# The Critical Concept of International Intellectual Property Law as the Encryption of Disparity for Africa in the Global Market

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Intellectual Property law has become the basis of a global market. The intensifying change needs of knowledge in the global economy has significant implications for Africa's role in the global market. In this regard, intellectual property law not only has a role to play in the creation of wealth but also ensures knowledge flexibility that is converted into commercial value. In the past, investors came to Africa in search of natural resources to create wealth. Today, Africa should intensify its search of knowledge in order to create wealth. To do so African countries need to restructure their laws in order to enable these countries convert Africa's knowledge into wealth. For these purposes, the creation of knowledge is not the end result, rather the creation of wealth is the end.

In the absence of comprehensive national laws protecting knowledge in Africa, the international laws governing knowledge are presumed to be a general practice accepted as the law by African states.[1] In terms of the international instruments on intellectual property rights, traditional knowledge is regarded as vague and unrecorded and are therefore not eligible for protection. For example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has brought about harmonisation of intellectual property rights worldwide.[2] In this regard, traditional knowledge falls under the WTO rules contained in Article27(3)(b) of the TRIPS agreement. However, there is no explicit provision to promote and protect traditional knowledge.[3]

Negotiations on traditional knowledge are ongoing within the international legal framework. For this reason, the World Intellectual Property Organization, (WIPO), is currently determining the effect of intellectual property law applications on traditional knowledge.[4]  At present, there is no universally accepted definition of traditional or indigenous knowledge. It is evident from Articles 65 and 66 of the TRIPS agreements that the WTO provides for transitional periods for developing and least developed countries to come into compliance with its requirements.

At present, negotiations on the role of intellectual property in encouraging small businesses to comply with commitments such as promotion of technological innovation and balancing rights of producers and consumers of intellectual property rights provided for in articles 7 and 8 of the TRIPS agreements of the WTO are in progress.[5] Member states may submit the acceptance of the protocol amending the TRIPS Agreement which resolved the question of importation of medicines from countries with capacity to produce essential medicines to countries without such capacity until 31 December 2019. [6]

Although the restructuring of the existing legal framework is unavoidable, the solution must be carefully sought in a conducive, fair and equitable manner to ensure the needs and interest of the marginalised communities should be considered. It is possible that this approach may provoke controversy, but it is vital ensuring uniform and equitable legal framework that address the need and interest of the marginalised communities to find a balance in the system.

At present, very few African countries have taken the initiative to restructure their intellectual property law at the national level. They have adopted a relatively fair regime, but it is still an evolving process. This move is encouraging, but it needs continuous improvement and commitment to put the interest and needs of the people first. For example, South Africa has been making headway with reviewing its existing intellectual property laws and been open for quite sometimes for public comment. The Parliamentary Monitoring group are now accepting submissions from various stakeholders and there is ongoing consultations process on the Bill.[7]

The intention is to amend its intellectual property law of Performance Act of 1967, Copyright Act 1978, Trade Marks Act 1993 and Designs Act 1993 to add certain definitions and requirements for applications for intellectual property, such as complying with the objectives of creating guidelines for the recognition and understanding of the wealth of indigenous knowledge and resources nationally.

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[1]Besson et al, Professor Baxter's Legacy: Still Paradoxical? Vol 6, issue 3, *ESIL Reflection*(2017), http://www.esil.eu/node/1713 (accessed 5 January 2018).

[2]Weinian  International patents rights harmonisation: the case of China (2017) 21.

[3]Andersen, Claiming the glass slipper: the protection of folklore as traditional knowledge (2010), 155, *Western Reserve Journal of Law, Technology and the Internet*, Volume 1, Number 2, Spring.

[4]Intergovernmental Committee on intellectual property and genetic resources, traditional knowledge and folklore (2008), http://www.wipo.int/edocs/modcs/tk/en/wipo/gtkf_ic_13/wipo_grtkf_13_7.doc (accessed 25 October 2017).

[5]Members' advanced discussions of intellectual property, inclusive innovation and the public interest (2017), https://www.wto.org/english/news_e/news17_e/trip_20oct17_e.htm

[6]See para 34 above.

[7]https://pmg.org.za/committee-meeting/28043/ (accessed 07 May 2019)

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