THE IMPLICATION OF INTELLECTUAL PROPERTY RIGHTS ON INDIGENOUS KNOWLEDGE: 
A STUDY OF HERBAL DRUGS

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Abstract

Traditional societies are known to have evolved indigenous solutions to local problems. Such solutions have been practiced over and over again to ascertain their reliability. These indigenous solutions are reflected in culture and traditions of various societies. Traditional communities derived socio-cultural and local identity from the land thus using the land not just as a means of livelihood, but as a source of identity. This harmonious relationship with the natural environment engendered sustainable practices and sustainable use. This study is designed to interrogate the usability or applicability of intellectual property rights on the production and use of herbal drugs in Nigeria. To do this the study posed this question: to what extent has intellectual property rights been useful in regulating the patenting of herbal drugs in Nigeria? Using the qualitative technique, the study examined herbal drugs in Nigeria. The findings of the study revealed that intellectual property rights have not in any way protected the rights of the manufacturers or producers of herbal drugs.

Introduction

Man has since time immemorial sought improved ways of accessing the three basic human needs – food, shelter and clothing. In addition to that, man has continued to device better ways of staying healthy, relating with others in the society as well as better understanding of the environment. As time passed, improvements were recorded in the level of knowledge.

It can thus be said that the scientific approaches to knowledge generation as we know it today is a recent phenomenon (Mkapa, 2004). As a result of the established scientific approaches to knowledge, tremendous inroads has been made in the areas of meeting the food needs of a large percentage of people, provision of improved health care facilities, improved communication networks which has transformed the world into a global village, existence of a global market among several others. Knowledge, therefore, is central to economic development because of its innovatory attributes especially in this era of globalization. Knowledge, especially those in the innovatory category, has the capacity not just to develop the society, but also to serve as a source of livelihood for those gifted with the knowledge; hence the need to protect their rights in that sphere.

The fecundity of the quest to protect intellectual property rights, therefore, lies not just on the significant role it lays in economic development, but more importantly on its ability to spur technological change which is an essential prerequisite for the growth of the economy. Scholars like Romer (1990) and Grossman & Helpman (1991) have acknowledged that Intellectual Property Rights are parts of the infrastructure supporting investments in Research and Development (R&D), leading to innovation and subsequent economic growth. Thus by guaranteeing temporary exclusive rights on inventions, Intellectual Property Rights allow the right-holders to price their products above marginal cost and recoup their initial research
investment (Adams, 2000). In this way, a situation whereby intellectuals are denied the fruits of their labour is carefully avoided.

Knowledge, whether at the local (indigenous) or national and international level deserves some level of statutory protection. However, it appears that indigenous knowledge has not been fully incorporated in the Intellectual Property Rights. This is so because indigenous knowledge appears to be taken for granted and often neglected in most cases. This is in spite of the fact that indigenous knowledge has been applied to the solution of local development problems given the fact that local communities are not just knowledgeable about local culture and practices; rather they are equally versed in knowledge on how to apply indigenous knowledge in adapting to adverse environments and improving their condition of living. One such way is in the discovery and use of herbal drugs.

The World Health Organisation (WHO) in 2002 estimated that about 80% of people living in Africa use traditional medicines for the management of their prevailing diseases (WHO, 2002). Also, about two thirds of AIDS patients in developing countries are said to be using traditional herbal medicines (UNAIDS Report, 2002). This, according to Wambebe (2008:3), may be due to accessibility, affordability, availability and acceptability of traditional herbal medicines by majority of the population in developing countries. WHO (2005) shows that 99 out of 120 countries surveyed classified herbal medicines as over the counter products making them easily accessible to the public. The significant role of traditional medicine in public health care delivery system in Africa underscores the various documents developed and capacity building workshops organized by the WHO.

The WHO has from the onset recognized the peculiar circumstances that obtain in developing countries with respect to traditional medicine and health care delivery. Both the WHO and United Nations International Children’s Education Fund (UNICEF) have recognized that taking into context the widespread use and acceptability of traditional medical practice, no impact will be made on Africa’s overall health care status without due recognition, development and integration of traditional medicine into the primary health care delivery system of each country or region. This recognition led to the WHO/UNICEF 1978 conference in Alma Ata, USSR, at which the participants resolved and specifically urged member states to: initiate comprehensive programs for the identification, evaluation, cultivation and conservation of medicinal plants used in traditional medicine; and, to ensure quality control of drugs developed from traditional plant remedies by using modern techniques and applying suitable standards and good manufacturing practices.

Given the fact that development of medicinal drugs relies very heavily on the knowledge carried by indigenous peoples and rural societies, this has raised concerns about equitable sharing of the benefits of such knowledge and the Intellectual Property Rights of these indigenous rural communities. This paper has therefore, set for itself the task of examining the extent to which intellectual property rights has been useful in regulating the patenting of herbal drugs in Nigeria.

Statement of problem
The issue of Intellectual Property Rights has remained problematic in Nigeria given the fact that Africa has been touted as ‘a net consumer of intellectual property and not a producer of intellectual property’ (Nwauche, 2005). The role of Nigeria as a consumer of intellectual property poses a major obstacle as it subjects Nigeria to the dictates of intellectual property rights owners whose prerogative it is to decide how they want their products and services to be
accessed. Denial of access to these priced goods and services negatively impacts on development in Nigeria in particular and Africa in general. This is one reason why Nigeria needs to develop and project indigenous knowledge as it is a leeway to development, albeit at the local scene.

A concerted attempt at cushioning the inability to use foreign rights-protected products can be seen in the area of herbal traditional medicine. As noted earlier, the WHO estimate shows that about 80% of people living in Africa use traditional medicines for the management of their prevailing diseases. Various organizations have tried to draw the attention of the international community to the need for formal recognition and protection of the intellectual property rights of indigenous peoples, particularly the rights of farmers, herbalists and custodians of a nation’s plant genetic resources. In highlighting this need, these organizations have not lost sight of the interdependence of all regions of the world in accessing some of the most important foods and medicines of the biosphere (Addae-Mensah, n.d:3). Governments and industries have recognized this need and have shown concern in the protection of intellectual property associated with biomaterials. This international concern has resulted in several conferences, meetings and workshops that have eventually led to the production and signing of various conventions and agreements. Perhaps the most important and far-reaching of these efforts is the ‘Biodiversity Convention.’

The Convention on Biological Diversity, popularly known as the ‘Biodiversity Convention,’ came into force on December 29, 1993, having been drawn up and tabled at the United Nations in 1992. This Convention is a broad and legally binding writ that is probably the most important initiative yet taken to set the world on a course towards environmentally sustainable development. The Convention also supports natural sovereignty, the right of countries to benefit from their bio-resources, and the right of countries to have access to technologies that could assist in the conservation and exploitation of their biological resources (The Crucible Group, 1993).

According to the Crucible Group, the range of feasible options for protecting the intellectual property of farmers and indigenous peoples has not yet been fully explored. The Group has suggested that the FAO, UNESCO, UPOV, WIPO (and perhaps WHO) ought to be asked to convene an international meeting of experts to explore this issue in conjunction with industry, NGOs and farmers’ organizations (The Crucible Group, 1993). It is a fact that none of the current Intellectual Property Conventions acknowledges fully the intellectual contribution of informal innovators such as herbalists and farmers (IDRC, 2004). Hence, the incomparable expertise of these people — most of whom are citizens of developing countries — is grossly undervalued. It is the absence of such recognition and acknowledgement that has led to the unquestioned and unchallenged appropriation of the innovations of rural communities (IDRC, 2004). Since intellectual property rights are designed to prevent the under-valuing and theft of the expertise of the indigenous people, the question remains: to what extent has intellectual property rights been useful in regulating the patenting of herbal drugs in Nigeria?

Conceptual Clarification

For a clearer understanding of the issue being interrogated in this paper, efforts will be made to operationalize the key concepts in the subject. These include Intellectual Property Rights, Indigenous Knowledge, and herbal drugs.
Intellectual Property Rights

It has been noted by Fink and Maskus (2005) that Intellectual Property Rights refers to the rules on how to protect patents, copyrights, trademarks, and trade secrets that have become a standard component of international trade agreements. Steered by the successful completion in 1994 of the World Trade Organisation’s agreement on Trade Related Aspects of Intellectual Property (TRIPs), the issue of Intellectual Property Rights have managed to assume prime position in the international scene as it relates to economic policy-making. The WTO inspired TRIPs outlined minimum standards in areas like patents, trademarks, copyrights, trade secrets among others which are generally associated with Intellectual Property Rights.

Granted that Intellectual Property Rights (henceforth IPRs), if effectively implemented constitutes an incentive for the creation and dissemination of new knowledge as well as the structure of the market and consumer welfare, scholars appears to be divided over the actual essence and effects of IPRs on the global south. To Helpman (1993), if there is anyone that benefits from the protection of IPRs, it is certainly not the South. This can be rightly attributed to what Leger (2006) described as the very low innovative capabilities of the less developed countries which limit the potential of IPRs to support local innovation. This lopsided benefit of IPRs led to the Geneva Declaration on the Future of World Intellectual Property of 2004. The Geneva Declaration on the Future of the World Intellectual Property Organization is a document signed in 2004 by some non-profit organizations, scientists, members of the academia and other individuals urging the World Intellectual Property Organisation (WIPO) to focus on the needs of developing countries with respect to intellectual property legislation. According to the Declaration, humanity faces a global crisis in the governance of knowledge, technology and culture in the following ways:

- Without access to essential medicines, millions suffer and die;
- Morally repugnant inequality of access to education, knowledge and technology undermines development and social cohesion;
- Anticompetitive practices in the knowledge economy impose enormous costs on consumers and retard innovation;
- Authors, artists and inventors face mounting barriers to follow-on innovation;
- Concentrated ownership and control of knowledge, technology, biological resources and culture harm development diversity and democratic institutions;
- Technological measures designed to enforce intellectual property rights in a digital environments threaten core exceptions in copyright law for disabled persons, libraries, educators, authors and consumers and undermine privacy and freedom;
- Key mechanisms to compensate and support creative individuals and communities are unfair to both creative persons and consumers;
- Private interests misappropriate social and public goods and lock up the public domain (Nwauche, 2005).

The above issues raised in the Geneva Declaration have grave imports for Africa in general and Nigeria in particular. This is so because Africa does not just have access limitations; it equally has the problem of innovation and creativity. This is aptly captured by Nwauche (2005) when he asserted that:

For Africa it is increasingly doubtful if intellectual property is of any meaningful purpose because Africa is a net consumer of intellectual property and does not produce intellectual property. Africa's consumptive
intellectual property habit is evident in the number of foreign intellectual property rights it protects. In brief, foreign intellectual property rights dwarf African intellectual property… To sum up these statistics, Africa generally is not being creative. Accordingly it can be argued that intellectual property is irrelevant to Africa, especially as one of the main objectives of intellectual property is creativity. Of course this assumes that Africa is incapable of being creative. However Africa is capable of enormous creativity, but is doing so at a worrisome pace.

Despite this scenario, many African countries have gone ahead to develop their own Intellectual Property Rights.

The history of intellectual property rights protection in Nigeria dates back to the colonial era when Trade Ordinance was introduced into the colonies by the British colonizers prior to the amalgamation of the northern and southern protectorates (Ibigbami and Orji, n.d). Intellectual Property is administered in Nigeria under two main set ups – Industrial property, which deals with trademarks, patents and industrial designs as well as copyright. The Federal Republic of Nigeria enacted the Trademarks Act in 1965. This Act can be found in Cap 436 Laws of the Federation of Nigeria 1990. The Federal Government of Nigeria raised her Intellectual Property laws to international standards by becoming signatory to several international treaties and conventions such as the Berne Convention which was signed on September 14, 1993, the Trade Related Aspects of Intellectual Property (TRIPS), and domesticating same into local legislation. Nigeria also became a founding member of the World Trade Organization (WTO) in 1993 and the World Intellectual Property Organization (WIPO). Nigeria assented to WIPO’s Patent Cooperation Treaty in 2005. Membership of these organizations strengthened Nigeria’s IP credentials and has resulted in international conglomerates such as the Coca-Cola Company, GlaxoSmithKline, Nestle, to mention a few, registering their trademarks in the trademarks registry in Nigeria. Copyright law and practice in Nigeria is regulated under the Copyright Act. Nigeria’s membership to these organisations is a tacit admission that intellectual property is valuable to commercial enterprises with regards to the enhancement of revenue and profits.

Intellectual property in the legal sphere encompasses copyrights, trademarks and patent law. According to Ibigbami and Orji (n.d), while trademark law regulates and protects a brand identity and copyrights serves the preservation of rights to creative work such as literary or musical art, patent law deals with safeguarding rights over scientific/technological inventions from outright copying to knowledgeable or unknowledgeable incorporation of already patented work and even to the incorporation of such a product that is sufficiently similar to one. In order to prevent unauthorized access or reproduction of intellectual works, copyright, patent or trademark can be applied for. Once this is granted, legal help can be sought for to halt any infringement.

Indigenous Knowledge

There is no single universally accepted definition of the concept of Indigenous Knowledge. Indigenous Knowledge can be distinguished from other aspects of knowledge based on some easily identifiable traits. Indigenous Knowledge is peculiar or unique to a given society and culture and serves as the springboard for local decision-making in agriculture, health, natural resource management and other activities. It is encapsulated in community practices, institutions,
relationships and rituals. It is a form of knowledge which cannot easily be codified (World Bank, 1998:4).

As a form of heritage of indigenous people, Indigenous Knowledge can be said to be a comprehensive knowledge system with the prerequisite concept of epistemology as well as scientific and logical validity. As an established system of knowledge, it must have been proved reliable through several replications producing the same results. Indigenous Knowledge developed in one local community can be applied to other local communities as well and similar results obtained. Thus based on the findings of the United Nations Sub-Commission on the Elimination of Discrimination and Protection of Minorities which ratified the ‘Principles and Guidelines for the Protection of the Heritage of Indigenous People’, elements of Indigenous Knowledge can best be understood only by means of pedagogy traditionally employed by these people themselves. To this end, Daes (1993), a member of the Commission, submitted that Indigenous knowledge comprises all knowledge pertaining to a particular people and its territory, the nature or use of which has been transmitted from generation to generation. Continuing, Daes noted that this knowledge includes ‘all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the rational use of flora and fauna’.

Indigenous Knowledge began to attract the attention of scholars of development studies, anthropology and geography in the mid-1980s. In recent times, scholars of health, water resource management, history, ecology and many other fields have started picking interest in Indigenous Knowledge (Burtis, 2003). Nakata (2002) contends that this interest is fuelled by research into sustainable development practices in developing countries and the scientific community’s concern over loss of species and ecosystems. To Burtis (2003), therefore, Indigenous Knowledge refers to the knowledge, innovations, and practices of indigenous groups in matters related to agriculture and environmental management, medicine and health, art and language.

To the Environment and Development Action – a Non-Governmental Organisation involved in rural development in Dakar, Indigenous Knowledge can be looked at from three levels or operational perspectives. Firstly, as a heritage from the past, including specific bodies of knowledge in different areas like botany, medicine and social governance; secondly, as the embodiment of a different and particularly African mode of thought which present learners and teachers apply to the acts of learning and instruction; and thirdly, as a means of articulating what people know and – for the future – creating new knowledge from the intersection of their capacities (in the first two senses above) and the challenges of development (ENDA, 2001).

From the foregoing, it could be surmised that Indigenous Knowledge is developed by the local community and is passed down from generation to generation. The utility of Indigenous Knowledge lies in the fact that it is developed in the traditional or local way and used in solving local problems without recourse to Western methods. A good example is in the area of health. It is common in traditional African societies to have roots and herbs used in curing particular diseases. In fact, there is hardly any ailment that does not have an indigenously developed knowledge of what to use in curing it and how it can be effectively cured. Not only that, the World Bank (1993) aptly captured the importance of Indigenous Knowledge when it asserted that:

Indigenous knowledge provides the basis for problem-solving strategies for local communities, especially the poor. It represents an important component of global knowledge on development issues. Indigenous Knowledge is an underutilized resource in the development process.
Learning from Indigenous Knowledge, by investigating first what local communities know and have, can improve understanding of local conditions and provide a productive context for activities designed to help the communities. Understanding Indigenous Knowledge can increase responsiveness to clients. Adapting international practices to the local setting can help improve the impact and sustainability of development assistance. Sharing Indigenous Knowledge within and across communities can help enhance cross-cultural understanding and promote the cultural dimension of development. Most importantly, investing in the exchange of Indigenous Knowledge and its integration into the assistance programs of the World Bank and its development partners can help to reduce poverty.

Indigenous Knowledge, if it cannot be spread and integrated into the development process, will be of very limited service. This is why the World Bank identified six ways through which Indigenous Knowledge (IK) can be exchanged and integrated into the development process within and between developing countries as well as between developing and industrial countries. These steps, as outlined by World Bank (1993) include:

- **Recognition and Identification**: some IK may be embedded in a mix of technologies or in cultural values, rendering them unrecognizable at first glance to the external observer (technical and social analyses may, therefore, be required to identify IK);
- **Validation**: This involves an assessment of IK’s significance and relevance (to solving problems), reliability (i.e., not being an accidental occurrence), functionality (how well does it work?), effectiveness and transferability;
- **Recording and Documentation** is a major challenge because of the tacit nature of IK (it is typically exchanged through personal communication from master to apprentice, from parent to child, etc.). In some cases, modern tools could be used, while in other circumstances it may be appropriate to rely on more traditional methods (e.g., taped narration, drawings);
- **Storage** in retrievable repositories: Storage is not limited to text document or electronic format; it could include tapes, films, storytelling, gene banks, etc.
- **Transfer**: This step goes beyond merely conveying the knowledge to the recipient; it also includes the testing of the knowledge in the new environment. Pilots are the most appropriate approach in this step; and,
- **Dissemination** to a wider community adds the developmental dimension to the exchange of knowledge and could promote a wider and deeper ripple impact of the knowledge transfer. Exchange of IK is the ideal outcome of a successful transfer and dissemination. This is essentially a learning process whereby the community where an IK practice originates, the agent who transmits the practice, and the community that adopts and adapts the practice all learn during the process.

The World Bank, however, elaborately failed to explain how Indigenous Knowledge can be codified and protected as an intellectual property. The World Bank is instead absorbed in how Indigenous Knowledge can best be developmentally utilised.

**Herbal Medicine/Drugs**

Herbal medicine – also called botanical medicine or phytomedicine -- refers to using a plant’s seeds, berries, roots, leaves, bark, or flowers for medicinal purposes. Herbalism has a long tradition of use outside of conventional medicine. It is becoming more mainstream as improvements in analysis and
quality control along with advances in clinical research show the value of herbal medicine in the treating and preventing disease. Herbal medicine is a clinical modality based upon using plant derived medicines as therapeutic tools (Gratus et al, 2009). Herbal medicine, sometimes referred to as Herbalism, Botanical medicine or Herbology, is the use of plants, in a wide variety of forms, for their therapeutic value (Altschuler, 2007). Herb plants produce and contain a variety of chemical compounds that act upon the body and are used to prevent or treat disease or promote health and well-being. Humans, and even Neanderthals, have used plants to treat their ailments for at least tens of thousands of years; most likely even longer than that. The first written accounts of the use of herbs originate in China, although all other civilizations from the ancient world were using plants as natural remedies for their ailments (Hassan et al, 2009). Western herbal medicine dates back to ancient Greece and its famous doctors like Hippocrates and Galen.

Plants had been used for medicinal purposes long before recorded history. Ancient Chinese and Egyptian papyrus writings describe medicinal uses for plants. Indigenous cultures (such as African and Native American) used herbs in their healing rituals, while others developed traditional medical systems (such as Ayurveda and Traditional Chinese Medicine) in which herbal therapies were used. Researchers found that people in different parts of the world tended to use the same or similar plants for the same purposes. In the early 19th century, when chemical analysis first became available, scientists began to extract and modify the active ingredients from plants. Later, chemists began making their own version of plant compounds, and over time, the use of herbal medicines declined in favour of drugs.

Recently, the World Health Organization estimated that 80% of people worldwide rely on herbal medicines for some part of their primary health care. In Germany, about 600 - 700 plant-based medicines are available and are prescribed by some 70% of German physicians. In the last 20 years in the United States, public dissatisfaction with the cost of prescription medications, combined with an interest in returning to natural or organic remedies, has led to an increase in herbal medicine use.

Theoretical Framework
On November 14, 2001, the Ministerial Conference of the World Trade Organization, meeting in Doha, Qatar, adopted the Declaration on the TRIPS Agreement and Public Health (Doha Declaration). The declaration affirms that the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights “can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all,” and it reaffirms that the Agreement “provide[s] flexibility for this purpose” (WTO, 2001).

The Doha Declaration mandated further negotiations on one important subject, providing in its paragraph 6: “We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem . . . .” Nearly two years later, on August 30, 2003, the WTO General Council adopted the Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (Decision). The leadership of the WTO hailed the Decision as evidence that the organization could deal effectively with important issues of social concern (WTO Press Release, 2003). However, the reaction among a broad cross-section of stakeholders was more tempered. Nongovernmental organizations (NGOs) concerned about access to medicines were disappointed by the complexity of the arrangement, arguing that it would be unworkable in practice (Becker, 2003). Similar misgivings were expressed by
developing country producers of generic pharmaceuticals. Spokespersons for the group of pharmaceutical companies that engage in substantial research and development (commonly known as Pharma) said they welcomed the Decision as finally resolving an open issue, but these companies later lobbied actively in Canada to restrict implementing legislation. The developing countries that had led the negotiations expressed satisfaction with the result, but others harboured doubts (Becker, 2003; WTO, 2003).

**Approaches to Indigenous Knowledge**

Batiste (n.d) delineated several approaches to the concept of Indigenous Knowledge. First is what he termed the ‘Eurocentric Approach’. This approach, according to him, is represented by the term *traditional knowledge*. Traditional Knowledge in this context suggests a body of relatively old data that has been handed down from generation to generation essentially unchanged. Working on the assumption that Indigenous Knowledge cannot be changed or modified, Brash (1997) contended that *Eurocentric researchers lay emphasis on delineating knowledge, practices, and techniques used by indigenous peoples, recording their local names and cataloguing their reported uses*. Batiste summarized the stand of the Eurocentric approach thus:

> In this taxonomic approach, it is the categorizer who decides whether a teaching, technology, or practice is Indigenous and unique to a given heritage or society, adopted from Eurocentric knowledge, or a blend of local and introduced components. Using these taxonomic studies, Eurocentric scholars provided definitions of Indigenous knowledge based on their partial framework, methodologies, and perspectives. Much effort was expended highlighting the differences between Eurocentric and Indigenous knowledge in terms of their respective ideological underpinnings, substance, methods, and so forth. In the literature, these differences were highlighted by underscoring the superiority of Eurocentric knowledge and its classifications and the inferiority of Indigenous knowledge.

The problem with this approach is that it failed to evolve any generally accepted conceptualisation of indigenous knowledge. All attempts at generating a definition of Indigenous Knowledge led to confusion occasioned by virtue of its broadness. Also, this approach also failed to recognise that Indigenous Knowledge is holistic in nature and, therefore, defies categorization.

The second approach discussed by Battiste is another variant of the Eurocentric Approach. The submission of this approach, as aptly captured by Grenier (1998) is that Indigenous Knowledge is *the unique, traditional, local knowledge existing within and developed around the specific conditions of women and men Indigenous to a particular geographic area*. This approach tends to perceive Indigenous or local Knowledge as merely empirical thereby reducing its worth to the indigenous people.

The third approach discussed by Battiste, tends to treat Indigenous Knowledge, according to Nazarea et al (1998) as *purely normative or spiritual*. As it stands, this approach fails to recognise that there is great variance in what individuals have knowledge of in each indigenous locale. For example, there are differences between the level of knowledge of ordinary people and that of experts in areas like fishing, healing, hunting etc. Here experience and professionalism play vital roles in differentiating knowledge holders from ordinary workers.
Whatever approach one adopts in examining the issue of indigenous knowledge, it will be pertinent to note that the indigenous populace have their unique way of categorizing and spreading knowledge. This is done in the same way that they manage to subdue the environment and derive a living from it. The method of doing this has been undergoing transformation from generation to generation.

Implication of Intellectual Property Rights on Herbal Medicine in Nigeria

In Nigeria, the issue of Intellectual Property Rights (IPR) as it relates to Traditional Medicine has not been given adequate attention (NNMDA, 2011). Before 2004, there had been no effort to address the IPR regime in Nigeria with reference to Traditional Medicine Knowledge (TMK). However, the Nigeria Natural Medicine Development Agency, in its attempt to develop and promote Traditional Medicine has taken steps to institutionalize and adequately provide a protective mechanism for TMK as well as create awareness and sensitize all stakeholders on this issue.

In December 2005, the Agency jointly organized a 3-day International workshop on IPR for TMKP with the National Office for Technology Acquisition and Promotion (NOTAP) both parastatals of the Federal Ministry of Science and Technology along with other national and international stakeholders with the theme: “Appropriate Intellectual Property Right Regime, a necessity to maximize the potentials of Traditional Medicine for Improved Healthcare Delivery, National Economic Growth and Development”. An International consultative Committee composed of experts drawn was constituted to develop legal mechanisms for the protection of Traditional Medicine Knowledge and Practice (TMKP).

The Committee developed a draft policy as well as a draft intellectual property framework, titled: “Traditional Knowledge and Biological Resources Protection Act”. This draft legal document is scheduled to be subjected to all stakeholders in different phases for their review and contributions to enrich it and ensure wider ownership recognition and acceptance. Presently, stakeholders’ forum is being conducted in the six geo-political zones of the country for this purpose.

It is presumed that at the end of this stakeholders exercise, the draft legal document would have been reviewed and enriched thereby giving it a general acceptance by all. Traditional Medicine Knowledge in Nigeria would be on the way to contributing to economic growth and development. Similarly, the IPR stakeholders’ forum is aimed at creating awareness and sensitizing all stakeholders on the need and benefits of IPR, as well as educates them on how they can harness the potentials for their benefits.

There is no gainsaying the fact that no fewer than 70% of Nigerians rely on Traditional Medicine (TM) for their basic health care needs especially at the primary healthcare delivery. This may not be unconnected with the fact that TM products are more affordable and accessible to the rural populace.

Despite this and the fact that TM competes as a major provider of healthcare delivery with orthodox medicines, poor perception of these natural drug products have continued to make it even more difficult for the integration of TM into the nation’s healthcare system.

In most parts of the African continent, TM and orthodox medicine exist side by side with people using either or both of them for treatment. In 2002, the World Health Organisation (WHO) launched a comprehensive traditional medicine strategy, emphasising on the documentation, development and promotion of TM, herbal remedies and medicinal plants
through research and the development of stronger evidence based on safety, efficacy and quality of the TM products and practices.

In line with WHO recommendations, the Director General of Nigeria Natural Medicine Development Agency (NNMDA), Tamunoibiu Okujagu, says Nigeria and other African countries are putting in place mechanisms for standardisation of TM products. Speaking on the 2011 African Traditional Medicine (ATM) Day in Lagos, Okujagu explained that several projects had been initiated to develop, promote, preserve and protect the nation’s traditional medicine products and practices, indigenous knowledge, culture and heritage as well as intellectual property rights of organisations. Okujagu who stressed the need for stakeholders to unite and discourage negative perceptions about TM products, said plans were underway to put in place regulatory framework, institutional instruments for developing African traditional medicines (ATM) and standardization of ATM as well as integrate TM into the health care system (Obinna, 2011).

He pointed out that conserving of medicinal plants, which is Africa’s heritage would not only assist in promoting documentation and ensuring sustainable utilization of Africa’s bioresources, but would also help in the integration of TM into the nation’s healthcare sector. Okujagu who hinted that the theme for this year’s ATM Day is “Conservation of Medicinal Plants: Africa’s Heritage” explained that the theme was critical and important in bringing to fore the potentials of Africa’s rich, huge, exotic and diverse bio-resources and biodiversity. He stated that the Agency’s activity in the development of pilot/ experimental Medicinal, Aromatic and Pesticidals Plant (MAPPS) would ensure proper cultivation of identified plants in the areas that they can grow best as well as preserve plants that are facing extinction amongst others.

Okujagu who identified wrong perception as a major challenge to the development of African Medicine, disclosed that as part of the agency’s activities to mark the ATM Day, the Agency in collaboration with the Global Institute of Bio-Exploration (GIBEX), Federal University of Technology, Minna, would be holding a stakeholders forum and national symposium on the development of medicinal plants as a means to achieving the MDG for improved health access. He said prior to the symposium, the two organisations would be signing a Memorandum of Understanding (MoU) to take possession of the land which the Vice Chancellor, Federal University of Technology, Minna generously donated for collaborative research between the university, NNMDA, and GIBEX. “It is hoped that this project in addition to research and development in MAPPS for traditional medicine development and promotion, will encourage the selection and domestication of highly needed MAPPS to aid researches,” he added.

**Conclusion**

This paper examined the implication of intellectual property rights on indigenous knowledge in Nigeria using herbal medicine as a case study. The findings of the study show that in as much as herbal medicine is widely used in Nigeria, the move to recognize it as an intellectual property is slow in coming. It was equally noted that the non-statutory recognition of traditional medicine as an intellectual property impedes development in the traditional medicine sector as it does not promote innovation but rather encourages piracy of indigenous knowledge. Pirating of indigenous knowledge not only denies the original owners the fruits of their works; it also cheapens intellectual works as fraudsters are at liberty to use it to achieve their own ends.

It is therefore suggested that the National Copyrights Commission (NCC) be strengthened so as to combat the piracy of indigenous knowledge. This is to enable it to
adequately reward innovative activity, ensure that the society has access to such innovations as well as prevent the unauthorized usage or abuse of such innovative activities. Again, bearers of indigenous knowledge should be incorporated into national development planning so as to provide for easier adaptability. Similarly, it will be of prime importance if the government can formulate development policies and programmes which will be channelled through the existent indigenous practices and institutions rather than devising alien ones which cannot easily adapt to the local conditions.

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