim their space? Surely, only they themselves! They (local research participants) have the ability to direct their margin space to the centre – As Ngungi wa Thiongo rightly observed, this is the struggle of,

“Waging and winning the struggle for cultural freedoms in the world” (Moving the Centre, xvii-xviii) – All in all ‘creating space for a Hundred flowers to Blossom’.

It should always be remembered that “denied memories are dangerous memories” (Scott 1997:18).

Bibliography

Battiste, M. & Henderson, J. Y. (2000). *Protecting Indigenous Knowledge and Heritage: A Global Challenge*. Saskatoon: Purich Publishing Ltd.

Brush, M. & Stanbinsky, D (1996). *Valuing Local Knowledge: Indigenous Peoples and Intellectual Property Rights*. Washington DC: Island Press.

Cox, J. L. (1996). *Methodological Considerations Relevant to Understanding African Indigenous Religions in Africa*. United Kingdom: Cambridge (Roots and Branches).

Grenier, L. (1998). *Working with Indigenous Knowledge: A guide for Researchers*. Ottawa: IDRC.

Le Grange, L. (2001). 'Challenges for participatory action research and indigenous knowledge in Africa' In: *Acta Academica*, vol.33, no. 3, pp.136-150.

Posey, D. (1996). *Beyond Intellectual Property: Towards Traditional Resource Rights for Indigenous Peoples and Local Communities*. Ottawa: IDRC.

Scott, P. (1997). 'Changes in knowledge production and dissemination in the context of globalisation' In: Cloete *et al* (eds.), pp. 3-12.

Serote, W. (1998), 'One Fundamental Threshold', In: World Intellectual Property Organization, Roundtable on Intellectual Property and Indigenous Peoples.