Intellectual Property and Innovation for National Development: Lessons from South Africa

By:

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August 7, 2019

Phase 2 negotiations towards the objectives of the AfCFTA, which will include Intellectual property (IP) rights, will afford “an opportunity for Africa to craft a new path for knowledge governance” and “redefine the agenda for negotiation of IP issues” in future trade agreements. However, as African countries go into the negotiations, it is important for them to first clarify their respective “fundamental priorities for IP” and development (Ncube, et al).

To do so, African countries will require a well-articulated IP policy based on their individual national development objectives. Such policy should articulate goals and strategies that will enable them to harness the gains of IP and innovation for their respective development in the fast-growing, technology-driven, global economy. This essay will briefly highlight some key policy and legal steps South

Africa (SA) has adopted to take advantage of the gains of IP and innovation for its national development. It will then draw lessons from that experience that IP negotiations in the AfCTA can benefit from.

IP, innovation and development

There is a strong nexus between IP, innovation and development. IP promotes innovation by incentivising innovators through empowering them to commercialise and control their innovation; and by ensuring equitable access to new technologies through flexibilities within IP legal frame and other regimes such as competition and human rights. Innovation, which can be referred to as the transformation of existing – and creation of new – technologies, contributes to development, which is both a process and objective of growth in the economic, social, cultural, ecological and political life of a nation.

Innovation continues to challenge the foundations of IP and raise questions about the extent to which IP systems can be stretched towards reaching developmental goals. One key question, from law and policy perspectives, is whether IP regimes should be formulated in a manner that affords protection for all forms of innovation for the benefit of innovators or whether it should be framed in an open and flexible way that fosters access to, and transfer, of knowledge while incentivising innovation.

In resolving this question, it should be noted that IP in itself is not enough to foster innovation for development. Other factors, such as investment in skills enhancement and R&D, are important in creating a knowledge economy for innovation to thrive for development.

Policy and Legal Initiatives in SA

In 2012, SA adopted its National Development Plan, 2030 (NDP), which aims eliminate poverty and reducing inequality by improving SA's competitive advantage in the areas of industrialisation, agriculture, indigenous knowledge systems (IKS), among others, through innovation, enhanced productivity, and an intensive pursuit of a knowledge-driven economy. This has been echoed in several policy documents, including the National Industrial Policy Framework implemented through the Industrial Policy Action Plan, which is geared towards boosting and promoting industrialisation and economic diversification by

navigating from the present dependence on commodities and non-tradable services to an innovative and technologically advanced economy.

In achieving the development objectives, SA policy makers recognise the impact of the fourth industrial revolution characterised by a speedy growth in cutting-edge information technology, and disruptive innovation, such as the use of artificial intelligence, occasioned by the increasing and widespread use of the internet. They also note the continuous advancement in the area of biotechnology with its implication on the IKS and genetic resources in SA.

The government acknowledged – in its 2018 draft white paper on science, technology and innovation– that modern technologies are important enablers of development because they are readily adaptable to foster growth in the areas of health, education, agriculture, food security, manufacturing, infrastructure, environment, among others. However, as a developing country, a well-thought out policy based on local realities is required to ensure that the technologies are harnessed to build national capacity, incentivise innovation and promote economic and socio-cultural wellbeing.

The SA IP Policy was formulated in 2018 to "consider the development dynamics of [SA] and improve how IP supports small institutions and vulnerable individuals in society, including in the domain of public health"; "nurture and promote a culture of innovation, by enabling [innovators] to reach their full potential and contribute towards improving the competitiveness of [...] industries"; "promote [SA] arts and culture"; and "solidify [SA's] various international obligations, [...] , in the service of [...] genetic resources and associated traditional knowledge".

Achieving these laudable objectives requires a strategy, which advances a "balanced and coordinated approach to IP that regulates IP rights in line with the [SA] Constitution"; introduces "key policy reforms that account for the development dynamics of [SA]"; promotes "innovation and a knowledge economy"; and leverages "competitive and comparative advantages to advance the transformation of the [SA] economy" (SA IP Policy).

Phase 1 of the IP Policy focuses on how the SA patent systems can be recalibrated, within the ambit of international IP regimes, to take advantage of innovation in health and other technologies. The second phase will focus on

other aspects of IP, including copyright. Nonetheless, significant progress has been made in enacting balanced, open and flexible copyright laws and IKS regime that takes into account the development needs of SA. The Copyright Amendment Bill, 2018 and Performers Protection Amendment Bill, 2016 were recently passed by the SA legislature and await presidential assent to become law. The Indigenous Knowledge Systems Bill, 2016(*sui generis*legal framework s), which will implement aspects of the Intellectual Property Law Amendment Act, 28 of 2013, also awaits presidential assent.

Lessons

The SA NDP recognises the importance of innovation towards meeting national developmental aspirations. The IP Policy reflects the government's desire to adopt balanced and coordinated methods that will ensure IP enables innovation and a knowledge economy for SA's development.

As they negotiate IP under AfCFTA, African countries can learn from the SA experience on the formulation of policies linking IP and innovation to their respective national development goals. In addition, it should be noted that IP is one factor in the innovation and development matrix. Other elements include massive investment in R&D, education and skills development, promotion of social stability and a comprehensive legal and policy framework that neatly connects these factors together. It is, therefore, important for African countries to adopt and implement holistic mechanisms, that will include but not limited to a balanced IP system, for harvesting the gains of innovation for their development.

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