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EMPOWERING RURAL WOMEN CRAFTERS IN KWAZULU-NATAL: THE DYNAMICS OF INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, INNOVATION AND SOCIAL ENTREPRENEURSHIP

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This article, based on qualitative and desk research, explores the intellectual property, traditional cultural expression, empowerment, innovation, and entrepreneurship dynamics at play in the work of a group of women crafters (bead-makers) participating in the Woza Moya project of the Hillcrest AIDS Centre Trust in KwaZulu-Natal, South Africa. The study found that, in this particular case, collaborative and inclusive innovation practices and social entrepreneurship modalities appear to generate significant empowerment for the craftspeople, regardless of the fact that the intellectual property system does not offer easily accessible opportunities. Inclusive innovation and social entrepreneurship would thus, in this case, appear to be some effective mechanisms for empowering rural women crafters.

Intellectual property — cultural rights — empowerment — social entrepreneurship

I INTRODUCTION

Intellectual property (‘IP’) regimes are generally viewed as a means of empowering innovators and creators by vesting them with exclusive rights over their innovation and creation. Such rights enable the innovators and creators to decide whether, or not, to allow third parties to use their innovation and creation, and the terms and conditions under which the use may be allowed. The exclusive rights, which are usually subject to justifiable limitations and exceptions, are meant to incentivise creativity and innovation for the benefit of innovators, creators, and the society in

† LLB LLM (UniBen, Nigeria) PhD (Cape Town). This research was carried out under the auspices of the Open African Innovation Research (Open AIR) network, in partnership with the University of Cape Town (South Africa), University of Johannesburg (South Africa), University of Ottawa (Canada), American University in Cairo (Egypt), Stratmore University (Kenya), and the Nigerian Institute of Advanced Legal Studies (Nigeria). The author acknowledges the support provided for this research by Open AIR, the Social Sciences and Humanities Research Council (SSHRC) of Canada, the International Development Research Centre (IDRC), the UK Department for International Development (DFID), and the Canadian Queen Elizabeth II Scholarship programme (OES). The opinions expressed, as well as any errors, are entirely those of the author.
general. To enjoy protection under IP regimes, a work must meet certain requirements. For instance, under patent regimes, an invention must meet a number of patentability requirements to be registered, such as newness, usefulness and non-obviousness. Similarly, under copyright regimes, although registration is not required, a creative work (e.g., a book, piece of art, film) must satisfy the requirements of originality (and fixation), and authorship (and ownership) for the creator to claim copyright.

From a gender perspective, however, a growing body of studies has shown that IP regimes, in fact, can be disempowering to women innovators and creators, especially rural African women crafters whose works, created in collaborative communities, are shaped by indigenous knowledge.¹ Thus, the extent to which IP regimes conform to local and international norms on gender equality is increasingly attracting attention from academics and policy-makers. The overall concerns, from a gender perspective, include how to empower innovative and creative women, especially those from rural African communities, to promote their recognition and value, in the process enabling them to harness the social and economic benefits of their work within existing IP regimes.²

The article proceeds from the premise that a solution to the challenge mentioned above may be found in adopting business strategies such as social entrepreneurship and inclusive innovation, which do not emphasise IP ownership and enforcement but promote collaboration and knowledge-sharing among rural craft women. It then provides evidence of how rural women crafters in South Africa are empowering themselves and their community economically and socially through social entrepreneurship, inclusive innovation and a platform that promotes collaboration and knowledge sharing. In particular, the paper draws from a case study of the rural Zulu women bead-makers under the Woza Moya (isiZulu for ‘come wind of change’) project of the Hillcrest AIDS Centre Trust (‘HACT’), a non-profit organisation (‘NPO’) situated in Hillcrest, KwaZulu-Natal, South Africa. The rural women reside in the rural communities that make up the populous Valley of a Thousand Hills in KwaZulu-Natal.


The evidence gathered during the case study demonstrates that the rural women crafters are empowering themselves and their communities, and promoting and creating value for their works through social entrepreneurship and inclusive innovation. Specifically, the evidence shows that, through social entrepreneurship and inclusive innovation, rural women crafters are developing a community, and this fosters inclusion, collaboration, knowledge-sharing, and continuous learning among themselves. Through this mechanism, the women are constantly improving and harnessing their indigenous knowledge and empowering themselves to be able to address their personal and shared social challenges of poverty, inadequate health care, housing, and access to education for their children, among others. Furthermore, they are creating recognition for themselves and their indigenous knowledge, while at the same time ensuring that they receive due compensation for their individual creativity.

In addition to the foregoing, rural women crafters working as a community could adopt important legal forms, such as co-operatives, NPOs and not-for-profit companies ('NPCs'), to enhance their innovation, entrepreneurship and collaboration. However, beyond noting that Woza Moya is the empowerment project of an NPO (viz HACT), this article does not explore how the legal forms may enhance innovation, entrepreneurship, and collaboration within the context of indigenous craft. This is an important issue, but is beyond the scope of this article.

The focus of this article is primarily on the IP, traditional cultural expressions ('TCEs'), inclusive innovation, and social/entrepreneurial dynamics of the HACT’s empowerment project. The article is divided into five parts, commencing with this introduction. The second part discusses the research methodology, while the third places the research in context by discussing rural Zulu women’s bead-making craft, and examining the social entrepreneurial dynamics of the Woza Moya project. The fourth part discusses the research findings of the case study, with a specific focus on the aspects relating to IP and its impact on gender equality and TCEs within the context of the research, as well as the inclusive innovation and empowerment perspectives of the Woza Moya project. Part V concludes the article.

II METHODOLOGY
The research was primarily a qualitative field study, conducted via participant observation, interviews, and a focus group discussion. The field research was complemented by desk review of statutes, treaties and

3 Co-Operatives Act 14 of 2005
4 Non-Profit Organisations Act 71 of 1997
5 Companies Act 71 of 2008, s 1 and sched 1.
literature relevant to the issues discussed in the article. The interviews, discussion and participant observation were conducted between 1 November 2018 and 31 January 2019 at the premises of the HACT in Hillcrest in eThekwini Municipality, and in KwaNyuswa\(^6\) in iLembe District Municipality, both of which lie in the KwaZulu-Natal Province.

HACT was founded in 1990, with the aim of educating people about the HIV/AIDS epidemic and preventing its spread in South Africa. Its primary focus is the rural Zulu communities within the Valley of a Thousand Hills and environs. HACT’s core activities include caring for those infected and affected by the HIV/AIDS scourge within the rural communities in the Valley of a Thousand Hills, and for every other person who falls within HACT’s reach.\(^7\) Rural Zulu women form a substantial part of the beneficiaries of HACT’s activities. The Woza Moya project was established by the HACT to enable the women to empower themselves in a sustainable manner primarily through their traditional bead-works.\(^8\)

During the course of my research, I participated in some of the activities of HACT, and the Woza Moya project in particular. I interviewed thirteen people: nine women and four men. Four of the thirteen interviewees (three women and one man) were members of staff of the HACT. The other nine were Zulu bead-makers (six women and three men) connected to the Woza Moya project. The focus group discussion had roughly 20 participants in total, all of whom were women bead-makers, including five of the women interviewed individually, under the Woza Moya project. Seventy per cent of the bead-makers who participated in the study did not have more than primary school education, while 15 per cent had never gone to school at all. Another 10 per cent had high school education, and the rest (5 per cent) had a college education. The participants were selected with the assistance of HACT staff. The staff also served as interpreters during my interactions with 80 per cent of the research participants, as these participants could communicate more fluently in isiZulu than in English.

Ethical clearance for this research was obtained from the Research Ethics Committee of the Law Faculty, University of Cape Town. The terms of the ethics clearance were complied with. Accordingly, the research participants were duly informed of the nature of the case study and their consent was obtained both orally and in writing. Consent was also obtained for audio recording of the conversations and for the photographs taken during the interviews. Finally, the research participants consented to the disclosure of their names and basic identifiers.

\(^6\) The interview with Gogo Sebenzani Mbanda was conducted in her compound in Kwanyuswa-Mathebethu community on 20 November 2018.


Fundamentally, the observation, interviews, and focus group discussion were structured so as to gain direct insights into the gender dimension of the Zulu beads and bead-works, the culture of knowledge-sharing and collaboration by rural Zulu women bead-makers, the social entrepreneurial and inclusive innovation perspectives of the Woza Moya project, and the role of rural Zulu men in bead-making. The case study was also meant to elicit the views of the research participants about their utilisation of IP regimes to harness the economic benefits of their bead-works. Here, the goal was to find out what knowledge, if any, they had about IP regimes and, if they did have such knowledge, whether they were interested in exploiting the regimes for their economic empowerment; and/or whether they regarded IP regimes as barriers to collaboration and knowledge sharing among them. Further, the case study sought to discover the strategies that the women have employed to empower themselves by promoting and creating value for their bead-works.

III RESEARCH CONTEXT

(a) Zulu women’s bead-work
The case study focused on the bead-work of rural Zulu women from the communities who constitute the majority of traditional crafters under HACT’s Woza Moya project. As with most other South African communities, Zulu rural communities are traditionally built on patriarchal structures, with men at the head of each household. Under such arrangements, a women’s role was normally to take care of their husbands and their households. Rural Zulu women were generally responsible for bearing and raising children, fetching firewood and water, cooking, repairing leaking thatched roofs, taking care of the older members of the household, tending the fields, and undertaking other domestic chores, including making of the local Zulu beer (umqombothi).9

Within this traditional structure, rural Zulu women were also required to maintain certain modes of acceptable behaviour, including codes of discussion. For instance, cultural taboos made it difficult for women openly to discuss personal and intimate matters of sexuality and love. Discussion of such matters between co-wives, mothers and their daughters, sisters and even friends had to be done through codes. Usually, such conversations were done in the course of carrying out their domestic and other duties or during ‘gossip sessions’ after such duties.10

10 Gogo Sebenzani Mbanda, in-persion interview conducted on 20 November 2018.
The bead-work tradition of rural Zulu women emerged principally out of the need for the women to communicate with one another their personal but shared concerns about love, sexuality and intimacy. As such, the bead-work culture is transmitted, principally, from mothers to daughters, elder sisters to younger sisters, grandmothers to their granddaughters, and so on. Rural Zulu women ‘literally grow into the art of bead-work as part of their normal socialisation’.11

The bead-work environment was used as a place of education, where older women would engage younger girls about love, sex and devotion. Bead-work is also deployed by the women as a means of expressing their feelings to their men. The bead-works are intertwined with rites of courtship, marriage, female initiation rites, and child bearing, among others. Further, the bead-works are used to distinguish women according to marital status and age, and to indicate virginity, willingness and readiness to marry and bear children. The use of bead-works also extends to ritual and other spiritual purposes by isangomas (Zulu traditional spiritualists).12

The messages in the bead-works are conveyed through codes represented in colours combined and woven into decorative geometrical designs, with each colour depicting a specific positive or negative feeling.13 The geometric designs are mainly expressed in triangular forms represented in colours. The triangular forms reflect the ‘three cardinal points in Zulu society — man, woman and child’ and the significance of family expressed through the eyes of Zulu women.14

It is important to note that beads and bead-works are a common feature of many African communities, including those found in South Africa. Historically, bead-works have existed in Africa for over 1000 years — long before contact with Europeans.15 According to oral tradition, the beads used in rural Zulu women’s bead-works were made from clay, stone, charcoal, metal or bone (depending on the colours required), and the beads were held together — and sewn to local attire and other artefacts — by threads made, according to indigenous custom, from stretchy plant leaves.16

The use of coloured glass beads was, until the late 18th and early 19th centuries, infrequent and reserved for special events, because glass beads were

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12 Mbanda interview op cit note 10.
14 Schoeman op cit note 11.
16 Mbanda interview op cit note 10.
scarce and considered very precious. 17 Today’s common usage of coloured glass beads for Zulu bead-work in contemporary times began in the early 19th century, when the Zulu people started trading with the Europeans around the coastal region of the present KwaZulu-Natal province of South Africa. Europeans of the time were buying other indigenous artefacts such as woodcarvings and ivories, and in return bartering or selling coloured glass beads and other items to the Zulu people. 18

The earliest Zulu women bead-works were ‘single beaded strands’ until the 19th century, when decorative geometric designs emerged, mainly as a result of the procurement of coloured glass beads from European merchants, and the creative opportunities these beads provided. 19 This is not to say that rural Zulu women were taught bead-making by the Europeans. The sale of coloured glass beads by the Europeans merely enhanced the women’s already-flourishing indigenous creativity. 20

The Zulu women bead-works are made into traditional bracelets, necklaces, rings, earrings, belts, semi-circular netted collars, and head dresses, among others. They are also sewn into local dresses, such as the Zulu fringed aprons and the leather (cow skin) dresses worn by Zulu men and warriors. Further, the bead-works have been used to adorn the attire and articles of isangomas and traditional rulers. 21 Some time in the 1980s, beaded dolls were introduced by the rural Zulu women bead-makers. The beaded dolls later became a very important means of social advocacy by the rural women, especially in relation to the HIV/AIDS pandemic in South Africa. 22

The Zulu ‘love letters’, which are a popular choice among tourists visiting Durban, are a common medium of communication utilised by rural Zulu women. The love letters are mainly made up of ‘interlinked geometric forms relating to male/female relationships’, expressed in an array of colourful beads. 23 Each colour, linked with others, conveys the feelings of a Zulu maiden towards a Zulu man. For instance, a mixture of white, red and yellow beads in a love letter will convey the message of purity and honesty (white), true love and passion (red), and wealth (yellow) from a Zulu maiden to her desired man. 24

17 Nettleton op cit note 15.
21 See generally Hlengiwe Dube Zulu Bead-Work: Talk with Beads (2009).
22 See generally Kate Wells Arts, AIDS and Education in South Africa (2012).
23 Wells et al op cit note 19 at 74.
24 Mbanda interview op cit note 10.
According to Dube, the deployment of these colour codes and motifs, and the wide range of their contrasts, distinguishes the bead-works of rural Zulu women from those of other South African indigenous communities, such as the amaXhosa in the Eastern Cape Province and the baSotho in the Free State Province. The bead-works of the baSotho are secondary to their material culture, as they are mainly for the ornamentation of leatherworks, fringe skirts, and for cosmetic purposes. Although the amaXhosa also use their bead-works as a medium of communication, the messages in the bead-works are conveyed principally through the shapes designed on the bead-work.

The use of glass beads deepened as the European settlers in South Africa established themselves through colonialism and, later, apartheid. Colonialism and apartheid had an enormous impact on black South African communities. However colonial and apartheid laws did not radically alter traditional patriarchal arrangements in rural Zulu communities. The colonial and apartheid eras were characterised by large amounts of migration of able-bodied men from their rural homesteads to work in mines and other industrial establishments in urban areas, in an effort to increase the incomes of their households. Despite their absence, the men continued to remain the heads of their households. At the same time, their absence foisted additional burdens on women, who had to take up the roles of breadwinners in their families when the men were away, and when remittances transferred by the men were insufficient or too infrequent. Such women also became primary keepers of cultural identity in the communities, ensuring observance of age-old customs, including the bead-work tradition.

The commoditisation of rural Zulu women's bead-works was a consequence of contact with Europeans, colonialism, and apartheid. Some art collectors among the Europeans who arrived in Zulu land in the early 19th century purchased traditional bead-works from the rural women, including via special commissions for particular designs. In addition to transforming the primary role of rural Zulu men into that of migrant workers, the periods of colonialism and apartheid also saw the movement of Zulu women into the growing urban centres, in search of domestic and child-care work, or education opportunities. The women who remained in the rural communities, and who therefore served as breadwinners for their families, had, in many cases, to resort to the sale of their bead-works to augment their household income. The commoditisation process of

27 Nathi Nzondi, in-person interview conducted on 30 January 2019.
28 Nettleton op cit note 15.
29 Ibid.
Zulu bead-works was further deepened as the local communities were hit by the HIV/AIDS pandemic. One major effect of the epidemic on rural Zulu communities was that men and women became ill and died, leaving their children to be catered for by grandmothers (gogos) with no substantial source of income. These grandmothers had to resort to the sale of bead-works to survive, indirectly maintaining the traditional significance of the craft.30

In modern times, the ‘intuitive fluidity’ of rural Zulu women’s bead-works as pieces of art,31 and their colourful decorative designs, have enhanced their commoditisation and easy incorporation into South African tourism and the modern fashion industry.32 The bead-works are sold to museums and art galleries locally and internationally, often producing significant financial returns. They are also sold to, and made on the commission of, celebrities and fashion merchants, both locally and internationally.33 Further, they have been deployed as a medium of HIV/AIDS awareness-raising and advocacy.34 The commoditisation of rural Zulu women’s bead-works in modern times has to a great extent been achieved through local commercial enterprises and art collectors, with little consideration of the impact on the economic well-being of rural women bead-makers, and the impact of the commoditisation process on the cultural significance of the bead-works.35

As I show in part IV below, the Woza Moya project aims at changing this tide by empowering rural Zulu women bead-makers through an inclusive approach that involves them as part of the planning and implementation of innovative strategies that play a role in harnessing the economic benefits of their indigenous craft for themselves and their communities. To this end, the project’s efforts are geared towards ensuring a culture of collaboration...
and knowledge sharing, rather than seeking to exploit existing IP regimes to the advantage of the bead-makers. Moreover, the women working under the Woza Moya project are largely unaware of the dynamics of the existing IP regimes in relation to their works. The few who understand the dynamics of IP regimes are concerned about the disempowerments that claims to IP rights may cause to the women. This informs the social entrepreneurial strategy being adopted under the Woza Moya project: to try to work around the challenges of the IP regime.

(b) Woza Moya as a social enterprise

The major purpose of social enterprises such as Woza Moya is that they are ventures established mainly to solve identified societal problems, rather than having the goal of making a profit. Where profits do accrue in the course of business of a social enterprise, as is the case sometimes, such profits are usually regarded not as an end in itself, but as a source of revenue that can be ploughed back into achieving the greater goal of the enterprise, which is normally to solve a societal challenge such as housing, health-care, education, or poverty, among others.

36 For instance, Victoria Nhlangulela, in-person interview conducted on 12 November 2018; Thokozani Cewe, in-person interview conducted on 12 November 2018; Jabu Mthembu, in-person interview conducted on 16 November 2018.

37 For instance, Lungile Manyathi, in-person interview conducted on 14 November 2018; Paula Thomson, in-person interview conducted on 13 November 2018.


This overall objective is what distinguishes social enterprises from commercial or conventional ones. Although commercial enterprises undertake some socially impactful activities within their communities, usually in the form of corporate social responsibility (‘CSR’) initiatives mandated by legislation, they are ultimately profit-making ventures. The distinction between social and commercial entrepreneurship may not be clear-cut if one focuses on the methods and strategies adopted by both ventures. This is because, in practice, social enterprises often deploy the methods and tools of commercial entrepreneurship. Thus, as is the case with commercial enterprises, social entrepreneurship continuously innovate, recognise and pursue new opportunities, adapt to existing circumstances, and strive to achieve their goals, even with limited resources. However, social enterprises are driven by their core commitment to solving communal problems. To discharge this commitment, social enterprises adopt collective and participatory approaches and tailor-made services that suit the needs of their target communities.

Social entrepreneurship is not a recent phenomenon. It has been around for a long time, but only started attracting serious academic attention towards the end of the 1990s. A substantial part of the academic literature speaks to the gender dimension of social entrepreneurship,
suitability for promoting the traditional and cultural craft sector, and its effectiveness for the empowerment of rural women crafters, especially within a developing country’s context.

From a gender perspective, empirical evidence from large-scale, cross-border surveys, such as the Global Entrepreneurship Monitor (‘GEM’) on social entrepreneurship shows that the gender gap in social enterprises is smaller compared to that in commercial ventures. According to the GEM survey, although country-specific differences exist, women are proportionally more active in social entrepreneurship as leaders, partners and employees, when compared to commercial operations. Social entrepreneurship in South Africa follows a similar gender trend. Existing research has alluded to the altruistic nature of women as the major reason for their increasing participation in social, as against commercial, enterprises. According to Huysentruyt, ‘women are generally more altruistic and socially minded than men, and because of this motivation — caring directly about social payoffs — they are therefore more disposed to establishing, managing and participating in social enterprises than in profit-making ventures.’

That being said, social entrepreneurship has been regarded as very adaptable in the sense that it can easily be replicated in different places and sectors ‘in order to continue generating social benefits’. Thus, it


51 Huysentruyt op cit 44 at 7.

52 Ibid; Nicolas & Rubio op cit note 46.

53 Maguirre et al op cit note 48.
has been regarded as a useful means for the promotion and creation of value for indigenous crafts, especially those manufactured by women. One example is Zulu bead-making. Such indigenous crafts are usually handmade and laced with the lived experiences and stories of the women crafters, to which socially conscious consumers can easily relate. Also, their production requires very minimal initial capital, flexible working hours and little other production infrastructure, such as a workspace. In addition, indigenous crafts have the capacity to ‘increase local incomes, preserve ancient techniques and cultural heritage and provide widespread employment’, especially for the rural women crafters, who are hardly ever supported by government or private donors. Indigenous crafts have socio-cultural and developmental importance which makes them more suitable for social, as opposed to commercial, entrepreneurship. Social entrepreneurship initiatives have the potential to empower rural craftswomen because they are able to generate revenue themselves, which allows them to operate independently of government and donors. These initiatives further promote artistic freedom, creativity and economic equality, especially where they adopt a ‘ground-up approach’ and provide ‘tools and opportunities’ directly to the women.

The Woza Moya project is administered as a social enterprise of the HACT. The Woza Moya project was conceived and developed by women, and for women, within the broad spectrum of HACT’s core objective, which is to prevent the spread of the HIV/AIDS pandemic and to care for those infected and affected by the disease in the rural communities around Hillcrest. The aim of the Woza Moya project is to enable HACT’s beneficiaries, the majority of whom are rural Zulu women, to fend sustainably for themselves and to solve the problems of poverty which the HIV/AIDS pandemic has inflicted on them and their communities.

As explained in part III(a) above, one of the impacts of apartheid in South Africa was the migration of young able-bodied men from rural communities to the urban centres for work purposes. The migration often led the men to maintain multiple sexual relationships with their rural wives and with women in the urban centres. Such multiple sexual relations enhanced the spread of the HIV/AIDS pandemic, and often led to the demise of young men and women in the rural communities. Women, especially grandmothers, are often the ones who bear the brunt

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54 See for instance Denomy op cit note 47; McQuilten & White op cit note 47.
55 Denomy ibid at 8.
56 McQuilten & White op cit note 47.
57 Ibid at 12.
58 Candace Davidson, in-person interview conducted on 15 November 2018.
59 Thomson interview op cit note 37.
60 Wells op cit note 22.
of the HIV/AIDS pandemic, in the sense that they are left behind, with little or no source of income, to care for their children, grandchildren and other family members who have been rendered incapacitated by the disease.\textsuperscript{61} The Woza Moya project can thus be seen as an example of a social enterprise that not only promotes and creates value for indigenous crafts and preserves the Zulu bead-making culture, but also empowers the rural women crafters.

The Woza Moya project began with fifteen women bead-makers. The project has now grown and diversified to accommodate over 350 Zulu traditional crafters involved in several arts and crafts activities, including wood-carving, ceramics, sewing, and basket-weaving. The Zulu women bead-makers constitute more than 80 per cent of the traditional crafters under the Woza Moya project.\textsuperscript{62} Despite receiving no government funds or sponsorship, the project continuously seeks to transform the rural women bead-makers into small business owners with zero start-up capital.\textsuperscript{63} According to Paula Thomson, co-ordinator of the project, when the bead-makers

‘are starting off, we would link them to one of the older and highly skilled ladies. They would be able to learn how to produce one of the products ... . They will start off with that, get beads ... . We put it on a credit system and when they bring their work, the cost of the bead is deducted from what they earn. It is like starting their own business with no money.’\textsuperscript{64}

Jabu Mthembu, a bead-maker, confirms this. She revealed that she was exposed to the commercial angle of Zulu bead-work when she joined the project.\textsuperscript{65} According to her,

‘before I joined Woza Moya, I was not doing commercial bead-work, even though I already had the skills. ... I started doing commercial bead-work when I joined Woza Moya. I have learnt a lot from Woza Moya.’\textsuperscript{66}

Similarly, Tholakele Sibisi revealed that the Woza Moya project has made it much easier for her to earn from bead-work.\textsuperscript{67} She stated:

‘Woza Moya helps take care of all the logistics of getting products to clients. I just get paid what my bead-work have earned monthly. ... [C]oming to Woza Moya has helped to improve the quality of my bead-works to the satisfaction of international clients. Through Woza Moya, my international clientele has broadened.’\textsuperscript{68}

\textsuperscript{61} John Lund, in-person interview conducted on 13 November 2018.
\textsuperscript{62} Thomson interview op cit note 37.
\textsuperscript{63} Ibid.
\textsuperscript{64} Ibid.
\textsuperscript{65} Mthembu interview op cit note 36.
\textsuperscript{66} Ibid.
\textsuperscript{67} Tholakele Sibisi, in-person interview conducted on 12 November 2018.
\textsuperscript{68} Ibid.
Woza Moya ensures that the proceeds from these sales accrue to the bead-workers. John Lund, who is involved with Woza Moya, informed me that the Woza Moya project does not generate income for HACT. The proceeds of sale from the products designed and created by the bead-makers are used to credit their individual bank accounts, which they opened through the assistance of the facilitators of the project.

Finally, to ensure success and reduce incidences of failure in their bead-making venture, the Woza Moya project continues to train the largely uneducated bead-makers in contemporary art and business; to provide them with market research, market access (foreign and local), and pricing guidance; and to assist them with quality control and assurance, and beading equipment. But, how do the women get around the challenges of IP regimes to empower themselves and their communities, to preserve their bead-making culture, and to promote value for their creativity? This matter will be investigated in part IV below.

IV RESEARCH FINDINGS AND ANALYSIS

(a)  Gender, traditional cultural expressions, and IP

Gender encompasses sex, which is determined based on the biological and physiological differences between males and females. Gender is a social and cultural construct that constitutes understandings of men, masculinity, women, and femininity. It sets out culturally accepted roles between men and women drawn from what is perceived as acceptable masculine and feminine behaviour in a given society. It defines the power relations between men and women as it shapes how they interact with each other, given their differentiated roles. Gender is constructed based on the beliefs and social expectations of a particular social group. As a cultural and social construct, the meaning of gender continues to evolve and broaden as cultural and social circumstances change. For the purposes of this research, I focused on two groups of gender constructs: masculine and feminine (men and women).

The conversation about gender equality has shaped, and continues to drive, laws and policies at the global and national levels. Gender equality is both a human-rights and sustainable-development imperative at the

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69 Lund interview op cit note 61.
70 Manyathi interview op cit note 37.
global level, and at a national level in South Africa too. The principles of gender equality emphasise the need for inclusiveness of all genders in the social, cultural and economic life of a people; the full and effective participation and equal opportunities for leadership at all levels of decision-making in political and economic activities; the empowerment of all genders by dismantling systems that marginalise certain genders, especially women and girls; and the implementation of legal and policy reforms that allow equal rights for women to economic resources, and access to, and ownership and control over, all forms of property, including IP.

As indicated in part I above, IP regimes, which really ought to empower innovators and creators, have in contrast been found in various studies to perpetuate gender inequalities against women innovators and creators. An in-depth discussion of the manifestations of gender inequality in IP regimes is beyond the scope of this article. It suffices for present purposes to note that gender inequalities in IP regimes have been demonstrated through the disparity in the available usage data of the various IP systems between men and women, which is fostered by the systemic, social, economic and cultural barriers facing innovative and creative women within IP systems.

The situation is even worse for women innovators and creators from rural African communities, whose creative ventures are undertaken within collaborative communities where communal, rather than individual, ownership rights is emphasised; where a culture of knowledge sharing is encouraged; and where creativity and innovation are shaped by, and are expressed through, tradition and culture. This is so because IP regimes’ standards for the promotion of science, arts and commerce were founded on masculine individualistic notions of the singular genius, and concepts of exclusivity, monopoly, authorship, and ownership. These ‘values’ do not align with the idea of communality and knowledge sharing. Moreover, it has been argued that, owing to their general Western origin, core IP laws, such as copyright, among others, are not properly suited to the peculiar nature of traditional cultural expressions (‘TCEs’).

Generally, TCEs (also known as folklore) are defined as the tangible and intangible forms through which the tradition and culture of a particular indigenous or local community is represented. TCEs include signs, patterns, designs, symbols, artefacts, rituals, songs, stories, dances, and artworks. TCEs are transmitted from generation to generation in indigenous and local communities (‘ILCs’) where they originate, and their creators are often — but not always — unknown. The bead-work of
the rural Zulu women fits the definition of TCEs because, as was shown in the discussion in part III(a) above, the bead-works are developed from, and are an embodiment of, Zulu culture. In particular, the bead-works developed as a means of communication among Zulu women, as a medium of socialisation of the Zulu girl child, and as an avenue through which Zulu women could communicate intimate feelings with their male counterparts, and discuss similar issues among their fellow women. The messages are traditionally depicted in colourful beads intricately designed and coded in a way that signifies the trinity of traditional Zulu family: mother, father and children. The bead-works have also been ingrained in the traditional, religious and spiritual rituals of the Zulu people. Moreover, the beading culture is passed down by mothers to their daughters, from one generation to the next.

Inherent in the above definition, however, is the difficulty of fitting TCEs within mainstream and formalised IP regimes, especially copyright, for instance, which requires protection for original works, such as music, visual art, films, books, contained in a fixed medium and for which an author is identifiable, while TCEs are owned by local communities with unidentifiable authors and, in many cases, are not in any fixed medium unless they happen to be tangible, such as the Zulu bead-work. Indeed, there is an ongoing debate and negotiations at the World Intellectual Property Organization (‘WIPO’) aimed at formulating minimum standards for the protection of TCEs and traditional knowledge (‘TK’) at the global level. A discussion of the progress of the negotiations is beyond the scope of this article.


Notwithstanding the ongoing nature of global discussions about definitions of TK, scholars seem to concur that TCEs such as Zulu women’s bead-works should be able to find some protection under existing mainstream and formalised IP tools, whether as trade marks, certification marks, collective marks, under copyright, or through sui generis tools\(^{85}\) such as formulated under the Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act 6 of 2019 (‘the IKS Act’).\(^{86}\)

It suffices for current purposes to note that trade marks, collective marks and certification marks are defined and protected in South Africa under the Trade Marks Act 194 of 1993.\(^{87}\) However, provisions relating to TCEs are not in force yet. The provisions were included in the Trade Marks Act by the Intellectual Property Laws Amendment Act 28 of 2013, which still requires Presidential proclamation to come into force.\(^{88}\) Nonetheless, relevant to the present discussion, the Intellectual Property Law Amendment Act proposes to amend s 2(1) (the definitions section) of the Trade Marks Act to include terms such as TCEs (referred to as ‘indigenous cultural expressions’ in the Act) and ‘traditional term or expression’.

Accordingly, TCEs are to be defined under the Trade Marks Act as ‘any form, tangible or intangible, or a combination thereof, in which traditional culture and knowledge are embodied, passed on between generations, and tangible or intangible forms of creativity of indigenous communities, including [...] material expressions such as art, handicrafts, [etc]’. Also, the amended Trade Marks Act will define ‘traditional term or expression’ to include artistic expressions with a traditional origin and character, and TCEs ‘created by persons who are, or were members, currently or historically, of an indigenous community and which is regarded as part of the heritage of the community’.

Once s 43B of the Trade Marks Act is included after the amendment is proclaimed, ‘traditional terms or expressions’ will constitute a certification or collective mark, but not a trade mark simpliciter. However, to be


\(^{86}\) Since the IKS Act is brand new, an analysis of its provisions is beyond the scope of this article. For a preliminary commentary see Lee-Ann Tong ‘Aligning the South African intellectual property system with traditional knowledge protection’ (2017) 12 *JIPLP* 179.

\(^{87}\) See ss 2(1) and 42–43.

\(^{88}\) See ss 9 and 15. An in-depth examination of the Intellectual Property Laws Amendment Act is beyond the scope of this article. For discussion see Ncube op cit note 82; Tong op cit note 86.
registrable as a collective or certification mark, the 'traditional term or expression' must be 'capable of distinguishing the goods or services of an indigenous community in respect of which it is registered or proposed to be registered, from the goods or services of another community or persons, either generally or where the traditional expression is registered or proposed to be registered subject to limitations, in relation to use within those limitations'.

Within the context of this study, the amendments to be made to the Trade Marks Act will potentially afford rural Zulu women an effective means, as a collective, to develop a ‘traditional term or expression’ which distinguishes their bead-works from those of other communities for purposes of commoditisation. Indeed, as my research revealed, rural Zulu women already have such a ‘traditional term or expression’ — Woza Moya — which they crest on, or tag to, their bead-works to distinguish them from those of other rural communities. Paula Thomson refers to it as their ‘trade mark’. However, in view of the foregoing discussion, it would best be regarded as a collective or certification mark. In terms of ownership of the registered collective or certification mark, the emphasis is on the group as a collective under the Woza Moya project, rather than the individual women bead-makers.

In this respect, and as I shall show further in part IV(b) below, my research raises an important dynamic of the creative process within the Woza Moya project — the fact that rural Zulu women bead-makers add enough individual style and creativity to the cultural expressions which the bead-works embody so that the bead-works they produce may be recognised as their own creation. This raises complex questions as to whether rural Zulu women would require permission from their indigenous communities before engaging in the production of their bead-work. An in-depth analysis of this issue is beyond the present scope.

It suffices to point out that the amendments to the Trade Marks Act proposed by the Intellectual Property Laws Amendment Act are silent on the issue as it relates to collective and certification marks. Certification and collective marks operate in a manner that, once registered, would allow individuals forming part of the community to be able to use the mark, without seeking permission from the community. This does not detract from the fact that ownership of the registered mark remains that

89 Trade Marks Act, s 43B(1)–(3).
90 Studies show that collective and certification marks are more suited to the collaborative and knowledge-sharing community within which women-led creative activities occur. See Adewopo et al in De Beer et al (eds) op cit note 85.
91 Thomson interview op cit note 37.
92 Intellectual Property Laws Amendment Act, s43F–43H.
93 Adewopo et al in De Beer et al (eds) op cit note 85.
of the collective. By implication, only the group as a collective can assert claims and enforce a right in relation to the certification or collective mark. This raises a further question about the effectiveness of the collective and certification marks regime to cater for the individual interests of the rural Zulu women bead-makers.

Alternatively, the women could rely on the protection provided under copyright because, when one views their work from an individual creative point of view, their respective bead-work may qualify as artistic works in terms of ss 2 and 7 of the Copyright Act 98 of 1978. However, operating as individuals, it seems the women may face a challenge to their claims of copyright. This is so because, in terms of the Intellectual Property Laws Amendment Act, which will in due course amend the Copyright Act, their individual bead-work may be regarded as a ‘derivative indigenous work’ which will be registrable subject to conditions, such as obtaining prior informed consent from the indigenous community or relevant authority. Even so, the fact that the women are part of the indigenous community should serve as an exception to the requirement of prior informed consent among others. Unfortunately, the Intellectual Property Laws Amendment Act does not contain express provision in this regard to clarify the situation.

From a gender perspective, the adequacy of the IP regimes, especially copyright, to safeguard TCEs from appropriation, especially within the fast-growing contemporary fashion industry, and indigenous art markets, and to enhance the economic well-being of rural African women crafters, is another matter entirely. This is because the mere existence or granting of IP rights, though important, is not enough in and of itself to empower the owner of the right. The rights owner needs to take steps in the form of enforcement and/or commercialisation to harness the benefits of such rights — that is, assuming the owner is keen about asserting such a right. Indeed, given the available research about the economics of IP rights enforcement from a developing country’s perspective, the adequacy of the IP regimes, especially copyright, to safeguard TCEs from appropriation, especially within the fast-growing contemporary fashion industry, and indigenous art markets, and to enhance the economic well-being of rural African women crafters, is another matter entirely.

94 Derivative indigenous work is defined by the Intellectual Property Laws Amendment Act to mean ‘any form of indigenous work recognised by an indigenous community as having an indigenous or traditional origin, and a substantial part of which, was derived from indigenous cultural expressions or knowledge irrespective of whether such derivative indigenous work was derived before or after the commencement of the [Act].’

95 Copyright Act, s 28B(4) (to be introduced by the Intellectual Property Laws Amendment Act).

96 Vezina op cit note 85; BBC op cit note 79.

context, rural women crafters would hardly be able to make claims under existing IP regimes for a number of reasons. First, rural women may not be aware of their IP rights. Secondly, even where there is awareness of IP rights, and the desire to harness its benefits, rural women may lack the capital and relevant infrastructure to monitor the exploitation of their work, and to combat the violation of their IP rights. This is further complicated by the nature of the indigenous art market, where easy modification and reproduction of designs and patterns is rife. Moreover, even where there is awareness of, and the capability to enforce rights, the assertion of individual IP ownership has the potential to distort the collaborative and knowledge-sharing communities which enable rural African craft women to empower one another.

In view of the foregoing, the question from a gender perspective remains how to get around the barriers IP regimes pose to empower indigenous women crafters: is it through the recognition or acknowledgement of their creativity, or by the commoditisation of their work? Whatever approach is adopted, it will have some implications for the cultural significance and empowerment of the rural women crafters. Recognition would create some sense of satisfaction, identity and fulfilment in the hearts of the indigenous women crafters in particular and the local community in general. However, this may not transform into the women’s economic empowerment because, according to scholars, indigenous art is not just a form of cultural expression for the communities. It is also a means of employment and for providing other basic amenities of life, such as education, health, and housing.

By contrast, commoditisation certainly has the capacity to empower the women economically, especially when the women take the lead, or are part of the decision making in the commoditisation process. However, if the commoditisation is done by a third party, the women may find it difficult to enjoy the benefits of their creativity. Also, commoditisation may homogenise the culture and identities expressed in rural women crafters.

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99 Bowrey op cit note 97; Wiseman op cit note 85.
100 Jeremy de Beer ‘Current realities of collaborative intellectual property in Africa’ in De Beer et al (eds) op cit note 85 at 373.
102 Bowrey op cit note 97.
crafts, and expunge all traditional meaning and ethos. On the positive side, commoditisation has the potential to generate understanding, by outsiders, of the tradition and culture expressed in indigenous art, and to enhance the evolution of the cultural expression with societal changes. The discussion that follows below provides evidence of how rural Zulu women bead-makers under the Woza Moya project are getting around these gender, TCEs and IP-related complexities.

(b) Social entrepreneurship and inclusive innovation

The discussion in part III(b) above explained the notion of social entrepreneurship and how the Woza Moya project is operated by the HACT as a social enterprise. This sub-part analyses the inclusive innovation strategy being deployed by the Woza Moya project to get around the barriers of IP regimes discussed in part IV(a).

Generally, inclusive innovation involves the modification of existing goods or services (indigenous or otherwise) to develop and implement new ideas aimed at empowering the marginalised members of societies through the creation of opportunities for their socio-economic well-being. Inclusive innovation is both a process and an outcome practised by socially driven organisations such as social enterprises, and it reflects a bottom-up, as opposed to a top-down, approach to solving social and economic problems faced by those at the bottom of the social pyramid. Inclusive innovation ensures that those at the base of the pyramid are not regarded as mere beneficiaries, but as partners and stakeholders in the creative process. In this regard, the idea of inclusive innovation requires that the beneficiaries of a project are included, in an open and collaborative manner, as co-creators and co-innovators in the solutions of the social problems which they face.105

104 Phillips op cit note 101.
Inclusive innovation can be successfully harnessed by social enterprises, especially those focused on rural communities. Indeed, as a social enterprise, the Woza Moya project continues to innovate and sustain the quality of their bead-works through an inclusive process that involves continuous training of the bead-makers, and their participation as partners and stakeholders in the design, planning, and production of the creative products that are shaped by their beading tradition and culture. The Woza Moya project ensures that the rural Zulu women bead-makers are not regarded as mere beneficiaries of the HACT, but are viewed as collaborators in the creative process.106

Under the co-ordination of a university-trained artist,107 the rural Zulu women of the Woza Moya project are transforming their bead-works into contemporary art pieces and preserving their tradition and culture, while empowering themselves economically. Their creative bead-works, in the form of beaded jewellery in different styles and ranges, sell in South Africa, North America and Europe. The women have also produced signature non-jewellery items, including works entitled Little Travellers,108 Beaded Green Suit,109 Dreams for Africa Map,110 a recent large Love Letter billboard for Toyota,111 and the Dreams for Africa Chair,112 which was adjudged the most beautiful object in South Africa during the 2011 Design Indaba in Cape Town.113 According to Paula Thomson,
EMPOWERING RURAL WOMEN CRAFTERS IN KWAZULU-NATAL

'[t]he bead-works are expressions of Zulu tradition and our top-notch products are a blend of this tradition and modernity. ... The Dreams for African Chair was our first collaborative project where we all contributed to a meaningful whole, and that was incredible because each lady brought in a small piece with their dreams and hope for the future ... . Five of us sat and made the first [Little Travellers] and we were so excited ... . There was a passion there ... a power, a story. And this makes the products stand out in places like Canada, Germany, Holland. We try to make it more exciting. We launched a pair of [Little] Travellers socks. We developed an interactive website for the Little Travellers. ... For all the big projects, I would design the concept and within that there would be room for each crafter to be creative. Like the Dream for Africa Map, I just painted the design out in a colour way (from greens, desert areas, oranges, etc) and each lady was assigned an area to work on based on her skill level. And in each piece, I said they must envision what is in that area of Africa (animals, people, or just pattern, etc) and their creativity must come out. It is incredible that the Map was made by so many women and each piece is unique and blends into the piece next to it.'

Within the community created by the Woza Moya project, the women are able to collaborate with one another and with some male traditional crafters who have learned the bead-making skills from their mothers or aunts, to preserve the Zulu beading culture and build on it to create contemporary jewellery and other fashion and artistic pieces. To this end, the project fosters the culture of knowledge-sharing among the bead-makers. Importantly, the Woza Moya project seeks to offer a community where rural women bead-makers with shared social, cultural and economic experiences can come together, make their bead-works, earn a decent and healthy living, be free to express themselves through their craft, and can act as a pillar of support for one another.

Indeed, all the bead-makers who took part in the case study indicated their willingness to share their particular bead-making skills with other women under the projects. The women are also willing to open up their unique bead-work designs for others within the project to copy, especially when this is necessary to enable them to meet specific orders from clients. Overall, the knowledge-sharing disposition of the women is informed by several factors, including the need to help one another grow economically and the desire to preserve their knowledge for posterity.

For instance, Victoria Nhlangulela’s willingness to share the knowledge she gained through the Woza Moya project is so that ‘the bead making

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114 Thomson interview op cit note 37.
115 Nzondi interview op cit note 27; Nkululeko Chiliza, in-person interview conducted on 19 November 2018; Sphamandla Mdluli in-person interview conducted on 13 November 2018.
116 Thomson interview op cit note 37.
117 Ibid.
can continue to grow’ after her demise. Furthermore, sharing her knowledge will help to empower other women the way she has been enabled through the Woza Moya project. Thokozani Cewe prefers to protect her bead-works through claims to IP rights because ‘it will help [her] children [to benefit] from [her] labour when [she] is dead’. However, she is happy to share her knowledge freely with other women working within the Woza Moya project. Jabulile Gladys Mzimelo loves to share her ‘skill and knowledge’ with other people because, according to her, ‘sometimes you find a person who is struggling and who you know if they can do beads, they will have the financial freedom to be able to take care of themselves’. It must be noted that from a conspectus of the interviews, while some of the women are disposed to extend the sharing culture beyond the framework of the Woza Moya project, others are not.

(c) Empowerment
I was able to gather from my observations and the focus group discussion that the Woza Moya project, by including rural women bead-makers as partners and stakeholders in the innovative process, has so far been able to empower the women in three principal ways. First, the project is constantly promoting and creating value for rural Zulu bead-works. This is achieved through the preservation of the core traditional and cultural significance of the bead-work; the enhancement of the quality of the bead-work through continuous training; the marketing and sales of the bead-works through social media and other on-line platforms, strategically located craft shops and through arts and fashion middlemen; and the execution of creative art projects, such as the Dreams for Africa Map, Dreams for Africa Chair, and the gigantic Love Letter billboard for Toyota, among others.

Secondly, the Woza Moya project has brought about economic and social progress for rural women bead-makers. The women are now able to earn a relatively decent income (between R4 000 and R10 000 per month) which has enabled them to own their own houses in their communities, to pay for the tertiary education of their children, to see themselves through school, and to cater to the basic needs of their households.

Thirdly, the Woza Moya project is instilling a sense of pride, confidence, and identity in the women. The majority of participants in the case study

118 Nhlangulela interview op cit note 36.
119 Cewe interview op cit note 36.
120 Jabulile Gladys Mzimelo, in-person interview conducted on 16 November 2018.
121 For instance, Mthembu interview op cit note 36; Mzimelo ibid.
122 For instance, Sibisi interview op cit note 67; Nhlangulela interview op cit note 36.
revealed that before joining the project, they could only find employment as domestic workers in the suburbs around their communities, since they are uneducated. Such a job fetched the women very meagre pay (between R1500 and R1800 per month), which was barely enough to survive on. However, after joining the project, they are now being regarded as business owners. This, along with their continuous participation in the innovative processes in the Woza Moya project, has earned them some recognition in their communities. They are proud to be identified as bead-makers.

V CONCLUSION

The extent to which IP regimes can afford protection for TCEs is still not clear. However, in deserving circumstances, TCEs may be protected under relevant trade mark and copyright legislation, for instance. Nonetheless, these IP regimes may not be effective in promoting and creating value for rural African women crafts, and in enhancing their economic well-being. This is because asserting claims to IP ownership rights may in themselves be disempowering within the context of rural women’s creative and innovative domains. One such example is Zulu bead-making under the Woza Moya project, which requires collaboration and knowledge-sharing among the bead-makers. Moreover, owners of IP rights do not ordinarily become empowered by the mere existence of the legal rights. IP rights owners need to take steps in the form of enforcement to harness the benefits of such rights — that is, assuming such owners are eager to, or even capable of, asserting their IP rights.

Therefore, empowering innovative and creative women — especially those whose works are driven by indigenous knowledge — requires promoting their recognition and value. If this is done, this will enable them to harness the social and economic benefits of their work. Additionally, the social interaction between elements of economic empowerment and preservation of cultural identity should be constructed in a manner which ensures that the women are able to address their personal and shared socio-economic challenges. This can be achieved through a system which ensures that:

- the rural African women crafters and their indigenous knowledge are adequately recognised;
- the women derive due compensation from the commoditisation of their creativity; and
- the women continue to innovate and create in a community that ensures collaboration and knowledge-sharing.

Drawing from the experiences of the Zulu women bead-makers participating in HACT’s Woza Moya project, this research has found that social entrepreneurship and inclusive innovation are some effective mechanisms for empowering rural African women crafters. Apart from
enabling community participation and collaboration in the indigenous craft sector with a view to finding solutions to communal problems, social entrepreneurship and inclusive innovation are effective means by which women can tackle the myriad social challenges with which they grapple on a daily basis.