

# **Commission on Intellectual Property Rights**

## **Country Case Study for Study 9: Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement**

### **Uganda**

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Commission.**

# **INSTITUTIONAL CAPACITY IN INTELLECTUAL PROPERTY POLICY, ADMINISTRATION AND ENFORCEMENT – THE CASE OF UGANDA**

## **1. Introduction**

This case study is part of a wider study on Institutional Capacity in Intellectual Property Policy, Regulation and Administration, covering the countries of Uganda, Kenya and Tanzania. It is a study commissioned by the United Kingdom's Commission on Intellectual Property Rights and it is being carried out under the auspices of the Economic and Social Research Foundation (ESRF) in Dar - Es - Salaam, Tanzania.

Intellectual Property Rights (IPR) are rights given to persons over the creation of the human mind (the human intellect). IP is the kind of property that results from fruits of mental labour.

This study identifies the institutions responsible for IP policy formulation, information dissemination, administration and enforcement in Uganda, including the mission and main functions of each. Furthermore, the key issues and challenges for the national IP administration and institutional infrastructure necessary over the coming years are also considered. Finally, IP-related policies, legislation and administrative arrangements are identified and examined.

In order to execute this assignment according to the terms of reference, the methodology employed included a review of available literature on the development and application of the national Intellectual Property (IP) Policy, legal and institutional framework in Uganda. In addition, interviews with officials in relevant institutions have been conducted with a view to collecting information on IP and the findings have been used to update the information availed through the literature survey.

## **2. The Policy and Legal Framework for IP in Uganda**

The recent history on the development of the national IP legal and institutional framework in Uganda is characterised by a flurry of activities. At independence, Uganda inherited the then existing British IP system, including whole pieces of legislation<sup>1</sup>. This situation continued until the late 1980s and the early 1990s when changes began to occur. The period 1990 to-date has been marked by changes in the IP legal system, mainly as a consequence of international obligations that were themselves a result of Uganda being

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<sup>1</sup> In Uganda today, for example, the country still maintains a British law on the Statute books – The United Kingdom Designs (Protection) Act.

signatory to a number of international treaties, conventions and agreements. One such agreement is the World Trade Organisation (WTO).

In April 1994, Uganda signed the agreement establishing WTO and ratified the same in October 1994. By 31<sup>st</sup> December 1994, the country had fulfilled all the conditions necessary to become a founder member of the WTO. By virtue of being a signatory to the WTO, the country is bound to fulfil specific obligations that have a bearing on its domestic legislation. Thus the legal regime with regards to commercial laws is affected and, in particular, legislation pertaining to trade-related aspects of intellectual property rights (TRIPS). This means that legislation related to TRIPS will have to be amended and new laws developed to ensure that Uganda's legal regime conforms to her international obligations.

The basic objective of the TRIPS agreement is to confer adequate and effective protection to intellectual property rights so that the owner of the rights receives the benefits of creativity and inventiveness. TRIPS covers all seven of the main areas of intellectual property:

- Copyright
- Trademarks
- Geographical indications
- Industrial designs
- Patents
- Layout designs of integrated circuits; and
- Undisclosed information, including trade secrets.

All WTO members are bound by the disciplines of the TRIPS Agreement.

In the year 2000, a task force was put in place to review and up-date the law pertaining to intellectual property rights in Uganda. The task force was set up under the auspices of the Uganda Law Reform Commission (ULRC) to spearhead the process of amending and up-dating of the law in this regard. The main objectives of the task force were:

- To document and publicise the nature of Uganda's obligations under the TRIPS agreement;
- To study existing legislation relating to the TRIPS agreement and establish the need for reform;
- To carry out a comparative analysis with foreign jurisdictions in their experience in up-dating domestic legislation to conform to international obligations under the TRIPS agreement; and
- To propose amendments and, where necessary, new legislation to up-date Uganda's law to conform to her TRIPS obligations.

## **2.1. IP Policy Framework**

At the moment there is no specific/concrete national policy on intellectual property rights in Uganda. What could be referred to as the national policy may only be construed from the various pieces of legislation (both substantive and subsidiary legislation) that are currently in the statute books as well as from the various policy statements that have been uttered by various government officials in this regard. In addition, part of the policy pertaining to IP rights may be, by implication, read in international conventions and treaties to which Uganda is a signatory, like the TRIPS agreement.

The National Science and Technology Policy<sup>2</sup> on the other hand provides for the formulation of a policy on intellectual property rights. The specific policy, though, is yet to be finalised. The various national statutes pertaining to intellectual property rights are discussed in the following section.

The TRIPS Task Force mentioned above may be regarded as the main forum through which public policy on IP is being developed and formulated in Uganda today. The main objectives of this task force have been given (see section 2 above) and here we concentrate on identifying who the decision makers are and the nature of the consultation process. The task force, whose activities are being funded by the United States Agency for International Development (USAID), is composed of representatives from the following stakeholders:

1. Uganda Law Reform Commission
2. Ministry of Justice
3. Uganda Law Society
4. The Judiciary (Commercial Court)
5. Uganda Investment Authority
6. Ministry of Tourism, Trade and Industry
7. Uganda National Council for Science and Technology

Representatives from the following organisations / institutions had also been invited to sit on the task force but are yet to do so:

- Uganda Investment Authority
- Uganda Revenue Authority
- Private Sector Foundation
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Internal Affairs (the Police)
- National NGO Forum

It was envisaged that the task force would be fully representative of the Ugandan society including civil society and that this would help in the formulation of an IP policy and legal framework that would be a reflection of the wishes of the people. The task force has since been sub-divided into five

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<sup>2</sup> See the Uganda National Science and Technology Policy (September 2001), Ministry of Finance, Planning and Economic Development, Kampala.

smaller committees each of which was assigned the responsibility of reaching out to the key stakeholders that, it was felt, could not be left out. These committees attempt to reach out to the following categories of stakeholders:

1. Publishers, writers and academic writers.
2. Broadcasters, performers and composers.
3. Manufacturers, investors, designers and artists.
4. Herbalists, agricultural researchers and pharmacists.
5. Administration of justice and law enforcement agencies.

Task force members on the various committees are supposed to constantly liaise with these stakeholders and collect their views of the various aspects of IP policy so that they (their views) get incorporated into the envisaged policy and legal framework guided by the provisions in the TRIPS agreement. It is not explicitly clear as to how the interests of poor people can be taken into account in this process. There is no explicit indication, too, of the integration of IP policy making with that of wider economic policy and strategies for development and poverty reduction. It may only be assumed that the wide spectrum of representation on the task force indicates a multi and trans-disciplinary team that would address the concerns of a wide cross-section of the people.

## **2.2. Legal Framework**

In Uganda today, there are a number of legal provisions pertaining to the administration and enforcement of intellectual property rights. These are contained in the various pieces of legislation that have been enacted since independence in 1962 and many of which were replicas of the law on IP as obtaining in England at the time. While a number of these laws have subsequently been amended and/or repealed, others remain intact and outmoded. The following is a sample of the laws pertaining to IP in Uganda today:

### **2.2.1. The Uganda National Council for Science and Technology Statute<sup>3</sup>**

This Statute creates the Uganda National Council for Science and Technology (UNCST) which it empowers with the function of protecting intellectual property rights. The Statute also provides for the operation of a National Patent Office by the UNCST.

### **2.2.2. The Patents Statute<sup>4</sup>**

The Statute provides for the grant, registration, and protection of patents and for other purposes incidental thereto. It also provides for the registration and protection of IP rights in patents and utility models.

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<sup>3</sup> Statute No.1 of 1990.

<sup>4</sup> Statute No. 10 of 1991. See also The Patents Act, Cap 82, Laws of Uganda.

At the moment, proposals are being floated to amend or even repeal the Patents Statute to bring it in line with Uganda's international commitments. There is a general feeling that this Statute should be repealed and replaced with the Industrial Property Bill (2001)<sup>5</sup>. This need arises from a multiplicity of developments in IP law on the international scene including a number of treaties and organisations to which Uganda is now a signatory.

### **2.2.3. The Copyright Act<sup>6</sup>**

This law makes provision for copyright of literary, musical and artistic works, cinematograph pictures, gramophone records and broadcasts and other purposes connected therewith.

### **2.2.4. The Trade Marks Act<sup>7</sup>**

This is an Act relating to the registration of Trade Marks. It provides for the appointment of a Registrar of TradeMarks (section 3) and the keeping of a register of trademarks (section 4).

### **2.2.5. The United Kingdom Designs (Protection) Act<sup>8</sup>**

The Act provides for the protection in Uganda of designs registered in the United Kingdom.

### **2.2.6. The Penal Code Act<sup>9</sup>**

In as far as IP rights are concerned, the Penal Code defines trademarks and makes it an offence for one to infringe on or forge a registered trademark.

## **2.3. The TRIPS Agreement: Implications for the IP Laws in Uganda**

As a result of the activities of the Uganda Law Reform Commission and the TRIPS Task Force, there are a number of Bills and draft Bills in the pipeline targeting provisions relating to IP rights administration and enforcement. These are intended to up-date the Ugandan law to bring it in line with the country's international obligations under the TRIPS agreement. The following is a sample of such pieces of legislation that are in the offing:

### **2.3.1. The Patents (Amendment) Bill, 2000.**

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<sup>5</sup> Interview with Ms Joan Apecu, Technical Assistant, Uganda Law Reform Commission, 9 November 2001.

<sup>6</sup> Cap 81, Laws of Uganda.

<sup>7</sup> Cap 83, Laws of Uganda.

<sup>8</sup> Cap 84, laws of Uganda.

<sup>9</sup> Cap 106, Laws of Uganda.

The object of this Bill is to amend the Patents Statute (No. 10 of 1991) to give effect in and by Uganda, to the provisions of the Patent Co-operation Treaty signed in Washington in 1970. Uganda is a party to this Treaty. If the changes are effected, they will introduce provisions for processing by the Patents Registry in Uganda of international applications in accordance with an international system under the Treaty whereby a single application made and filed in a country party to the Treaty, will have effect as an application in any other country party to the Treaty.

### 2.3.2. The Industrial Property Bill, 2001.

This Bill provides for the promotion of inventive and innovative activities to facilitate the acquisition of technology through the grant and regulation of patents, utility models, technovations and industrial designs.

The Bill, if enacted into law, would modernise an important part of Uganda's regime of IP law. It covers all industrial property (patents, industrial designs, utility models, and technovations) except trademarks.

## 3. Indicators of the IP System

Given the very short and limited period of time during which this study had to be carried out, it has not been possible to get all the indicators as indicated in the checklist of issues document. In addition the Registrar General's Office (Ministry of Justice), the main office that deals with the registration of patents, trade marks and other IP related aspects, operates manually – is yet to be computerised. It was not possible therefore, according to both Ms Bayiga and Mr Adia<sup>10</sup>, to obtain such statistics at such very short notice. Such statistics are recorded manually and kept in books/on files piled in the office. It would take a couple of days to access such data.

The scanty data that could be obtained from the Registrar General's Office revealed the following:

1. The most active IP-related register is one that registers **trademarks**. Only the 1999 records could be accessed and they reflect a registration of 805 trademarks for that year alone. Only one-third of these was local.
2. In the case of **patents**, according to the Registrar General's Office, the situation differs substantially. While not many applications are received annually, the number granted is even much lower.

Transactions in patents are also mainly dominated by applications from abroad. A few statistics in this regard were availed:

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<sup>10</sup> Ms Fiona Bayiga is a Senior State Attorney acting as the Registrar of Patents and Mr Francis Adia heads the Record/Registry. They were interviewed 13 November 2001.

- 1998:** 52 **applications** were received *from overseas*. But these went directly to the ARIPO office in Harare. They were sent to the Kampala Office (to be recorded) because it is “a designated office”
- Last 3 Years:** Only **one (1)** patent was granted on a local invention. The Head of Records said that it is common in Uganda to get **less than three** patent applications or even grants in any given year.
- 2001** **4 applications** have been submitted this year (to-date) to ARIPO in Harare “for novelty search”.

Details pertaining to the country of origin of applicants, field of technology, filing route, etc., could not be readily determined from the records at the time of the interview. The records office also confirmed that they have some backlog in the processing of the different types IPRs but that he could not avail the details from his un-computerised records at such short notice.

Regarding piracy and IPR infringement, it was disclosed by both the Senior State Attorney in the Registrar General’s Office and by the Chairman<sup>11</sup> of the Uganda Law Reform Commission that this is rampant in Uganda but that enforcement was mainly lacking because, under the present legislative set up, this is a civil matter. They cited the numerous incidents that have appeared in the print media in the recent past in this regard. The Registrar General’s Offices does not, however, have any records pertaining to such piracy and infringements and referred me to the Commercial Court for possible records of any prosecutions in this regard. Customs Offices could also have some statistics on the number of seizures of counterfeit goods in a given period of time but then the time frame for the study precluded a follow-up of this matter with customs officials.

Professor Kakooza also cited numerous incidents of music piracy that have appeared in the local media recently but that no legal action was taken. He attributed this to “the weak law”, “ignorance of the law”, and to the fact that there was “weak co-ordination” between the Registrar General’s Office and outside agencies. He further said that under Uganda law, infringement of a copyright is not a crime and that only a civil action can result from such infringement. The police or the state cannot interfere. He said that from his experience, he is “almost sure” that not more than ten civil cases have resulted from infringements in the last ten years. He noted, however, that there are some attempts in legal reform circles to make such infringements criminal so that the state can take the initiative to prosecute, in addition to the option of a civil action.

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<sup>11</sup> Professor Joseph Kakooza is the Chairperson of the Uganda Law Reform Commission (interviewed 14 November 2001).

#### **4. Analysis of Key National IP Institutions**

In Uganda, there are a number of institutions (both public and private – but mostly public) that are responsible either directly or indirectly for IP policy formulation, information dissemination, administration and enforcement. But the key institutions in this regard are:

- The Registrar General’s Office (Ministry of Justice); and
- Uganda National Council for Science and Technology (operating under the auspices of the Ministry of Finance, Planning and Economic Development).

##### **4.1. The Registrar General’s Office**

Section 3 of the Patents Statute creates the Office of the Registrar of Patents to supervise the performance of the duties and functions of a Registry of Patents. It also provides for the creation of other officers, including assistant / deputy registrars, as well as examiners.

Section 4 of the Patents Statute creates an office known as the Patents Registry, with all functions relating to the procedure for the grant of patents. This office is meant to register licence contracts, contracts assigning the right to a patent and to provide patent information services to the public, among other functions.

The Registrar of Patents is also empowered under the Statute to maintain a Register of Patents in which shall be recorded all the patents granted.<sup>12</sup> The Registrar may also issue administrative instructions relating to the procedure for the grant of patents<sup>13</sup>.

Other legal provisions empowering the Office of the Registrar General to handle IP matters are contained in the different laws/statutes pertaining to IPR.

As far as the staff component of the Registrar General’s Office is concerned, it has a strength of ten professional staff (professional lawyers) and about 10 administrative staff (records’ clerks, etc.).

##### **4.2. The Uganda National Council for Science and Technology**

The Uganda National Council for Science and Technology (UNCST or “the Council”) was established by Statute No.1 of 1990 as a body corporate, *inter alia* to advise Government on and co-ordinate the formulation of an explicit national policy on all fields of Science and Technology (S&T)<sup>14</sup>. The UNCST

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<sup>12</sup> See section 5 of the Patents Statute, 1991.

<sup>13</sup> Section 6, *ibid*.

<sup>14</sup> See Uganda National Council for Science and Technology Statute (No.1 of 1990), Section 3.

Statute also clearly stipulates that one of the functions of the Council “shall be...to protect intellectual property through appropriate patent laws and to operate a national patent office...”<sup>15</sup>.

An interview with the UNCST’s Executive Secretary (Dr Nyiira) revealed that in practice, the National Patent Office does not exist at the Council. He said that otherwise the Council is required to handle the technical requirements of applications for IPR-related applications and advise the Registrar General’s Office. The staff component of the Council consist of 20 senior staff (ranging from holders of Bachelors degrees to PhDs in various disciplines – but mostly in sciences) and support staff of 5. None of the Council’s professional staff, however, is specifically designated to handle IPR-related matters.

Both the Uganda National Council for Science and Technology and the Ministry of Justice (through the Office of the Registrar General) are the main institutions dealing with the administration and enforcement of IP rights in Uganda. In theory, both institutions are supposed to work together and co-ordinate their activities. According to Dr Nyiira<sup>16</sup>, each institution is responsible for a specific aspect of IP administration. The Ministry of Justice handles legal and procedural matters while the UNCST handles the technical aspects. According to Dr Nyiira, the Uganda Law reform Commission advised both institutions to harmonise their IP activities. In practice, however, there is no co-ordination between the two and each institution operates on its own<sup>17</sup>.

While the process of registering a trademark is a simple matter completed locally at the Registrar General’s Office, that of a patent is more complex. An application (on a standard form, complete with a sample) is first lodged at this office which then sends it to Harare. Overseas applicants usually forward their applications directly to ARIPO in Harare. ARIPO then advertises internationally to ascertain that the invention for which a patent is being sought is new. If no similar product is found, then the patent is granted. This is a long process and could take from 6 months up to a year, according to the Registrar General’s Office.

Both the Registrar General’s Office and the UNCST do not have specific training programmes pertaining to IPRs administration and enforcement. But they usually attend workshops and seminars where IPR issues are being discussed. Scanty information is available regarding the availability of courses provided in national or regional training centres and/or universities. Professor Kakoza however disclosed that Makerere University’s Faculty of Law offers a non-compulsory course on IP, but that even then this is at the masters level.

Other institutions that are concerned in one way or another with the administration and enforcement of IP include the following:

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<sup>15</sup> See UNCST Statute (ibid.), Section 3(e).

<sup>16</sup> Dr ZM Nyiira is the Executive Secretary of the UNCST. He revealed this in an interview on 12 November 2001.

<sup>17</sup> This position was also confirmed by the Acting Registrar General (Ministry of Justice), Ms Ketra Tukuratre, during an interview on 13 November 2001.

- Uganda Law Reform Commission (ULRC)
- Uganda National Bureau of Standards

Apart from ULRC, other institutions only play a very minimal role.

## **5. Financial Resources and Assistance to IP Institutions**

This study also attempted to investigate the financial resources available to key IP institutions in Uganda – both the annual income and the annual expenditure for the last three years, as well as the projected annual expenditure and income for the coming financial years. These figures, unfortunately, could not be readily accessed because of the short notice. They could not just be released without prior consultation with the authorities. The estimated costs of developing the IP system could not, too, be readily availed. What could be readily revealed were the financial constraints: virtually all the institutions that were part of this study said that they did not have the requisite funds to operate optimally.

### **5.1. Technical and Financial Assistance**

Virtually all the institutions contacted need both financial and technical assistance to enable them to execute their mandates efficiently and effectively. The ULRC did confirm that they had received some funding from the United States Agency for International Development (USAID) to enable it to effect its IP system to comply with TRIPS. USAID hired an expatriate consultant from the United States to work with the TRIPS Task Force and to advise it on matters pertaining to TRIPS. His travel, accommodation and subsistence were covered by USAID, in addition to his fee.

USAID also provided funds (US\$ 15,000) through the Private Sector Foundation (PSF) to facilitate the TRIPS task force and stakeholders' workshops. This amount catered for workshops, reports, and the preparation of draft bills. Government of Uganda also contributes financially through its normal allocation of funds to ULRC as a national institution to pay for salaries, among other things.

### **5.2. IP Institutions and International Linkages**

The Registrar General's Office works closely with WIPO and ARIPO. Generally, links exist with international institutions linked to the WTO. The revival of the East African Community (EAC), according to Professor Kakooza (ULRC) also means that sister institutions in east Africa will now have to co-operate more closely. Harmonisation of IP laws is expected to be effected between the EAC members.

## **6. Key Issues and Challenges for the National IP Administration and Institutional Infrastructure**

The country is in the midst of changes in the IP system. As a consequence, there are a number of issues and challenges that have to be faced in the process, as was revealed during interviews with various officials. These are discussed below.

### **6.1. Inadequate manpower**

The institutions that are involved in the teaching, administration and enforcement of IPRs are inadequately staffed and hence generally lack the institutional capacity to execute their mandates.

Makerere University's Faculty of Law was the only academic institution cited as having a course on IPRs. But they do not have enough personnel to teach and offer training adequately. That is why the course is optional.

The UNCST, which is statutorily required to run a national Patents Office does not do so because it does not have the requisite manpower. It does not have the capacity, for example, to investigate and verify inventions/innovations for which patents are sought.

The Registrar General's Office, too, is under-staffed. It has only lawyers, not technical people. This explains why, for example, cases of evaluations and verification of patents are always forwarded to ARIPO in Harare. The patents are only registered after being "okayed" by ARIPO in Harare.

### **6.2. Financial Constraints**

All the IP-related institutions cited above are financially constrained. The Law Reform Commission needs more funds to expedite the process of reviewing and up-dating IP-related legislation. The UNCST cannot employ experts to run the National Patents Office or to hire technical staff because of lack of funds. The Registrar General's Office is under-manned and not computerised because the requisite funds are lacking. One reason why they send applications for verification and subsequent registration of patents is because of lack of funds.

### **6.3. Lack of co-ordination between key partners in IP administration and enforcement.**

There is little co-ordination between the Registrar General's Office (Ministry of Justice), the Uganda National Council for Science and Technology and the Uganda Law Reform Commission. Yet these are the lead institutions in IP policy development, administration and enforcement. Other institutions like

the Commercial Court and the Customs Offices (Ministry of Internal Affairs) also operate in isolation.

#### **6.4. Inadequate information (the law generally)**

Laws are technical and very few people understand their rights and obligations under the law. Very few people, according to the Registrar General, understand them. The Registrar General's department is supposed to be semi-autonomous but this has not happened. It cannot adequately inform the public about pertinent matters.

Minimal attempt has been made to sensitise the general public about IPRs and related legislation. Both the Registrar General's Office and the ULRC are aware that most concerned parties are just ignorant of the legal provisions (or lack thereof) as far as the IP regime in Uganda is concerned. Both offices cite lack of financial resources as their biggest stumbling block in this regard.

#### **6.5. Weak and outmoded laws**

Many of the respondents were of the opinion that the law as existing today is weak and outmoded in many respects. For example, there is no legal requirement for one to register a copyright – it is not a compulsory requirement. There is therefore little enthusiasm on the part of enforcement agencies to act in case of any infringement. Professor Kakooza (ULRC) could only cite one case in which McMillan Publishers (England) once sued a local publisher for publishing one of their books without a licence. Macmillan won the case.

Another weakness that has already been pointed out is that infringement of a copyright is not a crime under current legislation. Only a civil action can be filed in order to obtain damages as in the Macmillan case above. One suggested solution here is to make infringement of a copyright a criminal offence.

As far as trade secrets are concerned, there is no law in Uganda to cover this. The same applies to the so-called neighbouring rights (not recognised in current Ugandan legislation). One of the suggestions that have been made to the TRIPS Task Force (under the auspices of the ULRC) is to bridge all these gaps in the new proposed legislation. Copyrights should, for example, be registered as a legal requirement. This way, it will be more enforceable. This study has revealed that serious activities are currently going on at the Law Reform Commission to amend the requisite legislation and make it compliant with TRIPS.

#### **6.6. Slow implementation**

There is a general consensus that the laws pertaining to IPRs should be reviewed and up-dated. But implementing this has been slow. One reason is that there has been lack of serious sensitisation of the key stakeholders in this regard. Both Cabinet and Parliament do not appear to be in a hurry to adopt and pass these laws expeditiously. Their priorities appear to be elsewhere. This has resulted in weak implementation of the law reform process.

## **7. CONCLUSION**

This study set out to identify the institutions responsible for IP policy formulation, information dissemination, administration and enforcement in Uganda. It sought to investigate whether these institutions had the institutional capacity necessary to carry out their mandates and to identify key issues and challenges for national IP administration and institutional infrastructure in Uganda. Finally the study attempted to identify existing IP-related policies and legislation.

The findings of this study do indicate that three key institutions are actively involved in IP-related activities. These are the Registrar General's Office (Ministry of Justice), Uganda National Council for Science and Technology, and the Uganda Law Reform Commission. The findings have further revealed that there is very little if any co-ordination between these institutions. They are under-staffed and poorly funded.

Uganda has no explicit policy on IP. The existing policy may only be construed from the various pieces of legislation. There are laws pertaining to IP but most of these are outmoded and need to be reviewed and up-dated. The Uganda Law Reform Commission and its TRIPS Task Force are already actively involved in this regard, with some financial support from USAID.

The IP system in Uganda today needs a total revamp. But a lot of problems are hampering this process. These include lack of the requisite financial and human resources and appropriate institutional and infrastructural capacity. Perhaps with a little donor/overseas support, these problems can be overcome. The re-constitution of the East African Community is also a welcome development in this regard. Regional re-integration is likely to lead to more institutional co-operation in east Africa and this has got many potential spin-offs.

Finally, the future for IP administration and enforcement is not that bleak. What is on the ground today may be insufficient, but there are definitely moves to rectify the situation and bring the IP regime in Uganda at par with internationally acceptable standards and in conformity with the country's commitments under the WTO and other conventions.

## **ADDITIONAL INFORMATION**

### **1. COMPETITION POLICY ISSUES**

There is no operational law in Uganda today on anti-monopoly practices. Under the Commercial Law Project<sup>18</sup>, however, the Government of Uganda has committed itself to revising the domestic commercial laws in order to support private sector development and encourage private investment. In this regard, the Uganda Law Reform Commission (ULRC) accessed funding from the Ministry of Justice and Constitutional Affairs in January 2001, to complete the reform of commercial laws. A total of not less than 16 commercial and trade laws is being reviewed under the project.

The reform of the commercial laws is geared towards having modern laws supporting a competitive economy in a coherent and accessible form providing maximum freedom for participants. One such proposed law will be the Competition Policy and Law. Its basic objective is to restrain firms with substantial market power from exercising that power in a manner that controls prices, limits production and shuts out competitors. It is therefore meant to curb unfair business practices and to regulate those practices that will be identified as being anti-competitive and to prevent unfair competition that causes economic injury to business through deceptive and wrongful business practices.

In conclusion, this study has found that Uganda does not, at the moment, have a Competition Policy. The ULRC is now in the process of drafting a Competition Law. The Competition Act that will eventually materialise will establish a single regulatory agency to combine the functions of a Trade Practices Commission (such as those of Kenya and Tanzania)<sup>19</sup> and Dumping. It is further envisaged that Uganda shall adopt a Competition Policy Act to relate to State legislation (anti-dumping and licensing) but which should not cover consumer laws, which would be too wide a function.

### **2. COMPULSORY LICENCES ISSUE**

Interviews with the ULRC and the Registrar General's Offices have revealed that at present cases of compulsory licensing have neither been reported nor documented. But the ULRC has made it a point to include and stress the issue of compulsory licensing in the up-coming IP-related draft laws, especially after the deliberations at the recent WTO conference in Doha, Qatar.

The above notwithstanding, the current Patents Statute (1991) clearly provides for compulsory licensing. The Minister of Justice may, if he deems it to be "in the vital public interest to do so", direct that a patent invention be exploited by

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<sup>18</sup> See the Workshop Report on *Fair Trade Laws Cluster (Reform of the Fair Trade Laws)*, Commercial Law Project, Uganda Law Reform Commission, August 2001, Kampala.

<sup>19</sup> See pp. 40-42 of the above report.

a Government agent or any other person so designated by the Minister<sup>20</sup>. In addition, at any time after four years from the filing date of an application or three years from the grant of a patent, whichever period last expires, any person may, in proceedings instituted by him against the owner of the patent or in proceedings instituted against him by the owner, request the court for the grant of a compulsory licence on certain specified grounds<sup>21</sup>. But, as noted in the last paragraph above, both the Registrar General Office (the Patents Office) and the ULRC know of no such cases of compulsory licensing as of today.

### 3. IP REGISTRATIONS AND IP OFFICES

It has not been possible to get detailed information on this section to augment on what was obtained in November 2001. The IP Offices are supposed to be within the Registrar's Department at the Ministry of Justice. However several sections of the Ministry are, since December 2001, moving from old to new premises that are scattered around Kampala. To make matters worse, the IP Office is not computerised. All data is stored in files (the old filing system) and is not easy to access especially now that they Departments/Offices are shifting to new premises. It is not possible at the moment, therefore, to get more data on the IP registrations, office costs and revenues. I was referred to the Under Secretary, Ministry of Justice, but he was not available and no other official was willing to assist in this regard.

The only data that could at the moment be accessed from the Registrar General's Office was that pertaining to the fees structure. Details on how much has been collected were not readily available, again because of the manual filing system. The fee structure, however, is as follows:

#### 3.1. Patents

The following fee structure applies to the administration of patents<sup>22</sup>:

3.1.1. Search of Register	US\$3.5
3.1.2. Request for copies or extracts from Register	US\$0.3 (per page)
3.1.3. Application fee for Grant of a Patent)	US\$105
3.1.4. Correction of Application for Grant of a Patent	US\$7
3.1.5. Grant and publication fee	US\$174
3.1.6. Application for extension of a term of a Patent	US\$35
3.1.7. Annual maintenance fee	US\$28
3.1.8. Surcharge for late payment of annual maintenance fee for Patent	20% of fee
3.1.9. Application to register an assignment or any other change in Ownership of an application or a patent	US\$35
3.1.10. Petition for Registration of a Licence pertaining to a patent	US\$35
3.1.11. Application for conversion on an application for a patent Into an application for a utility certificate or vice versa	US\$7

<sup>20</sup> Section 30 of the Patents Statute, 1991.

<sup>21</sup> See Section 31 of the Patents Statute, 1991.

<sup>22</sup> See Second Schedule, The Patents Regulations, 1993.

### 3.2. Trade Marks

Fees pertaining to Trade Marks are set out, *in detail*, in the relevant Statutory Instrument<sup>23</sup>. The amount varies according to the nature of the transaction, and on whether the applicant is a national or a foreigner. Foreigners pay a specified amount in US Dollars whereas local applicants pay a specified amount in Uganda Shillings, for example:

<b>Matter / Proceeding</b>	<b>Foreign Applicants</b>	<b>National Applicants</b>
Application to register a trade mark	US\$150	UShs 2000 (US\$1.2)
Application to register a registered user of a registered trade mark in respect of within a specification	US\$250	UShs 4000 (US\$2.3)

These are samples from an otherwise very detailed schedule. It consistently shows that foreign applicants, who are apparently the majority, do pay far much more than the locals.

## 4. IP LAWYERS AND PATENT AGENTS

In Uganda virtually all lawyers (advocates) are “general practitioners”, handling cases as and when they come. There are a few lawyers that describe themselves as “criminal”, or “commercial” (etc) lawyers, but generally there are no specialists entrenched only in a specific area of legal practice. In most cases the “speciality” of an advocate will be dictated by the availability of cases in a specific area. There are therefore no specialised lawyers to talk of in Uganda, especially when it comes to patents.

The above notwithstanding, interviews with the ULRC, Registrar General’s Office and with two law firms<sup>24</sup> (that indicated on their letter-heads that they deal with patents) did indicate that about ten (10) law firms in Kampala (law firms outside Kampala are in most cases mere extensions of those in the capital) do handle cases pertaining to patents (and other IP matters) as and when they arise. But they do not specialise. Such law firms mainly act as patent agents and mostly process the registration of trademarks. IP is certainly not a pronounced area of practice in Uganda. It is not, as Prof Kakooza put it, “a bread-winning branch of legal practice”.

Lack of specialisation in IP is understandable given the fact that Makerere University (the main law school in Uganda) does not really provide for IP on its syllabus as a compulsory subject. Most law students first come across IP

<sup>23</sup> The Trade Marks (Amendment) Rules, 1988.

<sup>24</sup> Katera and Company Advocates, Stanbic Bank Building, Kampala Road; and Angeret & Company Advocates (Patent & Trademark Attorneys), Agip House, Kampala Road.

during the post-graduate Bar Course at the Law Development Centre in Kampala (where it is offered as part of the wider commercial law component of the bar course), or when they go for Masters degree studies overseas.

## **5. FOREIGN ASSISTANCE**

Since 1995, Uganda's attempt to reform commercial laws in general and IP legislation in particular has received foreign assistance mainly from only two sources: the Austrian Government; and the United States Agency for International Development (USAID).

### **5.1. Austrian Assistance**

Since 1995, the Austrian Government, through the Austrian Development Co-operation (Austrian Development Co-operation East Africa), has provided much needed support to the reform of Uganda's commercial law regime in order to bring it in conformity with the country's international obligations.

The Austrian support consisted of:

1. Paying for the Office and operations (including remuneration) of the Chairperson to the Uganda Law reform Commission (ULRC) and his assistant;
2. Hiring and paying for a firm of American consultants (Reid and Priest) to evaluate all relevant pieces of commercial legislation; and
3. Hiring and paying for an extra foreign consultant, working together with a local consultant, again to review Uganda's commercial law regime.

These consultants did some work and came up with reports and recommendations, having reviewed 44 pieces of legislation. The Uganda Law Reform Commission was not, however, happy with the findings and recommendations. This was mainly because not enough consultations were made with key stakeholders and the reviewers do not appear to have taken Uganda's WTO obligations into account.

Interviews with key personnel at the Uganda Law Reform Commission failed to reveal the monetary value the Austrian support.<sup>25</sup>, but revealed that Austria will continue to assist the Commission through the donors' basket that is discussed below. The Austrian Government will also be contributing (funds) to the East African Community (EAC) in the specific area of law reform in East Africa.

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<sup>25</sup> The following officials were interviewed: Prof Joseph Kakooza, Chairperson, Uganda Law Reform Commission; and Ms Jean Kyazze, Principal Legal Officer (ULRC).

## 5.2. USAID Support

The amount of support the ULRC has so far received was given in the first IP Study Report. The information appearing here is therefore complimentary, having been obtained in subsequent interviews.

USAID did provide funds to the ULRC in its project to reform IP laws as a result of Uganda's obligations under the TRIPS Agreement. The process started in the year 2000 and is still continuing. The following were funded by USAID:

1. Hiring consultants from the USA (Nathan and Associates) to prepare background papers and come up with draft Bills of the relevant/reviewed IP laws.
2. Assisting and guiding the ULRC and the TRIPS Task Force in their work to reform IP laws. Two consultants have so far been involved, but, according to ULRC, they have produced little. Subsequently, ULRC staff have had to prepare their own Bills, without foreign assistance. The Bills so far finalised are:
  1. The IP Office Bill;
  2. The Trade Marks Bill;
  3. The Traditional Medicine Bill;
  4. The Industrial Properties Bill; and
  5. The Copyrights Bill.

In November 2001, USAID seconded a second consultant to the TRIPS Task Force to assist them with the drafting of the Bills. This one is still working with ULRC and has so far managed to produce the following draft Bills:

1. The Trade Secrets Bill;
  2. The Geographic Indications Bill;
  3. The Plant Varieties Protection Bill; and
  4. The Folklore Bill.
3. Laptop: USAID also supplied a laptop computer to the ULRC to enable the commission to access the internet and to ease communication with the consultants.

### **NB:**

1. In all these activities relating to the review of IP-related laws, the ULRC itself has contributed by taking care of / funding the TRIPS Task Force meetings and workshops, especially paying for sitting allowances of the members and other related expenses.
2. USAID has not released the funds directly to the ULRC, but has itself directly paid the consultants and their local technical assistants. The

funding has catered for the consultancy fees as well as air travel, subsistence and hotel accommodation.

3. All ULRC / USAID meeting / deliberations and support from the latter have been conducted through the auspices of the Private Sector Foundation (under the Private Sector Trade Policy Capacity Building Project), who acted as the middleman between the donor and ULRC.
4. Today, ULRC is still negotiating with USAID through the Private Sector Foundation for more funding as the process to review and update IP-related legislation continues. The Commission, for example, still needs funds to enable it to publish key relevant reports and the new Bills.

### **5.3. Other Support**

ULRC has also received some assistance from other sources other than those mentioned above. One such source has been the donors' "basket", a pool of resources / funds from a number of donors from the European Union. The "basket" was set up by the various potential donors in order to avoid negotiating individually with countries. According to Prof Joseph Kakooza<sup>26</sup>, this basket started in 2000 and has contributed/supported the Uganda Government in the Justice, Law and Order sector. IP legislation falls under this sector. However, disbursements from the "basket" are vetted first by the Ministry of Justice, who make the final decision as to where the monies should go in terms of their needs and priorities. This means that such monies do not necessarily reach the law reform efforts, though the donors have reportedly expressed a desire to contribute to law reform in Uganda.

The Funding for the Commercial Law Project mentioned in Section 1 above (though from the Ministry of Justice and Constitutional Affairs), was actually from the "basket" pool.

ULRC has also been promised support from Support for Private Enterprise Expansion and Development (SPEED) from the United States of America (USA). SPEED has expressed a desire to fund ULRC activities pertaining to the reform of IP laws. No tangible support / aid has so far been received from this end.

### **5.4. The Role of WIPO / ARIPO**

There has, according to the ULRC, been no technical assistance from these organisations in the re-drafting of IP legislation. The only support that is worth mentioning is that WIPO has organised some seminars in Uganda in which they drummed up support / agitated for IP law reform and urged for the sensitisation of the public to the need to reform such laws. Such seminars / workshops (at which relevant papers were delivered) were organised by WIPO and the Uganda Government. There has however been no actual assistance in the re-drafting of IP laws.

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<sup>26</sup> Chairperson, ULRC.

The role of ARIPO has been even more minimal, according to ULRC. They once organised a workshop outside Uganda in which the reform of IP laws was discussed.

### **5.5. Specific Request to Donors**

Uganda has not, according to ULRC, made any specific requests to the donors in its attempt to reform IP laws. Since USAID agreed to fund the whole process (this was before the “basket” idea), relevant officials saw no need to request other donors for assistance. They will only do so, according to Prof Kakooza, when USAID declares that it is no longer in a position to assist. In any case, the “basket” policy precludes any attempt to apply for funds elsewhere if the project is covered by the basket. By implication, asking for funding from elsewhere when USAID is already providing the funds would appear to be a case of “double funding”. At the moment, therefore, ULRC “is confident” that USAID will offer all the necessary funding.

It should be mentioned here that there appears to be a conflict of interest between the ULRC and the Registrar General’s Office (the IP Office). It was for example revealed during an interview with a Senior State Attorney<sup>27</sup> in the Registrar General’s Office that funds actually do exist at WIPO, but that before they could apply for such funding, ULRC rushed to the Americans and secured funding therefrom. The Registrar General’s Office seems to be of the view that the Americans are rushing in to fund the review of the IP laws in order to secure Uganda’s backing at the WTO and in order to have local laws that reflect the American position. They cite the IPR Bills as reflecting the American position as opposed to the general 3<sup>rd</sup> World position. Otherwise, they allege, funds are available at WIPO to help developing countries become TRIPS-compliant. But they cannot apply for these funds now as this would be “duplication” or “double funding” since USAID is already involved.

## **6. REGIONAL COOPERATION**

It was not possible (due to the short period of time in which this study had to be carried out and the short notice given) to get the official Uganda Government’s position or views on ARIPO or about deeper regional co-operation in the EAC. What appears here are views gathered from ULRC (a Government body) and the Registrar General’s Office (under the Ministry of Justice).

Uganda’s links with ARIPO remain at the level of the registration of patents. The Registrar General’s Office in Uganda acts as a “clearing house” for ARIPO. ARIPO should however assist technically in the establishment of an IPR Office in Kampala. Otherwise there is little assistance being received

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<sup>27</sup> Ms Fiona Bayiga, IP Office, Registrar General’s Department, Ministry of Justice, Kampala.

therefrom at the moment and the process of sending patents to the ARIPO Office in Harare takes too long.

There is no direct regional co-operation at the moment in the area of law reform between the partner states of the EAC. However the three law reform commissions in Uganda, Kenya and Tanzania, according to Prof Kakooza, have set up a sub-committee “on approximation and harmonisation of laws”. Part of the mandate of this committee is to periodically sit and try to establish uniformity in the operation of domestic laws.