





**HARMONISED MANUAL ON THE PROTECTION  
AND UTILISATION OF TRADITIONAL  
MEDICAL KNOWLEDGE**

## PREFACE

Intellectual property policies around the world are constantly changing. From 1883 (Paris Convention) to the present day, several treaties attempt to govern the complex field of intellectual property. Arrangements have been made to allow better use of industrial property by stakeholders. We can cite among others:

- The Hague Agreement on the International Registration of Designs in 1925;
- The Lisbon Agreement on the International Protection of Names of Geographical Origin of Products, in 2015;
- The Madrid Agreement for the International Registration of Marks, adopted in Madrid in 1989, modified in 2006, and in 2007. It was adopted in the OAPI area in 2015.

In addition, WIPO has worked to establish a generic system that combines intellectual property rights and rights relating to the protection of biological and genetic diversity. However, this system is not always in line with the effective preservation of traditional knowledge applied to natural resources, including traditional medical knowledge. This is why this *sui generis* protection system stipulates the prohibition of misappropriation and the obligation to disclose the source of traditional knowledge and the genetic resources which apply to it.

For Africa, the intellectual property protection of traditional knowledge is an issue with regard to the recognition of the rights of indigenous peoples and their customary rights. It is about enabling indigenous and local communities to benefit from the commercial and industrial exploitation of their cognitive heritage while contributing to scientific progress and ensuring the sharing of knowledge that would result. In this sense, the Convention on Biological Diversity (CBD) adopted in 1992, affirms the prevalence of the sovereignty of States over their biological resources, even if in 1994, agreements on aspects of intellectual property rights that affect trade (TRIPs) internationalise the patentability of living organisms.

This is why, the United Nations Economic Commission for Africa and the African Union have supported the establishment of the African Organization for Standardization (ARSO) which is devoted, among other things, to defending the interests of local communities. The practices and products of traditional medicine practitioners are subject to the standards set by ARSO while being articulated with the questions raised by intellectual property rights.

The African intellectual property offices, ARIPO (African Regional Organization for Intellectual Property Rights) and OAPI (African Intellectual Property Organization), have made significant progress in advocating with political decision-makers, to serious consideration of their legislative mission as a development tool for Member States.

The involvement of OAPI in the promotion of traditional medicine in Africa, responds to the recommendations resulting from the Summit of Heads of State held in 2001 in Lusaka and at the end of which, the first decade of traditional medicine was instituted. To this end, OAPI organised in 2004 a meeting of Ministers responsible for Health and Industry from OAPI Member Countries on the follow-up to the Libreville Initiative for the protection and promotion of African inventions in terms of drugs.

In 2006, WIPO amended the International Patent Classification to include a traditional knowledge category, which covers traditional herbal medicines. In 2010, ARIPO Member States adopted the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore.

Since the inception of the WHO Traditional Medicine programme in 2007, the issue of IPR and medicinal plants' conservation has featured less in the organisation's activities, mainly because of its complexity and the lack of expertise to address it sufficiently.

The interest given by WAHO to the question of intellectual property rights aims, among other things, to train practitioners of traditional medicine so that they acquire the legal tools necessary to protect their knowledge and products. This is why intellectual property protection of traditional medical knowledge is a priority in the WAHO 2016-2020 Strategic Plan.

To do this, WAHO gathered in May 2017 in Abuja in Nigeria, the expertise of the region to develop a Harmonised Manual on the protection and utilisation of traditional medical knowledge, straddling the concepts relating to patents, trademarks, industrial designs, geographical indications, copyright, traditional knowledge and expressions of folklore. The making of such an important work stems from a recommendation made in March 2016 during a workshop held in Abidjan in Côte d'Ivoire, on the tools in use for the protection of intellectual property rights relating to traditional medicine.

The publication of the Harmonised Manual on the protection and utilisation of traditional medical knowledge is linked to the objective of giving it a social impact structured around the community dynamics of traditional knowledge depositories. This is consistent with measures undertaken in Africa by ARIPO and OAPI which seek to provide guidance for the effective protection of traditional knowledge including traditional medical knowledge. Because the exploitation of medicinal plants certainly relates to domestic exploitation, but also to industrial exploitation, in other words, commercial exploitation.

However, the viability of legal mechanisms relating to the protection of traditional knowledge should be measured by the extent of the mobilisation of its holders through awareness-raising and capacity-building activities.

Respect for the rights of indigenous peoples to enjoy the use of their resources goes hand in hand with training for a good understanding of intellectual property field by holders of traditional knowledge. Such a vision is a preventive attitude to any form of illicit appropriation of community genetic resources. There is a need to safeguard an endogenous cognitive heritage that can provide economic assets to the continent.

The Harmonised Manual on the protection and utilisation of traditional medical knowledge is defined as a training tool intended for traditional medicine practitioners and centres of excellence, but also for all stakeholders concerned with the advantageous position that can play traditional medicine in the field of public health and intellectual property.

WAHO would like to express its sincere thanks to WIPO for the wealth of documentation provided, and in particular to all the experts of the region whose commitment and availability have made it possible to prepare this Manual.

I would like to express my gratitude to the African Intellectual Property Offices which supervised the orientation and training workshops for representatives of ECOWAS Member States to developing the modules of the Manual.

Given the irreplaceable role that traditional medical knowledge continues to play in solving the health problems of populations, I invite all the actors to work together to give the Manual the expected community impact with a view to further integrating local communities in the development process enhancing by intellectual property, the traditional cognitive potentials articulated with modern research for development.

**Prof Stanley Okolo**  
**Director General**

# FOREWORD

According to World Intellectual Property Organization (WIPO), the current international system of intellectual property protection was shaped during the Age of Enlightenment and Industrialisation and developed later according to the supposed needs of technologically advanced societies. Thus, when in 1886 the European powers ratified the Berne Convention to guarantee a minimum of protection rights common to the signatory countries, they cared little for the repercussions of their act on other countries, especially the developing countries. Indeed, if intellectual creation is universal, on the other hand, the conception of the protection of this activity of the human spirit can vary from one civilisation to another, from one culture to another.

The geostationary satellite and digital communication have reduced the world to an increasingly reduced dimension, so that everything flows in the fluidity of a market economy which packs our planet in its current motion. Thus, the information economy has given intellectual property unprecedented importance in the history of case law applied to intangible goods, which are intellectual products. Ultimately, there was a need to update intellectual property conventions in the face of the emergence of digital. This is why, if the passage from orality to writing remains for Africa, an inevitable challenge for its endogenous intellectual and scientific development; the protection by intellectual property of traditional knowledge is essential for the civilisation cultural resistance. Situated at the heart of the debate on the historical and philosophical evolution of intellectual property, Africa remains attentive to indigenous populations and local communities which, for their part, require integrated protection of their traditional knowledge. Indeed, the current protection systems do not allow the depositary communities to enhance their indigenous and customary rights according to the clauses of the protocols ratified by the States. Furthermore, intellectual property instruments such as patents and licenses are costly to access and do not take into account the reality of the transmission of traditional knowledge across generations. As for the location and characterisation of this knowledge, legal measures are still ineffective in ruling on this subject. This is why; local conventions enact clauses inspired by the sociological reality of traditional knowledge for the safeguard of the intellectual heritage of community know-how.

Facing the realism of financial market, the applicability of intellectual property laws to traditional knowledge must at the same time resolve the judicious articulation between the collective enjoyment of community knowledge and the anonymous creativity that covers it. Because, this knowledge is not the result of an individual cogitation, but rather the outcome of the inward of humanities demonstrating their world experience and their environment balance. This knowledge, to use the expression of the World Trade Organization, is “a precious world resource” which requires “the maintenance of the vitality of the peoples and communities which are at the origin of this knowledge and develop it”.

In the context of a globalised economy, the custodians of traditional therapeutic knowledge, who are Traditional Medicine Practitioners, must have a clear awareness of the challenges linked to the commercial and industrial exploitation of their intellectual heritage linked to international law for benefiting from scientific progress and its applications.

The development by WAHO of a Manual on the Protection and Utilisation of Traditional Medical Knowledge is an added value to the efforts made by African stakeholders for the legal protection of traditional knowledge on the international scene.

Therefore, this initiative of WAHO should be commended whereas its repercussions on the development of medicine and health care in general, will be measured by the dimension of the involvement of Traditional Medicine Practitioners as agents of the economic profitability of their therapeutic skills in the context of the advent of a new pharmaceutical management system for promoting herbal medicines.

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# INTRODUCTION TO INTELLECTUAL PROPERTY

## Intellectual property rights

It was in the Paris Convention for the Protection of Industrial Property of 1883 and in the Berne Convention for the Protection of Literary and Artistic Works of 1886 that was first recognised the importance of intellectual property protection. Both treaties are administered by the World Intellectual Property Organization (WIPO).

Intellectual property is the set of exclusive rights granted to intellectual creations to the author or to the rightful owner of a work of the mind. Intellectual property has two basic branches: industrial property and copyright.

Industrial property is a term that encompasses all concepts related to industry and also trade exploitation, in short, the business world. Industrial property includes patents protecting inventions and industrial designs, which are aesthetic creations defining the appearance of industrial products. Industrial property also covers product marks, service marks, and layout designs for integrated circuits, trade names and trade brands, trade secret, geographical indications and protection against unfair competition.

Copyright is the set of exclusive prerogatives available to a creator over his original spirit work. Copyright protects literary and artistic works, regardless of their literary or artistic quality. Original works protected by copyright may be made available to the public by persons or legal entities benefiting then from connected rights or related rights.

## The main functions of intellectual property rights

Intellectual property rights guarantee the protection of products from human creativity and protection against unfair competition. Protection consists of resorting to the laws, values and principles of intellectual property that govern patrimonial prerogatives, deposit procedures and the relevance of inventions. Intellectual property rights make it possible to document and preserve traditional knowledge. However, protecting the products of human creativity should not be at the expense of human rights.

## Benefits of Intellectual Property Information to Users

Intellectual property rights allow any creator, any author, to enjoy the material and moral interests resulting from any scientific, literary or artistic production emanating from him. The intellectual property rights system creates a legal basis and a legal environment that encourages investment. For instance, the patent promotes the marketing of new products and encourages the creation of new techniques for new products.

## Intellectual Property Information

Intellectual property rights cannot be taken in isolation from any geographical indication. Information on intellectual property includes all information that has been published in intellectual property documents or that may be derived from the analysis of classification statistics and includes:

- technical information taken from the description and drawings of patented inventions or outdated patents;

- legal information on patent claims defining the scope of the patent and its legal status;
- information relevant to companies from the reference data identifying the holder, the filing date, the country of origin, etc.;
- relevant information on public policies derived from an analysis of deposit trends to be used by policy makers, for example in the national industrial policy strategy.

## **AFRICAN INTELLECTUAL PROPERTY OFFICES**

### **THE AFRICAN REGIONAL INTELLECTUAL PROPERTY RIGHTS ORGANISATION (ARIPO)**

#### **Background**

ARIPO was established in 1976 by the Lusaka Agreement (Zambia). The organisation includes Anglophone countries including Botswana, The Gambia, Ghana, Kenya, Lesotho, Liberia (since 24 March 2010), Malawi, Mozambique, Namibia, Uganda, Rwanda (since 24 September 2011), Sierra Leone, Sudan, Swaziland, Tanzania, Zambia and Zimbabwe.

#### **Objective of ARIPO**

The member countries aim at cooperation, to pool their industrial property resources to achieve technological progress for economic and industrial development. Protocols have been ratified for the intellectual property protection of traditional knowledge, traditional cultural expressions and plant varieties.

### **THE AFRICAN INTELLECTUAL PROPERTY ORGANISATION (OAPI)**

#### **Background**

OAPI was established in 1977 by the Bangui Agreement (Central African Republic). The organisation includes Francophone countries including Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Mauritania, Niger, Senegal, Chad, and Togo

#### **Objective of OAPI**

Member countries aim to strengthen the creativity and protection of intellectual property rights in order to guarantee investment, facilitate technology transfer, contribute to the economic growth of states, and optimize the contribution of traditional medicine and pharmacopoeia.

## **KEY CONVENTIONS AND TREATIES ON INTELLECTUAL PROPERTY RIGHTS RELATED TO TRADITIONAL MEDICINE**

Traditional knowledge and genetic resources are examined in the context of biodiversity, an area governed by a number of important international instruments. Traditional knowledge is a living set of knowledge developed, preserved and passed on from one generation to another within a community with its cultural identity or spirituality.



The protection and utilisation of traditional knowledge, including knowledge of traditional medicine, call intellectual property in the traditional forms of creativity and innovation. However, the traditional intellectual property system generally considers these forms to be in the public domain and therefore freely usable by all.

However, intellectual property protection of traditional knowledge and know-how is an issue with respect to the recognition of the rights of indigenous peoples and their customary rights. For this reason, traditional knowledge documentation and registration allows customary holders to benefit from their traditional knowledge in their dealings with third parties and to avoid any risk of misappropriation and misuse of their cultural heritage. International legal instruments contribute to the protection of knowledge related to traditional medicine:

- the Convention on Biological Diversity (CBD) was adopted in 1992 to affirm the prevalence of State sovereignty over their biological resources;
- in 1994, the Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS) internationalise the patentability of living organisms;
- in 2001, the Doha Declaration instructed the TRIPS Council to examine the protection of traditional knowledge and traditional cultural expressions;
- in 2002, OAPI adopted the Libreville Initiative for the Protection and Development of Traditional Medicine and Pharmacopoeia;
- the 2008 Dakar Declaration on Intellectual Property and the Economic and Social Development of OAPI Member States, calls for the implementation of national policies to enhance the contribution of traditional medicine and pharmacopoeia;
- the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage requires the parties to document traditional knowledge and traditional cultural expressions as a means of safeguarding cultural heritage;
- ARIPO Member States adopt in 2009 the Swakopmund Protocol on the Protection of Traditional Knowledge, Expressions of Folklore and New Varieties of Plants;
- in 2010 the Nagoya Protocol on Access and Sharing of Genetic Resources stipulates that the documentation of traditional knowledge and traditional cultural expressions and the use of the agreed content require the prior informed consent of their traditional depositaries.

## CATEGORIES OF INTELLECTUAL PROPERTY RIGHTS

The law is born with declaration and publication, but not before. There are several categories of rights granted according to the division into two sectors of intellectual property namely, copyright and industrial property.

### Patent

The patent is an industrial property right conferring on its holder an exclusive right to exploit the patented invention for a limited period, which is generally 20 years and in a given territory. The patent generally confers on the holder the following exclusive rights:

- Product patent: it authorises the right to prevent third parties, in the absence of consent of the patent owner, from manufacturing, using, offering for sale, selling or importing for such purposes the product. *Example: a knee prosthesis;*

- Process patent: it authorizes the right to prevent third parties from applying the process in the absence of the consent of the holder and to use, offer for sale, sell or import for these purposes products which have been obtained directly by this process. *Example: The process of extracting a new substance from a plant.*

First, the patent protects a technical solution to a technical problem, not a simple idea. The rights conferred by a patent are set out in the Patent Law of the country in which the patent is granted.

In order to obtain a patent, an application must be made to the national or regional patent office, consisting of the title of the invention, the technical field attached thereto and a description enabling a third party to use or reproduce it.

The applicant must describe the invention in a sufficiently clear and complete manner in accordance with the following criteria or conditions of patentability:

- Novelty: the invention must be described in detail and be compared with existing technologies in the same field in order to demonstrate its novelty;
- Inventiveness: the invention must not be obvious to a person having an average knowledge of the technical field in question;
- Usefulness: the invention must be capable of being applied industrially, that is to say, it must be of a technical nature.

The holder of a patent has the right to decide who can, and who cannot, use the patented invention during the term of protection. It may, under a license, permit third parties to use the invention on mutually agreed terms. He may also sell his right to the invention to a third party, who in turn becomes the owner of the patent.

Upon the expiry of the patent, the protection ends and the invention falls into the public domain, that is to say that the proprietor loses his exclusive rights to the invention and that the invention can be freely exploited commercially by some thirds.

### **Utility model**

The utility model is considered as an additional means of protecting inventions. Unlike the patent, however, the utility model specifically protects inventions relating to instruments or parts of such instruments, provided that they are useful for the purpose or use for which they are intended. *Example: a corkscrew.* The utility model is provided for in the regional agreements of ARIPO and OAPI. The maximum term of protection provided by law for a utility model is generally shorter than that for patents (generally between 7 and 10 years). The “small patent” or “utility certificate” refers to a utility model of the object to be protected.

### **Industrial design**

An industrial design is generally constituted by the ornamental or aesthetic aspect of an object useful for the purpose or use to which it is intended. Visual attractiveness is one of the main factors influencing consumers in their preference for one product over another. Thus, by registering their industrial designs, manufacturers protect one of the distinctive figures that determine the commercial success of a diverse product from industry and crafts. *Example: technical and medical instruments, watches, jewellery and other luxury items, household items, electrical appliances, vehicles, architectural structures, textile designs, leisure items, etc.* Protection is 5 years. It can be extended several times, up to a maximum of 25 years.

### **Intellectual property and integrated circuits**

Integrated circuits are present in a great many items used daily: *Example: watches, televisions, washing machines, cars, complex computers, servers, etc.* The protection of a layout-design or the topography of an

integrated circuit is a relatively new issue. Protection is necessary because, although the cost of creating a layout-design is high, the copy of the layout is relatively facilitated by the photograph of each layer of the integrated circuit and its duplication by making a mask of reproduction.

## **Brand**

The brand is characterized by a sign consisting of elements perceived by the senses: a word, letters, numbers, sounds, drawings, colours, images, shapes, logos, labels, etc. In advertising and commercial strategies, it is sought an impact of the brand image on the consumer, his tastes and his preferences. The economic role of the brand is to guarantee protection as long as its distinctive sign exists to guide the choice of the consumer while inducing an idea of quality and identification of the product.

The brand must bear the characteristics of a sign or a combination of signs which distinguish the goods or services of a manufacture from those of another. Among the brands, the following categories are distinguished:

- product brands to distinguish certain products as being those of a particular manufacture,
- service brands to distinguish certain services as those of a particular manufacture,
- collective brands to distinguish the goods or services of members of an association or a cooperative,
- certification brands to distinguish products or services meeting a set of standards and having been certified by a competent authority,
- well-known brands considered to be well known on the market and benefiting from an enhanced protection.

The distinctive character of the sign is a determining factor. The lack of distinctiveness is an obstacle to the registration of the brand. The term of protection varies, but a brand may be exploited *ad aeternam* by renewing it indefinitely (usually for successive 10-year periods) subject to payment of renewal fees.

## **Trade names**

A trade name is a name or a denomination that identifies a manufacture. The trade name is protected without filing or registration, whether or not it is part of a trade brand. Protection means that, in order not to mislead the public, the trade name of a business may not be used by another manufacture as a trade name, trade brand or service brand.

## **Trade secrets**

In general, any confidential business information that gives a company a competitive advantage can be considered a business secret. In this respect, the secret of manufacture, for example, is a technique, a formula for the composition of a product that its designer decides to erect in secret. The law protects this secrecy by negatively punishing the disclosure of secrecy.

## **Geographical Indication**

A geographical indication is a sign affixed to products having a specific geographical origin and which possess qualities or notoriety due to this place of origin by virtue of its climate, the quality of the soils. Most of the time, a geographical indication contains the name of the place of origin of the products: *Example: Onion of the Dogon country, Dijon mustard*. The use of the geographical indication is a protective process. Thus, unauthorized third parties may not use a geographical indication where such use is likely to mislead the public as to the true origin of the product.

## Traditional Knowledge and Traditional Cultural Expressions

Traditional knowledge and traditional cultural expressions are products of creative intellectual activity and therefore fall within the scope of intellectual property. A distinction is made between traditional knowledge and traditional cultural expressions. Traditional knowledge provides information on “*how one achieves something*” while traditional cultural expressions express themselves on “*forms of expression*”.

The needs to protect traditional knowledge and traditional cultural expressions stem from the issues they embody with regard to the cultural, linguistic and economic potential they represent to contribute to the development of a society. Dynamic and evolving, traditional knowledge and cultural expressions are associated with agricultural, environmental, health, biodiversity, traditional lifestyles, natural and genetic resources, and know-how related to traditional architecture and traditional construction techniques.

Given their ownership by indigenous communities, traditional knowledge and traditional cultural expressions should not ipso facto fall into the public domain in order to no longer deserve protection under intellectual property rights.

However, as they remain “traditional”, cultural expressions cannot be fully protected by existing conventional intellectual property systems. Patents for invention and copyright, too, cannot apply to traditional knowledge and cultural expressions as such.

Moreover, under current intellectual property law, intellectual property rights belong to those who document or record traditional knowledge and traditional cultural expressions and not necessarily to their traditional holders.

But, intellectual property can protect innovations and creations developed using traditional cultural knowledge and expressions.

Therefore, while facilitating documentation, access and dissemination, *sui generis* protection describes a national or regional law specifically designed to protect traditional knowledge and traditional cultural expressions and takes into account the particular characteristics of these Knowledge or expressions and the particular needs of their holders.

Under the *sui generis* seal, the documentation of traditional knowledge and traditional cultural expressions becomes an intellectual property protection to preserve and protect them. In this context, the rights, needs and expectations of indigenous and local communities, as traditional holders of traditional knowledge and traditional cultural expressions, should be placed at the forefront. Knowingly, the holders must be involved in each step of the documentation and take part in the planned mechanisms that ensure an equitable sharing of benefits between traditional trustees, intellectual property holders and third parties.

### Plant varieties

Traditional medical knowledge can be used for scientific research and contributes to enhancing the innovation and creativity of indigenous and local communities. Many of the current drugs and vaccines developed from plant-based substances justify the growing commercial interest in natural medicinal resources and associated traditional knowledge.

However, there have been numerous cases of misappropriation of the therapeutic virtues of traditional medicines by third parties without the prior consent of the holders of the medical knowledge associated with them. Indigenous and local communities, international bodies and Governments, mainly from developing countries, have demanded that traditional medical knowledge be better recognized, respected, preserved and protected.

In 2000, the National Institute of Communication and Information Sciences in India identified that 80% of the 4,896 plant-based medical patents registered in the USA are directly related to 07 medicinal plants of Indian origin. The patents were cancelled later on. *Example: turmeric for the treatment of wounds, neem for its antifungal properties, an extract of jamelonier for diabetes.*

Indigenous and local communities in the Amazon and Pacific islands are not benefiting from the exploitation of their genetic resources by pharmaceutical companies. According to the South African Institute of Natural Resources, this research is accompanied by anarchic deforestation that threatens 80% of plant species.

Plant varieties are protected by patents, by an alternative *sui generis* system or a combination of these two means. It is not the plant that is the subject of a patent application, but its distinctive, innovative and inventive description, for the protection of intellectual property rights in plant varieties.

The plant varieties patent must not be given an individual privilege or be granted to the detriment of biodiversity and the interests of local indigenous communities. Respecting the customary rights of indigenous and local communities, ARIPO adopted a Protocol on the Protection of Traditional Knowledge, Expressions of Folklore and New Varieties of Plants. OAPI has set standards for access to biological resources to be dependent on the prior written, free and informed consent of the State and / or local community concerned.

## CHALLENGES OF DEVELOPING COUNTRIES FACING INTELLECTUAL PROPERTY RIGHTS

If intellectual creation is universal, on the other hand, the conception of the protection of this activity of the human mind may vary from one civilization to another. When the Paris Convention of 1883 and that of Berne of 1886 were ratified by the European States in order to guarantee a minimum of protection rights common to the signatory countries, they paid little attention to the effects of their act on other countries, in particular the developing countries.

The information society economy has accelerated the convergence of all interests related to the globalisation of intellectual property. The strategy of competitiveness clusters is being refined so that 90% of economic exchanges on the planet involve intangible matters, and therefore intellectual rights. Intellectual property rights are logically driven to develop in proportion to the information itself.

Since 1999, developing countries have been calling for regular amendments to intellectual property treaties to combat the phenomenon of bio piracy. Their demands were initially opposed by the developed countries. Then, gradually, some countries such as Norway, Switzerland and the European Union countries began to accept the principle that helps to address the many shortcomings that the elasticity of the concept of intellectual property still fails to fill.

The demand of developing countries is associated with the position of indigenous and local communities, which require protection of their knowledge on the basis of recognition of the endogenous values of their customary rights, obligations and responsibilities dictated by their lives, their culture and their conception of the world. It is a matter of recognizing the rights of indigenous and local communities as inalienable fundamental rights.

In the field of intellectual property rights, the challenges faced by developing countries can be summarized as follows:

- the cost-effectiveness of existing legal and policy options in the context of conventional intellectual property systems,
- coordination at national level of the various structural activities related to intellectual property issues,
- strengthening the functional capacities of national liaison structures with regional intellectual property offices,



- training of competent intellectual property officers,
- the weakness of the means to satisfy the procedures for the acquisition of intellectual property rights,
- exploitation of existing patents for the valorisation of local inventions and entrepreneurial innovation,
- the establishment of traditional knowledge through documentation,
- insufficient involvement of stakeholders such as researchers, governments, development partners,
- ignorance of the world of intellectual property by holders of traditional knowledge and traditional cultural expressions,
- the misappropriation of the components of the cultural heritage of indigenous peoples.

In Africa, regional intellectual property offices no longer want to remain registrars for foreign patents. Alongside their legislative mission, African intellectual property offices are also defined as tools for the development of their member states.

Thus, intellectual property protection policy should benefit from *sui generis* legal mechanisms, i.e. adapted to the specificity of traditional knowledge and traditional cultural expressions according to their existing forms and the interests of their holders. In addition to safeguarding against misappropriation traditional knowledge and traditional cultural expressions, the overall objectives of protection should also be used as a vehicle for economic development.

The viability of legal mechanisms should be measured by the extent to which the owners and their leaders are mobilized through inclusive consultations and capacity-building and community awareness-raising activities on the overall objectives of the protection of traditional knowledge and traditional cultural expressions by intellectual property.

## **ACHIEVEMENTS IN THE DEVELOPMENT OF INTELLECTUAL PROPERTY IN AFRICA**

In the area of intellectual property development, such achievements include:

- the development by regional intellectual property offices of legal elements for the preservation and protection of genetic resources, traditional knowledge and traditional cultural expressions,
- strengthening the capacities of the players concerned by intellectual property protection,
- the simplification of the procedures and expenses related to obtaining intellectual property rights,
- the granting of patents to products derived from traditional medicine,
- financial and technical support to the holders for the protection of their traditional knowledge,
- the creation of intellectual property courts and tribunals in some countries,
- teaching of intellectual property in universities,
- the automation of intellectual property offices and their provision of electronic services.

## **COPYRIGHT**

Copyright consists in establishing a legal link between the author and his work. The latter is a natural person and not a company, for example. One may be a holder of rights by assignment of rights made by an author. Copyright includes literary and artistic creations such as books, poems and plays, films, music, paintings and sculptures, works based on technology such as computer programs and Electronic databases.



## Criteria for copyright protection

Unlike the protection of inventions, copyright protects only the form of expression of ideas, not ideas themselves. Copyright guarantees the protection of creativity that pertains to the choice and arrangement of words, musical notes, colours and shapes. In other words, it is not necessary that the ideas expressed by the work be original, but the form of expression must be an original creation of the author

## Rationale for copyright protection

Legislation recognizes that the author has specific rights that prevent him from copying his work or exploiting it without authorisation. The specific rights are broken down as follows:

- moral rights which are linked to the personality of the author, who may claim authorship of his work, decide the time and manner of its publication (right to disclose), oppose any distortion of the work and any use detrimental to the reputation of the author,
- the economic rights which enable the author to be remunerated for each use of his work.

## Acquisition of copyright protection

A work is considered protected from its inception. According to some national laws, copyright originates at the moment when it is expressed in tangible form (paper, computer file, sound support, etc.).

## Duration of a copyright

The duration of the copyright is not indefinite. Generally, national legislation extends the term of copyright to 50 years after the death of the author. It is noted, however, a tendency to lengthen the duration of copyright. For example, it is increased to 70 years after the death of the author in Burkina Faso, European Union, Ghana, Senegal and the USA. In Côte d'Ivoire, the duration is extended to 99 years after the death of the author.

## Related rights

Related rights are created around works protected by copyright and apply to audiovisual performers and producers such as producers of phonograms and video grams, radio and television broadcasters and publishers.

## THE PROCEDURE FOR THE DEPOSITION OF A REQUEST FOR REGISTRATION OF A BRAND

The registration of a trademark is made at a national or regional intellectual property office. To be registered, a mark must be represented by letters or numbers. Distinctive symbols, shapes, audible signals, perfumes or colours may also be used.

### At ARIPO

Protection of a trademark may be obtained on an individual basis in any ARIPO member countries through a national application in that country. However, the ARIPO trademark system is governed by the Banjul Trademark Protocol. This protocol is operational in 10 of the 19 Member States. The signatory states of the Banjul Protocol (Liberia, Botswana, Lesotho, Malawi, Tanzania, Uganda, Namibia, Sao Tome and Principe Swaziland and Zimbabwe) are designated as Contracting States to the Banjul Protocol.

Protection is ensured by the grant of a non-PCT or PCT type patent. The PCT (Patent Cooperation Treaty) acquires international protection. The effects of a non-PCT patent shall be limited to the territory of the State of the administration which issued it.

The following documents are required for the submission of a non-PCT application in ARIPO territory:

- power of attorney (signature is sufficient, no legalization) - late filing possible within 2 months;
- description, claims, drawings and abstract in English - required for filing;
- declaration of Assignment of the Invention - possible late filing, no fixed time limit;
- Priority document with certified translation in English - Late filing possible within 3 and 6 months respectively.

The following documents are required for the filing of a PCT application in ARIPO territory:

- power of attorney (signature is sufficient, no legalization) - late filing possible within 2 months;
- description, claims, drawings and abstract in English - required for filing;
- declaration of Assignment of the Invention - possible late filing, no fixed time limit;
- copy of the PCT International Publication - required for filing;
- copy of the International Research Report - possible late filing, no fixed deadline;
- copy of the International Preliminary Examination Report, possible late filing, no fixed time limit.

### **Applicant**

An applicant is a natural person or a legal person who is in good faith to apply for registration of a mark.

### **Depositor**

An ARIPO application may be filed by a qualified natural or legal person, in person or through an authorized representative.

### **Representation**

The representative is a trademark agent or legal practitioner who is duly recognized by the national industrial property office of the Contracting State as having the right to represent the candidate. Where the applicant is neither an ordinary resident nor a principal place of business in one of the Contracting States of the Banjul Protocol, that applicant shall be represented at the time of the filing of an application.

### **Receipt of the application**

A trademark application may be filed either directly with the ARIPO Office in Harare, Zimbabwe or through the national industrial property office of a Contracting State of the Banjul Protocol. In the latter case, the industrial property office of the Contracting State shall act as the receiving office of the ARIPO Office. The application can currently be filed by personal delivery, by e-mail or by registered mail, according to the method agreed for the applicant.

### **Transmission of the application to the ARIPO Office**

If the application is filed with an industrial property office of a Contracting State, that office shall transmit the application to the ARIPO office within one month of receipt of the request.

## **ARIPO Online Service**

ARIPO has recently introduced online services to enable applicants, lawyers, agents and other users to operate electronically in a secure environment. This facility allows on-line filing of intellectual property files, on-line payment of fees, sending and receiving notifications and general monitoring of filed applications. The online service is available at *eservice.aripo.org* or from the ARIPO website *www.aripo.org* or by contacting ARIPO at *mail@aripo.org*. The online filing option includes a 20% reduction in the application fee. All documents submitted by the applicant after the submission of the application to the ARIPO Office must be filed directly with the ARIPO office.

## **Requirements for Assigning a Filing Date**

Upon receipt of the request, either from the applicant (or his representative) or from a receiving office, the ARIPO office shall examine the application. The examination is to determine the filing date of the application. A filing date is granted to an application if it meets the following conditions:

- contain an express or implied indication that registration is sought,
- mention the identity of the applicant,
- contain sufficient information to contact the applicant or his representatives,
- reproduce clearly the mark for which registration is sought,
- draw up a list of goods and / or services for which registration is requested.

## **Content of an ARIPO brand application**

The application for registration of a brand should be made in a prescribed form. The application form must contain the following elements:

- the name and address of the applicant,
- designation of the State Party to the Banjul Protocol,
- description of goods and / or services,
- classify the corresponding goods and / or services according to the Nice classification,
- name (s) of colour claimed (if any) as a distinctive feature of the brand,
- a reproduction of the brand in the form of a two-dimensional reproduction, graphic or photographic,
- a statement of actual use or intent to use the brand.

## **Formality of substantive examination**

The ARIPO office reviews the application by verifying that the application form is duly completed in accordance with the required formalities. If the application is filed by a representative, a power of attorney is filed. Required application fees are paid, if not attached, a commitment statement to pay them (in US dollars) within 21 business days. Nationals of a Contracting State may pay the prescribed fees in local currency equivalent to the prescribed fee in their intellectual property office. If priority is claimed, the candidate must file a priority document. Priority remains within six months.

## **Substantive examination**

The substantive examination shall be carried out by a State designated in accordance with its national laws. Each of the designated States has 12 months (currently being amended at 9 months) to notify the ARIPO office.

## **Correction / Amendment of Application**

The ARIPO office may refuse an application due to non-compliance with formal requirements. The applicant may ask the office to reconsider the refusal. If the Office still refuses, the applicant may, within a period of 3 months from the date of refusal, request that the application be processed in a State designated in accordance with the national law of that State. If the ARIPO office reconsiders the application but finds that the request is unacceptable, the applicant may appeal the decision of the Office to the Board of Appeal. The office then communicates the refusal to the applicant, who has the opportunity to reply either through the office or by the designated State concerned. The refusal is subject to appeal or review under the national laws of the designated State. If the trade mark application is valid for registration, the ARIPO Office shall register the mark against other designated States which have not objected.

## **Applications for registration, publication and opposition**

Applications for marks which have been accepted by the designated States in the course of a substantive examination shall be published in the Journal of ARIPO and, three months after publication, the office shall record the note on the payment of a registration fee, Registration by the applicant. The office issues a certificate of registration to the applicant. During the publication of the mark in the Journal, any person may give notice of objection. The opposition is dealt with in accordance with national laws.

## **Effect of registration**

The duration of registration of a registered trademark is 10 years from the filing date. Registration may be renewed for an additional period of 10 years upon payment of the prescribed renewal fee. The rights conferred by the registered trade mark shall be the same in each designated State. Of the 19 member states of ARIPO, 10 are the Contracting States of the Banjul Protocol. Only these can be designated in brand applications.

## **Application Fees Regulations**

The Banjul Protocol regulates all charges for services rendered by the ARIPO office. Each Contracting State may choose to use either the current fees of ARIPO or the royalties of each country on requests for designation of that country.

Some fees are as follows:

- registration fee, \$ 100 (paper deposit), \$ 80 (on-line filing);
- first class designation fee per state, \$ 50
- for each additional grade per class per state, \$ 10;
- registration fee: for one class per designated state \$ 100;
- registration fee: for each additional category per designated state, \$ 50;
- renewal of registration for one category per Designated State, \$ 100;
- renewal of registration for each additional category per designated state, \$ 50.

## **Calls and conversions**

The ARIPO office may refuse an application due to non-compliance with formal requirements. The applicant may invite the office to reconsider the refusal. If the office still refuses, the applicant may appeal the decision to the office of the ARIPO Board of Appeal or, within 3 months from the date of the request for refusal, the application may be in a State designated in accordance with the national law of that State. The decision of the Board of Appeal shall be final.

## Contact

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## THE TYPES OF RESEARCH SERVICES PROVIDED BY ARIPO FOR PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

### Novelty Searches

The search for novelty, also known as search for patentability / registration, is the most common type of search for patents, utility models and industrial designs. This search is conducted when an applicant / inventor / creator has an alleged invention or design that he seeks to protect and wishes to determine if there is a prior art that can destroy its novelty. Novelty searches generally have no constraints of date or artistic precedence. In other words, if the prior art that is read on the invention is found, regardless of whether the state of the art is prior or 100 years old, it is relevant.

### Infringement investigations (freedom of exploitation)

Investigations of offenses (also known as freedom of exploitation, right to use, clearance or search for legal status) are conducted to prove whether a proposed product, activity or invention does not violate (or violate) an active registration Patent or design in a given geographical area. In a different way, infringing searches or seeking legal status, indicate whether a patent or design has been granted / registered or not. In case of agreement / registration, the searches indicate the countries or regions in which the right was granted / registered and, if it is still valid or has expired or is invalidated in a given country or region.

### Validity Searches

A search for validity could be considered as an extensive or exhaustive search for patentability / registration. Its purpose is to determine whether an intellectual property right already obtained is valid or not. A search for validity could be carried out when the dispute concerning the violation of a right arises and the defendant attempts to invalidate the right of the plaintiff. Another example where the search for validity proves useful is the negotiation of licenses. In assessing the value of a licensed intellectual property right to a licensee, the licensee may wish to conduct a validity search to determine the content of the intellectual property right. Upon receipt of the results, the licensee may adjust the minimum royalty payments accordingly before signing the license agreement. However, it is important to note that most people assume the validation of the research to simply mean whether the maintenance fees have been paid or not.

### Advanced Research

The term “technology advanced research” often means different things for different people. The state of the art is at the highest level of development, from a device, a technique or a scientific field, realized at a given moment. In general, technology advanced research is designed to quickly allow someone to determine the most common development in a given field.

### Selective Dissemination of Information Searches

Selective dissemination of patent information means the automatic dissemination / expansion of all patent documents published or disclosed in a defined technical field. It is a permanent order for the automatic dissemination of patent documents in a particular field to a specific sector. Selective dissemination of information is very useful for specialized institutions or industries.

## **Bibliographic Searches**

The bibliographic data generally refers to the various data appearing on the home page of an intellectual property rights document or to the corresponding applications and may include document identification data, national repository data, priority data, Publication data, classification data and other concise data relating to the technical content of the document.

## **Copy Searches**

This is a type of search in which a client requests copies of a particular document, as it has been issued / registered, renewal certificates, assignments, and so on. This type of research is popular, especially in the search requests of many ARIPO member states.

## **Patent Family Searches**

Generally speaking, a family of patents is a group of patents that, as a family, are all related to each other by the priorities of a particular patent document. Therefore, a patent family search is a search to establish all documents having the same priority or combination of priorities. This may also include utility models.

# **THE TYPES OF RESEARCH SERVICES PROVIDED BY ARIPO FOR TRADEMARKS**

## **Geographic scope of research**

A brand search is the first step required in the process of marketing a word or phrase. Current research at the ARIPO office is limited to applications submitted through an ARIPO office. The upgrading and connectivity of the ARIPO ICT system with the Member States will allow the possibility of wider research covering the Member States.

## **Brands Availability Searches**

If you want to register a brand, you must make an availability search first. A search determines whether a brand has already been registered. The same brand may not be registered in 2 or more parts. The use of a brand already registered with another party could constitute a violation of the property rights of someone else. When considering whether to use a brand or when you are currently on the market with the brand, you should consult professional advice on what to do next.

## **Search for brand status**

The search proceeds on an existing brand to determine its status. This may determine whether it is registered or renewed or whether it determines such data as the details of the applicant, the designated, allocated / authorized, and so on.

## **Other searches ranked as “ARIPO Research”**

These are general information searches on ARIPO. These include research requesting information on, for example, ARIPO Member States, States party to one of the ARIPO protocols (Harare Protocol, Banjul Protocol or Swakopmund Protocol), Fee schedules, deadlines for processing applications, copyright and related rights etc. This is a category of research requesting general information that can not be classified in any of the searches listed above. For example, search requests for general information on intellectual property.



## TREATMENT OF ARIPO RESEARCH REQUESTS

Requests for research from non-profit entities for search requests at the ARIPO office are filed mainly by industrial property offices of Member States, intellectual property agents, industries, research institutions / Development, universities, small and medium-sized enterprises, students and individuals. Research requests from public institutions as well as from small and medium-sized enterprises, or individuals who do not benefit from a profit, attract costs.

### Dissemination of patent information

Patent information is made available to the public through various databases. Each database covers a particular set of patent documents. At present, no database contains full coverage of all patent documents ever published worldwide. It is therefore necessary to consult several databases in order to find and access the patent documents related to your interests. When performing searches at the ARIPO office, a host of databases are consulted.

These databases include, but are not limited to: POLITE +, Esp @ cenet, USPTO, PatentScope, freepatents. online, Delphion, aRDi Medline. In addition to the above databases, CD-ROMs and DVD-ROMs are consulted.

A search in intellectual property documents provides information on recent developments in a range of technical fields. In fact, for some areas of technology, new developments are initially and sometimes exclusively recorded in intellectual property documents. Nevertheless, it is essential to keep in mind the limits of the data in which the research is carried out.

### Estimated cost of a search

- Patents / Utility Models / Concepts

A minimum of \$ 100 is charged for any research done on patents, utility models and industrial designs. This fee is invoiced by each case. The cost increases as a result of the complexity and time spent on the conclusion of the research. The actual cost is made available to the applicant at the end of the search.

- Trademarks

A fee of \$ 50 is charged for any trademark search conducted by the ARIPO office. This fee is invoiced by each case. Fees must be paid before the research is conducted or, in return, a commitment to file fees within 21 days must accompany the search request.

### **At the OAPI**

The obtaining of a patent title requires the filing of a file satisfying all the conditions of admissibility. This file includes:

- a request to the Director-General of the Organisation in four copies (forms available on the Internet and at OAPI);
- a document proving the payment to the Organisation of the filing fee and the publication fee;
- a power of attorney under private seal, without stamp, if the applicant is represented by an agent;
- a sealed envelope containing, in duplicate, a description of the invention forming the subject of the patent sought, drawings which would be necessary or useful for the understanding of the invention, claim or claims defining the scope of protection sought and not overriding the contents of the description and the descriptive abstract summarizing it is set out in the description, claim or claims referred to.

The cost of a patent may or may not be subsidized by the national intellectual property office. *Example of Senegal: the cost of the subsidized patent is 22 500 FCFA and the unsubsidized one is 590 000 FCFA. The annuity (annual fee) for the subsidised patent for the benefit of natural persons is 44 000 FCFA. The annuity for legal persons is 325,000 FCFA.*

Once the application is filed with OAPI, it is subject to administrative and technical review. The applicant shall receive, in the event of a positive reply to his request, an order of registration of the certificate of deposit by the Director General of OAPI.

## **THE TYPES OF RESEARCH SERVICES PROVIDED BY OAPI**

OAPI can conduct bibliographic research and provide information on inventions, protections.

## **TREATMENT OF A REQUEST FOR RESEARCH BY OAPI**

The application is processed by the OAPI through the national intellectual property offices.

### **Estimated cost of a search**

The search is free of charge at OAPI level. It should be emphasized that this research is facilitated by the establishment of the CATI centres at the level of the different countries by WIPO.

## **THE CONSTITUTION OF THE FILE OF A REQUEST FOR THE PROTECTION OF THE BRAND**

The application for the registration of a mark shall include:

- a) Form M 301 containing the following mandatory information:
  - the applicant's full address, domicile and nationality;
  - reproduction of the mark;
  - claiming colours where appropriate;
  - the list of products or services;
  - classes of products or services: in the OAPI system in force, the deposit is made distinctly in class of products or class of services;
  - the address of the representative where applicable;
  - the date, number and country of the previous filing where priority is claimed;
  - the date of the application, the signature and the stamp of the applicant or representative. If the applicant is a legal person, the identity and status of the signatory must be indicated;
  - the method of payment of fees and the deduction of the said taxes.
- (b) the document proving payment of the prescribed fees.

(c) a power of attorney, without stamp, if the applicant is represented by an agent.

(d) the reproduction of the mark on Form M 301 ' , if applicable.

(e) the priority document, if any.

The right of priority attached to a prior filing must be claimed at the time of filing of the mark or at the latest within 3 months.

The priority document must be accompanied by a translation into English or French when it is drawn up in a language other than these.

(f) the use regulations attached to the collective mark must be approved by ministerial decision setting out the conditions for use of the mark.

## **METHODS OF DEPOSIT OF APPLICATIONS**

The application may be filed directly with OAPI, or sent by post. Direct deposit is made:

- at OAPI reception office;
- in a box specifically provided for this purpose at OAPI, on public holidays and outside working hours;
- by letter addressed to the Director-General of OAPI.

The application may be lodged indirectly by postal mail to the Ministry responsible for industrial property. This method of filing is reserved only for applicants domiciled in the OAPI territory.

## **THE NON-RENEWAL OF THE BRAND**

The brand not renewed in due time falls in principle into the public domain. However, the brand not renewed for reasons beyond the control of the holder may be restored for a period of 24 months from the date on which the renewal was to take place. A brand whose registration has not been renewed may not give rise to registration for the benefit of a third party for identical or similar goods or services less than three years after the expiry of the period of validity of the registration or renewal of the brand.

## **ENTRIES IN THE SPECIAL REGISTER OF BRANDS**

All changes affecting the legal life of the brand must be recorded in the register, namely: the assignment of the brand, licensing, change of name of the trademark owner, etc.

Acts relating to such changes shall be recorded in writing and communicated to OAPI in order to be registered in the Special Register of Brands held for this purpose.

## **ISSUE OF THE TITLE**

The issuance of the Registration Order occurs approximately 7 months after the filing of the application after a conclusive examination.

## **RESORTS**

Any person who has an interest in the opposition may oppose the registration of a brand by sending a

reasoned opinion to the Director-General of OAPI accompanied by a document justifying payment of the opposition fee. The opposition application must be made within 6 months of the publication of the brand registered in the Official Bulletin of the Organization.

The Superior Appeals Commission is an organ of OAPI, which decides on the decisions of the Director-General following the rejection of an application for registration or the cancellation of a brand following an opposition.

Any person challenging the decision of the Chief Executive Officer made in one of the aforementioned assumptions, upon payment of the required fee, may refer the matter to the Superior Appeals Commission.

If the application is rejected, the appeal must be lodged within 60 days of notification of the decision.

As regards the opposition, the appeal must be lodged for a period of 3 months from receipt of the notification of the opposition decision to the parties concerned

## **IRREGULAR REQUESTS**

Notifications of irregularity shall be sent to the applicant or to the representative. They shall be granted 3 months for the regularization of their applications. This period may be extended by 30 days upon a justified request from the applicant or his representative. Any application not rectified within this period shall be rejected by decision of the Director General of OAPI.

## **DURATION OF PROTECTION**

The registration of a brand produces effects for 10 years from the date of filing of the application. Ownership of the brand may be retained without limitation of duration by successive renewals which may be made every 10 years in the year of the tenth anniversary.

## **THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS FOR THE DEVELOPMENT OF TRADITIONAL MEDICINE**

If the success rate for synthetic medication is 0.001%, it is 74% for traditional herbal medicines (Wambebe 2002). Therefore, bio-prospecting of genetic resources by pharmaceutical companies and research institutions is on the rise. The applicability of intellectual property rights to traditional medical knowledge is subject to their detailed documentation for preservation and effective use. Intellectual property rights protect traditional medical knowledge and prevent its exploitation for the benefit of third parties without the appropriate financial compensation for its holders. Intellectual property rights thus allow moral recognition of medicinal substances extracted from plants.

## **TYPES OF INTELLECTUAL PROPERTY RIGHTS ADAPTED TO TRADITIONAL MEDICINE**

The products of traditional medicine cannot be the subject of a copyright and moreover if they contain knowledge of Community origin. For reasons of economic interest, it is possible to overlay intellectual property rights for the protection of traditional medical knowledge.

For traditional medicine, intellectual property protection can use either the collective brand or the certification brand. The use of the geographical indication is also a protective process.

The conditions to be fulfilled are as follows:

- to have a specification to guarantee the use of the product,
- to specify the origin of the product,
- to register the brand and renew the protection (no limit provided that the product is used and the renewal fees are paid).

To circumvent the difficulties inherent in the payment of annuities and other royalties, the granting of a “small patent” would be less onerous for members of indigenous communities and owners of the product to be protected.

## KEY ELEMENTS TO HELP COUNTRIES PROTECT TRADITIONAL KNOWLEDGE

Countries should develop appropriate legal protection systems that ensure the legal personality of indigenous and local communities to acquire “owner status” and hold an intellectual property right over their traditional knowledge. Therefore, the initiatives of countries and regions with their own *sui generis* system for the protection traditional knowledge and traditional cultural expressions should be welcomed.

As part of the periodic review of African intellectual property law jurisprudence, relevant provisions should strengthen the protection of the rights of indigenous and local communities and provide secure access to their biological resources.

Technical and financial assistance for the protection and enforcement of intellectual property rights should be made effective. In this regard, national intellectual property offices must be autonomous and operational, with appropriate legislative instruments to do so.

At the institutional level, a State policy on intellectual property must be established for developing materials to train and inform in local languages, holders of traditional knowledge and traditional cultural expressions. Training may include the following areas of interest:

- the code of ethics to be observed by third parties in the audiovisual or written documentation of traditional knowledge and traditional cultural expressions,
- the promotion of endogenous research and knowledge in environmental and cultural practices,
- the valorisation of traditional land and seed of local producers,
- the protection of biodiversity and the right of holders ownership.

Documenting genetic resources, mapping their holders and taking into account their expectations, constitute a means for stakeholders to identify areas of traditional knowledge presence in order to establish them as economic development social prosperity.

In addition to acts of deterrence, moral reparation and administrative sanction, measures against genetic predators must simultaneously lead to the revocation of intellectual property rights arising from any form of bio-piracy.

## TRAINING OFFERED BY ARIPO ON INTELLECTUAL PROPERTY RIGHTS ISSUES

ARIPO organizes meetings on intellectual property rights for the benefit of several targets. Topics covered include:

- intellectual property in Africa and the role of the intelligentsia,
- the harmonisation of intellectual property protection practices,
- regional integration in the field of intellectual property,
- approaches to intellectual property for the protection of traditional knowledge,
- intellectual property rights and access to medicines.

## TRAINING OFFERED BY OAPI ON INTELLECTUAL PROPERTY RIGHTS ISSUES

OAPI has an intermediate training course in intellectual property rights. It is made available to the public, a module of learning and impregnation to the keys to intellectual property. Scholarships are available to applicants for the training course.

The Intellectual Property Offices of the OAPI Member States organise, in collaboration with partners, training sessions for actors, in particular holders of traditional knowledge, on intellectual property rights.

## INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS

Multiple intellectual property rights coexist, intertwine and the superiority of one international convention over another becomes one of the major challenges for controlling regulatory spaces. More than property itself, the question is that of control and power, which has also opened up areas of political and social conflict. Depending on the ratio of an inventor for 50 to 60 people, it is estimated more than 100 million patented out of 7 billion individuals worldwide. The definition of property rights raises questions about the type of public, private or collective ownership that needs to be defined, or about the role of the market, institutions and the different actors involved in clarifying these rights.

Respect for human rights is part of the protection of traditional knowledge, traditional cultural expressions and genetic resources. In 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. Article 31 stipulates that indigenous peoples “*have the right to preserve, control, protect and develop their collective intellectual property of that cultural heritage, traditional knowledge and traditional cultural expressions*”. WIPO frequently refers to this statement in the course of its work. This is why the *sui generis* legal system proposes real groups of rights linked to the notion of the collective ownership. In this respect, traditional knowledge and traditional cultural expressions are considered to be community property, so that all rights and interests in this material should be recognised in communities rather than in individuals, even though traditional knowledge or traditional cultural expression is created or developed by an individual belonging to a community.







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