Nigeria and WIPO's Development Agenda

By:

Emmanuel Kolawole Oke

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Nigeria's role in shaping international intellectual property law deserves more scholarly attention. That is not to say that Nigeria's role in this regard has not been acknowledged in the existing literature. For instance, Nigeria's role as part of the state actors from developing countries that opposed the inclusion of intellectual property into the Uruguay Round that led to the creation of the WTO is well documented. Nevertheless, Nigeria's role in other fora and venues where issues relating to international intellectual property law are being negotiated and discussed deserves more attention. In this regard, this blog post will focus on Nigeria's role in the World Intellectual Property Organisation (WIPO). Due to constraints of space, it is not possible to provide an exhaustive examination of Nigeria's contributions to WIPO's work. The focus here will solely be on Nigeria's role within the context of the work of WIPO's Committee on Development and Intellectual Property (CDIP). The CDIP was established in 2008 after the adoption of WIPO's Development Agenda in 2007 (more about this below). Specifically, this post will highlight the role played by Nigeria in securing the inclusion of an agenda item on 'Intellectual Property and

Development' at CDIP.

One might be justified in thinking that the inclusion of an agenda item on intellectual property and development in a Committee that is named after intellectual property and development should be fairly straightforward. However, as will be demonstrated below, this was ironically and interestingly not as straightforward as one would normally expect due to significant opposition to this particular agenda item from developed countries. Why were certain countries opposed to this agenda item? Why was it even necessary for developing countries to demand for this particular agenda item in the first place?

Before answering these questions, it is important to briefly comment on the interface between intellectual property and development. The relationship between intellectual property and development has been the focus of numerous scholarly articles and books (for instance, see here and here). It is therefore impossible to provide a comprehensive analysis of this relationship in this blog post. Nevertheless, it is worth noting here that the way and manner in which a country designs and implements its intellectual property laws can have a significant impact on its development trajectory. In this context, the word 'development' encompasses human, economic, and technological development. Even the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) recognises that there is a link between intellectual property and development. For instance, the fifth recital of the Preamble to the TRIPS Agreement recognises 'the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives'. Furthermore, Article 8.1 of the TRIPS Agreement provides that, 'in formulating or amending their laws and regulations', WTO members may adopt measures necessary to *inter alia* 'promote the public interest in sectors of vital importance to their socio-economic and technological development'. While this comes with a proviso that 'such measures are consistent with the provisions of this Agreement,' it is still a recognition of the fact that states may need to take steps to carefully design their national intellectual property laws in a manner that is compatible with their developmental needs and objectives.

It is against this backdrop that one can begin to understand the history behind the demand for and the eventual adoption by WIPO of the Development Agenda in 2007. The Development Agenda has its origins in a proposal submitted by Argentina and Brazil ahead of the 31st session of WIPO's General Assembly in 2004. The aim of this proposal was essentially to infuse a development perspective into WIPO's work at an institutional level. This proposal was subsequently co-sponsored by a number of other developing countries and together they all formed the 'Group of Friends of Development'. Conspicuously, Nigeria was not a co-sponsor of this initiative. Nevertheless, a number of African countries such as Egypt, Kenya, Sierra Leone, South Africa, and Tanzania were co-sponsors of this proposal.

Three years later, the WIPO General Assembly eventually adopted the Development Agenda in 2007 with its 45 recommendations. WIPO member states also agreed to create the CDIP as a standing committee of WIPO. The 45 recommendations of the Development Agenda are divided into six clusters: Cluster A: Technical Assistance and Capacity Building; Cluster B: Norm-Setting, Flexibilities, Public Policy and Public Domain; Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge; Cluster D: Assessment, Evaluation and Impact Studies; Cluster E: Institutional Matters including Mandate and Governance; and Cluster F: Other Issues. Moreover, the decision to establish the CDIP rests on three key pillars. The CDIP is meant to: (a) develop a work program for implementation of the adopted recommendations; (b) monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies; and (c) discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly.

It was the third and final pillar, i.e. the discussion of intellectual property and development related issues, which formed the basis of the demand by Brazil to propose the introduction of a new agenda item on intellectual property and development during the sixth session of the CDIP in 2010. During this meeting, Brazil contended that, while the CDIP had been working on the first two pillars of its mandate, the third pillar had not yet been addressed. Brazil further proposed a number of topics that could be discussed under this new agenda item including WIPO's contribution to the UN Millennium Development Goals.

This proposal was supported by the African Group. However, it was opposed by developed countries. Crucially, developed countries argued that since the entire work of the CDIP was related to intellectual property and development, a new agenda item on the issue was unnecessary. There was thus no consensus on this proposed agenda item and this remained the case for about 7 years at the CDIP. While developing countries were firmly in favour of the new proposed agenda item, developed countries remained resolute in their opposition to the proposal. Therefore, a WIPO committee tasked with discussing issues relating to intellectual property and development could not reach an agreement on including an agenda item on an issue that ironically lies at the centre of its mandate.

So, what was Nigeria's role in all of this? During the period of the stalemate on this issue, at the fifteenth session of the CDIP in 2015, Nigeria made a key intervention on this proposed new agenda item. It should be noted that during this session, Nigeria was also speaking on behalf of the African Group at the CDIP. With regard to the stalemate on the proposed new agenda item on intellectual property and development, Nigeria suggested two specific issues that states could discuss under this proposed agenda item. The first issue was access to knowledge while the second was intellectual property and technology transfer. One would have expected that it should not have taken the CDIP until its fifteenth session for these important issues relating to intellectual property and development to be brought up for discussion.

With regard to access to knowledge, Nigeria stated that:

> It was clear that access to knowledge was fundamental to human and societal development. Knowledge was an asset. It supported socio-economic growth and development in industrialized nations. Developing countries and LDCs faced obstacles in accessing knowledge and scientific information that could help meet the priorities of their development objectives. Therefore, the Committee could discuss access to knowledge and the various impediments faced by stakeholders in developing countries and LDCs in this respect … There were many areas and aspects that could be discussed. The proposed standing agenda item could provide a

> platform for discussing those issues, including the challenges and experiences of other nations. The Committee could also come to a decision on how to ameliorate the situation for developing countries and LDCs.

In relation to intellectual property and technology transfer, Nigeria pointed out that:

> This also concerned access to knowledge. It played a substantial role in fostering innovation and creative thinking. The Committee could initially focus on simplifying the language of patent applications as a form of technology transfer. Without prejudice to any other aspects of international transfer of technology that could be proposed, the Committee could initially focus on simplifying the language of patent applications as a form of technology transfer. There was a lot of literature on the technical nature of patent applications and the fact that it had become an art form. For educational reasons, published patent applications could be used as a form of technology transfer in schools. If the language could be understood by the average interested stakeholder, it could foster innovation and creativity. It could provide ideas and assist in educational growth and development. This was an area that could be examined if Member States committed to the inclusion of a standing agenda item on IP and development.

Nevertheless, as there was continued opposition to the proposed agenda item by developing countries, no consensus was reached on this agenda item during the fifteenth session of the CDIP.

During the seventeenth session of the CDIP in 2016, Nigeria intervened again on this proposed agenda item. This time around, it emphasised the connection between the proposed agenda item and the third pillar of the CDIP's mandate. Speaking on behalf of the African Group, Nigeria contended that:

> There were three pillars establishing the CDIP and the Committee was meant to engage in those. The first was the development of a work

> program for implementing the 45 [Development Agenda] Recommendations and the second pillar was to monitor, assess, discuss and report on the implementation of those recommendations adopted and for that purpose to coordinate with relevant WIPO bodies. The last pillar was to discuss IP and Development related issues as agreed by the Committee, as well as those decided by the [WIPO General Assembly]. Since the commencement of the Committee, there was not a dedicated agenda item that would address IP and Development related issues specifically, beyond projects, presentations and guides or other development resource-based activities undertaken by the Secretariat or put forward by Member States. The African Group believed the Committee should have an agenda item that allowed discussing IP and Development related issues.

Developed countries however remained steadfast in their opposition to this proposed agenda item during the seventeenth session. Speaking on behalf of a group of developed countries, Greece stressed that 'Member States should avoid redundancy in their discussions as the role of the Committee was already to discuss IP and Development.' It noted that it was 'not convinced of the new proposed agenda item.' In the same vein, speaking on behalf of the EU, Netherlands noted that the EU was 'convinced that the proposal to have a standing agenda item was not needed in order to achieve the aim of having the Committee deal with IP and development issues and the implementation of the Development Agenda within the WIPO bodies.'

The lack of consensus regarding this proposed agenda item continued until the nineteenth session of the CDIP in 2017 when WIPO member states were apparently able to reach a consensus regarding the introduction of this agenda item after informal consultations. As the agreement was reached via informal consultations which are not officially recorded, one can only speculate on what may have persuaded developed countries to change their minds regarding this particular agenda item after seven years of sustained opposition to it. Nevertheless, the interventions by Nigeria during the fifteenth and seventeenth sessions of the CDIP arguably contributed to sustaining the momentum regarding the demand for the adoption of this proposed agenda item by the CDIP. One will have to wait and see whether this particular agenda item and the

work of CDIP as a whole will have any meaningful impact on the needs and aspirations of developing countries.

In conclusion, this post has focused on a specific aspect of Nigeria's contribution to the development of international intellectual property law. Considering the limited scope of the analysis in this post, the role of Nigeria in CDIP's negotiations cannot really be used as a yardstick to assess the strengths and weaknesses of Nigeria's contributions to the shaping of international intellectual property law. Nevertheless, as the analysis above demonstrates, Nigeria certainly has the potential to make significant contributions with regard to the future development and direction of international intellectual property law. One can only hope that Nigeria's potential in this regard will be fully actualised.

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