Mapping Africa's Complex Regimes: Towards an African Centred AfCFTA Intellectual Property Protocol

By Titilayo Adebola December 8, 2020

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Abstract

This article breaks new ground by advancing the first comprehensive mapping and analysis of the fragmented intellectual property (IP) architecture in Africa in light of the pending African Continental Free Trade Area (AfCFTA) IP Protocol. I argue that the AfCFTA IP Protocol presents a timely, albeit arduous, opportunity for Africa to reconstruct its broken IP architecture by aligning the conflicting sub-regional IP regimes with the development-oriented aspirations that animate the African Union's IP agenda. This will drive the design and delivery of IP systems suited to the

contexts, conditions and collective interests of Africa.

In appreciating Africa's agricultural resources, traditional knowledge and cultural legacies, I argue that the AfCFTA IP Protocol negotiators ought to prioritise geographical indications, plant variety protection, traditional knowledge and traditional cultural expressions, which embody Africa's innovative and creative strengths. While the African Union (AU) has policy frameworks on these subjects, there are variations in the sub-regional organisations' uptake patterns.Sub-regional organisations are increasingly embracing the Continental Strategy for Geographical Indications in Africa 2018 - 2023. Conversely, no sub-regional organisation has introduced a plant variety protection system styled on the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources 2000.

Moreover, the sub-regional regimes adopt distinct governance structures. The Organisation Africaine de la Propriété Intellectuelle (OAPI) operates a uniform system, whereas the African Regional Intellectual Property Organisation (ARIPO) operates a flexible system. The AU's ambitious attempt to resolve the policy incoherence and inconsistency through the Pan African Intellectual Property Organisation (PAIPO)- a single Pan-African IP organisation to harmonise IP and stimulate social and economic development in Africa - is inchoate. I conclude by submitting suggestions that challenge the AfCFTA IP Protocol negotiators to supply homegrown African centred IP systems that radically reimagine the normative configurations of IP.

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