



**USING EXISTING INTELLECTUAL PROPERTY
SYSTEMS FOR THE PROTECTION AND
COMMERCIALISATION OF TRADITIONAL
KNOWLEDGE AND TRADITIONAL CULTURAL
EXPRESSIONS**

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Introduction

- This paper discusses the protection of traditional knowledge under existing intellectual property regime.
- Tradition- based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition based innovations and creations resulting from intellectual activity in the industrial, scientific, literary and artistic fields



Reasons to protect TK

- ensure its preservation especially in the areas of genetic resources and traditional cultural expressions.
- to protect traditional knowledge from undue or uncontrolled commercial exploitation
- to encourage and promote its use
- moral obligation
- Benefit sharing



Protection Using Intellectual Property

- Copyright and Related Rights
- Trademarks
- Geographical Indications
- Trade secrets and protection from unfair competition
- Utility models



Copyright and Related Rights

- Documentation and archiving of TK
- Performances
- Sound Recordings
- Copyright (designs and artwork)
- Existing protection under copyright such as in Botswana , Kenya, Malawi
- Limited in application



Geographical Indications

- an identification which identifies a good (s) as originating in a specific territory, or a region or locality in that region where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin
- Geographical indications bill will extend to some TK products such as Kisii soapstone



Utility Models

- Better known as “petty patents”
- Novelty or inventive step to qualify for protection.
- May be extended to cover TK



Trademarks

- One advantage with trademark protection is that it can be perpetual as long as the renewal is sustained.
- A good example is the *Kikoy*, a fabric that has over the years been used by the coastal people in Kenya
- The government, through institutions such as the National Museums, can register the trademark on behalf of the communities and protect it from undue exploitation



Trade Secrets

- This may be one of the most viable means of protection under the intellectual property regime for traditional knowledge especially as it relates to medicines and other industrial processes and products.
- Its main shortcoming is that it does not protect against reverse engineering and certain steps have to be taken to ensure that it remains a trade secret and the parties involved advised accordingly



Summary and Conclusions

- From the foregoing, it is clear that intellectual property law only offers limited protection to traditional knowledge due to the conditions set for intellectual property protection.
- The laws should be extended to include the beneficiaries of protection, the rights granted, transfer of the rights, and benefit sharing as well as enforcement of the rights.