

WIPO



WIPO/GRTKF/IC/16/INF/8

ORIGINAL: English

DATE: February 19, 2010

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**INTERGOVERNMENTAL COMMITTEE ON
INTELLECTUAL PROPERTY AND GENETIC RESOURCES,
TRADITIONAL KNOWLEDGE AND FOLKLORE**

**Sixteenth Session
Geneva, May 3 to 7, 2010**

**POLICIES, MEASURES AND EXPERIENCES REGARDING INTELLECTUAL
PROPERTY AND GENETIC RESOURCES: SUBMISSION BY ZAMBIA**

Document prepared by the Secretariat

1. At its fifteenth session, held from December 7 to 11, 2009, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee'):

“invited Member States and observers to make available to the Secretariat papers describing regional, national and community policies, measures and experiences regarding intellectual property and genetic resources before February 12, 2010, and requested the Secretariat to make these available as information documents for the next session of the Committee.” [...]

2. Further to the decision above, the WIPO Secretariat issued a circular to all Committee participants, dated January 15, 2010, recalling the decision and inviting participants to make their submissions before February 12, 2010.

3. Pursuant to the above decision, the Delegation of Zambia submitted a document entitled “Report to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore from the Zambian Patent Office - Regional, National and Community Policies, Measures and Strategies and Experiences regarding Intellectual Property and Genetic Resources” and requested it be made available as an information document for the sixteenth session of the Committee.

4. The document is reproduced in the form received and contained in the Annex to this document.

[Annex follows]

ANNEX

REPORT TO THE INTER-GOVERNMENTAL COMMITTEE ON INTELLECTUAL
PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND
FOLKLORE FROM THE ZAMBIAN PATENT OFFICE

REGIONAL, NATIONAL AND COMMUNITY POLICIES, MEASURES AND
STRATEGIES AND EXPERIENCES REGARDING INTELLECTUAL
PROPERTY AND GENETIC RESOURCES.

1. Introduction

In Zambia, issues of IPR are vested in two Ministries namely the Ministry of Commerce, Trade and Industry (MCTI) and the Ministry of Information and Broadcasting. The Patents and Companies Registration Office (PACRO), which is an executive Agency of the MCTI, administers the Industrial Property aspect of Intellectual Property rights, while the Ministry of Information and Broadcasting Services deals with Copyrights and Neighbouring Rights. The mandate of IP protection under PACRO extends to Trademarks, Patents, and Industrial Designs. Protection for genetic resources and traditional knowledge is not covered under our legislation although the TRIPs Agreement requires that protection for these resources be provided. Other aspects of protection of IP rights such as the protection of genetic resources are administered by the Ministry of Agriculture and Cooperatives through various Acts..

2. National Ip Legislation

The government of the Republic of Zambia has mandated PACRO to administer IP issues through three Acts. These are the Trademarks, Patents and Registered Industrial Designs. However these Acts do not specifically provide for the protection of traditional knowledge, expressions of folklore and genetic resources. The TRIPs Agreement makes provisions to protect these resources either as patents or under a *sui generis* system. Zambia has until 2013 to make its laws in IP compliant with the TRIPs Agreement.

(a) Trademarks, Patents and Industrial designs

All these Acts have no provision for the protection of TK, GR and Folklore.

(b) Legislation in IP on Legislation on the protection of genetic resources

The government of the Republic of Zambia has taken measures to protect new plant varieties and genetic resources through a number of Acts which are administered by the ministry of Agriculture and Cooperatives. These are:

(i) Plant Breeder's Act 2007: This Act provides for the protection of plant breeder's rights and the registration of plant varieties. The Act is administered by the Seed Certification and Control Institute (SCCI) under the Ministry of Agriculture and Cooperatives. However, this Act also does not make specific reference to intellectual property and how it relates to plant breeders rights.

(ii) Plant Variety and Seeds Act Cap 236 of 1995: This Act is also administered by the Ministry of Agriculture and Cooperatives through the Seed Control and Certification Institute (SCCI) to deal with regulation and control of the production, sale, and import of seed for sowing and export. The Act also deals with testing of seed for minimum standards for germination and purity. The Act does not refer to intellectual property vis-a-vis plant varieties and seeds.

3. International Conventions

(a) UPOV Convention

Protection of genetic resources is also provided for under the UPOV Convention but since Zambia is not a member, it has not benefitted from the provisions under this convention. UPOV deals with the protection of new plant varieties internationally. If a state so wishes, it can use the UPOV Convention for the protection of traditional knowledge though the convention itself is silent on this aspect.

(b) Convention on Biological Diversity (CBD)

Zambia is party to this Convention which provides for the protection of genetic resources. The CBD has the objectives of “*the conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources*”. The CBD also has important provisions concerning “knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity”. The CBD provides the issue of disclosure obligations as it is essential to disclose in the patent system the information that is specifically required about genetic resources or traditional knowledge used in the claimed invention. The CBD also adopts the dual goals of conserving biodiversity and promoting sustainable use of its components, and specifies that benefits arising out of the utilization. This convention is administered by the ministry of Tourism, Environment and Natural Resources through the Forestry Department and the Environmental Council of Zambia. Forests and other genetic resources have successfully been protected under the provisions of the CBD and Forestry Act. Additional protection measures for genetic resources have been made through the Environmental Protection and Pollution Control Act administered by the Environmental Council of Zambia. Again, very little has been addressed in relation to intellectual property rights.

4. The Zambian Draft Ip Policy

Many countries in the region of southern Africa do not have intellectual property policies. However, Zambia has completed formulation of the policy document which has since been submitted to Government for approval. It was observed over the years that, as a country, Zambia had not utilized the full potential of Intellectual Property as a tool for social and economic development although intellectual property legislation has been in existence dating back to the pre-independence days. It was also observed that, Zambia, despite having an abundance of Genetic Resources, Folklore and Traditional Knowledge whose intellectual property rights can significantly contribute to the social and economic development of the country if properly and effectively harnessed, nothing much was being done to tap this potential.

The formulation of this policy was therefore aimed at encouraging inventors, innovators and creators to work hard so as to reap the benefits of intellectual property rights, for example, through payment of royalties. The ethical basis of this policy, in principle, with regard to appropriate Intellectual Property protection was to promote policy objectives that are consistent with widely accepted ethical norms and values. In this regard the policy will endeavour to reflect and promote an inherent entitlement for reward and recognition of one's intellectual and creative contributions on one hand while on the other, promote a strong utilitarian flavor to Intellectual Property law and policy, as a conscious tool to promote social welfare.

This policy has specifically devoted two chapters to deal with the protection of TK, GR and Expressions of Folklore.

5. Regional Ip Policies (Comesa Policy)

Although there have not been many regional policies dealing with IP, Common Market for Eastern and Southern Africa (COMESA) came up with a regional policy which has a bearing on intellectual property vis-à-vis traditional knowledge. Currently, there is a Policy formulated by COMESA which deals with IP and Trade. This policy has also encompassed the protection of traditional knowledge and IP. The policy recognized that traditional knowledge and innovation systems have contributed significantly to the present body of knowledge possessed by various stakeholders including scientists and researchers. The recent developments in biotechnological sciences and rise in patents in the field of biotechnology have put tremendous pressure on the TK often located in developing countries including COMESA Member States. The policy recognizes that a lot of money is raised from genetic resources. However, there is rampant bio-piracy in the region and this has raised a lot of concern. For this reason, the policy has stipulated the following as some of the strategies that need to be undertaken by member states in the Eastern and Southern African region:

- Promote the use of TK, genetic resources, and folklore including the rights of TK, GR and Folklore holders and actively ensure they are duly rewarded;
- Secure the protection of TK, GR and Folklore through IP or *sui generis* systems to prevent misappropriation, misuse, and exploitation of TK, GR and Folklore;
- Utilize advantages created by biotechnology to exploit and enhance TK, GR and Folklore within COMESA Member states and where necessary through joint ventures alliances or technology transfer and licensing;
- Encourage COMESA Member states to ratify or accede to and effectively implement international treaties such as the convention for Biological Diversity and international treaty on plant genetic resources for food and agriculture (ITGRFA) that promote the protection of TK; and
- Cooperate and collaborate within and outside COMESA on issues regarding TK, GR and Folklore.

It is the view of COMESA that when member states adopt these measures and strategies, TK, GR and Expressions of Folklore will have adequate protection.

6. Aripo And The Lusaka Agreement

The English-speaking countries in Africa use the African Regional Industrial Property Organization (ARIPO), which is an inter-governmental industrial property organization to protect IP rights. This organization was created in 1976 at a Diplomatic Conference in Lusaka, Zambia. The Treaty creating ARIPO (known as the Lusaka Agreement) entered into force in 1978. The headquarters of ARIPO are in Harare, Zimbabwe. At present, 15 States are members of ARIPO. These are Botswana, Gambia, The Ghana, Kenya, Lesotho, Malawi, Mozambique, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. ARIPO has come up with Protocols that are utilized by member states for the protection of IPRs. They were however not specific for the protection of genetic resources traditional knowledge and expression of folklore until recently when a Draft Protocol on the protection of traditional knowledge was formulated.

7. Harare Protocol

In December 1982, ARIPO adopted the Protocol on Patents and Industrial Designs (Known as the Harare Protocol). The Protocol empowers the Office of ARIPO to grant patents and register industrial designs and to administer the granted patents and registered industrial designs, on behalf of the Contracting State (i.e. State which are party to the Protocol). A Patent granted under the Harare Protocol has the same effect in the designated Contracting State as a national patent. The Protocol entered into force in 1984. Since that date the following countries are a party to the Protocol:- Botswana, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. Some Contracting States have already incorporated the Protocol into their national laws; for the other Contracting States, incorporation is under way. This protocol does not provide protection to TK, GR and Folklore.

8. The Banjul Protocol

The Banjul Protocol on marks was adopted by the administrative Council in 1993. It establishes a trademark filing system similar to the Harare Protocol. Under the Protocol an applicant may file a single application either at a Contracting State or directly with ARIPO Office and designates in the application the member states in which he wishes his mark to be protected. The Protocol came into force on 6th March, 1997 when three countries ratified, namely Malawi, Swaziland and Zimbabwe, since then Lesotho and Tanzania have joined the Protocol. Zambia is not a member of the Protocol. Again this protocol does not provide for any protection on TK, GR and expressions of Folklore.

9. The Draft Aripo Protocol On Traditional Knowledge Expressions Of Folklore And Genetic Resources

In the recent past, ARIPO has come up with a Draft document on the protection of traditional knowledge, expression of folklore and genetic resources. The purpose of this instrument is:

- To protect traditional knowledge holders against any infringement of their rights as recognized by the instrument: and

- To protect expressions of folklore against misappropriation, misuse and exploitation beyond their traditional context.

This instrument aims at protecting traditional knowledge that is generated; preserved in a traditional and intergenerational context and traditional knowledge that is distinctively associated with local or traditional community. This knowledge should be integral to the cultural identity that is recognized as holding the knowledge through a form of custodianship, guardianship or collective and cultural ownership or responsibility. When adopted, this instrument will assist member states of ARIPO to protect these resources in the region.

10. Conclusion

As can be seen from above, protection of TK, GR and Folklore has not been given prominent attention in many of the legislation available. This has resulted in very limited protection for these very important resources. Many countries in the region either do not have policies on IP or are just beginning to prepare them. Additionally many states have outdated IP laws which have no provisions for the protection of TK, GR and Folklore. It is only recently that organizations like COMESA and ARIPO have taken initiatives to include the protection of TK, GR and Folklore in their policies and protocols. This is a step in the right direction as this will go a long way in advancing the protection IP in member states and the region. Further, many states in the region have started taking steps to update their IP legislation to meet the TRIPs obligations by 2013. This will further strengthen the protection regimes of IP in many states in the region. When IP policies have been formulated and legislation has been fully amended, the problem of bio-piracy, pillaging and other undesirable vices will be a thing of the past.

[End of Annex and of document]