Introduction to the Symposium on Plant Variety Protection and Traditional Knowledge in Africa

By:

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By 1 July 2021, all African World Trade Organisation (WTO) members are expected to have introduced plant variety protection systems as per the provisions of Article 27.3(b) of the Agreement Trade-Related Aspects of Intellectual Property Rights (TRIPS). Recognising the cultural, social, economic, financial, technical and administrative constraints of crafting and introducing new intellectual property systems at the national level, TRIPS provides a two-tiered transition period for developing and least-developed WTO members. 1 January 2000 for developed countries and 1 July 2021 for least developed countries (or whatever date a particular country ceases to be in the least developed category if that happens before 2021).

This symposium, comprising six contributions, presents case studies of the existing plant variety protection systems in Africa, complexities around introducing new systems as well as the interlinkages between plant variety

protection, human rights and traditional knowledge. In the first contribution, an interview with a leading African intellectual property scholar, titled ‘In Conversation with Dr Susan Isiko Štrba’, Štrba shares her opinions on the current plant variety protection landscape in Africa. According to Štrba, the African Group’s conflation of different issues relating to plant varieties, such as access-benefit sharing and farmers rights from the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) contributed to the impasse on the revision of Article 27.3(b) of TRIPS at the TRIPS Council.

Štrba draws attention to the forum shopping technique that has resulted in plant variety protection-related negotiations in international fora beyond the WTO. Reflecting on the state of plant variety protection in Africa, Štrba illuminates the proliferation of the International Convention for the Protection of New Varieties of Plants (UPOV) 1991 on the continent. Štrba argues that the wholesale adoption of the UPOV 1991 Convention is unsuited to Africa because it ‘primarily emphasises the protection of [commercial] plant breeders at the expense of local farmers.’ She sees harmonisation of intellectual property through the IP Protocol of the AfCFTA as possibly an opportunity to rewrite and introduce plant variety protection instruments suited to Africa. Štrba wonders if there is enough courage and unity among the 55 African countries to promote a uniform plant variety protection agenda suited for Africa.

Starting off the discussions on plant variety protection at the national level, Peter Munyi’s contribution, titled ‘Layering Protection of the Rights of Plant Breeders in Kenya: A Contrast of Law and Practice’ presents the case study of the rights of plant breeders in Kenya. Kenya is one of the African countries, alongside South Africa and Zimbabwe, that had a plant breeders’ rights system even before TRIPS entered into force on 1 January 1995. In his contribution, Munyi uncovers the ‘layers’ of protection available to plant breeders in Kenya, including the Plant Breeders’ Rights System, Seed Certification and Anti-Counterfeiting legislation, which he describes as ‘legislation overkill’, as they go beyond Kenya’s obligations both at the international and regional levels. Munyi concludes that ‘despite the availability of the three layers of rights to plant breeders, the enforcement of their [plant breeders] rights appears to be quite nominal.’

Although unlike Kenya, Ghana does not have a plant variety protection system, Daniel Acquah's contribution, titled 'The Proposed Plant Breeders Bill of Ghana and the Food Sovereignty Conundrum' examines the bifurcation of debates on Ghana's plant breeders rights bill as a contest between food sovereignty and food security. Civil society groups and farmers' unions reject the Bill asserting that it could 'erode the conservation of agricultural biodiversity for livelihood security and food sovereignty.' Scientists embrace the Bill, emphasising that it is a means to 'encourage more private investments in the seed sector for the benefit of farmers and the nation, making the country more competitive in the seed industry and ensuring food security.'Acquah proposes a 'middle way.' He argues that the Plant Breeders Bill can complement the government's effort in tackling hunger and poverty problems in the country by balancing the interest of breeders and farmers while ensuring adequate production of accessible food.

In sharp contrast to the vibrant debates in Ghana, Titilayo Adebola's contribution, titled 'Breaking the *Silence* on Plant Variety Protection in Nigeria' draws attention to the non-existent discourse on plant variety protection in Nigeria. Adebola points out that although Nigeria, a developing country member of the WTO, is a signatory to TRIPS, it has failed to meet its implementation deadline of 1 January 2000. However, she argues that 'the silence should not be equated with absolute legislative inactivity around the subject in the country.' Adebola observes that there have been unsuccessful intellectual property law reform attempts which sought to introduce a plant variety protection system. Furthermore, Nigeria has recently contacted the UPOV Office to solicit support to craft its plant variety protection law, at the same time, the country has an Industrial Property Bill at the Committee and Public Hearing stage at its National Assembly. According to Adebola, these current activities have failed to attract public attention like it did in Ghana. Like Acquah, Adebola concludes that the system best suited to Nigeria is one that balances the interests of commercial plant breeders and small-scale farmers while suggesting the African Model Law as a useful guideline.

In his contribution, titled 'The Harmonisation of IP Law in Africa: The AfCFTA, PVP Laws, and the Right to Food', Emmanuel Oke deviates from the developments at the national levels to present insights on the attempts at harmonising intellectual property law in Africa and its possible consequences on

plant variety protection and the right to food. Oke presents two main arguments. First, the intellectual property negotiations of the African Continental Free Trade Area (AfCFTA) should be guided by the need to ensure there is a balance between protecting intellectual property rights and securing access to essential goods such as seeds. Second, the negotiations should ensure that intellectual property rights are used as tools for promoting and protecting human rights such as the right to food. Oke concludes that the intellectual property negotiations of the AfCFTA should consider both human rights and the flexibilities provided in TRIPS, to balance the legitimate interests of the different stakeholders.

In the final contribution, titled 'Traditional Knowledge Protection: An African Perspective', Oluwatobi Moody discusses current debates around the protection of traditional knowledge vis-à-vis international developments and Africa's standpoints. Moody notes that Africa remains an active*demandeur*for an effective international system of protection for traditional knowledge and several African countries and intergovernmental organisations have crafted frameworks as exemplars. He argues that one of the major reasons for which traditional knowledge protection is sought is to prevent biopiracy. Moody concludes that as negotiations for the Protocol on intellectual property of the AfCFTA progresses, Africa should employ the opportunities presented to introduce traditional knowledge systems that address biopiracy.

These six timely, thoughtful and informative contributions, offer selected African scholars' perspectives on the plant variety protection developments on their continent. With the final deadline for implementation of TRIPS obligations fast-approaching and the current advancements on plant variety protection at the national, sub-regional, regional and international levels, these contributions propose suggestions on how the competing interests of stakeholders relevant to plant variety protection should be addressed. It is hoped that these contributions, inspired by the realities and conditions in Africa, will contribute to shaping the negotiations, reforms and introductions of plant variety protection systems across the continent.

Contributors

Susan Isiko Štrba: In Conversation with Dr Susan Isiko Štrba

Peter Munyi: Layering Protection of the Rights of Plant Breeders in Kenya: A Contrast of Law and Practice

Daniel Acquah: The Proposed Plant Breeders Bill of Ghana and the Food Sovereignty Conundrum

Titilayo Adebola: Breaking the Silence on Plant Variety Protection in Nigeria

Emmanuel Kolawole Oke: The Harmonisation of IP Law in Africa: The AfCFTA, PVP Laws, and the Right to Food

Oluwatobiloba Moody: Traditional Knowledge Protection: An African Perspective

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