

**PRIORITY NEEDS FOR TECHNICAL AND FINANCIAL COOPERATION**

Communication from Tanzania

According to paragraph 2 of the Decision of 29 November 2005 on the Extension of the Transition Period under Article 66.1 for Least Developed Country Members, "all the least developed country Members will provide to the Council for TRIPS, preferably by 1 January 2008, as much information as possible on their individual priority needs for technical and financial cooperation in order to assist them taking steps necessary to implement the TRIPS Agreement".

The present document reproduces the information which has been received from the delegation of Tanzania by means of a communication dated 3 August 2010 and 19 October 2010.

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**1. INTRODUCTION**

On 29 November 2005 the TRIPS Council extended the original transition period for implementation of the TRIPS Agreement by LDCs under Article 66.1 TRIPS, from 1 January 2006 to 1 July 2013. That decision called for LDCs to provide the TRIPS Council, preferably before 1 January 2008, as much information as possible on their individual priority needs for technical and financial assistance for implementing the TRIPS Agreement. Under Article 67 TRIPS, developed country members have an obligation to provide technical and financial assistance to developing countries for implementing the TRIPS Agreement.

Tanzania took the initiative to respond to the TRIPS Council decision of 29 December 2005 by making use of a diagnostic tool kit and consultancy support from a pilot project undertaken by the International Centre for Trade and Sustainable Development (ICTSD) and Saana Consulting in 2007, with financial support from the UK Department for International Development (DFID). With active participation from a wide range of stakeholders the pilot project completed a comprehensive needs assessment and stakeholder consultation exercise in Tanzania in October 2007, under the leadership of the Ministry of Industry, Trade and Marketing (MITM) in collaboration with the Business Registrations and Licensing Agency (BRELA).

Apart from MITM and BRELA other stakeholders who attended the meeting included those from the Copyright Society of Tanzania (COSOTA), the Attorney General's Chambers, Police Force, the Fair Competition Commission (FCC), Tanzania Food and Drugs Authority (TFDA) and the Customs Department of the Tanzania Revenue Authority (TRA). The aim of the stakeholders' meeting was to identify Tanzania's priority needs for technical and financial assistance, as well as needs for cooperation in order to implement the TRIPS Agreement.

The report of the needs assessment and consultation exercise identified the problems, challenges and key issues related to the implementation of the TRIPS Agreement as well as the long-term requirements for technical assistance and capacity building on the implementation of the objectives, principles, rights and obligations of the TRIPS Agreement for Tanzania in four major areas:

- a) IP policy, legal and regulatory framework;
- b) Promoting innovation, technology transfer, creativity and using IP for development;
- c) IPR administration infrastructure; and
- d) Enforcement and regulatory regime for IPRs.

Based on this assessment, Tanzania is submitting formally its needs for technical and financial assistance to the TRIPS Council with encouragement from the TRIPS Council Members. Tanzania will be following up the needs assessment work by translating it into a national capacity building programme through BRELA under the Ministry of Industry Trade and Marketing. Work will be undertaken in close collaboration with stakeholders and development partners to formulate a suite of priority technical assistance projects and activity clusters within an overall national capacity building programme on trade, IP and TRIPS for Tanzania.

The overall goal of the project is to further integrate Tanzania into the global economy and world trading system by increasing the contribution of IP towards the achievement of sustainable economic growth and poverty reduction. The specific purpose of the programme is to upgrade the national system for IP generation, protection, administration and enforcement in Tanzania in line with TRIPS and applicable regional and international IP agreements. The main expected results of the programme can be summarised as follows:

- Improved legal context harmonized with objectives, principles, rights, obligations and flexibilities set out in the TRIPS Agreement, as well as other commitments to international and regional IP standards;
- Modern, service-oriented, and accessible and automated administration services for IPRs available for enterprises, creators and inventors in Tanzania;
- Strengthened institutional framework and improved national IP coordination mechanism;
- Increased awareness and use of IP as a tool for economic development and integration in Tanzania; and
- Structured expansion of IP education, training and research institutions and programmes within a common national network.

Development Partners, including potentially multilateral organisations and WTO Members (National IP offices, Development Agencies, Innovation, Technology Research Institutes and Education Organizations) will be requested by Tanzania to provide experts for specific programme activities. The project implementing team will use financial support from development Partners to procure consultancy services from international and national experts and academics in the fields of IP law, economics, administration, education and training, enforcement, and management. In this regard, Tanzania welcomes multilateral organizations and WTO Members to provide support towards the implementation of this programme.

## 2. NATIONAL DEVELOPMENT CONTEXT

The national development context, in terms of the broad range of economic, industrial, human, social and institutional factors, are of great importance for the design of technical assistance and capacity building programmes in any sector and IP-related technical assistance (IPRTA) is most certainly no exception. This section first looks at some of the key issues and challenges related to the national development context in LDCs, before setting out a detailed checklist to guide an assessment of key factors that should be taken into account in the planning of an IPRTA programme or project.

### 2.1 Key Issues and Challenges

Donors and providers of IPRTA must be constantly aware that the development of IP systems in LDCs cannot be considered in isolation to the general development context and needs of the country concerned. For example, the sustainable provision of information technology equipment for an IP office may require consideration of financial resources and local skills to service and maintain the equipment, reliable power supply and telecommunications infrastructure or associated equipment like air conditioners.

Other factors like the level of formal IPR registration activity (e.g. low numbers of patenting and trademark applications) in a small or very low-income country may mean that it is not technically feasible nor economically viable for such a country to establish and sustain an IPR system comparable to developed countries in terms of capacity for administration, enforcement and regulation of IPRs.

It follows from this that the assessment of IPRTA and capacity building requirements of a developing country should be based on what that country needs, rather than on what a donor country wants, or is able, to provide. Recipients of IPRTA from LDCs obviously have a key role to play in informing such assessments, based on a broad and medium term perspective, and a wide range of stakeholders should be involved – not just national IP offices but stakeholders from other government agencies, the business sector and civil society as well.

Donors do have an important role to play in this process by assisting LDCs to understand the international IP systems and their future developments, as well as sharing the lessons of their own experience. For example, IP offices of donor countries as well as other traditional and non-traditional IP technical assistance donor agencies may be able to share experiences on the use of specific legal models and administrative practices for IP protection (e.g. utility models, certain kinds of *sui generis* protection systems, or protocols for ensuring equitable access to, and benefit sharing from, biological material) that could be appropriate for the needs of stakeholders in developing countries. In this way, donors can provide LDCs with sufficient information to make informed decisions about how their national systems should develop and what can be realistically achieved and delivered in the short and long term.

### 2.2 Diagnostic assessment checklist

#### 2.2.1 *Economic Development status and economic structure*

- *What is the economic status of the country in terms of GDP and recent growth levels? What is the economic structure of the country, including the manufacturing, services and agricultural sectors?*
  - The GDP amounted T Sh 24,754,457 Million in 2008 at current prices or T Sh 14,828,345 million in 2001 constant prices.  
Contribution to GDP
  - Agriculture 25.7 per cent

- Manufacturing 7.8 per cent
- Services 43.8 per cent

In 2008, the GDP in real terms grew by 7.4 per cent compared to 7.1 per cent in 2007.

The agriculture sector grew by 4.5 per cent in 2008 compared to 4.1 per cent in 2007. The Agriculture Sector contributed 25.7 per cent to GDP, compared to 25.8 per cent in 2007.

The growth rate of the manufacturing sector was 9.9 per cent in 2008 compared to 8.7 per cent in 2007. The contribution of the sector to GDP increased to 7.8 per cent in 2008.

The growth rate of the mining and quarrying sector decline from 10.7 per cent in 2007, to 2.5 per cent in 2008. The contribution of the sector to GDP decline from 3.5 per cent in 2007, from 3.4 per cent in 2008.

In 2008, the construction sector grew by 10.5 per cent compared to 9.7 per cent in 2007. The share of the sector increased to GDP was 7.7 per cent in 2008, compared to 7.8 per cent in 2007.

The growth rate of electricity and water sector declined to 5.4 per cent in 2008, compared to 10.9 per cent in 2007. The contribution of electricity and water sector to GDP was 1.7 per cent in 2008, compare to 1.6 per cent in 2007.

The trade, hotels and restaurants sector, including tourism, grew by 8.5 per cent in 2008, compared to 8.1 per cent in 2007. The contribution of the sector to GDP increased to 43.7 per cent in 2008, compare to 43.3 per cent in 2007.

In 2008, the transport and communication sector grew by 6.9 per cent compared to 6.5 per cent in 2007. The sector's contribution to GDP in 2008 remained at 4.2 per cent, as it was in 2007.

The financial and business services sector grew by 11.9 per cent in 2008 compared to 10.2 per cent in 2007. The sector's contribution to GDP in 2008 remained at 1.6 per cent, as it was in 2007.

In 2008, the growth rate of public administration and other services sector grew by 9.0 per cent compared to 6.9 in 2007. The growth rate of public administration sub-sector increased to 7.0 per cent, from 6.7 per cent in 2007. The education, health and other services sub-sectors grew by 6.9 and 9.0 per cent respectively in 2008 compared to 5.5 and 8.8 per cent respectively in 2007. The increase in the growth rates of those sub sectors was due to implementation of education development programmes particularly primary and secondary education development programmes, and expansion of health services in the country. The sector's contribution to GDP increased to 5.5 per cent in 2007 to 6.9 per cent in 2008.

- *What are the main industries and sources of employment & investment in the country? How are these trends changing over time?*

The main industrial sub sectors are; Tea sub sector, Non metal and mineral products, Metallic products, Brewery, Wood and wooden products, Tobacco sub sector, Soft drinks, Packaging industries, Soft drinks, Meat and meat products, Automotive, Fishery, Leather and leather products, Edible oil, Energy sub sector, Coffee sub sector, Dairy and dairy products, Drinking water sub sector, Sugar sub sector, Cashew sub sector, Chemicals sub sector, Textile and

textile products, Food sub sector and Pharmaceuticals. Human resources in these industries include locals and foreigners. Some industries are privately owned by locals, privately owned by foreigners, Joint ventures between foreigners and locals and State and privately owned.

- *What is the ownership structure in the various sectors of manufacturing, service and agriculture*
  - Specific information in ownership structure is not available. There are those which are owned by locals, foreigners and other by joint ventures.
- *What information is available about levels of expenditure in Research & Development, levels of technology licensing activities?*
  - Information is not available on the level of expenditure in R&D as different R&D Institutions have different sources of resources in R&D
  - No licensing agreement so far has been entered into at the Patent Registry.
- *What are the levels for key telecommunications and information technology indicators, such as numbers of telephone lines per capita and Internet usage?*

By 30th June 2009, about 17.6 millions Tanzanians (at most) owned voice telephone lines. The mobile voice telecommunication leads the market by having more subscriptions (99 per cent) as compared to fixed line services (1 per cent)

The annual number of Tanzanian subscribing for a voice telephone lines grows at an average rate of 50+ per cent. The mobile telephone number grows exponentially at the rate of 118 per cent while fixed lines grows at 24 per cent  
Internet users (per 1000 people) = 1.4

- *Are business and government agencies generally able to utilize modern IT hardware and software applications to capture efficiency and productivity gains? If not, what measures are being taken or planned to address these problems?*
  - Only some businesses and government agencies are able to utilize modern IT hardware and software. National ICT Policy is in place to facilitate efficiently use of ICT.

### **2.2.2 Human Development Status and Poverty Profile**

- *What is the national social and economic status of the country?*
  - Gross per capita.
  - Per capita was T Sh 629,884 in 2008 compared to T Sh 546,956 in 2007 at current prices, equivalent to an increase of 15.2 per cent.
  - Level and Incidence of poverty:  
In order to reduce income poverty, GDP growth needs to be sustained at 6 to 8 per cent per annum, in the past six years the GDP has been growing at an average rate of 7.0 per cent per annum which reflects that the real GDP is within the target. Despite the effect of drought that resulted to shortage of power the real GDP continues to grow where by in 2007 the growth rate was 7.1 per cent compare to 6.7 per cent in 2006 at constant 2001 price. In improving social well being, indicators such as education, health and availability of water and sanitation have been considered. The achievements obtained so far have been reflected in the provision of social services.

- *What is the general health and education situation for the population? (e.g. infant mortality rate, maternal mortality rate, under 5 mortality rate, literacy levels)? What is the level of government expenditure per capita on education and healthcare in the country?*
  - Infant mortality rate 84/1000 live births
  - Under-five mortality rate 134/1000 live births
  - Maternal mortality rate 14/1,000 live births
  - Allocation to the education affairs and services sector increased to 6.7 per cent in 2008 compared to 5.5 per cent in 2007, while allocation to health affairs and services sector increased to 9.0 per cent from 8.8 per cent in 2007.
  
- *Is the population in the country facing acute problems in accessing key technologies for human development and poverty reduction (such as access to essential medicines, textbooks and educational materials, inputs for subsistence agriculture, etc)? If so, what measures are being taken or planned to improve access?*
  - Measures taken to improve access includes those of sensitizing and empowering least developed countries including Tanzania to take advantage of the WTO flexibilities for creating viable technological base due to their special needs and requirements economically, financially and administratively so as to address their specific constraints in the areas mentioned above.

### **2.2.3 National Development Strategies and Assistance Programmes**

- *What are the national development priorities, plans and strategies for poverty reduction in the country? Are these clearly articulated in published documents, such as Poverty Reduction Strategy Papers?*
  - The National Strategy for Growth and Reduction of Poverty (NSGRP) is a national organizing framework for putting the focus on poverty reduction high on the country's development agenda. The NSGRP is informed by the aspirations of Tanzania's Development Vision (Vision 2025) for high and shared growth, high quality livelihood, peace, stability and unity, good governance, high quality education and international competitiveness. It is committed to the Millennium Development goals (MDGs), as internationally agreed targets for reducing poverty, hunger, diseases, illiteracy, environmental degradation and discrimination against women by 2015. It strives to widen the space for country ownership and effective participation of civil society, private sector development and fruitful local and external partnerships in development and commitment to regional and other international initiatives for social and economic development.
  - The NSGRP builds on the Poverty Reduction Strategy Paper (PRSP) (2000/01 -02/03), the PRS Review, the Medium Term Plan for Growth and Poverty Reduction and the Tanzania Mini -Tiger Plan 2020 (TMTP2020) that emphasize the growth momentum to fast-track the targets of Vision 2025.
  
- *Have issues related to IPR, research and development, access to technologies and knowledge products been addressed in such documents?*
  - Only issues relating to R&D, access to technologies have been clearly addressed

- *What is the Official Development Assistance (ODA) framework for the country? Who are the key donors? What are the major ODA-funded programmes and future plans?*

Tanzania is managing the ODA through a Joint Assistance Strategy (JAS) under the Ministry of Finance.

Key Donors.

There are 14 key donors enumerated under JAS, these are UK, Canada, Japan, Germany, Norway Sweden Switzerland

Major ODA – Funded Programme

Primary Education Development Programme (MEM)

Secondary Education Development Programme (MES)

Local Government Reform Programme

Public Service Reform Programme

Public Finance Reform Programme (PFMRP)

Agricultural Sectors Development Programme

- *Has a Diagnostic Trade Integrated Study (DTIS) been undertaken for the country under the Integrated Framework for Trade Related Technical Assistance? What is the current status of the Integrated Framework in the country?*

➤ Yes

➤ Identification of quick win projects to be implemented

- *How will the proposed IPRTA project or programme relate to these ongoing or planned efforts by other donors? What lessons have been learnt by donors providing technical assistance and capacity building in the country?*

➤ IPRTA is one of the capacity building programmes like any other programme

Addresses the weakness of Tanzanian economy in their specific area.

### **3. INTELLECTUAL PROPERTY POLICY FRAMEWORK**

This section looks at the key issues and challenges related to the legal and policy framework in LDCs, before setting out a detailed checklist to guide an assessment, based on available evidence, about the capacity of a country to formulate policy and legislation on intellectual property and to participate in international IP standards setting and negotiations.

#### **3.1 Key Issues and Challenges**

Most LDCs are members of the World Trade Organisation (WTO) or are in the process of accession. Compliance with TRIPS will therefore require the preparation and implementation of the full range of industrial and intellectual property laws, as prescribed under the TRIPS Agreement. At the same time, many countries are finding themselves increasingly involved in negotiations that are occurring in parallel at the international, regional and bilateral levels, negotiations that are constantly reshaping the global IPR regime. LDCs are increasingly concerned about the TRIPS-plus agreements at the regional and bilateral level, as these tend to require commitments that go beyond the minimum standards set out in the TRIPS Agreement.

The capacity of LDCs to participate effectively in international and regional IPR rule making and standard setting varies considerably, from influential to virtual spectator. Effective IPR policy development and implementation requires specialized technical and analytical skills and also a capacity to coordinate the policy development process in the national capacity so as to ensure the

participation of key stakeholders both within and outside of government. Responsibility for IPR policy in LDCs generally falls to ministries of international trade or foreign affairs. The subsequent development of IP legislation and regulations is often delegated to ministries or departments that are, or will be, responsible for the actual administration of the IP system.

Important IPR issues facing national policy makers and legislators in developing countries include how to regulate access and protect plant varieties and plant genetic materials; how to best exploit national biological resources as envisaged under the Convention of Biological Diversity (CBD); whether and how to design and implement appropriate systems to protect traditional knowledge; how to deal with the various "flexibilities" afforded under the TRIPS Agreement; and how best to continue to adopt administrative systems and processes to keep pace with rapidly evolving international and regional IP systems and standards.

To ensure that national IPR reform processes are effectively linked to related areas of development policy, and that stakeholders participate effectively in these reform processes, IPRTA donors and providers should be mindful of the need to build the capacity of local institutions to carry out policy research and dialogue with these stakeholders, in addition to providing international expert and legal advice.

In recent years, concerns have been expressed from a number of different sources regarding the role of donors in providing advice and technical assistance to developing countries for reform of IPR policy and legislation. While LDC IP offices typically value the technical assistance provided by institutions such as WIPO or bilateral donors, a number of experts and organizations have raised substantial concerns about whether this assistance has always been appropriately tailored to the circumstances of the developing country concerned.

Such concerns demonstrate the potential sensitivity and importance of this area of domestic regulatory policymaking in developing countries. As many LDCs will continue to depend on technical assistance in this area for some time to come, particularly as they proceed with implementation of the TRIPS Agreement, IP technical assistance should be mindful of the need to respond positively to these concerns.

In particular, IPRTA donors and providers should ensure that advice on legal and policy reform to LDCs in relation to implementation of the TRIPS Agreement, always fully takes into account the possible options and flexibilities to accommodate public policy objectives.

### **3.2 Diagnostic Assessment Checklist**

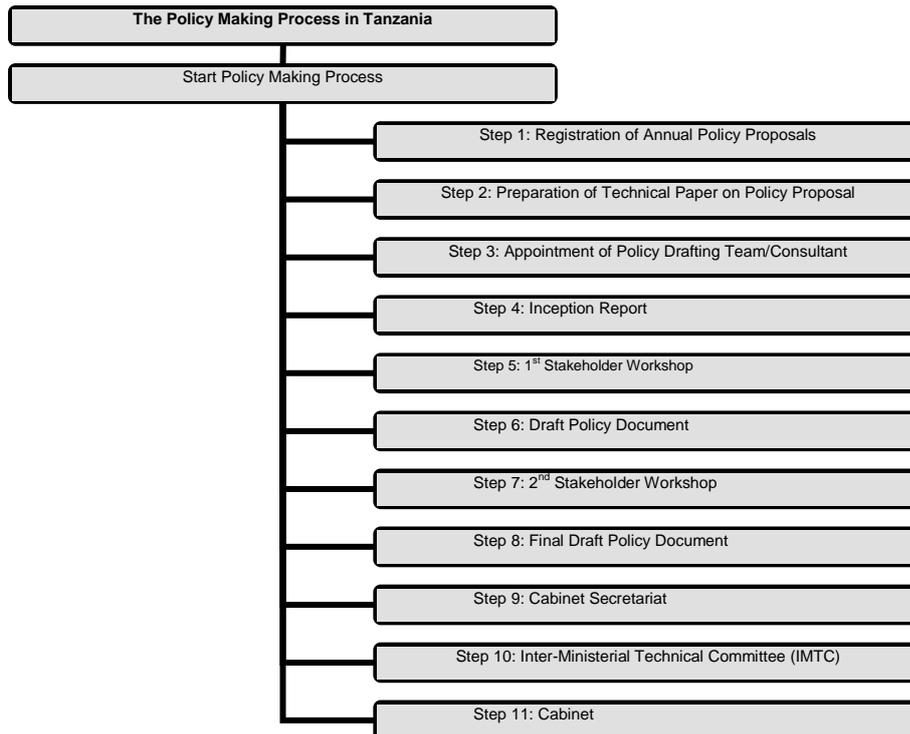
#### **3.2.1 Key National Concerns and Issues**

- *What are the key national concerns in relation to IPR policy and legislative framework?*
  - Lack of National IP Policy.
  - Lack of legislation on some important branches of IP including Geographical Indications, Industrial Designs, Traditional Knowledge and out-dated provisions in the existing legislation.
- *How well have such concerns been manifested or articulated by stakeholders in the country? Are these concerns based on actual documented evidence?*
  - They have been manifested or articulated through the media, workshops, meetings, seminars, conferences, etc.

- Yes they are based on documented evidence which can be found in various reports, (National Stakeholders' meetings, ARIPO Draft Instrument on Protection of TK and Expression of Folklore, reports from various IP workshops, e.g. Expanding frontier of music industry in Tanzania" Bagamoyo, March 13 – 15, 2006. The report of the "Small research on Bongo Flavour in the music business of Tanzania: Livelihood Focus." Conducted by Tanzania Youth Coalition (TYC), etc.)
- Lack of legislation is causing the country to loose out in goods that have unique characteristics only found in Tanzania (Tanzanite, Usambara flower, etc), genetic resources/TK patented and country losing out in benefit sharing.
- *Are some potentially important concerns and issues likely to surface in the near future? What are these? What measures are being taken or planned to address these?*
  - Yes some potential important concerns are likely to surface.
  - Lack of coherence in forming institutional IP policies, refer 2<sup>nd</sup> bullet above, loss of income due to infringements/piracy, etc.
  - Planned formulation of National IP Policy, review of IP Laws, COSOTA is working on a fundraising project for purchase of anti-piracy stickers – HAKIGRAM. The Regulations for the use of the same is in place.
- *To what extent have the objectives of the TRIPS Agreement, Article 7, been taken into account in formulating national IP strategy?*
  - No IP Policy in place

### **3.2.2 National Policymaking/legislative processes & stakeholder map**

- *What Ministry has the lead role in ensuring the country's compliance with the TRIPS Agreement?*
  - Ministry of Industry, Trade and Marketing
- *What Ministry or agency has the lead role in IPR policy making?*
  - Ministry of Industry, Trade and Marketing
- *What is the general policy making process particularly with respect to public participation in the area of IPR?*



- *To what extent does lobbying by particular interest groups influence policy making and legislative processes generally and in respect of IPR policy/legislation in particular?*
  - Lack of awareness on IP issues is the big concern
  - Large segment of the population is not aware so it becomes difficult to legislate
- *If the development of policy and the preparation of legislation for the various forms of IPR are the responsibilities of different ministries or agencies, what are these?*
  - Ministry of Industry, Trade and Marketing, Ministry of Justice and Constitutional Affairs.
- *What Ministry or agency has the lead role in the drafting of IPR legislation?*
  - Ministry of Industry, Trade and Marketing
- *What role do IPR administrators play in policy development and the drafting of legislation and regulations?*
  - Advisory
  - Identifying gaps and controversial provisions and recommend
  - Soliciting views from stakeholders
  - Conduct research and study
- *What is the process for developing IPR legislation, regulations and procedures?*
  - Preparation of discussion papers
  - Compilation of stakeholders concerns and comments
  - Research and study

- Draft proposal for the relevant legislation and regulations
- *Who are the key stakeholders in the country's process for IP policy and legislation development?*
  - Ministries/Agencies:
    - Industry, Trade and Marketing
    - Foreign Affairs and International Relations
    - Justice and Constitutional Affairs
    - Finance
    - Science, Technology and Higher Education
    - Agriculture and Food Security
    - Health and Community Development
    - Information, Sports and Culture
    - Infrastructure
    - Education and Vocational Training
    - Labour, Employment and Youth Development
    - Environment
    - The Business Registrations and Licensing Agency (BRELA)
    - The Copyright Society of Tanzania (COSOTA)
    - The Fair Competition Commission (FCC)
  - Enforcement Authorities
    - Customs
    - Police Force
    - Judiciary
    - Courts and Tribunals
  - Non-Government
    - IP Agents and Attorneys
    - Inventor Association
    - Copyright Collectives
    - R & D Institutions
    - Universities
    - Tanzania Chamber of Commerce, Industry and Agriculture
    - Consumers
    - General Public
    - Academic Community
  - International
    - WIPO
    - EPO
    - WTO
    - UNDP
    - World Bank
    - Foreign IP Offices
    - East African Community (EPA)
    - ARIPO/OAPI
    - UNCTAD, UNIDO, WHO, WCO, ETC

### **3.2.3 Existing Legal Framework for Industrial and Intellectual Property Protection, Enforcement and Regulation**

- *Does a statement of national policy (i.e. purpose) with regard to intellectual and industrial property exist that forms the basis for IPR laws and the administration of IPRs in the country?*
  - No, the statement does not exist
- *If there's no explicit statement of purpose, where can the government's expression of such purpose best be found?*
  - Laws and Regulations
  - International conventions, treaties, agreements and protocols that the country is a signatory
- *What is the nature and scope of the national legal framework for the establishment and enforcement (including ADR) of IP rights?*
  - Patents Act No 1 of 1987
  - The Trade and Service Marks Act No. 12 of 1986
  - Copyright and Neighbouring Rights Act of 1999.
  - Plant Breeders Rights Act No.22 of 2003
  - Fair Competition Act No. 8 of 2003
  - Merchandise Marks Act 1963
  - Traditional and Alternative Medicines Act No. 23 2002
  - The Seeds Act
  - The Civil Procedure Code, 1966
  - Penal Code, Chapter 16
- *Does the National Legal Framework for IP meet all TRIPS requirements?*
  - It does not.
- *If the National Legislation does not meet all TRIPS requirements, what areas require further attention?*
  - Establishment of IP Policy, revision of the IP Legislation to include flexibilities and minimum standards.
- *To what extent have TRIPS flexibilities been considered and reflected in national legislation?*
  - They are not yet reflected but there are proposals for having provisions that provide for public health. TRIPS flexibilities have not yet been fully considered and reflected in the national legislation especially with respect to public health products and particularly pharmaceuticals. Available information estimates importation of more than 70 per cent of national requirements for essential medicines hence there is an urgent need for enactment of comprehensive legislation that protects public health and enhances access to essential medicines. The transition period till 2016 given for pharmaceuticals in itself is a flexibility which needs to be utilized properly. During this period the country needs to build manufacturing and technological capacity in the area of pharmaceuticals in order to enhance access to essential medicines.

- Expression and or inclusion of TRIPS flexibilities in the proposed Industrial Property Act of the United Republic of Tanzania which legislation consolidates pieces of Intellectual Property Laws, currently in force
- Article 27(3)(b) of the TRIPS Agreement
- Compulsory licenses and their implications
- Several stakeholders' and consultative meetings have been conducted and report produced on reflection of TRIPS flexibilities in the municipal, domestic or local legislation

### **3.2.4 Protection of Traditional Knowledge, Folklore and Biodiversity**

- *What are the broad national interests and/or concerns with respect to protection of traditional knowledge, folklore and biodiversity*
    - Lack of database on TK and folklore in the country
    - Existence of similar tribes in more than one country e.g. Masai in Tanzania and Kenya, Makonde in Tanzania and Mozambique etc.
    - Lack of appropriate and binding access benefit sharing mechanism
  - *What activities are currently under way in the country that have led or will lead to the definition*
    - A study on the mapping of creative industries in Tanzania
    - ARIPO Instrument on Protection of TK and Expressions of Folklore
  - *Are there specific issues that are of particular domestic concern or interest? Who are the key stakeholders with respect to each issue?*
    - Yes.
    - Geographical Indication; Kilimanjaro Mountain, Ngorongoro, Kyela rice, etc.
    - Traditional Textiles/art; Kikoi cloth, Mbolole cloth, tingatinga art, etc
    - Minerals; Tanzanite
    - Garden plant of Usambara that has been cross bred and patented by a UK National
    - Kihansi toads taken by the US research organization
- Key stakeholders:*
- Textile Industry (Local manufacturers)
  - Small and Medium Enterprises (SMEs)
  - Ministry of Finance
  - Ministry of Industry, Trade and Marketing
  - Ministry of Local Government and Cooperatives
  - Ministry of Environment and Metrology
  - Ministry of Agriculture
- *Does the country participate in regional or international 'common interest' blocs in connection with any of these issues? If yes, what ministry or agency has the lead role? What role do the IPR administrators play in this?*
    - Yes it does
    - The Ministry/agency having the leading role is the Ministry of Industry, Trade and Marketing and BRELA
    - The role IPR administrators play is; participating in negotiations, representing country position/interests, Report back/advise

### **3.2.5 Recent Legal Changes**

- *What changes in IPR legislation have been promulgated since 1990?*
  - 1994: Coming into force of the Patents Act No. 1 of 1987 – Patents Regulations 1994.
  - 1999: Enactment of the Copyright and Neighbouring Rights Act No. 7 of 1999.
  - 2000: The Trade and Service Marks Regulations 2000.
  - Accession to the Patent Cooperation Treaty (PCT) 14<sup>th</sup> September, 2000.
  - 2002: Enactment of the new Plants (Breeders Rights Protection) Act No. 22 of 2002.
  - 2003: Fair Competition Act
  - 2005: Coming into force of the 1963 Merchandise Marks Act
  
- *Why were these changes made? Was it due to internal processes or in response to external forces such as the need to implement treaties, etc?*
  - Partly due to the countries obligations, under the international instruments that she is a signatory and response to internal unavoidable economic and development trends.
  - Regulations were made in order to administer the above laws
  
- *Did the country require TA to undertake these changes? If so, from whom was the TA obtained and under what conditions, if any, was the TA provided?*
  - Patent, Trade & Service Marks – changes had to be locally manifested
  - Copyrights – yes; WIPO facilitated sensitisation seminars and workshops; unconditional
  - Fair Competition Commission – yes; from World Bank through capacity building and project funding; unconditional
  
- *Have the above legislative changes been implemented in practice? That is, are there implementing rules and regulations or administrative guidelines in place, and are these being actively implemented by administrators, courts and enforcement authorities?*
  - Yes, the changes have been partially implemented in practice and are administered by the responsible institutions.
  - The High Court of Tanzania has established a Commercial Division that specializes in commercial disputes including Intellectual Property matters.

### **3.2.6 Planned Legal Changes**

- *What legal changes that will impact IPRs are planned or pending?*
  - Formulating a national IP Policy
  - Reviewing existing IP laws
  - Enacting new IP laws
  
- *Are the planned legal changes due to internal demands/processes or is it because of international obligations or other external factors?*
  - Yes due to both internal demands and international obligations.
  
- *When are they expected to be promulgated?*
  - After all the procedures for enactment have been exhausted.

### **3.2.7 Membership of International Treaties and Agreements**

- *Is the country a member of the WTO? Is the country acceding to the WTO?*
  - Yes (member).
- *Is the country a full member or observer at WIPO?*
  - Full member
- *Is the country a member of other key intellectual property protection, global protection system and classification treaties? If so, which ones?*
  - Yes
  - Berne convention
  - Paris convention
  - PCT
  - WIPO
  - Nice Agreement
  - International Patent Classification
- *Is the country a member of bilateral or regional trade agreements that include an IP component or provision? If so, which ones?*
  - Yes, SADC-EPA and EAC
- *Have all these treaties been implemented nationally?*
  - Yes. PCT applications, Harare protocol, Banjul Protocol
- *Is the country a member of regional IPR treaties or agreements? Is the membership regarded as successful by the country concerned?*
  - Yes, ARIPO. The membership is regarded as successful.

### **3.2.8 Participation in International IP Standard Setting and Negotiations**

- *To what extent does the country participate in international IPR standard setting (e.g. WIPO, WTO)?*

The country participates in WTO and WIPO in General Council Meetings, Assembly Sessions and some of intergovernmental working committees as full members.
- *Is the country currently involved in international, regional or bilateral negotiations that have an IPR component? If yes, what are these?*
  - Yes. WTO, SADC-EPA and EAC
- *Does the country have permanent representation at WTO and WIPO in Geneva?*
  - Yes. Through Geneva Permanent Mission.

- *Who are the key IP agencies and officials in the capital? What are the mechanisms for consulting with stakeholders and co-ordinating policy positions across government?*
  - MITM, BRELA, COSOTA and FCC
  - The mechanism is through conducting stakeholders' meetings and other fora.
- *Does the country participate in regional trading bloc deliberations on IPRs?*
  - Yes.
- *What role does the IP office play in supporting IPR discussions and negotiations at the regional and international levels? What resources do the IPR offices have for this?*
  - IP office plays the role of establishing IP legal status, advice on IP legislation review process to comply with TRIPS Agreement and other relevant IP international standards.
  - IPR offices have very limited financial resources and negotiation skills.

### **3.2.9 Technical assistance and capacity building programmes**

- *What donors have been or are presently actively providing IP-related technical assistance in support of the development of the national IP policy and legal framework?*
  - WIPO, WTO and World Bank.
- *How will new proposed IPRTA projects or programmes be co-ordinated with, learn lessons from and complement such other donor-supported activities?*
  - Through the MITM and relevant authorities.

## **4. IPR ADMINISTRATION REGIME**

This section looks at the key issues and challenges related to the IPR administration regime in LDCs, before setting out a detailed checklist to guide an assessment, based on available evidence, about a country's capacity to administer IPRs effectively at the national level in line with its national development policy objectives as well as its current or future international obligations (e.g. WTO/TRIPS, regional and bilateral agreements, etc).

### **4.1 Key issues and challenges**

There is a very wide variation in the volumes of IPR applications, grants and registrations processed by developing countries and developing countries. For example, WIPO annual statistics show that in 2002, trademark application filings ranged from 378,631 in China, to 106 in Tonga. This has important implication for the kinds of institutional arrangements for IPR administration that may be appropriate for individual LDCs.

IPR application rates in any given country are determined by various factors, including the nature of the national IPR laws and their enforcement in the country, whether the country is member of a regional organization (e.g. ARIPO, OAPI) or is a member of international treaties such as the Patent Cooperation Treaty, or the Madrid Agreement in respect of trademarks.

The administration of industrial property rights (patents, trademarks, industrial designs, utility models, integrated circuit topographies and plant varieties) involves the receiving of applications,

examination to ensure that applications comply with formality and substantive requirements, the granting or refusal of rights, and the registration, publication and maintenance of public records of the rights accorded. Copyright subsists upon the creation of an eligible work and registration systems, where these exist, are voluntary. Private copyright collective management societies collect and distribute royalties to members for the performance of musical works in their inventories and, in effect, assist national authorities with enforcement of copyright.

In the following section, the term IPR "office" is intended to cover all variants, including a single, integrated, organization as well as multiple organizations (e.g. where patents, trademarks and copyright may actually be administered by separate institutions). In the majority of LDCs the administration of industrial property is carried out in a department within a ministry of industry and trade, or a ministry of justice.

In a growing number of countries an autonomous government agency is responsible for the administration of industrial property. Copyright is generally administered by a department in a ministry of culture, information or education. In some instances, there is no identifiable unit with responsibility for copyright administration. As noted in the earlier section on IPR policy and legal framework, effective IP policy development and implementation requires specialized technical and analytical skills. The same skills are needed to set up and effectively operate institutions that have been charged with the administration of those IPR policies and laws.

Often, LDCs may not have sufficient specialized knowledge and relevant expertise among their officials to enable them to define effectively their needs with regard to administration of the national IPR system. Donors and providers of IPRTA are therefore encouraged to adopt a transparent and comprehensive methodology for assessing a country's IPR administration needs, using the diagnostic assessment checklist below.

The methodology used should ensure that the recipient country itself is able to participate effectively in both the needs definition process and in the implementation and subsequent evaluation of the results of IPRTA activities, projects, and programmes.

## **4.2 Diagnostic assessment checklist**

### **4.2.1 Time series data on IPR applications and grants**

- *What are the categories and volumes of IPRs that are applied for and granted or registered annually in the country?*

Trade and Service Marks application filing - approximately 1000 per year  
Patents applications filing – approximately 20 per year

- *What are the current and previous years' statistics for each form of IPR?*

➤	2006	Trade and Service Marks applications	-	800
		Patents applications	-	25
	2007	Trade and Service Marks	-	1015
		Patents	-	27
	2008	Trade and Services Marks	-	1200
		Patents	-	33

2009	Trade and Services Marks	- 1300
	Patents	- 37

- *What significant trends may be observed from the data on IPR applications over the time? What factors explain these trends? Are these trends likely to continue or change in the future?*
  - Filing of applications indicates an upward trend.
  - Factors responsible for the increased filings:
    - Awareness of IPRs on the part of local applicants
    - Efforts done by local patent and Trade marks Attorneys
    - Reliance and confidence in filing directly to the Registries as opposed to the introduced international application system.

#### **4.2.2 Legal basis and mandate of IP institutions in public and private sector**

- *What are the laws and regulations that establish the legal mandate and basis for administration of industrial and intellectual property in the country?*
  - Patents Act No 1 of 1987 and its Regulations of 1994
  - The Trade and Service Marks Act No. 12 of 1986 and its Regulations of 2000
  - Copyright and Neighbouring Rights Act No.
  - Industrial Designs Ordinance of 1936
  - Plant Breeders Rights Act of 2003
  - Fair Competition Act of 2003
  - Merchandise Marks Act 1963
- *Have these laws and regulations been recently adopted or been in force for some time?*
  - Some have been in force for some time and some have been recently enacted.
- *To what extent are the existing laws and regulations in compliance with the TRIPS Agreement? What are the main areas where amendments are required to bring about full compliance?*
  - Semi compliant
  - -Public health and availability of essential drugs.
    - Express provisions and or inclusion of TRIPS flexibilities in the proposed Industrial Property Act of the United Republic of Tanzania which legislation consolidates pieces of Intellectual Property Laws, currently in force
    - Article 27(3)(b) of the TRIPS Agreement
    - Compulsory licenses and their implications
    - Several stakeholders' and consultative meetings have been conducted and report produced on reflection of TRIPS flexibilities in the municipal, domestic or local legislation

#### **4.2.3 Existing IPR administration processes**

- *How is the responsibility for administering IPRs organized in the country?*
  - Responsibility for administering IPRs is scattered:-  
Patents, Trade and Service Marks, Industrial Designs

Copyrights and Neighbouring Rights, Expressions of Folklore  
Anti-competitive practices and Plant Breeders Rights

- *Are there separate offices and accountabilities for each of the various forms of IPR or are these administered from a single, integrated, IPR office?*
  - Yes, there are separate offices/institutions for the administration of the above forms of IPR.
- *Are there direct linkages between the stated "purposes" (if this exists) of the IPR legislative framework and the specific operational activities of the institutions responsible for administration of the legislation identifiable?*
  - No direct linkages.
- *How well does administration of the legislation appear to serve the policy goals and stated "purpose" of the IPR legal framework? What criteria are applied, and by whom, in reaching such conclusions?*
  - Absence of National IP Policy.
- *What is the quality of the IPR administration process overall? Are users satisfied with the levels of service provided by the national IPR offices? If not, what are the main priorities for improving service delivery? What measures are being taken or planned to address these issues?*
  - The quality is poor
  - No. Users are not satisfied with the levels of service provided
  - Establish a functional national IP Policy
    - Review IP Laws
    - Enhance technical skills
    - Improve equipment
    - Enhance accessibility by decentralizing services and introducing WAN (Wide Area Network) system
    - Improve licensing of users and introduction of anti-piracy security device
  - Legislation review process is in progress, discussions are underway with view to formulating National IP Policy.

**4.2.4 Human resources**

- *What are the total numbers of staff involved in administering the various forms of national IPR legislation?*
  - Industrial Property- Patent, Trade and Service Marks 8
  - Copyrights and Neighbouring Rights 18
  - Fair Competition 47
  - Plant Breeders Rights 7

- *What is the allocation of IPR office staff by broad areas of functional responsibility*
  - Industrial Property
    - Management 1
    - Legal/technical examination 3
    - Clerical 4
  - Copyrights
    - Management 5
    - Technical/Legal 13
  - Fair Competition
    - Management 12
    - Technical 35
  - Plant Breeders Rights
    - Management 2
    - Technical 5
  
- *What are the educational and technical qualifications of IP office professional staff?*
  - Advanced Diploma – Masters
  
- *What is the level in-house staff training in IP law and administration*
  - The level is minimal
  
- *Are there private sector practitioners and attorneys available for each main form of IPR?*
  - Yes, for Industrial Property.
  
- *Are agents and attorneys trained in IP law? By whom? Is the qualification of agents certified by the IP office? If yes, How?*
  - No, they are not trained.
  - No. The IP office does not certify the qualification of agents.

#### **4.2.5 Automation and information management systems**

- *Does the national IPR office(s) have the technical resources, including project management capacity, to manage its own information management modernization programme? Does the office have a strategic plan to guide future automation efforts or does it rely on ad hoc projects?*
  - No.
  - Yes, it is stipulated in the strategic plan
  
- *Are the existing information management and automation systems effective and appropriate for the national IPR office(s)? Does the office have the financial and technical resources to maintain necessary computer systems?*
  - No.
  - No.

- *What automation projects have taken place?*
  - Industrial Property – The WIPO Industrial Property Automated System (IPAS) is currently partially applicable for trade and service marks.
    - 8 staff and an administrator inclusive manage the system
    - The users are not well trained to use the system.
    - The system is three years old.
    - There is one main server and 7 other user computers
    - IT equipment is obsolete
    - It is planned to fully automate Industrial Property Registry in the near future.
- *Does the office have an Internet website?*
  - Yes. BRELA – [www.brela-tz.org](http://www.brela-tz.org)  
COSOTA – [www.cosota-tz.org](http://www.cosota-tz.org)
- Does the office actively use WIPOnet?
  - No.

#### **4.2.6 Physical infrastructure**

- *Where is the headquarters of the national IPR office located? In what part of the city?*
  - Outskirt of the Central business city (Dar es Salaam)
- *Does the IPR office have mechanisms to provide regional access to its services? What are these?*
  - No.
- *Are the IPR office accommodations designed to facilitate public access? Are IPR office accommodations adequate to meet projected needs for the next five years?*
  - No. They are not user friendly.
  - No. The office is currently rented, space is not enough and cannot automate under the current tenancy agreement.

#### **4.2.7 Financing and cost recovery from IPR service delivery**

- *What is the size of the annual operating budget of the national IPR office(s)? What trends may be observed in terms of changes in operating costs and revenue for the national IPR office over time? What factors explain these? Are these trends likely to continue?*
  - Industrial Property –T Sh 237.6 million – 20 per cent of total Organization's revenue.
    - The trend is – relatively stable (depends on customer needs)
    - The trends are likely to continue
  - Copyrights - Approximately T Sh 202.4 million
    - Unstable; dependent on government subvention
    - The trends are likely to continue

- Industrial property- Costs and Revenue
  - Costs           2004/2005 T Sh 137.4 million;  
                  2005/2006 T Sh 165.8 million;  
                  2006/2007 T Sh 200.5 million;  
                  2007/2008 T Sh 130.4 million  
                  2008/2009 T Sh 164.4 million
  - Revenue           2004/2005 T Sh 214.4 million;  
                  2005/2006 T Sh 229.7 million;  
                  2006/2007 T Sh 242.0 million;  
                  2007/2008 T Sh 587.3 million  
                  2008/2009 T Sh 629.1 million

The trend is relatively stable and likely to continue.

- Copyrights:- Costs and Revenue
  - 2005/2006; approximately T Sh 100.2 million  
                  2006/2007; approximately T Sh 125.2 million
  - Costs           2007/2008; T Sh 247.6 million  
                  2008/2009; T Sh 345.2 million
  - Revenue       2007/2008: T Sh 255.5 million  
                  2008/2009: T Sh 314.2 million

- *How are operations of the national IPR office(s) funded?*
  - Industrial Property 100 per cent self-financing through user fees
  - Copyrights           95 per cent government  
                              5 per cent user fees
- *What level of financial reserves, if any, does the national IPR office have? Are these considered adequate for prudential reasons?*
  - No. they do not exist.
- *If funding is through annual government appropriations, is there a potential for the office to access its own fee revenue?*
  - Yes for Copyrights office
- *If the office accesses IPR fee revenues, to what extent does income offset expenditures? How regularly are fee levels reviewed by senior management of the IPR office and on what criteria?*
  - Industrial Property – The income is not enough to sustain IP expenditures.
  - Copyrights – 5/95 per cent; is not enough.
  - Fee levels not regularly reviewed.
  - Fee reviews are made through Regulations made by the Minister responsible for IP upon advice

- *How do fee levels compare with similar services provided by IPR offices in other LDCs and developing countries in the region?*
  - Comparatively low.
- *What, if any, is the legal mechanism under which the IPR office accesses fee revenue and for setting fee levels?*
  - Through Acts and Regulations

#### **4.2.8 Modernisation plans and programmes**

- *Does the office have a strategic plan for modernization?*
  - Yes.
- *If so, to what extent has the plan been implemented?*
  - To a minimum extent.
- *Have specific needs for external technical and financial assistance already been identified?*
  - Yes roughly.
- *What donors are already providing IPRTA? Are the results of the assistance that is being provided sustainable?*
  - WIPO, WTO, CISAC.
  - The provided assistance is not sustainable.
- *What requirements are there for human resources development, including training, and what possibilities are there to exploit distance learning?*
  - Conducive working environment
  - Training in the following:
    - Classification treaties
    - Existing systems
    - Documentations, licensing, litigations, negotiations
    - Advanced knowledge
  - Distance learning is accessible at cost.
- *What requirements are there for automation (both hardware and software) and streamlining of IPR administration processes?*
  - Conducive accommodation, security devices, well maintained server and working machines (i.e. computers, scanners, printers, etc), trainings on system use.

## **5. ENFORCEMENT AND REGULATION REGIME**

This section looks at the key issues and challenges related to the regime for enforcement and regulation of IPRs in LDCs, before setting out a detailed checklist to guide an assessment, based on available evidence, about a country's capacity to enforce and regulate IPRs at the national level in line with domestic legislation, national development policy objectives and its current or future international obligations (WIPO treaties, TRIPS Agreement, regional and bilateral agreements).

## 5.1 Key issues and challenges

IPRs of all forms are useful and valuable to their holders only if they are capable of being enforced. At the same time, IPRs are also capable of being utilised by holders in ways which may unfairly restrict competition or be otherwise harmful to the public interest. This means that legal systems and regulatory frameworks and institutions must be fully effective in respect of both of these objectives. For many LDCs, the concepts of intellectual property law and its administration, enforcement and regulation are new and therefore present a challenge to enforcement authorities and regulators who may possess little, if any, specialized knowledge in the field.

IPR infringement through counterfeit or "fake" drugs, automobile parts, pesticides, foodstuff and bottled water are appearing in the marketplace at an alarming rate in some parts of the world – in both developed and developing countries. The negative implications of this, not only in financial terms but also in terms of public health and safety can be huge. Consumers can be "morally selective when it comes to purchasing counterfeit goods, and frequently view the pirating of consumer goods, especially, clothing and CDs as soft crimes".

The public therefore needs to be persuaded to refuse to knowingly purchase counterfeit goods. Increased enforcement of IPRs is also often politically sensitive as it may be seen as leading to increased costs for consumers and even the loss of access to jobs. A key element in any effort to strengthen the enforcement of IPRs is to increase public awareness and understanding of industrial and intellectual property. At the same time, clear, cost-effective, readily accessible enforcement mechanisms and procedures are required.

For most major IPRTA donors, a key policy objective going forward is to ensure that enforcement systems in developing countries address serious IPR infringements more effectively. This is seen as critically important to protect the incentives that the system offers to IPR holders. But, as the UK Commission on Intellectual Property Rights noted, it is also important that developing countries are assisted to develop institutions capable of doing this in a balanced, pro-competitive way. Developed countries have introduced stronger IPR protection in the context of competition regimes and other regulatory regimes designed to ensure that IPRs do not harm the public interest. Seen from the institutional perspective, however, such effective regulation of IPRs is likely to present significant challenges for policymakers, administrators and enforcement agencies in LDCs.

This suggests that, as well as enforcement, building capacity for regulation of IPRs, particularly in relation to matters of special public interest (as with compulsory licensing) or in relation to controlling anti-competitive practices by rights holders, should be given higher priority in IP technical assistance programmes for developing countries and transition economies in the future.

As well as the development of appropriate regulatory frameworks per se, an important part of effective regulation is the undertaking of regular, periodic reviews of all aspects of the national IPR regime, to ensure that these are relevant and appropriate. Donors of IPRTA could also do more to assist developing countries in this task, through providing appropriate technical assistance as well as formal and on-the-job training.

## 5.2 Diagnostic assessment checklist

### 5.2.1 Analysis of the nature and status of IPR infringement

- *What are the alleged levels of infringement of different kinds of IPRs in the country? What official data is available about actual instances of IPR infringement?*
  - Copyrights – the level of infringement is very high at 95 per cent
  - Fair Competitions – in merchandise Marks the level is very high but no data is currently available
- *By whom are the allegations of IPR infringement being made e.g. domestic interests, USTR, BSA, copyright collectives?*
  - Domestic interests, foreign interests and IPR collectives (associations)
- *What is the nature of infringement in each of the areas of copyright, trademarks, patents, Geographical Indications etc?*
  - Copyrights – Illegal copying, reproduction, translation, adaptation, distribution, public performances, broadcasting, importation/exportation of pirated bootlegs and counterfeits.
  - Industrial Property – Passing off and counterfeits.
  - Fair Competition – Counterfeiting of imported and domestic goods
- *Do linkages exist between national enforcement authorities and foreign or international authorities and bodies*
  - Copyright – Southern and Eastern Africa Copyright Network (SEACONET), International Federation of Reprographic Rights Organization (IFRO)
  - Fair Competition Commission – ICR Cooperate Research
  - CUSTOMS – Signatory to WCO, EACU
  - Police – Member to Interpol, Southern Africa Regional Police Chiefs Cooperation Organization (SARPCCO), East African Police Chiefs Cooperation Organization (EAPCCO)
  - TFDA – International Medical Products Anti-counterfeiting Task Force (IMPACT)

### 5.2.2 Levels of public awareness and awareness raising initiatives

- *Does the IP office carry out activities intended to increase public awareness and understanding of IPRs? If so, what are they?*
  - Yes to a limited extent.
  - Seminars, Marking of IP and Technology day, seminars, workshops, conferences, TV and radio programmes, fairs and exhibitions.
- *What are the primary objectives of such "outreach" activities, e.g. to promote innovation, to fight infringement? How extensive and well resourced are such awareness raising activities in the country?*
  - To create IP awareness, to promote innovation, to fight infringement.
  - Awareness raising activities are limited to availability of resources.

- *What are the views of stakeholders, including the domestic business sector and foreign/international stakeholders, e.g. USTR, AIPLA, BSA, ICC regarding access to IPR enforcement systems?*
  - IP services are not adequately accessible, IP services are geographically centralized and erratic.

### **5.2.3 Administrative systems**

- *To what extent are the enforcement of IPRs provisions of the TRIPS Agreement (Part II) being met?*
  - Inadequate
- *What role does the IPR office play in the enforcement of private IPRs?*
  - Advisory, conducting quasi judicial proceedings
- *Does the IPR office provide any dispute resolution services?*
  - Yes.
- *What linkages exist between the IP office and national IPR enforcement authorities?*
  - Enquiry and information sharing.
- *Is Alternative Dispute Resolution (ADR) practiced in connection with IPR matters?*
  - Yes.
- *If ADR is used, in what form is it practiced (negotiation, mediation/conciliation, arbitration)?*
  - Mediation
- *Is the country party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards?*
  - Yes
- *Is collective management of copyright and related rights practiced?*
  - Yes
- *Does a Copyright Tribunal, or a comparable system exist for setting royalty rates?*
  - Yes

- *Does the national IPR office administer systems for the compulsory licensing of IPRs, e.g. in cases of national interest or the abuse of rights? Does the national IPR office have appropriate professional and technical capacity in this respect? Does the country have the institutional capacity to administer, in the public interest, the compulsory licensing provisions under Article 31 of TRIPS?*
  - Yes, patent law provides.
  - No professional and technical capacity in administering the compulsory licensing
- *Is there a requirement and a system for registering technology transfer agreement?*
  - No.

#### **5.2.4 Judiciary**

- *Are all civil and administrative procedures and remedies, as called for in the TRIPS Agreement, in place?*
  - No.
- *What types of courts hear IPR cases? How are the courts structured to deal with IP matters? Is the judiciary in these courts generally familiar with IPR concepts, legislation and case laws?*
  - The High Court, Resident Magistrate Court and District Magistrate Court
  - No special IP court
  - The judiciary is not very familiar with IPR concepts.
- *Do prosecutors and the judiciary receive formal training in IPR law? What kind of formal training programmes are operated? Are these effective and well attended? What are the gaps?*
  - No.
- *To what degree does the judiciary rely on lawyers, as officers of the courts, to explain the legal and/or technical issues of IPRs?*
  - To a great extent hence can be misled to favour ones interest.
- *How many IPR cases are brought before the courts?*
  - Statistics *not currently available*
- *Do the courts have access to IPR registry?*
  - Yes. Rarely used.

#### **5.2.5 Police**

- *Are there special units for IPRs within the police forces?*
  - No

- *Are there formal linkages between the national IPR office(s) and the police? If so, what are they?*
  - Yes. Through counter-inquiries and general correspondence
- *Do police receive formal training in IPR law? What kind of formal training programmes are operated? Are these effective and well attended? What are the gaps?*
  - No, they do not.
- *Do police have access to IPR registry information?*
  - Yes. Rarely used.

#### **5.2.6 Customs**

- *Are TRIPS special requirements related to border measures (Part III, Section 4) in place?*
  - No.
- *Are there units within the customs authority specializing in IPRs?*
  - No.
- *Do customs authorities receive formal training in IPR law? What kind of formal training programmes are operated? Are these effective and well attended? What are the gaps?*
  - No.
- *Are there formal linkages between the national IPR office(s) and customs authority? If so, what are they?*
  - No linkages.
- *Do customs authorities have access to IPR registry information?*
  - Yes. Rarely used.

#### **5.2.7 Competition policy and authorities**

- *Does competition legislation exist in the country? Does existing competition legislation address IPR issues?*
  - Yes.
  - Yes.
- *Are IPR-related restrictive practices addressed in national IPR legislation?*
  - Yes. To a large extent.

- *Does institutional capacity exist that can address IPR-related issues effectively either under competition legislation or under IPR legislation?*
  - No.

## **6 PROMOTING INNOVATION, CREATIVITY & TECHNOLOGY TRANSFER**

This section looks at the key issues and challenges related to promoting national innovation, creativity and transfer of technology in developing countries and transition economies, before setting out a detailed checklist to guide an assessment, based on available evidence, about a country's capacity to promote these objectives through exploitation of the IPR system.

### **6.1 Key issues and challenges**

Most LDCs are able to devote few resources to innovation and generate very low levels of (industrial) intellectual property that could be protected by the formal system of patents and trademarks. For example, almost 90 per cent of patents granted in 2000 in the US originated from the USA, Europe and Japan. To address this situation, LDCs need to have more than just the minimum administrative and institutional capacities required to provide a reasonably smooth system for administration and enforcement of IPRs.

LDCs require a wider institutional framework in order to support development of their national innovation capabilities through maximizing access to technologies and knowledge assets protected by IPRs (e.g. through subsidised patent information searching services and support to upgrade technology transfer capabilities in universities). They also need to strengthen research and education institutions and to conduct public education and awareness campaigns that focus on the merits of innovation, creativity and technology transfer.

The evidence suggests that these imperatives are not always well reflected at present in the institutional infrastructure in LDCs or, indeed, in most technical co-operation programmes supported by donor organisations. The "cost of ignorance" regarding IPR can be high even when infringement of rights is not at issue. One need only consider the amount of needless duplication of research and development that takes place in the industrial sector. This occurs most often in the realm of small and medium enterprises (SMEs) but is not restricted to that sector. Large, well-funded governmental research organizations have also been known to have "re-invented the wheel" because they were not sufficiently aware of or knowledgeable about the IPR system. The mis-allocation of scarce R&D resources in this manner translates into significant direct costs.

Equally significant, albeit harder to quantify, are the opportunity costs associated with the reluctance of commercial enterprises to innovate for lack of understanding of IPRs. It is not uncommon for SMEs that do not understand IPRs to lack the enthusiasm to venture into areas of business where they may feel threatened by litigious competitors.

For example, a small business enterprise that does not understand that a competitor's foreign patent is not enforceable in his/her country, or that a foreign patent granted 30 years ago is no longer enforceable, is at a serious competitive disadvantage in the marketplace. Similarly, a domestic producer of goods who has relied on foreign suppliers of patented components is often not likely to substitute his own, or domestically fabricated components, when the suppliers patent expires, if he has no basic understanding of the patent system.

The real gains for an LDC may instead lie in exploiting the intellectual effort already expended by a major foreign patent authority in establishing the TRIPS criteria for patentability, including novelty, inventiveness and industrial applicability, and focusing their own scarce technical resources on activities that offer greater payback. These might include activities such as helping domestic SMEs to access and exploit appropriate technology disclosed in patent documentation.

## **6.2 Diagnostic assessment checklist**

### **6.2.1 Institutions and initiatives for promoting innovation, creativity and technology transfer**

- *Are government research facilities and grant award programmes for research & development available?*
  - Yes.
- *Are government incentive programmes and subsidies for national industries and foreign investors in technology intensive sectors available?*
  - No.
- *Are research and educational use exemptions in patent and copyright law to promote learning, research for follow-on innovation and diffusion of technical knowledge in place?*
  - Yes, but not fully utilized  
Key constraints:
    - Lack of awareness
    - Unstable organization
    - Lack of managerial skills.
    - Financial constraints.
- *Is research and development conducted at universities and colleges?*
  - Yes.
- *Are there inventors, authors, composers, writers, musicians or handicraft societies in existence?*
  - Yes.
- *How effective currently are the above institutions and initiatives in promoting national innovation, creativity and technology in the country? What are the key constraints if any?*
  - Not effective.

### **6.2.2 Mechanisms used by the IP office to enhance public awareness and understanding of intellectual property**

- *Does the national IP office have or use any of the following: a Web site; publications and audiovisual materials; radio and television; speakers and lecturers?*
  - Yes, Occasionally.
- *Are invention/innovation fairs, prizes, shows used to promote awareness?*
  - 
  - Yes.

- *Are intermediary organizations used to leverage increased IP awareness?*
  - Yes, somehow.
- *Does the national IP office provide access to a modern and comprehensive patent information system database for nationals, companies and research organizations in the country to utilize? Is the database on-line? Is the database linked to other global patent databases?*
  - No.

**6.2.3 Who are the key targets of IP office public information or out-reach activities? To what extent are the following included?**

- *General Public?*
  - Yes. To a large extent
- *Does the country promote the participation of women in IP activities?*
  - No.
- *Musicians, artists, Performers?*
  - Yes, to a great extent.
- *Inventors and innovators?*
  - Yes, to some extent.
- *Politicians and senior government policy advisers?*
  - Yes, rarely.
- *Judiciary and enforcement agencies?*
  - Yes, rarely.
- *Government officials, including treasury, economic/industrial development, culture, agriculture, employment, education?*
  - No.
- *Legal community?*
  - Yes. Rarely.
- *Academic community (both as educators and researchers)?*
  - Yes. Occasionally.

- *Publicly funded research and development community?*

- Yes. Occasionally.

- *Business community and their associations?*

- Yes. Occasionally.

#### **6.2.4 Opportunities to work in cooperation with (complimenting) key partners and stakeholders**

- *Does a national research organization or council for science and technology exist in the country?*

- Yes.

- *Are there universities or other academic institutions that conduct research which could be of industrial application? Are such institutions well linked with industry? Do they currently the IPR system and have technology transfer departments?*

- Yes.

- Such institutions are not well linked with industry.

- Yes some have technology transfer departments.

- *Do national organizations exist that manage rights on behalf of artists, composers, performers and other copyright holders?*

- Yes.

- *Is there a national (sub-national or regional) association of IPR professionals active in the country?*

- Yes. In its infancy stage (IP Forum Limited).

- *Are there associations of inventors, artists, lawyers, engineers in existence?*

- Yes, but some not active.

#### **6.2.5 Are successful examples of other domestic government programmes and foreign IP organizations exploited for enhancing domestic IP awareness?**

- *Do examples of successful public awareness activities by other government ministries exist?*

- Yes.

- *Is it feasible to evaluate public education and awareness activities of IPR offices in other countries and adopt/adapt best practices?*

- Yes.

- *Do international associations of IPR practitioners, IPR holders and inventors have programmes that would support domestic initiatives?*
    - Yes.
  
  - *Are there regional economic cooperation programmes that may support national IPR awareness activities?*
    - Yes.
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