ZAMBIA-COUNTRY REPORT

by

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INTRODUCTION

PROFILE OF ZAMBIA

Zambia is a landlocked State with an area of 752,600 square kilometers and a population of 10.3 million people. The country is a multiparty democracy whose principal State institutions are established by the constitution of Zambia. The Constitution embodies the doctrine of the separation of powers with the functions and powers of the three main organs of the State, namely, the Executive, the Legislature and the Judiciary clearly defined in the Constitution. The Executive arm of Government is headed by a President who is the Head of State and Government and Commander-in-Chief of the armed forces. The Executive, through Cabinet, is charged with the responsibility of formulating Government policy and initiating legislation for submission and consideration by the National Assembly.

The Constitution vests legislative power of the Republic of Zambia in Parliament which consists of the President and the National Assembly. The power is exercised through bills passed by the National Assembly composed of 150 elected members representing 150 constituencies and assented to by the President. Election of members to the National Assembly is by direct universal adult suffrage and secret ballot using the first past the post electoral system. The National Assembly sits mainly in plenary but performs a number of its functions through select committees.

The Judicature of Zambia is composed of the Supreme Court of Zambia, the High Court for Zambia, the Industrial Relations Court, the Subordinates Courts and the Local Courts. The Judicature has both constitutional and institutional independence as it has the power over its procedural environment in which cases are heard and decisions are rendered. The Judiciary's powers of interpreting the law is not seen as amounting to judicial legislation except where through interpretation and application of the law the courts fill in gaps left by statute law leading to the issuance of guidelines for the effective implementation of the law.

POLICY FRAMEWORK

Zambia, for a long time, pursued a commandist economic policy based along socialist lines up until 1990 when the State after change of Government began to pursue a liberal economic policy based on a free market. This shift in policy has seen a number of institutional and legal reforms aimed at creating an environment conducive for a private sector driven economy with the State assuming the role of regulator. The State has since divested its shareholding in most State run enterprises and has formulated policies tailored to promote private sector investment and initiatives. The country's policy framework has further been influenced by developments within the region such as the creation of a common market and a free trade area within the Common Market for Eastern and Southern Africa (COMESA).

LEGAL AND INSTITUTIONAL FRAMEWORK FOR INTELLECTUAL PROPERTY

Zambia's legal framework for intellectual property can be said to comprise the Constitution of Zambia and legislation enacted pursuant to it and international instruments on intellectual property adopted within the World Intellectual Property Organisation (WIPO) and African Regional Intellectual Property Organisation acceded to by the State. The following comprises Zambia's domestic legal regime for intellectual property:

(a) Industrial Property

This comprises of the following pieces of legislation:

- Patents Act, Chapter 400 of the Laws of Zambia (first enacted under the Federation of Rhodesia and Nyasaland in 1958 and last revised in 1994)
- Trade Marks Act, Chapter 401 of the Laws of Zambia (first enacted in 1958 and last revised in 1994)
- Registered Designs Act, Chapter 402 of the Laws of Zambia (first enacted in 1958 and last revised 1994)

(b) Copyright and Related Rights

This comprises of the following:

Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia (enacted in 1994 to provide for copyright in literary, musical and artistic works, computer programmes, audiovisual works, sound recordings, broadcasts and cable programmes and to provide for rights in performances)

(c) Other Country-specific legislation

Unfair Competition

- The Merchandise Marks Act, Chapter 405 of the Laws of Zambia (first enacted in 1958 and last revised in 1994)
- The Registration of Business Names Act, Chapter 389 of the Laws of Zambia (first enacted in 1931 and last revised 1994)
- Competition and Fair Trading Act, Chapter 417 of the Laws of Zambia (enacted in 1994 to encourage competition in the economy by prohibiting anti-competitive trade practices, to regulate monopolies and concentrations of economic power, to protect consumer welfare, to strengthen the efficiency of production and distribution of goods and services, to secure the best possible conditions for the freedom of trade and to expend the base of entrepreneurship)

International Obligations

Zambia is a State party to the following international intellectual property instruments:

- WIPO Convention, since May 1977
- Paris Convention (Industrial Property), since April 1965
- Berne Convention (Literary and Artistic Works), since January 1992
- Trade Related Aspects of Intellectual Property (TRIPS) Agreement, since January 1995.

Zambia like most Commonwealth jurisdictions is a dualist legal system which means that international instruments ratified or acceded to by the State are not self-executing at domestic level and require actual incorporation by way of enacting an Act of Parliament or passing regulations under existing legislation.

Membership of other bodies

- Member of African Regional Industrial Property Organization (ARIPO), since 1978
- Member of Universal Copyright Convention (UCC) since March 1965

Institutional Framework

Intellectual property in Zambia is administered by the State through two line ministries, namely, the Ministry of Commerce Trade and Industry under which the Patents and Companies Registration falls and the Ministry of Information and Broadcasting Services under which the Copyright Administration Office falls. Other organizations involved in the administration of copyright and related rights include the Zambia Music Copyright Protection Society.

Authorities Enforcing Intellectual Property

There are various institutions involved in the enforcement of intellectual property law in Zambia and these include:

- Industrial Property Tribunal which falls under the Zambian Patent Office Copyright Tribunal which falls under the Registrar of Copyright Zambia Music Copyright Protection Society Zambia Revenue Authority Zambia Competition Commission Zambia Police Service
- The Registrar of the Industrial Property Office cooperates with the Zambia Revenue Authority and the Zambia Police Service in enforcement of intellectual property law

TEACHING AND TRAINING OF INTELLECTUAL PROPERTY

The globalization of the World economy has more than ever before increased the demand for the protection and promotion of intellectual property. Those who undertake scientific and technological research, those who create and interpret works of learning,

culture, entertainment and information, those who devise the marketing of products and services all look up to the legal protection at both national and international level against competitors, as a way of sustaining the value of their skill, creativity and labour or their investment in what is this distinctively theirs.

This globalization of the world economy and the role intellectual property has played in the social, economic and cultural development of both the developed and developing countries has created the ever-increasing demand for human resource development in the field of intellectual property in these countries.

Whilst appreciating and recognizing the role WIPO Worldwide Academy has played and continues to play in human resource development in the field of intellectual property law there is a need to involve other players in human resource development worldwide if the desired levels of appreciation and enforcement are to be achieved.

Currently, teaching and training of intellectual property targets professionals working in the field of intellectual property, that is, academia, teachers and trainers and government officials dealing with policy and implementation of intellectual property law. There is need to expand the targeted audience to include civil society and other stakeholders in the various intellectual property programmes.

Intellectual property law is taught as a subject in very few African universities. This is due to lack of awareness on the importance of intellectual property law and lack of financial resources and qualified lecturers to undertake teaching and research in intellectual property law. There is need for the WIPO Worldwide Academy and its collaborators to bring about a higher level of awareness and appreciation of intellectual property so that it can be included in the curricula of every law school around the world.

TEACHING AND TRAINING OF INTELLECTUAL PROPERTY LAW IN ZAMBIA

Currently, teaching and training of intellectual property in Zambia is only available at the University education level. The teaching of intellectual property was introduced at the University of Zambia in the School of Law in 1999/2000 academic year at undergraduate level as an elective course.

At that time it was recognized that since the advent of a liberalized and privatized economy. Zambia had witnessed the enactment and amendment of laws to meet the needs and challenges of a liberalized and privatized economy.

It was further recognized that the region was increasingly integrating economically. The movement towards an integrated regional economy was as a result of increased trade between nations which called for greater levels of harmonization in various aspects of intellectual property law between trading nations.

The teaching of Intellectual property in the School of Law at UNZA is divided into two components:

(1) Introduction to Intellectual Property and Competition Law

(2) Advanced Intellectual Property Law

Each of the two components is taught in one semester. In fact the former is a pre-requisite of the latter. Both courses deal with three main aspects of intellectual property practice, namely:

- The nature and extent of rights that are available to protect intellectual property;
- The process of obtaining and registering intellectual property rights; and
- The process of protecting and enforcing intellectual property rights once acquired which is effected in the courts of law.

"Introduction to Intellectual Property and Competition Law" course covers the following areas:

Patents Law

- Subject matter of patent and ownership issues
- Rights of patent holders-time, term and transfer
- Practical considerations
- Requirements for suit

Trademark Law

- Requirements for protection
- Subject matter concerns and ownership issues
- Rights-time, term, and transfers
- Practical considerations
- Requirements for suit

Copyright Law

- What is copyrightable subject matter
- Determination of ownership of copyright rights guaranteed by copyright, including, term, time and transfer issues
- Exceptions and limitations on rights
- Practical considerations-forms, costs and constraints
- Requirements for suit

Competition Law

- Importance of competition in a free market economy
- When does competition become unfair?
- Interference, tortuous, or contractual
- Scope of the Fair Trading and Competition Act of 1994
- Practical considerations
- Overview of the free market enterprise system and the role of legal regulation
- The role of the Zambian Competition Commission
- Illegal tie-ins, promotions and discounts
- Mergers, monopolies, trademarks and joint ventures
- Advertising practices

"Advanced Intellectual Property" course addresses the international dimensions of the subject matter. The course covers the following topics:

- The role of Intellectual property in development
- International Treaties and Conventions on intellectual property
- Enforcement of intellectual property
- Commercial transactions in intellectual property
- Technological and legal developments in intellectual property
- Intellectual property institutions

It should be noted that other than the above undergraduate course offered by the School of Law, none of the over forty tertiary institutions in Zambia offer intellectual property as a course. However, it is worth noting the strides made so far by the WIPO Worldwide Academy which has conducted two important seminars in Zambia, one for thirty-eight judges and senior staff from the Judiciary on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and other aspects of intellectual property, and a National Intellectual Property Seminar for sixty-three participants drawn from the legal profession, engineering profession, law students, officials from the Registry of Patents and Trademarks, collecting societies and other interested parties.

FACTORS/CONSTRAINTS AFFECTING THE TEACHING AND TRAINING OF INTELLECTUAL PROPERTY

It is imperative to note that teaching and training of Intellectual Property law in Zambia like any other developing country faces a number of challenges, which include:

- Intellectual property course offered by the UNZA School of Law is only open to students within the School of Law. Thus other students from other disciplines such as School of Engineering, Natural Sciences, Humanities and other interested groups are denied a chance to learn intellectual property;

- Lack of adequate qualified lecturers to teach and research in intellectual property law;

- Lack of financial and material resources for teaching and research in intellectual property law. Thanks to WIPO Worldwide Academy which has contributed teaching and reading material of intellectual property to UNZA School of law;

- Lack of specialized intellectual Property faculty/unit dedicated to the promotion of teaching and training, research and studying of intellectual property;

- Due to lack of adequate teaching facilities and resources the number of students allowed to learn intellectual property is limited;

- Intellectual property is offered by the School of Law not as a compulsory course but as an elective course. This does not encourage the students to see the need and realize the importance of studying intellectual property law;

- Absence of other intellectual property tailor-made learning and training programmes to cater for audiences such as the Executive (policy-makers), Legislature, Judiciary, Law enforcement, custom officials, business community and other target groups who are not reached by intellectual property offered by UNZA School of Law;

- Lack of involvement of other institutions such as Institute of Human Rights, Intellectual Property and Development Trust (HURID) or other civil society in the teaching and training of intellectual property through tailor-made training programmes to the audience alluded to above, who are not reached by UNZA School of Law;

- Lack of civil society institutions to sensitize and create general awareness on intellectual property; and lack of information to the public to understand the applications of intellectual property and the opportunities that intellectual property provides in promoting economic growth.

SUGGESTED WAY FORWARD

If intellectual property is to be brought to a level where human rights is today in terms of awareness and its effective teaching and inclusion in the curricula of every institution of learning around the world, the following are some of the suggested solutions:

- WIPO Worldwide Academy should help build capacity in universities and other institutions from civil society which are involved in the teaching, training, research and promotion of intellectual property;

- WIPO Worldwide Academy should involve civil society at national level to build capacity for the Executive (policy-markers), legislature, judiciary, law enforcement, custom officials, business community, collecting societies and other stakeholders in intellectual property through tailor-made training programs which may not be reached by UNZA School of Law program on intellectual property. This will facilitate the growth of human resource development in the field of intellectual property in Zambia;

- WIPO Worldwide Academy should involve the civil society in sensitizing and raising the awareness of the public on the importance and benefits of protecting intellectual property.

- There is a need for cooperation agreements to be negotiated between WIPO Worldwide Academy and institutions outside Government in order to bring about a tripartite arrangement in the promotion and protection of intellectual property rights involving WIPO, government and civil society. WIPO being a headquarter based specialized agency of the United Nations needs to identify partners beyond government in order to increase its coverage in the fulfillment of its mandate.

CONCLUSION

Teaching and training in intellectual property law play an important role in the economic, social and cultural development of any nation and as such demands that as many people as possible are made aware of this fact in their various activities and disciplines. Intellectual property in developing countries should be seen as the engine for social progress and poverty reduction. It is against this background that institutions of learning are made to be at the spear point of this goal.

Whilst recognizing the success that has been achieved by WIPO Worldwide Academy through its distance learning programme and the ever-increasing demand for the programme it is important for the Academy to identify cooperating partners at national level with the requisite expertise and knowledge in intellectual property to build on whatever gains would have been made. It is perhaps important, at this point, for WIPO Worldwide Academy to begin to seriously consider bringing on board non-traditional government and non-governmental organizations at national level especially those from the education sector to spearhead the promotion of intellectual property law.