

Towards a National Intellectual Property Policy and Strategy for Kenya

During the year 2012, a series of consultative meetings were held on the draft **National Intellectual Property Policy** ("IP Policy") for the Republic of Kenya. The process of developing the IP Policy started in the year 2005, when the World Intellectual Property Organization (WIPO) commissioned an Intellectual Property (IP) audit to assess the situation then of the IP system in Kenya and to identify strengths and weaknesses and use the findings to develop an IP Policy. The IP audit was successfully completed and audit results were validated during a stakeholders meeting in Nairobi in the year 2006. Subsequently, there was a first draft of the IP Policy (2007 – 2012), although the draft was not formally completed.

In the year 2011, following a series of meetings between the Kenya Government and WIPO, it was agreed that there was a need to finalize the process of developing the IP Policy that was started in the year 2005. Subsequently, the Kenya Government submitted a formal request to WIPO for technical assistance to undertake a review of the Draft IP Policy in order to take into account new developments that had taken place since 2007. Through WIPO's assistance, there was a thorough assessment of the Kenyan IP system with a view to use the findings to inform the development of the IP Policy.

According to the (United Kingdom) **Report of the Commission on Intellectual Property Rights (2002)**, many developing countries tend to under-emphasize the process of policy making, with little consideration being placed on the capacity of stakeholders in government and outside government to participate in shaping policy. It does however appear that the Kenya process was participatory and that it took into consideration the views of all stakeholders including IP lawyers, academics, interested civil society organizations and members of the public.

The IP Policy is intended to strengthen the management and administration of the intellectual property system and to encourage innovation and creativity in Kenya. The IP Policy has been informed by Vision 2030 - Kenya's long term development plan, the Constitution of Kenya, existing national development policies including the Science, Technology and Innovation (STI) policy, trade policy, industrialization policy, agricultural sector development strategy, energy policy, seed policy and herbal products industry policy, among others.

The IP Policy is intended to run for 18 years (2013-2030), and will be implemented in tranches of five years in line with the Medium Term Plan (MTP). The key strategic objectives of the IP Policy are identified as follows:

- a) To enhance the legal framework for protection of intellectual property rights;
- b) To strengthen the institutional framework for administration and management of IP rights;
- c) To promote creativity and innovation to enhance IP generating activities;
- d) To promote and facilitate commercial exploitation of IP rights and technology transfer;
- e) To strengthen legal and institutional framework for enforcement of intellectual property rights;
- f) To develop adequate human resource capacity for the administration, protection, commercialization and enforcement of IP rights;
- g) To create public awareness on IP issues;
- h) To develop and promote Intellectual Property Services industry;
- i) To promote research on IP related issues.

It is proposed that implementation of the IP Policy will be carried out through the **National Intellectual Property Strategy (NIPS)**. The Strategy will run for 5 years (2013-2018) to coincide

with the second Medium Term Plan (MTP). The key organs for implementation of the IP Policy have been identified as follows:

- a) Inter-Ministerial Coordinating Group
- b) Steering Committee
- c) Project Management Unit

The IP Policy makes it mandatory for all universities and research institutions to develop and implement intellectual property policies. The National Council for Science and Technology (NCST) will develop modalities to support universities and research institutions to develop and implement IP policies. The IP Policy further makes it mandatory that all universities and research institutions should establish and make operational technology transfer offices (TTOs). NCST will develop modalities to support universities and research institutions to achieve this. It is proposed that a benchmarking study will be undertaken by NCST with a view to making recommendations on how to implement tax incentives for the private sector to fund research activities in the universities and research organizations.

In respect to anti-counterfeiting, the IP Policy notes that the fight against counterfeit and contraband products in Kenya is disjointed and unstructured. While the Anti-Counterfeit Agency (ACA) concentrates its efforts on raising intelligence on counterfeits in the formal manufacturing sector, the Pharmacy and Poisons Board of Kenya (PPB) has been responsible for coordinating surveillance and even seizure of counterfeit drugs, medicines and medical devices while the Kenya Copyright Board (KECOBO) has been active in monitoring counterfeits in the Copyright sector including software among others.

The IP Policy proposes a need for rationalization of the mandate of the ACA as the apex body so that it can ably coordinate all issues relating to counterfeiting, streamline them and address all the gaps in regulations and laws. This does not make obsolete the need for specialization in different fields such as medicine and Information Communication and Technology (ICT). Nevertheless, these can be better coordinated relative to what is happening currently.

The Draft IP Policy comes at a time when the country is moving full-throttle towards attainment of Kenya's **Vision 2030** that aims towards making Kenya a newly-industrializing middle-income country, capable of providing a high quality of life for all its citizens by the year 2030. Vision 2030 recommends a need to boost science, technology and innovation by increasing investment in research and development.

The success of the IP Policy will depend on the extent to which its development and implementation is properly linked to key areas of development policy such as healthcare, science and technology, environment, agriculture, education and culture. The Government of Kenya and donors must take into consideration the need to help build the capacity of local institutions to undertake continuous IP Policy research and dialogue with stakeholders, in addition to providing necessary technical expertise and legal advice.#

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