



The Strategic Use of Intellectual Property for Prosperity and Development

Compendium of the Proceedings
of the High-Level Forum on Intellectual
Property for the Least Developed Countries

July 23 and 24, 2009
Geneva, Switzerland



- WIPO Director General Francis Gurry and International Publishers Association Secretary General Jens Bammel signing the aRD_i Partners' Statement of Intent on the occasion of the High-Level Forum.

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CONTENTS

Preface	11
Opening Addresses	12
Dr. Francis Gurry Director General World Intellectual Property Organization His Excellency Mr. Dilip Barua Minister for Industries, Government of the People's Republic of Bangladesh Chairman of the Coordination Council of Least Developed Countries	
Special Plenary	15
His Excellency, Mr. Juneydi Saddo Minister for Science and Technology, Ethiopia	
Her Excellency Mrs. Mpeo Mahase-Moiloa Minister for Law and Constitutional Affairs and for Justice and Human Rights, Lesotho	
His Excellency Mr. Richard Fienena Minister for Economy and Industry, Madagascar	
His Excellency Mr. Ahmadou Abdoulaye Diallo Minister for Industry, Investments and Trade, Mali	
His Excellency Mr. Mohamed Rasheed Minister for Economic Development, Maldives	
His Excellency Mr. Dan Bahadu Chaudhury State Minister for Industries, Nepal	
His Excellency Mr. Fredrick Ruhindi Deputy Attorney General and Minister of State for Justice and Constitutional Affairs, Uganda	
Her Excellency Mrs. Mary Nagu Minister for Industry, Trade and Marketing, United Republic of Tanzania	
His Excellency Mr. Roger Dovonou Minister for Industry, Benin	

Inauguration of the Access to Research for Development and Innovation Service (aRDⁱ)

28

Mr. Yo Takagi
Executive Director, Global Intellectual Property
Infrastructure Department
World Intellectual Property Organization

Mr. Andrew Czajkowski
Head, Innovation and Technology Support Section
World Intellectual Property Organization

Dr. Francis Gurry
Director General
World Intellectual Property Organization

His Excellency Mr. Dilip Barua
Minister for Industries, Government of the People's Republic of Bangladesh
Chairman of the Coordination Council of Least Developed Countries

Mr. Sergie A. Ordzhonikidze
United Nations Under-Secretary-General
Director-General of the United Nations Office at Geneva

Mr. Jens Bammel
Secretary General, International Publishers Association

Dr. Francis Gurry
Director General
World Intellectual Property Organization

Theme One – Integrating Intellectual Property into National Development Policy and Strategies of the LDCs

36

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization

Her Excellency Mrs. Mpeo Mahase-Moiloa
Minister for Law and Constitutional Affairs and for
Justice and Human Rights, Lesotho

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute

Topic (a) – The Role of IP in Reducing Poverty, Fostering Development and Wealth Creation

Professor Keith E. Maskus
Associate Dean for Social Sciences
University of Colorado

Topic (b) – IP and Public Policy Issues

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute

Discussion

Her Excellency Mrs. Mpeo Mahase-Moiloa

Delegation of Uganda

Delegation of Lesotho

Delegation of Senegal

Delegation of Niger

Professor Keith E. Maskus

Professor James Otieno-Odek

Mr. Narendra Sabharwal

Theme Two – The Strategic Importance of Transfer of Technology and Technological Capacity-Building for the Development of LDCs

50

His Excellency, Minister Juneydi Saddo
Minister for Science and Technology, Ethiopia

Professor Keith E. Maskus
Associate Dean for Social Sciences
University of Colorado

Topic (a) – Linking Universities and Research Centers to Public and Private Sector for the Management, Promotion and Commercialization of IP Assets; Spin-offs and Start-ups

Mr. Yuke Chin Lee
Intellectual Property Consultant
Malaysian Invention and Design Society
Kuala Lumpur

Topic (b) – The Importance of Patent Documents for the Extraction of Technological Information for Technological Development: The Malaysian Experience

Mr. Yuke Chin Lee
Intellectual Property Consultant
Malaysian Invention and Design Society
Kuala Lumpur

Discussion

His Excellency, Mr. Juneydi Saddo

Delegation of Bangladesh

Delegation of Cambodia

Delegation of Guinea

Delegation of Senegal

Delegation of Uganda

His Excellency, Minister Juneydi Saddo

Professor Keith E. Maskus

Mr. Yuke Chin Lee

Delegation of Nepal

Delegation of Mali

Mr. Narendra Sabharwal

His Excellency, Mr. Juneydi Saddo

Theme Three – Sharing of Experience with some LDCs on the Wealth Creation Effect of Trademarks, Service Marks, Geographical Indications and Industrial Designs

64

Her Excellency, Mrs. Mary Nagu
Minister for Industry, Trade and Marketing
United Republic of Tanzania

Mr. Getachew Mengistie
Intellectual Property Law Consultant and Attorney, former Director General
of the Ethiopian Intellectual Property Office

Topic (b) – Using Industrial Designs for Value Addition in Products and Services of LDCs – The Experience of Ethiopia

Mr. Getachew Mengistie
Intellectual Property Law Consultant and Attorney, former Director General of the Ethiopian Intellectual Property Office

Her Excellency, Mrs. Mary Nagu

Topic (a) – Geographical Indications and its Application in LDCs: The Experience of the African Intellectual Property Organization (OAPI)

Mr. Paulin Edou Edou
Director General, African Intellectual Property Organization

Discussion

Her Excellency, Mrs. Mary Nagu

Delegation of Cambodia

Delegation of the United Republic of Tanzania

Delegation of Guinea

Delegation of Samoa

Delegation of Sudan

Delegation of Rwanda

Delegation of Senegal

Delegation of Madagascar

Her Excellency, Mrs. Mary Nagu

Mr. Paulin Edou Edou

Mr. Getachew Mengistie

Her Excellency, Mrs. Mary Nagu

Mr. Narendra Sabharwal

Her Excellency, Mrs. Mary Nagu

Theme Four – Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth and Development of LDCs

74

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization

His Excellency Mr. Richard Fienena
Minister of Economy and Industry, Madagascar

Mr. Daniel J. Gervais
Professor of Law, Director, Technology and Entertainment Law Program
Vanderbilt University Law School, Nashville

Topic (a) – Copyright and Related Rights: Striking the Balance Between Protection and the Public Interest

Mr. David Uwemedimo
Director of Legal Affairs
International Confederation of Societies of Authors and Composers, Paris

Topic (b) – Copyright Collective Management Societies and New Technologies

Mr. Daniel J. Gervais
Professor of Law, Director, Technology and Entertainment Law Program
Vanderbilt University Law School

Discussion

His Excellency Mr. Richard Fienena

Delegation of Senegal

Delegation of Cambodia

Delegation of Burundi

Delegation of the United Republic of Tanzania

Delegation of Sudan

Delegation of Ethiopia

Delegation of Samoa

Delegation of Lesotho

Mr. Daniel J. Gervais

Mr. David Uwemedimo

His Excellency Mr. Richard Fienena

Mr. Narendra Sabharwal

Theme Five – Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions: Preserving Traditional and Cultural Assets and Creating Wealth

91

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization

His Excellency Mr. Roger Dovonou
Minister for Industry, Benin

Mr. Wend Wendland
Acting Director and Head, Traditional Creativity, Cultural Expressions and Cultural Heritage Section
World Intellectual Property Organization

Topic (a) – Exploitation of Traditional Knowledge and Folklore and its Contribution to Sustainable Development in LDCs: From Farm to Pharma, the Experience of South Africa from Research to Commercialization

Mr. Motlalepula Gilbert Matsabisa
Director, Indigenous Knowledge Systems (Health) Lead Programme (IKS)
South African Medical Research Council

Topic (b) – Protecting Traditional Knowledge and Folklore in LDCs

Mr. Gift Huggins Sibanda
Director General, African Regional Intellectual Property Organization

Discussion

Delegation of Ethiopia

Delegation of Mali

Delegation of Nepal

Delegation of Burkina Faso

Mr. Wend Wendland

Mr. Motlalepula Gilbert Matsabisa

Mr. Gift Huggins Sibanda

Theme Six – Regional Cooperation in IP: Promoting Synergies and Building Partnerships

104

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State for Justice
and Constitutional Affairs, Uganda

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute

His Excellency Mr. Fredrick Ruhindi

Topic (b) – The Role of OAPI in IP Institution Building for LDCs

Mr. Paulin Edou Edou
Director General, African Intellectual Property Organization

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State for
Justice and Constitutional Affairs, Uganda

Topic (a) – The Role of the African Regional Intellectual Property Organization (ARIPO) in IP Institution-Building for LDCs

Mr. Gift Huggins Sibanda
Director General, African Regional Intellectual Property Organization

Discussion

Delegation of Rwanda

His Excellency Mr. Fredrick Ruhindi

Delegation of Rwanda

Delegation of Ethiopia

Delegation of Mali

Mr. Gift Huggins Sibanda

Mr. Paulin Edou Edou

Mr. Gift Huggins Sibanda

Delegation of Sudan

Professor James Otieno-Odek

His Excellency Mr. Fredrick Ruhindi

Conclusions and Closing Ceremony

117

His Excellency Mr. Dilip Barua

Delegation of Bangladesh

His Excellency Mr. Fredrick Ruhindi

Delegation of Burundi

His Excellency Mr. Dilip Barua

Delegation of Nepal

His Excellency Mr. Dilip Barua

Delegation of Mali

His Excellency Mr. Dilip Barua

His Excellency Mr. Fredrick Ruhindi

His Excellency Mr. Dilip Barua

Annex 1: Program

Annex 2: List of Participants

Annex 3: Ministerial Declaration on Intellectual Property for the Least Developed Countries

PREFACE

The WIPO High-Level Forum for Least Developed Countries (LDCs), held in Geneva on July 23 and 24, 2009, provided an opportunity for ministers, senior policymakers and high level officials from LDCs to discuss, in-depth, the strategic use of intellectual property for prosperity and development in their countries.

Participants were able to reflect on the formulation of national IP policies and how to implement them; to discuss with international and national experts the technical aspects of using IP for wealth creation in LDCs; and to examine successful country experiences.

This publication contains the policy and technical papers and the presentations made concerning valuable country experiences as well as the ministerial policy statements delivered at the special plenary session of the Forum.

During their statements, ministers outlined the state of IP institutions at the national level and underscored what has been accomplished so far, as well as what remains to be done. They emphasized the importance they attach to the assistance received from WIPO in both policy formulation and the use of IP for development, including its role in poverty reduction and in the transfer of technology.

Presentations of national experiences in the successful use of IP for economic growth and development in LDCs, included that of Ethiopia, in using trademarks to promote its major export commodity, coffee; of Malaysia, in using patent information for national technological capacity-building; and of South Africa, in using traditional knowledge for the generation of employment and wealth creation.

The Forum also hosted the launch of the Access to Research for Development and Innovation (aRDi) project, a new public-private partnership involving WIPO and leading science and technology publishing companies, as well as the International Publishers Association. The aRDi program enables LDCs to access selected online scientific and technical information free of charge.

Participants in the Forum recognized that a wide range of institutions – those concerned with markets, education, information, research, administration and legislation, as well as non governmental organizations, the judiciary, the media and civil society – can contribute to the process of IP institution building in LDCs, through efforts to enhance and sustain awareness of IP issues.

The Geneva Ministerial Declaration on Intellectual Property for the Least Developed Countries, adopted at the close of the Forum, is also included in this publication. The Declaration stresses the importance both of IP as a tool for development and of WIPO as a forum for partnership and cooperation in strengthening IP institutions in LDCs. It urges WIPO to intensify its capacity-building assistance for LDCs and to support LDCs in improving the competitiveness of their companies through regular access to new technologies. It also appeals to development partners to make more funds available for LDC-specific projects. It is hoped that this publication will serve as important reading material for all those interested in the development of IP institutions and systems in LDCs.



Francis Gurry
Director General

OPENING ADDRESSES

Dr. Francis Gurry

Director General

World Intellectual Property Organization (WIPO)

It is my pleasure to welcome you here this morning. It is a very great honor for me to see 10 Ministers here from the Least Developed Countries (LDCs), and so many other guests from the LDCs for this High Level Forum on Intellectual Property (IP) for the LDCs and the Strategic Use of Intellectual Property for Prosperity and Development.

We are delighted that you have taken the time to come and join us here at WIPO. This is the first occasion that I have had to speak with Ministers from LDCs since I started my term of office as the Director General of WIPO in October of last year. I would like to say a few words if I may, about the importance that I personally attach and that the whole of the WIPO administration attaches to the LDCs. I emphasized when I started that it was necessary for IP to broaden its horizons and for the international IP system to focus on some of the fundamental challenges that the world is facing at this moment. Foremost, amongst those of course, is the challenge presented by the knowledge gap and the digital divide. A key element of our mission is to determine how we can use IP to contribute to the reduction of the knowledge gap and the digital divide. Of course, these are very grand words and we hear them repeated so frequently, but what we are trying to do at WIPO is to take a number of concrete steps that can contribute to this objective of reducing the knowledge gap. During my campaign for election to the office of Director General, I mentioned the importance of access to scientific and technological information. I am very pleased that, at the end of this morning, we will be unveiling a new product or a new service of this Organization, which we call

“aRDⁱ”, or Access to Research for Development and Innovation. It is a service that we think can be of great value to, in particular, research institutions, patent offices, academics, business and professionals in LDCs and indeed in developing countries. Broadly speaking, it provides free access to a series of scientific and technical journals of great importance and equivalent in value to 400,000 US dollars of annual subscriptions in the course of one year. Of course, for an individual researcher, a scientific person, a university, a patent office in an LDC, such a sum is completely beyond the realms of possibility, so we are delighted that this will be a feature of our program in the course of today’s session.

This particular element, the aRDⁱ program or the Access to Research for Development and Innovation, is more generally part of a new strategic goal of this Organization that was adopted by the Member States in the Program and Budget for the current year, 2009. It features proposals for the Program and Budget for 2010 and 2011, concerning a global infrastructure and enhancement of participation, in particular of developing countries and LDCs in global infrastructure. The program contains a number of different elements, most notably databases of scientific and technological information to put at the disposal of research institutions, patent offices and universities. We are working on this and you will see in the course of this year further developments in respect of what we call our PatentScope search service which gives access to over 1.6 million patent documents, in fully searchable form, which constitutes the complete library of international patent applications filed under the Patent Cooperation Treaty (PCT). In conjunction with this, we are digitizing the patent collections of a number of different countries. In the month of September, we will be unveiling the collections of about eight such countries, which include the collections of the African Regional Intellectual Property Organization (ARIPO), with whom we are very pleased to have had very close cooperation. This will be closely followed we hope

by its counterpart, the collections of the Organisation Africaine de la propriété intellectuelle (OAPI), in the course of the year.

Of course, this base of disembodied information is one thing, but primary importance is embodied in knowledge or human capital. Another very important part of our program is to concentrate on strengthening human capital in the LDCs in particular. As you are aware, the WIPO Academy plays a key role in this respect. The WIPO Academy has as its mission to provide distance learning programs, other training programs and educational opportunities for developing countries and LDCs. The Academy will encourage more active participation of IP academies and training institutions from developing countries and LDCs in our network that we are building globally.

I also place a great deal of emphasis on the strengthening of our LDCs Division in WIPO. In this respect, I am very happy to say that in October of last year we appointed a Director for this Division, Mr. Kifle Shenkoru, whom I wish to thank most warmly for his work and organization in bringing together this Forum, and we have also strengthened the staff of that Division.

Later this year, we will be organizing another major conference, in December of this year, on Mobilizing Resources for Development. This event forms part of our overall development agenda, which is an extremely important feature of the institution that was endorsed by the Member States a year ago, and which we are trying to make operational at the moment. The December conference is aimed at helping us see how we can mobilize resources in the most effective manner, resources from around the world and extra budgetary resources of WIPO, for the purpose of meeting the contribution of IP, in particular to the Millennium Development Goals (MDGs).

We are also placing a great deal of emphasis on the importance of national IP and/or innovation strategies. We are encouraging countries to adopt such strategies where they have not yet done so. Our conception is that such a strategy should fit into the national development plan for the national economic strategy. It should seek to work in unison with that national development plan and try to identify the areas in which IP can contribute to those industrial and agricultural sectors that may be identified in the national development plan or in the national development economic strategy.

Similarly, we are very much aware of the importance of the international architecture for facilitating the participation of LDCs in both this Organization and in the world of IP. In this respect, we are very conscious of the need to establish an international framework for the protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), in which the LDCs are extremely of course rich. I am very disappointed that we have had two meetings in this area this year that have both ended without a result. We very much hope that in the future, we will be able to move this particular area of the program of WIPO so that the overall international architecture reflects fully what we understand by the knowledge economy. The knowledge economy is not confined of course, simply to one part of knowledge but encompasses global knowledge including, in particular, TCEs and TK.

Let me again thank you so much for your presence here this morning and extend to you once again a very warm welcome.

His Excellency Mr. Dilip Barua
Minister for Industries, Government of the
People's Republic of Bangladesh
Chairman of the Coordination Council of Least
Developed Countries (LDCs)

It is an immense pleasure to see you all at this High level Forum on IP for LDCs. On behalf of the LDCs, I wish to extend my heartfelt thanks to the Director General, Dr. Francis Gurry, for organizing this important Forum. We are proud of having a personality like you as our Director General. We have full confidence that under your leadership, WIPO will strengthen its IP-related activities in support of the national development of LDCs. We also appreciate the proactive role played by the LDCs Division in drawing up a comprehensive program.

The global economy and trade are evolving rapidly. New innovations, technologies, creativity, knowledge, talent and management techniques are contributing to enhanced productivity and competitiveness. New IP-related areas of trade have emerged, in particular in the service sector. This globalized economy represents a turbulent reordering with distinct opportunities and pitfalls. WIPO's role against this backdrop should be strengthened through its commitment and activities in facilitating the utilization of IP as a tool for development, particularly for LDCs.

We are encouraged to see that this High Level Forum will address some key issues that are crucial to LDCs in fostering their national development and productive integration in the world economy.

Most LDCs have been opening their economies and liberalizing their policies with the intention of attracting foreign direct investment (FDI), expecting a transfer of improved technologies to their economies. In reality, this has rarely been the case. FDI flows to LDCs have not led to any notable improvement in terms of technology transfer. Our aims of improving productivity of small and medium sized enterprises (SMEs),

creating a sound industrial base and fostering Research and Development (R&D) institutions have remained unfulfilled.

In this context, I would like to recall Article 66.2 of the TRIPS Agreement, which allows a mandatory provision of providing incentive to entrepreneurs from developed countries for promoting their investment in LDCs. We expect meaningful technology transfer to take place under this provision and urge our development partners to support our endeavor of industrialization and enhanced productivity.

Let me raise another specific area of concern. As you may be aware, LDCs were required to submit their TRIPS needs assessment reports by January 1, 2008. So far, only a handful of LDCs have been able to comply with this requirement. This clearly reflects the inability of many LDCs to identify their IP related needs.

We believe WIPO can assist individual LDCs in identifying their respective IP needs with a view to developing an IP based society, drawing up and implementing comprehensive programs for individual countries.

LDCs are not importers of technologies. They have limited financial and human resources for developing their IP institutions. The concept of institution-building of IP for development involves several interrelated dimensions and a multiplicity of actions. The setting of priorities and coordination is therefore imperative. Each dimension of development is vital to the success of all others, as well as to the core concept of citizen-centered progress and development. Successful development cannot be achieved by pursuing any one sector in isolation, nor can any one sector be excluded from the development process.

It is also alarming that despite the waiver granted by the WTO and efforts undertaken by LDCs, many developed countries are pressing the LDCs to sign

bilateral and regional trading arrangements with stringent provisions for the protection of intellectual property rights (IPRs). This would not only undermine their multilateral commitments but would mean that LDCs would be compelled to do what they cannot afford to do. On behalf of the LDC members, I call upon our trading partners not to impose TRIPS plus provisions, which would compromise our poverty alleviation and development priorities.

In order to make this Forum effective and meaningful, I would like to urge our distinguished experts and delegates to come up with useful recommendations.

I would like to suggest that we try to develop an outcome based on the recommendations emanating from this Forum. On my part, I believe that the following issues of our common concern should be reflected in such an outcome:

- Strengthening regional and international cooperation for building sustainable IP institutions;
- Assistance in formulating strategies and policies for poverty eradication and wealth creation through effective use of IP;
- Increasing the protection and beneficial use of TCEs;
- Strengthening the use of trademarks, service marks, designs and geographical indications;
- Enhancing WIPO's assistance and support for creative and innovative activities;
- Increasing use of IP tools in economic activities with a focus on branding selected export products of LDCs;
- Strengthening ongoing efforts to generate additional resources for development of IP institutions and systems for LDCs;

- Increasing the visibility of LDCs in WIPO and further raising the profile and inclusivity of this Forum.

Let me conclude by urging WIPO to increase its assistance to LDCs in meeting all their IP objectives. From our side, I would also like to assure you that LDCs would extend their full support and cooperation to WIPO to promote further development of the international IP system.

I finally expect that the WIPO Secretariat will implement the outcome of this Conference fully and will contribute to the strategic use of IP for our prosperity and development. I wish this event every success and thank you for your patience.

Special Plenary

His Excellency, Mr. Juneydi Saddo
Minister for Science and Technology, Ethiopia

It gives me great pleasure to address to this High Level Forum on IP for LDCs organized by WIPO.

I would like to thank WIPO for organizing this Forum for LDCs, and also for the excellent facilitation, communication and organization.

The 21st century is known for the globalized world but also for the cruel division of the world to different sections based on the level of economic development. Our world is currently divided into three sections, the G8, the 134 middle income countries and of course the 50 LDCs. This is only a broad classification of the 192 current United Nations (UN) recognized Member States.

In the purely capitalist world of our time, this reality is stark. The G8 comprises nearly 948 million people (14 percent of the total world population) but commands 65 percent of the gross world product, while in the LDCs there are 750 million

people, nearly 11.1 percent of the total world population of which 50 percent of this population are living on less than one dollar a day. Nor can I forget to mention that 34 countries out of the 50 LDCs are African.

It is against this simple background in fact that the UN specialized agency, WIPO called upon us to hold this High Level Meeting. The wide divide between the world communities is due to complex, historical, political and economic reasons. I will not go into the details of these problems; rather, I will focus on what the UN system in general and WIPO in this particular case can do for us in enabling us to help ourselves.

This ugly divide is getting bigger and wider, assisted by the gap in technological capability. As everybody clearly understands, the gap in economic development is almost the gap in technological capability. This means that any meaningful development agenda should focus on technological capacity-building. Technological capacity requires development of the right human resources starting from schools, universities, the right manpower in the industry, which is ready to deal with technology. This in turn requires the right science and technology infrastructure in the right technology landscape.

Technology is widely available throughout the world. We are trying to learn how some countries could just manage to acquire and assimilate technology in a very short time into their economy. There is so much out there to learn about and act upon quickly. IP information is critical in technology negotiation, licensing, transfer and protection. It is a fact of life that we in LDCs are not in a position to invent technologies and we do not have all the time in the world to play around with such myths. We need to be alert and steadfast in learning from others and revamp our production systems in both agricultural industries and manufacturing industries, covering both hardware and software and including management systems. Government research

institutes, universities and the entire education system including technical schools should be reoriented and refocused on technological learning in industry and with industry. Later, as capacity grows, they can lead the advancement of technology in many fronts.

In this High Level Forum, we need to be clear on the need for development with particular emphasis on IP. If and when the UN systems and the developed world assist the LDCs, then let it be strong genuine capacity-building for the acquisition of technology. Let us work together to defeat poverty through technological catching up, not by assistance only for survival. World history has showed us that after World War II the United States of America pumped huge sums of money into rebuilding Europe. It also assisted Japan and Korea substantially. It opened up its doors to Europeans and East Asians so that they could trade, learn and start innovating.

Finally, we are here to learn from the best experiences of fellow countries, different experts and authorities of the UN system agencies and organizations. We are also ready to work, cooperate and move forward to the acceptable middle income countries. It is my government's wish to smash poverty and abolish the so-called LDCs. We can all be respectable middle income countries. Thank you very much.

Her Excellency Mrs. Mpeo Mahase-Moiloa
Minister for Law and Constitutional Affairs and
for Justice and Human Rights, Lesotho

First, I would like to thank WIPO for inviting me to this important Forum and I also wish to endorse the statement made by the Coordinator of LDCs. We are gathered here today to exchange views on how best we can devise appropriate strategies and put in place policies on the use of IP for prosperity and development in the context of LDCs. We look forward to some vigorous discussions and stimulating debates, which should include sharing experiences and exchanging ideas, hence learning from one another.

Global developments in technology and international trade have led to heightened awareness of the importance of IP. Countries have increasingly recognized the importance of IP as a tool for creation of wealth.

As LDCs, we face huge challenges to build IP institutions in order to ensure that our respective countries receive tangible benefits from the system. We have a duty to ensure that these benefits extend to both the owners of IPRs and the general public.

These challenges include:

- Addressing capacity building, human and institutional; and creating relevant institutions aimed at contributing to economic growth and social and cultural development. This has become increasingly important for LDCs;
- Formulating and adopting national policies that incorporate strategic utilization of IPRs;
- Attending to technology transfer and commercialization especially in universities and research institutions;
- Ensuring effective utilization of all aspects of IP for wealth creation, including focus of IP institution-building;
- Utilization of WIPO PatentScope for policy and business analysis;
- Initiating the requisite legislative framework;
- Promoting creativity and formulating and adopting more innovation-friendly policies and programs;
- Strengthening cooperation among all stakeholders at the national level;
- Utilizing copyright to facilitate access to better education;
- Engaging in sustainable qualitative development of human resources through investment in specialized training in the field of IP;
- Embarking on national awareness programs to highlight the importance of protecting IPRs as well as promoting IP culture;
- Enforcing pertinent laws, rules and regulations meticulously;
- Promoting exchange of ideas and information as well as sharing of experiences on major issues relevant to the development of inventive and innovative activities;
- Building awareness of IP as it relates to the private sector, governmental organizations, IP advocacy groups and non governmental organizations; and
- Putting in place reward systems for owners of IPRs in recognition of their outstanding achievements and contribution, so as to encourage inventive and creative activity.

The challenges LDCs face in building IP institutions will require action aimed at strengthening both national policies and external support measures. In this context, there is a need to:

- Foster regional cooperation in order to overcome the shortage of resources for IP institution-building in LDCs. The regional approach would have to include issues of enforcement, taking into consideration that infringement of IPRs respects no borders; and
- Fully appreciate that governments have obligations to put in place the appropriate policies at the national and regional levels.

It is our hope that WIPO will continue to strengthen its partnership with LDCs by intensifying its technical assistance programs, in particular those relating to the formulation and implementation of national policy strategies.

Only when IP has been fully integrated into national policies can we fully benefit from IPRs. Protection alone is not enough. This means that IP offices should realize that their mandate goes beyond providing protection of IPRs. They have to be involved in strategy formulation, planning and implementation so as to further technical and economic progress. I thank you all for your kind attention.

His Excellency Mr. Richard Fienena
Minister for Economy and Industry, Madagascar

It is a great honor and a genuine pleasure for me to speak at the opening session of this High-Level Forum on Strategic IP for Prosperity and Development. On behalf of the Government of Madagascar, let me begin by thanking Dr. Francis Gurry, Director General of the Organization, for his kind invitation to take part in this High Level Forum. I would also like to thank all of your colleagues and most particularly the LDCs Division.

For several years now, thanks to the outreach work carried out by WIPO, the general public has become increasingly interested in IP issues. The topic is widely debated and now occupies a central place in discussions on a globalized economy. The compromise between property and dissemination linked to IP are the two central pillars of this debate. For some countries, the IP system is a decisive factor in prosperity in this era of technology. For others, it is considered a new form of protection, which replaces disappearing non tariff measures, subsidies and other commercial measures. Although IP is increasingly recognized in political and economic circuits in developing countries, the institutions in this area are still relatively unknown in countries such as our LDCs.

In fact, in most developed countries, IP organizations are part and parcel of national intergovernmental structures, whereas in our countries they are only in their budding stages. Some lawyers and economists have analyzed IP and its main constituent elements in developed countries. The same cannot be said for the LDCs.

In Madagascar, the Malagasy Intellectual Property Office (OMAPI) administers IP, and we have a special office for copyright. Through these institutions, Madagascar has adopted the resolutions stemming from the 2007 Forum on Capacity-Building and the Knowledge Base for Social and Cultural Development. However, we hope that more concrete and tangible action can be taken for the LDCs' advancement.

With respect more particularly to Madagascar, several achievements should be mentioned. We have trained staff and automated the IP office but we still have much to do. In this respect, Mr. Director General, we would like to request the help of WIPO in developing our IP strategy and integrating it into our national development policy. This will help us modernize our structures. My country is aware that access to knowledge as well as the dissemination of knowledge through

inventors and other creators is a sine qua non for mobilizing national capacity and directing it to the strategic use of IP. This impacts different areas, such as education, pharmaceutical products, communication technologies, renewable energy and food security, which concern the international community. My country would thus like to benefit from the experience of the LDCs Division and the information center notably.

In conclusion, my delegation would like to take this opportunity to commend the Director General on his choices in the new Deputy Directors General recently approved and confirmed. Rest assured that Madagascar supports you in the accomplishment of your obligations. We hope that our cooperation ties can be maintained and that the IP situation in the LDCs would be reinforced. Thank you for your attention.

**His Excellency Mr. Ahmadou Abdoulaye Diallo
Minister for Industry, Investments and Trade, Mali**

Let me first of all express my gratitude for the invitation to speak at this very High Level Forum. Since this is the first time that I have seen the Director General of WIPO directly, I would like to congratulate him and tell him what a good job he is doing. I read your acceptance speech with the greatest attention and I think it was full of hope and full of promises.

I also welcome the advent of aRDi and congratulate you on the topic of this Forum – The Strategic use of IP for Prosperity and Development. If I were to re-phrase it, I would say The Strategic Use of IP for Development and Prosperity, to put emphasis on the cause and effect relationship – the fact that development must precede prosperity.

If I were asked to tell you about the IP situation in Mali, I would say the following. First of all, we do not have exhaustive knowledge of all IP objects and

assets in our country. Second, we have so far not succeeded in creating fertile and dynamic interaction between IP assets in Mali and those at the global scale. Third, we have not managed to create sufficient interaction between our actors and the knowledge community, especially universities and other institutions of higher learning, research centers and individual researchers. Fourth, we have not yet managed to create a shared space for inventors, scientists, universities, research centers, educational institutions, world banks and finance institutions. Fifth, when we organize invention and technology fairs, we discover that there is much talent in Mali, but once the works have been handed out we do not know where to go from there, simply because we do not have the capability to implement the inventions that have been designed. Sixth, with regard to musical works we have not been successful in fighting piracy. Seventh, we have not been successful in making IP a vehicle for stimulating FDI.

The consequence of all the above mentioned points is that in actual fact we are very far from achieving the aims stated in the title of the Forum. This is why I thought it was a very worthwhile trip for me to make. I know that you are aware of all this but I will repeat it all the same, hoping that together with WIPO and ARIPO, of which Mali is a member, we will succeed in achieving the seven aims which I enumerated. This is why I came to Geneva with a draft agreement that I hope we can sign with the Director General of WIPO. Thank you very much for your attention.

His Excellency Mr. Mohamed Rasheed
Minister for Economic Development, Maldives

I am very privileged to be here today as the Minister from the Cabinet of the first democratically elected Government of the Maldives. I understand from the remarks of the Director General that the month of October was also a very auspicious month for him, as he was elected as the Director General during that month. It was in October of last year that the Maldives organized a multi party election. We won an election where we peacefully transitioned from a 30-year single-party system to a multi party system. I am here to represent that government. Today, we are here to talk about IPRs, not human rights.

I would like to thank the Director General and the senior management of WIPO for inviting me to this High-Level Forum, and it is a very timely occasion for us to adjust to this Forum. It is indeed an honor to be among the eminent guests and dignitaries from the international community. I hope this timely initiative from WIPO will pave the way for more such events, focusing on addressing IP-related competitiveness in developing countries, especially the issues in LDCs.

IP is a new notion in the Maldives, but I can assure you that the momentum is being created to address the issue of IPRs. The current government gives utmost priority to protecting, promoting and improving the quality of IPRs in the Maldives and thereby fulfilling its international obligations and commitments. Furthermore, the government attaches the highest priority to good governance, transparency and accountability in fulfilling the pledges in our manifesto as well as delivering what we have promised to the people of Maldives, which had been deprived for some years.

Based on the efforts that have been made in the last few years, especially the last couple of months, there have been intensified programs to raise the level of understanding and awareness of IPRs

within the Maldivian community. Our aim in the immediate term is to foster a conducive environment for the establishment of a holistic IP regime and IP culture in the Maldives.

Maldives is due to graduate from LDC status in December 2010. This will have a huge implication for the Maldives in the immediate term following its graduation. It means as a country, it must have an effective legal framework and enforcement mechanisms in place and be in full compliance with the WTO TRIPS Agreement by the end of 2010. This is a gigantic step. It is a move from non existing IP regime to a full compliance regime. Undoubtedly, this poses huge challenges and opportunities for a graduating small and vulnerable economy like ours.

To address the immediate challenges associated with the introduction of an IP regime, Maldives will need policy space and sustained technical assistance and cooperation from partner countries and multilateral agencies. We need your support and ask WIPO to support our efforts to become fully IP-compliant and to establish the necessary safeguards as a coping strategy to deal with issues stemming from IP-compliance in the immediate and medium term.

We believe that within challenges lie opportunities. The government has recently announced plans for the Maldives to become a carbon-neutral economy by 2010. We are a small vulnerable island economy, and the risk of doing nothing to address the issue of climate change may be significant for us. With this commitment, the government wishes to place environmental sustainability at the center of its own socio economic development while at the same time pointing to a new clean development path for all development countries.

We believe that an effective international IP regime has a major role to play in the move towards the sustainable development of an economy. The enabling environment that will be created from an

internationally compliant IP regime will provide confidence to enable investment, particularly environment friendly technology producers to invest in Maldives. An effective international IP regime is also a prerequisite for researchers and developers to step up their efforts in our countries, rich in biodiversity and TK and other IP resources. However, countries such as ours would need more equitable to access technology that is so crucial to achieving the sustainable development to which we have committed ourselves.

In this endeavor, the Maldives need not only sustained technical assistance but also continued cooperation and partnership from multilateral agencies and the global private sector. The Government of the Maldives stands ready to welcome and work with key partners in our efforts, as its top priorities today are enhancing democracy, prioritization, privatization and decentralization. Needless to say that with regard to prioritization and the opening up our economy to the international community where we are focusing on renewable energy, we have the need to have good support and guidance from WIPO. In conclusion, I wish the Forum every success. Thank you very much.

His Excellency Mr. Dan Bahadu Chaudhury
State Minister for Industries, Nepal

It is indeed a great pleasure and privilege for me to be here at this august gathering. I express my sincere thanks for the kind invitation extended to my delegation and myself.

My delegation commends WIPO under its dynamic Director General, Mr. Francis Gurry, for having brought IPRs to the center stage of international debates in the present context. We are pleased to see a number of far-reaching initiatives that aim to bring membership closer to the Organization, promote and protect IPRs, and project them as a valuable economic resource for development.

My delegation expresses its appreciation to the Secretariat and the officials concerned for all the hard work that has gone into the preparation of this meeting.

This Ministerial Meeting stands as a striking example of WIPO's commitment and approach to the development of IP sector. The discussions on important themes, namely, Integrating IP into National Development Policy and Strategies of the LDCs; The Strategic Importance of Transfer of Technology and Technological Capacity-Building for the Development of LDCs; Sharing of Experience with some LDCs on the Wealth Creation Effect of Trademarks, Service Marks, Geographical Indications and Industrial Designs; Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth and Development of LDCs, TK, TCEs: Preserving Traditional and Cultural Assets and Creating Wealth and Regional Cooperation in IP are of great significance and relevance in the present context of LDCs. We are confident that this Forum will come up with a set of recommendations that aim at improving the strategic, institutional, and systemic frameworks for the modernization and development of the IP regime of LDCs.

LDCs like Nepal possess rich biodiversity and therefore have great potential and huge opportunities for the development of IP, especially TK, TCEs, indigenous technology and genetic resources. Our efforts should be directed towards ensuring the equitable distribution of benefits. We are of the view that users of these resources should always disclose the country of origin, and acquire the prior consent of the originating country. I believe that this meeting would be able to make firm and clear commitments on this issue to ensure the protection of public interests in the development of IP regime.

We live in an age of information. The knowledge-based trade is growing both in importance and volume. IP has emerged as a valuable tool for

economic growth. It has come to be associated with knowledge, innovation and creativity. The development of IP has a direct bearing on countries' technological, socio-economic, cultural and social progress. The strategic use of IP is critical to the development of other policy areas, such as food security, health, labor, trade, culture and heritage, the environment, investment and scientific and technological development. This calls for investments in knowledge infrastructures. The potentials in LDCs provide ample opportunities for investments to promote innovation and creativity for the advancement of IP.

However, LDCs face several constraints such as shortage of resources, lack of capacity and a weak IP infrastructure to develop and initiate trade that is knowledge-based. They stand in the way of LDCs taking full advantage of opportunities. We would therefore appeal to development partners to support LDCs both technically and financially to help develop this sector.

The deepening global economic and financial crisis has hit the LDCs hard through no fault of their own, exposing them to external shocks. The lack of employment opportunities and trade prospects among others has increased their vulnerability to social upheaval and instability. This plight calls for a special and differential treatment of the LDCs. IP is one area that has immense potential for development and thus provides hope to LDCs in this time of great economic difficulty, as it can help contribute to social development, economic growth and wealth creation.

We feel that there should be separate, focused programs backed by adequate resources. In this context, the LDCs Division should be strengthened and equipped with the necessary resources. A geographically balanced and inclusive representation in the Organization, particularly that of LDCs, should be given due consideration.

Nepal is making a democratic transition after an armed conflict that has lasted over a decade. We are engaged in the post conflict reconstruction phase. Our focus is to mainstream people into peaceful and productive channels. The development of IP in Nepal can play an important role for the institutionalization of peace and strengthening of democratic roots in the transitional phase of the country. What we need is huge FDI that generates more jobs and makes people believe that democracy works better, takes care of their needs and creates a secure future.

We attach great importance to the ongoing cooperation between Nepal and WIPO. It has been instrumental in creating opportunities for developing strategic, institutional and systemic improvements in the field of IP. Its programs have helped develop human and institutional capacity in the IP sector, formulate new rules and regulations and automate the IP system. Nepal is rich in genetic and cultural resources, traditions and practices, geographical features and indigenous products, knowledge and skills. Because of weak institutional and systemic capacity, existing potentials for economic, social and cultural development have not been properly utilized.

The recent visit of officials from Nepal provided valuable opportunities for productive interaction with WIPO officials and has opened space for supporting Nepal's strategy for the strengthening of the IP system, strategic planning for policy and legal reform, institutional capacity-building, human resource development, application of information and communication technology for automation, educational, systemic and methodological improvements.

Nepal has listed IP as an instrument for broad-based industrial development and has accordingly developed policy frameworks on industrial promotion, foreign investment and technology transfer. Preparations are underway to ratify the

PCT and other relevant instruments so as to harmonize the national system with international standards.

We feel that this High Level Forum should focus on the following:

- Facilitating the transfer of knowledge in favor of LDCs to fight against poverty;
- Assisting the enterprises in LDCs, including SMEs, in improving their competitiveness and their ability to gain regular access to new ideas and technologies;
- Conducting research and awareness outreach programs to promote links between IP protection and economic development;
- Making technical assistance and capacity-building programs demand-driven and development-oriented in LDCs to cater to the special needs of LDCs and help establish national IP institutions to foster economic growth, social progress and cultural development;
- Enhancing the collaboration and partnerships between the LDCs and developed economies for producing synergic impacts;
- Developing the capacity of LDCs on the strategic, institutional and systemic fronts in order to effectively use IP in local, national and global systems;
- Developing and applying the tools, techniques and methods for effective integration of IP system into national development and public private partnership frameworks.

I thank you for your kind attention.

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State
for Justice and Constitutional Affairs, Uganda

On behalf of the Government and People of Uganda, it is a great honor for me and my Delegation to be invited to participate in this High-Level Forum on IP for the LDCs. Distinguished participants, for me these two last expressions are a mouthful and are opposites of each other. A High Level Forum on IP is very high-sounding and LDCs are very low sounding. What a contradiction, high-sounding and low-sounding. How many of us are happy to belong to LDCs, put up your hands? Need I say any more about that? You know why we are here for – to stop being LDCs.

Mr. Director General, I bring you heartfelt congratulations from His Excellency President, Mr. Yoweri Kaguta Museveni, and the Government and People of Uganda upon your election as WIPO's Director General. I also take this opportunity to thank the entire staff of WIPO, who are of course the unsung heroes, for a successful and progressive meeting so far.

My delegation greatly appreciates the invitation extended to us and the excellent arrangements made for our travel and stay in Geneva.

Uganda remains proud of its membership in WIPO and supports the programs and projects adopted by the previous General Assembly that are now being implemented by the Director General and the International Bureau.

My delegation is pleased with the theme of this Forum – The Strategic Use of IP for Prosperity and Development. Allow me to note that my government has adopted the theme of Prosperity for All as a national goal for all national development programs.

Our new National Development Program (NDP) 2009/2014, has incorporated IP in two key sectors.

Our government intends to address IP issues under the broad areas of science and technology, industrialization and competitiveness and justice, law and order.

Over the years, our government has embraced the idea of using IP as a strategy for prosperity and the growth of the economy. Various programs have therefore been adopted to implement this strategy. A number of legal and institutional reforms have been implemented and others are ongoing. Allow me to highlight the following:

- In terms of legal reforms: We have accomplished enactment of the Laws on Copyright and Neighboring Rights and Trade Secrets. We have tabled in Parliament four Bills on IP, i.e., the IP Bill, the Trademarks Bill, the Geographical Indications Bill and the Plant Variety Protection Bill. I am confident, since I am the person shepherding these Bills in Parliament, that by the close of this year a new law will be passed.
- In terms of institutional reforms: The Uganda Registration Services Bureau Act was enacted to make the IP office autonomous. A board of directors was appointed early this year and financial modalities are being worked out to ensure implementation of the autonomy status of that organization, whose Head, Mr. Kyomuhendo Bisereko, is here with us today.
- We have done a lot in the modernization of IP office registration procedures. Particularly with the technical assistance of WIPO, we have implemented the IP Automation System (IPAS) for registration of trademarks this year.
- In terms of cooperation for development programs, in collaboration with WIPO, we have requested technical assistance and we have conducted activities in the areas of training staff in all fields of IP, placing our IP laws online on

the WIPO and organizing seminars, workshops and symposiums for awareness enhancement and distance training.

- A diagnostic study on Uganda's trade and IP programs has been conducted to make us compliant with the TRIPS Agreement by 2013. We are now seeking additional support to cover gaps in specific areas, such as enforcement and public awareness.

Mr. Director General, distinguished participants, I would like to conclude by reiterating that it is our obligation as leaders of this generation to make IP a success strategy in our countries as a reality and a legacy of our lifetime. I strongly believe that we can do this in spite of the challenges that we still face.

Last but not least, I ask the Director General to further support these forums to bridge the gap and strengthen functional synergies between technical staff/experts and policy makers. Uganda, in cooperation with WIPO, is willing to host a follow up regional seminar for Members of Parliament and other policy-makers. I thank you.

**Her Excellency Mrs. Mary Nagu
Minister for Industry, Trade and Marketing,
United Republic of Tanzania**

Let me at the outset join my colleagues in thanking Dr. Francis Gurry, Director General of WIPO, for organizing this very important High Level Forum for LDCs, on this very relevant theme of Strategic Use of IP for Prosperity and Development. My government greatly appreciates the enabling role of IP in generating people's development and prosperity and raising their standards of living while reducing poverty, hunger and disease, all key goals for our LDCs, and for IP's strength and capacity to address other social and economic challenges.

Mr. Chairman, unlike in the past when IP was perceived by developing countries and LDCs especially in Sub-Saharan Africa as a tool for a monopoly of the few, many countries including my own country Tanzania now recognize IP is as an effective instrument and facilitator of transformation and sustainable development.

In the case of my country, Tanzania, we have seen in practical terms how, for instance, the entertainment industry is benefitting youths and the old through job creation and related opportunities. Engagement in the audiovisual business is exponentially expanding including the composition, production and distribution of creative works which make a significant contribution to national GDP and the improvement of living standards. In my country, we have in place a very comprehensive Copyright and Neighboring Rights Act, with all the necessary civil and penal sanctions, on the part of the copyright administration and enforcement. There is also a copyright collective management society, which collects royalties from commercial users of copyrighted works and distributes them to the owners of those works. Moreover, the Copyright and the Neighboring Rights Act of Tanzania is one of the few pieces of legislation on copyright in Africa that contain specific provisions on the protection of expressions of folklore. Despite the encouraging successes in this area, there are some challenges mainly relating to piracy and other illegal uses of these works. More needs to be done in terms of enhancing the awareness and cooperation of players in this industry, in order to make it perform optimally.

In the area of technology development, Tanzania like other LDCs still faces critical challenges particularly in relation to budgetary constraints to support R&D in designated universities and other institutions. Consequently, the output from the universities and R&D institutions is limited in terms of developing appropriate technology and products, to be applied and diffused into the economic

sectors, such as industry, agriculture, energy, construction and mining.

As a result of our internal inadequacies, our extreme dependence on imported technology persists. In most cases, it is expensive and difficult to adapt, assimilate and integrate the same into the local environment.

The overdependence on imported technology also pulverizes our bargaining power. In a nutshell, the challenges are a major stumbling block to development. I should also stress that technology is a particularly outstanding challenge insofar as researchers lack the ability to offer and promote their research outputs in the market. This problem is accentuated when research is designed and carried out without determining the market needs and demand. In brief, the difficulties in the commercialization of their research output have remained serious disincentives to objective scientific research which calls for deliberate action for its linkage between research and industry to determine the relevant market needs.

In countries where this linkage exists, governments may not need to set aside funds for research except for strategic research, such as that involving national security and defence. On the other hand, there are research institutions in developed and some developing countries which have not only become financially independent but have also been contributing part of their surplus incomes to the State. In our view, this type of synergetic relationship in society is very important for incentivizing the “create protect and commercialize” principle, for the benefit of our inventors and innovators.

Mr. Chairman, I am also informed that about 80 percent of all published global technical information is in patent documents, and that such documents are publicly available free of charge in patent offices and on the Internet. This information enables any person who is skilled in the art of that field of technology to effectively use it. Indeed, scientific

researchers need not reinvent the wheel. Through published patent information, they are able to easily determine the latest status of any field technology.

For example, with the help of patent information researchers may not need to start from scratch. One needs only to know what has already been done by others in that field of technology, and pick up from that point for further improvement. Any added inventive step from that prior art is also patentable as long as it meets the patentability criteria as per specific national legislation. This has come out of the good work that WIPO has been doing.

Likewise, for purposes of negotiating a license for transfer of technology, a prospective licensee, through patent information, is able to know the source of technology, its proprietors, their location and addressees. A published patent document provides an easy route to access the required technology, and facilitates negotiations options for technology transfer.

Similarly, patent protection is a territorial affair and is accordingly regulated under each country's municipal patent legislation. It means therefore that patents are not protected in any territory where patent owners have not sought protection. Such patents are therefore in the public domain with respect to a particular territory in which protection has not been obtained, and this is an advantage for LDCs. Any disclosed technology of such patent document could be exploited by any interested party without infringing any rights of its owners.

To take full advantage of the foregoing opportunities a Tanzania IP Advisory Services and Information Center was established and formally launched on March 27, 2007. It is strategically located at the Tanzania Commission of Science and Technology (COSTECH), an umbrella institution for coordinating scientific research and technology development in the country.

Alongside this development, a technology licensing manual was also prepared. Tanzania is deeply thankful to WIPO through its LDCs Division for its help in recording these success stories. The LDCs Division worked hand in hand with the Tanzania Industrial Property Office (BRELA), COSTECH of the University of Dar es Salaam and the Tanzania IP Forum to ensure effective interaction and involvement of potential users of that center, and we are very grateful indeed for its assistance.

I am also of the opinion that strategic use of patent information, especially in SMEs, could assist business operators in innovating and enhancing their competitiveness.

Competitive innovations could also be transferred by way of technology license to other users, thereby providing the innovator with economic benefits. The strategic use of trademarks, brands, geographic indications and industrial designs to differentiate similar products of different manufacturers has also proved a very effective marketing tool for our SMEs. This is particularly important when SMEs constitute the majority of business operators and include many women in LDCs. If this strategy is coupled with supportive policies, legal and regulatory frameworks could provide a significant turning point in these countries.

In this same vein, Tanzania attaches great importance to the need to promote value addition in the various locally produced items like agro-produce such as cotton, coffee and tea. The difference between LDCs or developing countries and developed countries of course is the knowledge gap and the digital divide, but the fact that we trade in commodities and get value added products from developed countries makes us to continue to remain LDCs. Proper management and use of the foregoing IP tools could, to a great extent, enable our SMEs upgrade their production and supply capacities.

Mr. Chairman, let me also mention that Tanzania, like many other developing countries, believes that TK, Expressions of Folklore and Genetic Resources are an important subject matter with the substantial real and potential contribution to national GDPs. These are part of the daily activities of our people, providing considerable employment and social security opportunities. My country therefore supports the need to have protective disciplines and mechanism in place, to regulate and check illegal exploitation and curb ever-growing global biopiracy. The measures are also intended to provide the legitimate beneficiaries of these resources with a conducive and enabling environment with a view to ensuring effective exploitation and economic as well as moral benefits.

In the context of genetic resources and the patenting process, I wish to reiterate that the disclosure requirement on the source of genetic resources in patent applications whose subject matter for its protection is derived from a certain genetic resource is in our view critical to enable the communities from where such a resource is obtained to also benefit through agreed materials benefit-sharing. It is our hope that the Intergovernmental Committee, which was given the task to find modalities on how such resources could be globally protected, will soon finalize its work so that the next step, namely, having an internationally binding instrument for the protection of these resources, can be concluded and implemented as soon as possible.

For the benefit of those who might not be aware that ARIPO is closely working with its Member States to draft a regional protocol on the protection of TK and TCEs, I believe this adds to the positive efforts which will eventually culminate in these countries having the ability to effectively exploit these resources for economic development and poverty alleviation.

In conclusion, my delegation is not oblivious of the critical challenge that has come as a result of the

global financial and economic crisis threatening economic growth worldwide. Many developing countries, particularly LDCs like Tanzania, will shortly be severely affected by the economic downturn, with the obvious outcome of declining financial capacity to support and sustain investment, production, trade and the livelihood of the majority of our inhabitants. In fact, the negative effects have already started to be felt. It is my delegation's expectation that one of the themes of this High Level Forum would have been this important challenge.

I am sure the successful outcome of this Forum will come up with concrete proposals for solution, including the need for the implementation of WIPO's Development Agenda, which will get us out of the disgrace of LDCs, as my brother from Uganda has said earlier on. I thank you very much for your attention and I wish this meeting very successful deliberations.

His Excellency Mr. Roger Dvonou
Minister for Industry, Benin

I would like to begin by thanking Mr. Francis Gurry, Director General of WIPO, for having invited me to this High Level Forum.

It would not be decent on my part to say nothing at all, because I consider this meeting extremely important. It is therefore a great pleasure for me to attend this meeting, which will provide an opportunity for exchanging points of views and experiences, in particular as regards the formulation and implementation of IP strategies to boost the development of LDCs.

Benin attaches great importance to IP as a factor for the growth of wealth. My government is convinced that IP is what will help us meet challenges of poverty and employment. This is why I am particularly happy to be here at the beginning of a process that will help LDCs derive full benefit

from IP. Researchers should have access to databases, and thus add value to what they are working on. Those who transform raw materials into commodities are those who become richest. In other words, owning raw materials is not sufficient. Only those countries which have acquired technology to add value to the raw material will derive full benefit from the situation. My country exports cotton fibre. We have financial difficulties we would not have encountered had we had the possibility of adding value to only 10 percent of our production. This is why we welcome the organization of this Forum.

The present Forum, as you will have understood, is of the highest importance to the government of my country in particular. We hope that the recommendations formulated here will be realistic and practical, because we have come here to find solutions to our development problems.

To conclude, we would like to once again congratulate and express our full support to Mr. Francis Gurry and his colleagues. Thank you very much

Inauguration of the Access to Research for Development and Innovation Service (aRD*i*)

Mr. Yo Takagi

Executive Director, Global Intellectual Property Infrastructure Department, WIPO

It is my great honor to take this opportunity to give a short presentation of one of WIPO's important project for LDCs, aRD*i*, which stands for Access to Research for Development and Innovation Service. You are now familiar with this acronym, as our Director General has mentioned it several times this morning. This presentation is intended to help you understand better the background and initial stage of implementation of the aRD*i* project just before the official launch of the project.

The project is a result of successful coordination and partnerships with publishers of scientific and technical journals. We have also received advice and support from other UN agencies, some of which are represented here in this room today. I wish to thank the publishers for fruitful cooperation, and in particular the significant contribution made by the International Association of Scientific, Technical and Medical Publishers (STM).

For many years now, WIPO has provided technical assistance and undertaken activities for capacity-building in LDCs to promote research and innovation for development. One of our challenges is to improve access to human knowledge, in particular scientific and technical information, because such access is essential to the enhancement of national capacity for home-grown innovation.

Innovation in this century is expected to meet global challenges such as poverty reduction, improvement of public health and sustainable

development with green technology. It requires wide range of human knowledge and multidisciplinary research. The IP system, in particular the patent system, has functioned as a knowledge infrastructure, not only for protecting innovation results and promoting the commercialization of results but also for disclosing and disseminating shared human knowledge - new knowledge in all fields of science and technology.

There are now more than 800,000 new patent documents available to scientists and engineers every year, which is we believe the largest collection of human knowledge in the standard format. Most of them are now made available through the Internet free of charge.

The second largest resources of human knowledge for innovation are scientific and technical journals. The number of articles published in those journals annually is about 700,000. Scientific and technical journals and articles are also studied frequently by inventors, patent offices and examiners. In this regard, we are very pleased to see growing crossover effects between these two major resources of human knowledge.

However, scientific and technical journals are not public documents that are freely available. Scientists and engineers in LDCs, therefore, have difficulties in accessing the database of these journals. Our Director General mentioned this morning the high price of the subscription. This is mainly because LDCs cannot afford to subscribe to the databases of the scientific and technical journals. The challenge is to mitigate these difficulties of LDCs in accessing these databases while respecting the rights of the authors and the publishers including their copyrights.

WIPO Member States discussed the challenge within the framework of WIPO's Development Agenda as one of the special initiatives in relation to IP for development. Against this backdrop, the project of aRD_i was born and conceptualized last

year. After almost one year of negotiation and consultation with our partners, today WIPO is very pleased to inform you that the project is now ready for official launch.

I wish to give you a flavor of the project by showing you a newly created for this project. Let me ask my colleague, Mr. Andrew Czajkowski, Project Manager of aRD_i, to show you a few slides.

Mr. Andrew Czajkowski
Head, Innovation and Technology Support
Section, WIPO

 aRD_i reflects WIPO's commitment and contribution to the MDGs, particularly goal 8, to develop a global partnership for development, which includes the specific target of making available the benefits of new technologies, especially information and communications technologies.

It is also a very important element in WIPO's Development Agenda, particularly recommendation 8, in which Member States requests WIPO to facilitate access to specialized databases.

aRD_i is a new public and private partnership between WIPO and major scientific and technical publishers. It follows in the footsteps of established UN sister programs such as the Access to Research Initiative (HINARI) of the World Health Organization (WHO), which provides access to biomedical and health journals, Access to Global Online Research in Agriculture (AGORA) of the Food and Agriculture Organization (FAO), which provides access to agricultural publications, and Online Access to Research in the Environment (OARE) of the United Nations Environment Programme (UNEP), which provides access to environmental literature.

aRDİ's standing publishers are listed in this slide. Cooperation with publishers has been coordinated by the STM, and we are also very optimistic that this list will grow very soon into a much bigger one.

The objective of aRDİ is to promote the integration of developing countries and LDCs into the global knowledge economy and to allow developing countries and LDCs to more fully realize their creative potential. It strives to achieve this aim by providing valuable scientific and technical information found in journals to LDCs, where academic and research institutions as well as IP offices can access the full article in a scientific and technical journal free of charge. In the case for certain developing countries, IP offices can access such journals, the scientific and technical journals, at a very low cost.

Eligible countries are divided into two groups. Group one consists of the LDCs. Let me remind you that these are the countries where access is free. Group two covers certain developing countries, and there are 58 such countries. In fact, you can see the exact countries in each group from the aRDİ brochure that has been distributed with your conference papers.

The eligibility conditions are the same as those of the other UN sister programs and as have been agreed by the other publishers. WIPO insists that the UN agencies, publishers and all partners be committed to raising awareness of aRDİ and its UN sister programs with regard to capacity-building, training and use of these programs in evaluating the effectiveness of these programs and monitoring usage. This is the front page of the aRDİ . It is available from today at the Internet address of www.wipo.int/ardi. Thank you very much for your attention.

Dr. Francis Gurry
Director General
World Intellectual Property Organization (WIPO)

● My colleagues have explained the context and the significance of this new service of WIPO. Allow me simply to make three points very briefly.

First of all, as my colleagues have indicated, this represents a commitment on the part of this Organization to the MDGs as well as to the WIPO Development Agenda. As such, it represents our desire to open this Organization up to the rest of the UN system and to make sure that we play our part in the UN system.

Secondly, I would like to note that this is a public-private partnership. As you all know and are aware, public-private partnerships are increasingly vehicles that are used to deliver on certain policy objectives.

That leads me to my third point, which is to express our very deep gratitude to our partners in the private sector in this particular service: first of all, the International Publishers Association (IPA), whose Secretary General is with us and from whom we will be hearing shortly, and also to our friends in the STM who are also with us this morning and who have been the driving force behind this and to whom we are deeply grateful.

Effectively, this service represents a renunciation on the part of the publishers of the right to receive any remuneration for the journals that they publish. As I mentioned at the outset, the current collection of journals that are available at free of access to the LDCs is equivalent to a subscription rate of 400,000 US dollars per year. Therefore, it is a very significant contribution that is being made by the publishing industry and we are very grateful to you all for this contribution.

We are also grateful as I and my colleagues have also mentioned to our partners in the UN system

notably WHO, FAO and UNEP. I am sure that this is a service that will be highly appreciated.

His Excellency Mr. Dilip Barua
Minister for Industries, Government of the
People's Republic of Bangladesh
Chairman of the Coordination Council of Least
Developed Countries (LDCs)

For historical reasons, the IP potential and the innovative genius of the LDCs could not be tapped and that is why we are lagging hard behind in the world of IP, particularly in respect of industrial property. Lack of research, infrastructure and investment has turned the tide against us.

As a result, scholars and capable researchers frequently migrate to industrially developed countries. We face a bleak future unless this is reversed and unless we engage in IP research and development. In this context, what we actually need is technological assistance complemented by appropriate IP policy and institutions integrated with the overall development strategy of our countries.

Let me take this opportunity to explain our current thinking on industrial development in Bangladesh. The newly elected democratic Government of Bangladesh is committed to the nation building up a knowledge-based society with a view to establishing an industrialized Bangladesh by 2021. As per the road map of vision 2021, we will make a digital Bangladesh ensuring IPRs, e-governance, e-management, e-commerce, e-learning as well as e-service in every sector of the economy. To make a digital Bangladesh as envisioned by the government, we need to begin with a strong IPR administration for the realization of our dream of a digital Bangladesh.

The present government emphasizes IP in its new industrial policy. Formulation of separate IP policy will be our next step. Bangladesh is an advocate of

public-private partnership (PPP) and will announce PPP guidelines shortly. With support from WIPO, the Dhaka Chamber of Commerce & Industry is working on establishing an IP Knowledge Center.

Whether from basic research to applied technology or from one firm to another, the transfer of technology is fundamentally a matter of the flow of human knowledge from one human being to another. This can be done through education, scientific literature or direct human contact.

Human resources are crucial both to the development and the application of technology. Certainly, some inventions have been made by individuals with little education, but today the majority of inventions are made by those who have substantial education in science or technology. The reduction of invention to commercial application usually requires skilled entrepreneurs and, depending on the particular field, skilled mechanics, lab technicians, or software writers. Hence, a broad range of scientific and technological skills is absolutely crucial for LDCs to participate effectively in the international technological economy.

At present, innovation and creativity, knowledge and talent, technology and technique are viewed as the key factors for productivity improvement. The international economy is rapidly changing as a result of globalization, liberalization, evolving technologies and internationalization of production networks. The environment in which LDCs are operating today is different from that in which most development strategies and institutions were formed. This presents more challenges than opportunities for LDCs.

The domestic knowledge system in LDCs is often characterized by weak industrial and scientific infrastructure, poor collaboration and sectoral interlinkages, and lack of skills and institutional support for technological upgrading. IPRs are still unimportant across the main sectors and LDCs suffer from a lack of knowledge-intensive activities.

In order to face these challenges, LDCs must carry out respective priority needs assessments for technical and financial cooperation to implement the TRIPS Agreement in cooperation with WIPO and WTO. The priority needs among others, include:

- Securing financial and logistical assistance to complement ongoing IP reform programs;
- Setting up a national IP policy forum;
- Developing a national strategy on IP;
- Undertaking specific activities for updating the IP legal framework and administrative infrastructure;
- Using IP as a tool for socio-economic development.

As an LDC member like other countries, Bangladesh is also striving hard for integration into the global economy and has undergone several painful reforms to this end. We have passed so many hurdles that we believe that it would also be possible to overcome and establish a balanced IPRs regime if we are united. I also like to bring up the case of Bangladesh because it has a vibrant private sector. With its innovative and industrious people, it has proved to be an economically rapidly growing country in the region.

Technology information would remain the key to addressing these challenges successfully. Technology available in the public and private domain needs to be more exploited. Access to technological information in patents and scientific and technical journals is, therefore, extremely important. It is a factor which helps to secure affordable access to new technologies that improve technology transfer and R&D with a view to ensuring sustainable productivity. It has made a huge contribution towards economic diversification ensuring low-cost access to drugs and life-saving interventions.

On behalf of the LDC group, I would like to express our appreciation to Dr. Francis Gurry, Director General of WIPO, for making this kind of precious

resources available for the development of the LDCs. I thank you.

Mr. Sergie A. Ordzhonikidze
United Nations Under-Secretary-General
Director-General of the United Nations Office
at Geneva

It is a pleasure for me to be with you at the inauguration of the aRDi. The project has already been described eloquently by the previous speakers and was presented brilliantly by the Assistant Director General of WIPO, so I will not dwell on the details. Rather, I will try to place it within the broader efforts of what the UN family in Geneva is doing to promote sustainable economic growth for development.

We come together here at a time of multiple crises, from deep financial and economic uncertainty and high food prices to the continuous warming of our planet and a rapidly spreading virus. Common to all these challenges is that they call for new approaches and inclusive partnerships, and aRDi provides an illustrative example of both.

Despite advances, we are not fully on track to realizing the MDGs within the 2015 deadline. We can only accelerate progress through innovation. This is important across all goals and goal 8 in particular, but particularly with respect to the health-related ones as well. Less than two weeks ago, governments at the annual High-Level Segment of the Economic and Social Council, which takes place this year in Geneva, recognized the vital role of research in this field. In their Ministerial Declaration, they stated their commitment to promoting research and development, knowledge-sharing and provision and use of information and communications technology for health, including through facilitating affordable access by all countries, especially developing ones. Here, aRDi is a practical tool to help reverse the

negative trends by empowering developing countries to help themselves.

A comprehensive, concerted approach to reduce the knowledge gap and encourage greater participation by developing countries is necessary if we are to achieve the MDGs. This has to include all stakeholders, national governments, donors, the entire UN system, other international organizations, civil society and the private sector. I am pleased that all these stakeholders are represented here today.

For the UN, a strong inter-agency effort is key, and I appreciate the involvement of several UN entities in this effort as a demonstration of the Organization's common directions and drive for development. The aRDi project builds on the achievements and experience of WHO, FAO and UNEP in sharing information in their respective areas. aRDi will now broaden the subject base and allow for greater exchange also across disciplines. An interdisciplinary approach is imperative in confronting our shared challenges as these cut across all thematic boundaries. This inclusive and outward-looking collaboration can serve as a model for other parts of the UN, and indeed for other stakeholders.

Allowing access to available scientific and technological data, information and analysis is neither a zero-sum game nor a short-term one-way process. What we need is a balanced approach that takes into account both the need to protect copyright to enable innovation and to share information in order to cultivate further innovation. In these debates, we sometimes focus mainly on developing countries as "receivers" of know-how. However, with the right tools and adequate resources, they are also potentially significant producers of knowledge.

Pooling and exchange of expertise bring mutual long-term gains. At a time of global economic uncertainty, we must draw on the talent and skills of all countries. By facilitating the work of scientists and researchers in developing countries, we enable

them to fulfil their potential and to contribute their creativity both to the local and to the global common good. This is the path to meaningful long-term sustainable development because it produces initiatives tailored to local conditions and concerns, builds local capacities, generates productivity interests and stimulates diversification in our knowledge-based economic environment.

The economic and financial crisis carries the risk of cuts in funding for research, teaching and training. Yet these are among the most critical sectors to bring an end to the crisis. If these areas are not nurtured, the crisis could in fact deepen further and recovery would take longer. It is our hope that aRDi and other projects will facilitate research, sending a clear signal to governments and other stakeholders to maintain the focus on, and funding for research, teaching and training. The UN family has consistently advocated and worked concretely for such a long-term approach to address the underlying structural causes of the crisis, and through this, turn it into an opportunity for progress.

In this context, we must also keep in mind that aRDi, or any access to information, is not an end in itself. For this information to be used effectively and have an impact, it must be coupled with continued training, capacity-building and technology transfers and ongoing improvement in knowledge infrastructure.

aRDi and its sister projects within the UN also point to the value of enhanced engagement between research and policy. Input from research and academia helps provide a sound basis for policy-making and brings important nuance and detail. The UN Office at Geneva has been working for a number of years with our colleagues in the UN system to strengthen the ties between these two communities. I hope that aRDi can also become a vehicle for reinforcing these important links.

aRDi is a welcome addition to the initiatives of the UN bigger family to step up our development

efforts and we look forward to following its progress. Thank you very much.

Mr. Jens Bammel
Secretary General, International Publishers Association (IPA)

I am speaking on behalf of the IPA, our associate member, the STM Publishers Association and the many publishers we represent from around the world, big and small, from developed and developing countries and LDCs.

We all support the MDGs, and we believe it is the sovereign right of every country to develop and nurture a local reading and book culture, and with it a local publishing industry. It is a sovereign right but it is also a moral and social obligation, in particular because publishing depends so strongly on the legal framework. It is up to you, it is up to governments to decide whether you create or destroy your local publishing industry.

We are delighted to see that the aRD*i* project has been able to develop in such a short time and so effectively, to the point that we are able to launch it here today. Our greatest thanks go to the people who have made this project reality. It is always unfair to mention individuals who have worked very hard, but at the same it would be more unfair not to mention those who have worked particularly hard under the able guidance of Mr. Takagi. In particular, Mr. Andrew Czajkowski, whom you have already heard, and Mr. Alex Riechel in the background, who have been active and committed beyond the call of duty to make sure this would happen. I would also like to thank Mr. Maurice Long and all the other staff at the STM Association who have committed considerable resources and commitment to ensuring that this project could indeed take off.

Publishers create value by selecting, editing and placing information into a context often involving the brand of a magazine or the imprint of a publishing house. In short, publishers turn mines of information into gold nuggets of accessible knowledge. Creating value has a cost and it is the market that determines the price. However, even sustainable market mechanisms have their limits and fringes. We all understand that literary works are commercial products but also objects of cultural and scientific value, and therefore have a special role to play. Providing these important publications to patent offices in developing countries, in an area where the benefits of the free market economy do not yet reach, is an important role to play.

It must, however, remain the rare exception to the general principle that markets, in particular in the developing world, can and should develop the industry that brings forth such valuable works. Market mechanisms will provide the best incentives for high-quality local school books, children literature, adult fiction and non-fiction and other publications.

The aRD*i* project is intended to boost these mechanisms and to kick start innovation and creativity in the developing countries. The aRD*i* project is also a very good example that demonstrates the new approach that WIPO has taken to addressing the many public interests/concerns in the developing world. It shows some new elements that are required to address these challenges and that may be useful in the context of all the IP issues that we face. I would like to call them the “3Cs” – Collaboration, Commitment and Context.

Collaboration means that we should seek to bring different stakeholders together instead of creating unnecessary and artificial polarization. Another good example is the collaboration we are achieving at the moment in the stakeholder platform for the benefit of access for visually impaired persons.

The second “C” is the commitment, and by this I mean the commitment of resources. Political will is important but it cannot change the realities and isolations. Resources are needed, technical expertise, legal expertise, time and money to get the things to work. When we talk about the commitment of WIPO to the aRDi project, I think we owe special thanks to Francis Gurry, and his particular commitment to this project. aRDi bears his hallmark at every step.

Context realization means that we are not looking at copyright and IP in isolation. It is not a panacea, nor is it the solution to all the problems that developing countries still face. It is a part of an often far broader picture and must be recognized as such.

There is a fourth important element, but my imagination did not reach far enough to find a word beginning with the letter “C” to describe it. Perhaps consensus describes it best. Consensus on the fundamental principle of IP. IP is a legal artefact, an artificial construction and at the same time, it is a success story. It has been created because of the fundamental insight that promoting and protecting the commercial and moral interests of the few, in this case the creators and inventors, actually serves the interest of the many in the longer term. It is the public that benefits from the industrial and cultural progress of the creators.

We hope that WIPO and its Member States will keep these fundamental principles in mind as we take on the other challenges that lie ahead over the next few years. IPA and its members wish aRDi great success. Thank you.

Dr. Francis Gurry

Director General

World Intellectual Property Organization (WIPO)

● Mr. Bammel and myself are going to sign the Agreement that constitutes the basis for this service.

Ladies and gentlemen, my thanks once again to the IPA, the STM and Mr. Ordzhonikidze, thank you very much for being with us this morning.

Theme One – Integrating Intellectual Property into National Development Policy and Strategies of the LDCs

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization (WIPO)

It is a great pleasure to welcome you back for our first business session, which will deal with Theme One – Integrating Intellectual Property into National Development Policy and Strategies of the LDCs. Thank you.

Her Excellency Mrs. Mpeo Mahase-Moiloa
Minister for Law and Constitutional Affairs and for Justice and Human Rights, Lesotho

Let me also welcome everybody to this afternoon's session. We are all aware that we are dealing with five themes, and we are now on Theme One – Integrating Intellectual Property into National Development Policy and Strategies of the LDCs. It is a great pleasure for me to introduce our lead speaker on this theme, Professor James Otieno-Odek, Managing Director, Kenya Industrial Property Institute (KIPI), Nairobi.

Professor Odek has worked in the area of IP for a number of years now. He has also published on the subject, so today he will be sharing with us his knowledge on the subject matter. I have already stated what our theme is about, so let me take this opportunity to invite Professor Odek to make his presentation.

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute (KIPI), Nairobi

The topic for my presentation is Integrating IP into National Development. The first and most important aspect when I was given the topic was to pose the question, what is to be integrated into what? Is it IP to be integrated into the national development of a country or is it the national development policy that needs to be integrated? That is the challenge that occurred in my mind: which is to be integrated first?

It is not going to be a chicken-and-egg question as to which one comes first, is it the chicken or the egg? Nevertheless, suffice to state that when we deal with IP we are dealing with knowledge. For any country to prosper, for any country to develop, it is important for knowledge to be embedded and ingrained within its national development policy. In this particular session, there is only one message that I would like us to take back home, that is what you see on the screen, namely, that IP is the driving force behind a knowledge-based economy and IP is knowledge. That is the only message that I want you to carry home with you.

I will use a motor vehicle as an example. If you have a car and it does not have an engine, certainly the car will not move. It will go nowhere. You can repaint it, refurbish it, redecorate it, but you will only have an empty shell – something that cannot move, something that cannot take you from point A to point B. That is basically what IP does to a national economy. It is the engine that drives the national economy; it is the engine that gives rise to growth and development. The challenge that we do have as LDCs is how to incorporate this IP engine in our national development goals.

We need to integrate IP into our national economy. In our economies, we do have various sectors, the agricultural sector for example. For the agriculture sector to thrive in our various economies we need

to imbibe, we need to put knowledge of IP within that sector. In other words, we need to put science into agriculture.

When we use fertilizers, when we come up with new plant varieties to increase yields, we are putting knowledge into agriculture and this is the challenge that we do have. We have to put knowledge into our agricultural systems. When we are conducting irrigation, we are putting knowledge into the agricultural production system.

If we take the health sector for instance, a healthy people, a healthy population is the human resource base, it is the foundation for the country to develop. The human resource of a country is determined by the knowledge base of its people. If you have skilled manpower, it means you have put knowledge and technology within them, so this is another challenge for us.

How do we establish a critical mass of knowledgeable technical people who can be creative and innovative? This is one of the challenges of integrating IP into the national development policy. If we take the field of infrastructural development, we in LDCs say we do not have roads; we do not have bridges in terms of infrastructure. All these infrastructural facilities require knowledge, they require IP. Therefore, this is another thing that we need to do. We need to put knowledge into our infrastructural system, we need to put knowledge into our health sector and we need to put knowledge into all the sectors of our national economy. This knowledge is contained within the IP system.

One would argue or ask, what are the steps required to integrate IP into the national development goal? What steps are required? I will suggest several measures that are required, and we as LDCs will need to think about them, ponder over them and implement them if appropriate.

The first step is to identify the national objectives. What are your national development goals? That is the first thing to do in the process of integrating IP into the national development system.

Once we have identified the national goals, the next step is to undertake a national IP audit. In conducting the audit, we will find out the following basic purposes – what is the state of play? What is the state of IP in the respective country? What is the level of awareness? What are the laws or the legal framework that exists? What human resource capacity exists in the country to implement an IP strategy and what physical or financial resources are required?

Next, the third step is to formulate a national IP strategy. A national IP strategy itself must have a program of action, what needs to be implemented. We need to move from the realm of theory and awareness-creation at that stage. We need a program of action in the national IP strategy, a program that will produce tangible and measurable results. Once this has been done in terms of the strategy, then we need to identify the human and financial resources required to implement the strategy. The strategy has to be implemented and this strategy must be in line with the national development goals.

As you undergo all this process, it is very important to involve all the stakeholders. You need to bear in mind that IP is a cross-cutting issue that cuts across all sectors of the national economy. It cuts across the agricultural sector, the educational sector and the health sector. All sectors of the economy are affected by the IP system. By recognizing the cross cutting nature of IP, it becomes imperative to involve all stakeholders, so that each stakeholder is quite clear as to the role he is supposed to play in the process of integrating IP to meet the national development goals.

I need to add one other thing: a lead institution must be identified, an institution that will be

responsible for implementing the strategy. As in any community, you have several actors and players. When there is no leader, nothing moves forward. We need a lead institution, an organization or an institutional framework that can deliver the national IP strategy. Hence, a lead institution must either be put in place or identified and given the resources to discharge its mandate.

Now, in an LDC framework, I do recognize and appreciate that there are certain challenges. This could be financial, it could be human resource capacity constraints and it could be infrastructural constraints. Yes, all those constraints do exist, but as the constraints do exist, we are reminded of the old adage – you must first help yourself before you call your neighbour to assist you. The beginning or the starting point is in your own house. If your house catches fire, you do not just leave it and run around calling your neighbour to come and put the fire out. You have to start from there. As you shout for help, you should be doing something. Therefore, in this quest to integrate IP into our national development goals, the ball starts with us, the LDCs. We need to put in place a national IP strategy, a strategy that is realistic and a strategy that we can implement. This can only be done effectively once we identify our priorities.

Lastly, I wish to point out that it is not easy to be jack-of-all-trades and to specialize in everything. IP is wide, knowledge is wide, and each country must identify its IP clusters or the niche that they can examine. One of the tasks when formulating a national IP strategy is to identify the niche of a specific country. We know our individual countries, which aspect of IP one can exploit and boost the national economy. It is not easy to integrate everything and be a jack-of-all-trades and become an expert in everything. We need to identify the individual niches, the core competence of our countries that can easily be delivered.

If you look at the history of the world and the history of so many other countries, you will find

that countries have specialized in specific fields. Therefore, it is up to us as LDCs to find out to what extent we can develop a niche, in what specific aspect of IP.

Last but not least, we need to keep in mind that IP is not only national; it is also regional and multilateral. There are certain things that take place at the global level that must be considered. There are certain things that take place at the regional level that must be considered. At the global level, you cannot turn a blind eye to the provisions of the TRIPS Agreement. Fortunately, we are LDCs, because there are all those flexibility provisions contained in the TRIPS Agreement. One needs to look at those provisions and determine how we can effectively exploit them to yield the desired results.

The last bit of homework I would like to give to each one of us is to identify what constitutes our respective national innovation systems. For the IP strategy to be delivered, one needs to understand and appreciate the national innovation system that exists in your specific country. Once you understand the national innovation system and how to effectively make use of it, then I believe the sky will be the limit. With the strategy in place, with a clear appreciation and understanding of the national innovation system, I do believe that one can effectively integrate IP into the national development goals of our respective countries.

I do believe at the time of discussion, I will have more opportunity to shed light and explain anything that has not been clear. Thank you ladies and gentlemen for paying attention.

Her Excellency Mrs. Mpeo Mahase-Moiloa
Minister for Law and Constitutional Affairs and
for Justice and Human Rights, Lesotho

● Thank you very much, Professor Odek, that was very enlightening indeed. In the interest of time let

met quickly invite our panelist. Professor Keith E. Maskus is an Associate Dean for Social Sciences in the University of Colorado. He has authored interesting books on IP and has worked with the World Bank in the area of IP. Today, he is here to share with us his experience on the Role of IP in Reducing Poverty, Fostering Development and Wealth Creation. Before he dwells on that subject matter, I think it will only be proper for me to invite him just to share with us his brief remarks on the presentation that has just been made by Professor Odek. Thank you.

Professor Keith E. Maskus

Associate Dean for Social Sciences, University of Colorado, Boulder, Colorado

(a) The Role of IP in Reducing Poverty, Fostering Development and Wealth Creation

I am very delighted to address this High-Level Forum and very grateful for the invitation. I was asked in this presentation to say some words about what economic research seems to say about the subject that you can see on the screen – How can IP help reduce poverty and foster development? I would like to say at the outset that this is a complex issue. I will be focusing on elements that are positive in developing countries and I hope in LDCs, but as you know these are very complex tradeoffs.

You may know that in historical prospective reforms, IPRs tend to follow what market participants see as their needs to protect their IP creations. A good example would be the patent system developed in Japan after World War II. This was a transparent system/an open system, which was actually designed to maximize the dissemination of new knowledge into the Japanese economy. They have since the 1980s and the 1990s adopted a much more rigorous patent system like the American system. During this period, they had a system in place that was very

much focused on small-scale innovation, extensive licensing and dissemination of new knowledge into the Japanese economy. We have fairly solid evidence that it helped boost economic growth in Japan.

There is also a fair amount of evidence that looking at the data we have, the strength of IPRs over time goes up but depends upon each country's economic and social interests. This means the optimal protection system may not be the same in all countries. Many of my colleagues in the United States of America from the US Trade Representative's Office and industrial organizations tend to take the view that very high-level one-size-fits-all IP regimes make sense with the global economy. I think we are not so clear on that at all. However, interest in IP protection tends to develop over time as economic interest emerges. Here are some examples: In India, a fairly strong copyright system has encouraged the film development and software industry for a long time. In China, stronger interest in patent protection has benefited the biotechnology sector, engine design and other kinds of capital goods sectors. In Korea and Taiwan, this has helped in information technology, so these things do change over time.

Why IPRs? Society clearly has an interest in creating knowledge and, just as important, disseminating that knowledge as broadly as possible within the economy. However, knowledge can be developed in a number of ways. If you rely on markets, it can be subject to real costs and uncertainties, which create problems and market failures. As you know, invention and creation can be costly activities and they can have uncertain results. It may be difficult for inventors, musicians, creators, novelists etc., to actually get the returns from their activities or to appropriate these returns. It can be quite difficult to license or sell information in a context where you do not have the kind of legal certainty and contracting arrangements that protect secret information and patent information.

IPRs are market-based solutions rather than government-directed solutions. This can be fairly efficient in generating innovation in economies where there is a lot of competition, but it may be rather costly in economies where there is not much competition. These are the objectives of a balanced system of IPRs. No need to go through them in detail, other than to mention a few that seem to be fairly significant in the context of development, such as commercialization of new goods and technologies. I will argue in a minute that if we reform the patent system, it will take some time before it encourages a lot of new domestic innovation. What it can do is to encourage commercialization through the placing on a market of new technologies and new goods, particularly those coming from abroad.

With regard to providing legal frameworks for protecting and licensing the basic resources and supporting innovation in the context of development, in particular genetic resources and traditional knowledge, I think it is quite important to guarantee consumers the origin of products. Hence, you are buying something that came from a particular firm or particular location and you can be confident in consuming it.

There can be positive impacts to be sure on economic development. Economists have been studying this for a long time with, I think, a fair degree of confidence to promote technical change and to expand both domestic and foreign markets products that can be registered at home and abroad. I will claim in another minute or so that probably one of the most significant things that you can do to promote domestic value added from protecting IP is in fact to register IP in international markets.

More cultural goods can be created with the protection of copyright for example, industrial designs, apparel designs, global commercialization of genetic resources and traditional knowledge.

Finally, we think that there may be more products developed for developing countries and LDC markets as a result of stronger global protection. There is some evidence that is coming through, but it is taking some time.

There can also be some potentially negative impacts on economic development. I do not want to suggest otherwise. What it all comes down to is to be sure that the IP reforms that you have adopted or will adopt are complemented by appropriate policies; to make sure they are competitive; that they act in a way that encourages dynamic innovation, competition and diffusion. These are some of the potentially negative impacts on development, and we can talk later about means of complementing these policies to try to avoid those issues.

Systematic evidence on the gains and losses of IP reforms in the LDCs is very scarce. We do not know a lot about how this works. Most of the studies we have tend to use aggregate data and most of this data comes from the developing world and the middle-income developing countries more than the LDCs. Therefore, we really would like to see more large micro-based economic surveys. Most IP reforms in the LDCs are still ongoing. I suspect that the TRIPS Agreement has not been fully implemented in many countries represented in this room.

IPRs are only one factor in technical change, so it is difficult to sort out very clearly what the effects of IP reforms can be. There are problems in deciding what is causing what. Do stronger patents generate more innovation or is it the other way around? We have been forced to look into individual country studies and to talk about some anecdotal evidence. Here are some tentative conclusions that I think have some sense to them. As far as we can tell, patent reforms do not raise local innovation for some period of time but they do tend to improve the prospects for inward technology transfer. In very simple terms, if you

are a relatively poor country with limited technological capacity, it is unlikely you will see the domestic interest pushing strongly for patent reforms but you will see international interest pushing strongly for patent reform, as you very well know. The reason for that is that these international firms intend to take advantage of the stronger patent rights through processes of technology transfer through patent registrations, licensing etc. Over a period of time, you may very well see more innovation developed locally but in the short run, that seems not to be the case.

There are some other forms of IP that seem to be more associated with innovation in even the LDCs. Trademark protection can encourage local forum development, product entry and marketing reach. Without nationally, regionally or even globally recognized trademarks, it is quite difficult to extend your market beyond the village/provincial level.

Balanced policies and trade secrets encourage firms, specific investment and knowledge. In the absence of IP protection, creative artisans and firms tend to rely on more informal methods of secrecy which can limit the market quite extensively. A good example comes from India, where the traditional apparel artisans/developers of Saris and other forms of apparels tend to be very localized. Only a small number of the best and high developers of these apparel designs have a national or international market, so this tends to keep the average income fairly low.

There is considerable potential for raising value-added production from geographical indications. I know that this is an area of considerable interest for a number of countries in this room. Copyrights and efficient collective licensing societies can encourage domestic development of software, especially music and films. Again, I emphasize the word efficient because there are some places where collective agencies are not very efficient and fairly closed and have not been so positive for the music sector.

Here are some examples where weak IP seems to limit the local market. I have mentioned Indian traditional apparel artisans. Let me just mention a study the World Bank did some years ago in Senegal in which I was involved. Looking at the music industry where substantial local piracy really does limit incomes in Senegal – 30,000 local musicians, less than 15 of them were selling and performing abroad. Those who did perform abroad also did their recording in music studios in France, the United Kingdom and the United States of America, because they felt that was where they could protect those recordings. In fact, you have a situation, a two-tier kind of economy, in which the vast majority of the musicians with creative interest exists in a highly perfectly competitive kind of industry without being able to create much value for themselves and a small number of successful musicians who could do that.

The last couple of slides show some positive stories – global marketing prospects. Let me just give you a basic economist perspective here. To begin with, I think that there is enormous scope for gains. When you recognize that in a rich world, which is knowledge-abundant but very heavily in the position of wanting to demand the resources that can be extracted from the resource-abundant and talent-abundant LDCs, there must be some way of breaching this gap and generating more income, more value for the owners of the resources and for the talent-abundant creative interests in the developing countries. Unfortunately, today, producers in the LDCs have simply not been able to claim the intangible economic value from their knowledge. It is quite difficult to do so. It takes not only creativity, it takes legal protection and it takes licensing arrangements, so we really need to develop that. A key strategy for gaining income is to register and protect IP in major international markets. A very good example is the Mexican tequila industry. Ten years ago in the United States of America, tequila was considered a sort of low-value drink on which you became inebriated very quickly. Now, there are extremely

very high-value niche developers of tequila who have become quite valuable in the United States of America.

Here are a couple of examples you may know about. This one has been less than entirely sustainable but it is an interesting story. The Cocoa Farmer Cooperative in Ghana that bought one-third of a British chocolate company some years ago in order to take control of the brand names of their cocoa products/chocolate products in the European Union and in the United States of America. That has generated, we think, somewhat stable markets for high-quality cocoa from Ghana. In Samoa, in a traditional village, healers use the stems of the mamala tree, which has traditionally been used for a number of treatments. It turns out in working with the National Institutes for Health and AIDS researchers in the United States of America, they have been able to extract prostratin, which is in fact a drug that has potential use in HIV. This particular drug has been licensed to the University of Berkeley to run clinical tests to see if this could be useful as a drug to treat HIV. If it is commercialized, then the Government of Samoa will in fact be sharing the license revenues with Berkeley. Ethiopia is going to be talked about I assume a little bit later today so I will not say anything about that. One final example comes from Uruguay – the Acheguaki tribal name. I just want to mention this because here is a case where a well-meaning American fair trade company actually used this tribe's name in selling its own tea in the United States of America without permission. When it was brought to their attention by the Government of Uruguay, they were willing to sign a licensing agreement and to send some resources to the tribe in Uruguay. Here is a case where recognizing that international companies have some interest in licensing is definitely worth doing.

Lessons to draw: this is I believe my last slide. Piracy and counterfeiting do penalize local launch producers, at least as much if not more than foreign firms. After all, the foreign firms have

multiple markets and domestic interest is just one. Informal IP protection tends to sustain low incomes. You should invest in international registration, in enforcement of IPRs which is where the larger markets are to begin with, so making sure that your firms or creative interest get their rents and royalties are important. International firms have an interest in licensing agreements and there is considerable scope for international benefit sharing if we can develop administrative procedures that are effective and transparent. I will stop right there. Thank you for listening.

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute (KIPI), Nairobi

(b) IP and Public Policy Issues

I will talk about IP and Public Policy. Once again, I have a small message that we could reflect upon. The message states that the relationship between economic development and IP lies in effective utilization of public policy to achieve national goals. Public policy is the key.

In addition, public policy goes hand in hand with what we call policy space. I would not attempt to define what constitutes public policy. I just want to emphasize the importance of public policy in IP discourse.

Why is public policy important? There are two reasons why public policy is important when it comes to IP. The first one is that public policy affects the nature and scope of rights within the IP system. The particular right that a country would grant to IPR holders is a public policy question. Whether you want to give broader rights or narrow rights is a public policy issue that must be decided based on other factors.

The second most important reason why public policy is important is that public policy balances private rights and public interests. When we talk about IP, we are quite familiar that these are private rights. These private rights must be counterbalanced with public interest, and that balancing is done within the realm of public policy. Therefore, as you enact any legislation or as you take any position about IP in a specific country, the thing that comes in mind is that there is a balancing or private rights versus public interests. This is the realm of public policy.

The end result is that the particular system/the type of IPR system that a country will have is a system that is based on public policy. In effect, each country must ask itself what type of IPR system it needs, what type of rights it needs to put in place and what incentives it should give for innovational creativity. These are all public policy issues. What institutional framework should we put in place? What prioritization should we have in terms of resource allocation? All these are public policy issues that must be decided by policy-makers.

I am happy to note that we have amongst us here today ministers and senior government officials. They are the ones who on a day-to-day basis make public policy decisions. They make public policy decisions when it comes to IPRs. These are some of the issues that they have to grapple with as a country: What type of IP system do we need to have? What incentive structures do we need to put in place? Do we need to encourage foreign registration or do we need to exclude some sectors? All these are public policy issues that a country must decide for itself, and these decisions must be made as I stated before, in line with the national development goals.

I do recall that in the last few minutes I mentioned that we must keep in mind the regional and international dimensions of IP. This is important because within the global system we have minimum standards. Fortunately for LDCs, some of those minimum standards are not applicable.

However, it needs to be kept in mind that the minimum standards actually provide the four corners of the public policy you can play with, what you can do or what flexibility provisions are available. Therefore, this needs to be kept in mind when it comes to public policy.

For an LDC country, I have identified five thematic areas where public policy shall remain crucial. The first one that I mentioned is the flexibility provisions within the WTO and TRIPS Agreement. Each country must examine and study these flexibility provisions and make use of public policy, because this is the area/the policy space that has been created to enable an LDC country to effectively utilize IPRs for its socio-economic development.

The second thing to be borne in mind with regard to public policy from an LDC perspective is the role of IP in bilateral and regional agreements. This is a crucial issue today. We have numerous trade agreements, regional trade agreements and bilateral trade agreements being negotiated. All these agreements have an IPR component. On the subject of a public policy issue, it is important to bear in mind how to factor in IP in bilateral and regional agreements. It is in this area that TRIPS plus provisions are found. TRIPS plus provisions are finding their way in bilateral and regional agreements. As a word of caution, LDCs need to keep in mind that these regional trade agreements can actually go far beyond TRIPS plus. It may become both a political and an academic question whether those TRIPS plus provisions are encountered in the TRIPS Agreement. I do know that most of the LDCs represented here are members of the EU/ACP Cotonou Partnership Agreement. In addition, there are all these economic partnership agreement (EPA) negotiations going on. A word of caution: bilateral and regional agreements contain public policy issues that need to be looked at. Whether you have TRIPS plus or not is something to keep in mind.

Enforcement issues are important for LDCs. As my colleague, Keith has mentioned, enforcement of stronger IPRs have repercussions for a country. The impact is not clear but enforcement issues must be kept in mind. Whether an LDC requires stringent IPRs is something for debate. These are public policy issues that must be borne in mind by LDCs. What enforcement regime do you want to put in place? At the risk of not contradicting myself, it is important to enforce IPRs, it is important to recognize IPRs, but the system/the regime that a country puts in place must be clearly thought out as a public policy issue.

Another public policy concern for LDCs is that we need to recognize the role of non proprietary collaborative works in generating IP. Issues of traditional knowledge, genetic resources and biopiracy as well as geographical indications need to be kept in mind. A regime that can be set up as a regional or multilateral framework must be borne or shaped by public policy considerations.

In the morning, we heard about the digital divide that exists between LDCs and other countries of the world. When dealing with copyright and the Internet, we as LDCs must bear in mind that we need access to literature, publications and journals. Personally, I was very happy with the initiative this morning whereby LDCs will have free access to some public journals. Unfortunately, my country has to pay as we are in the other category. For the other countries, it is a positive step that access to information is at least important in the IP field.

We as LDCs do require a clear policy on how technology can be transferred and how technology can be diffused to our countries. We need technology to be able to develop. We need technology to be able to extract the IP potential that we do have in our countries. Hence, a clear framework for technology diffusion is important. One might need to think about the possibility of initiating technology diffusion observatory units within our respective countries so that we can

see to what extent is technology diffusing into our countries to enable us to undertake economic growth.

Last but not least, capacity-building is always an issue that will be with LDCs for some time. Public policy needs to address human resource capacity and infrastructural capacity.

I have focused mainly on the public policy concerns for LDCs. Nevertheless, we need to bear in mind that there are other public policy issues that are topical and contemporary at the global level

When you talk about green technology, it is now a public policy concern for the rest of the world. We cannot ignore green technology issues. We cannot ignore IP and climate change. These are facts of life that we are facing in the current generation.

Questions of IP and food security are important. We as LDCs need to reflect on all these issues. What type of regime do we have, how can we use the IP system to enhance our food security?

IP and health is also an important issue. We start from the point that most of us in LDCs do not invent drugs but we import them. Since we import drugs, what system shall be put in place to enable the IP regime facilitate access to health and access to medicine? These are some of the public policy issues that we need to bear in mind as we develop our national IP strategy. There are certain public policy concerns that are very crucial, that we must keep in mind and that we need to keep on balancing. Hence, for policy-makers it is important to bear in mind that public policy is the tool we do have in our hands to shape the IP system in whatever way we need. As we design and shape our IP system, we need to bear in mind our national goal and our national interest. As policy-makers, you are more experienced in this art of balancing than some of us. We may hear from you at an appropriate time in the course of discussion.

Discussion

Her Excellency Mrs. Mpeo Mahase-Moiloa Minister for Law and Constitutional Affairs and for Justice and Human Rights, Lesotho

Once again, Professor Odek, we thank you so much for sharing this information with us. Excellencies, distinguished participants, we have had an opportunity to listen to two important presenters, and based on what they have shared with us this evening, I think you will agree with me that both of them are indeed able experts in their own rights.

In some of our countries, it is true that IP is not part of our national planning and development strategies. One would like to seize this opportunity to urge us as governments to take a proactive role here to ensure that IP becomes part of our national planning.

Yes, it is very true that the private sector also has a role or a stake in this, but we know that the private sector in the LDCs faces numerous challenges. It is not as strong as the private sector we find in the developed world. Let us as governments take the lead. In the near future, we hope that we would be able to work hand in hand with our private sector. In the same breath, we continue to appeal to WIPO. We know that they have expertise in this area, so they should continue to help our countries as we move into the preparation of the policies that we are discussing here today. We have heard that IP forms the most important part of our planning, that is the how part. We can make our plans, we can formulate our visions, but if we lack the necessary knowledge as to how we are going to implement it, then we are likely not to move an inch.

The floor is open just for questions or remarks.

Delegation of Uganda

I do not have a problem with the role of IP in reducing poverty. In Uganda, we no longer call it poverty reduction – we call it poverty eradication. We do not intend to reduce – we intend to eradicate. I would like clarification from Professor Odek on the issue of public policy. I have no doubt in my mind that certainly, it strengthens the IP regime, but there are so many players involved. The public policy formulators, we the policy-setters and pacemakers are sometimes quite overwhelmed by international negotiations. We want you to get to the nitty-gritty of how LDCs can be assisted.

I will give you an example. Let us take the area of pharmaceutical products. There is a rush to developing countries to set up pharmaceutical industries, both in active pharmaceutical ingredients and finished products. However, there is a problem from developed countries, fighting the people who are establishing these companies in LDCs, particularly from the Asian communities. The developed countries are coming in on the other side, through fighting counterfeit laws that they are formulating. They are saying that such laws are not actually strong enough – in other words, they are fighting generic products. Therefore, we realize that we are at a crossroads. How effective can we be, may be if we can be assisted by WIPO? How can WIPO come in to strengthen our understanding and our role in policy formulation, so that we are protected from warring parties who want to take advantage of our situation?

Finally, you said that there must be a lead institution for an IPR regime. I believe Kenya has it. How independent is it, how autonomous is it and how able is it to propel the IPR regime? Thank you.

Delegation of Lesotho

● My question is directed to Professor Odek. Could he please highlight the features of an IP audit. Thank you.

Delegation of Senegal

● I would like to thank both speakers. Their task is not an easy one, as it is difficult to address such intangible intellectual issues. Thanks to the contributions of the professors, we have been able to identify the real crux of the matter and the problem of IP for development.

I have two questions for Professor Odek that I find particularly important. First of all, access to knowledge. He demonstrated in his presentation that profitable use of IP relies on access to knowledge upstream. He gave some tangible examples of that, but access to knowledge raises difficulties in LDCs and one particular difficulty is that of language. Today, we refer to various publications that are accessible on the Internet. However, there are two obstacles to access those publications in poor countries, access to the Internet per se. We have mentioned the digital divide and the other obstacle is that of language. If we look at the percentage of those who have access to the Internet in their language or the language that they understand, it is a very low percentage. In order for everyone to be able to benefit from such knowledge, the majority of the population needs to have access to this knowledge to be able to make the best use of IP.

The second problem is striking a balance between the interest of rights holders, safeguarding their rights and the public or general interest. In LDCs in particular, it is difficult to know where we should set the threshold to make sure that the rights holders collect fees to promote innovation, reap the benefits of their innovation and at the same time

allow poor inhabitants to access to goods. How can we strike the right balance? I think this is extremely difficult in a context marked by great poverty. Thank you.

Delegation of Niger

● As a representative of a very poor LDC, I have to deal with a particular problem. The fact that the information that we receive based on patent documents is not utilized. We cannot take advantage of this information. It is very difficult for us to translate research into tangible activities and to make the best possible use of all the information that we can find in patent documents. We are very glad to take part in this Forum to have a better idea of the policies that should serve as guidelines for our governments to build their national capacities, and to make the best possible and most rational use of all the information that can be gleaned from these patent documents. Thank you very much.

Professor Keith E. Maskus

Associate Dean for Social Sciences, University of Colorado, Boulder, Colorado

● Thank you for these questions and comments. These are indeed complex and difficult issues. I want to reaffirm what Professor Odek said about the need for balance, as you reformulate your national innovation strategies, your public health policies in the context of IP. It does take a lot of thought, a lot of reading and a lot of research to figure out how best to utilize what is available in the context of TRIPS flexibilities, etc., to make sure that there is a balance set up in the IP regime. The safeguards that you can have will in fact be appropriate for your economy.

The Minister of Uganda mentioned that even in the context of seeing these reforms in the LDCs, there

are still attempts in the developed world to try to limit access, even more particularly, in the context of pharmaceuticals. You mentioned a case. I think what you are referring to is the new counterfeiting transit rules. Hence, what appears to be perfectly legitimate generic drugs can be seized and taken out of circulation, if they go through a port where the patented drug is protected. I think that is what you may have been referring to – the recent case in the Netherlands, I suppose.

I think that to the extent you can do so, it is important to make it clear that that kind of limitation on what seems to be legitimate transit of pharmaceuticals and related products is perfectly legitimate. You should not permit the port authorities in developed countries to do that. I think this requires some negotiations and some representations at high level. Otherwise, these products will have to move in different transit channels and that is a costly thing. It could in fact limit the ability to develop generic industries in your own countries.

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property
Institute (KIPI), Nairobi

● The institution which I head is the Kenya Industrial Property Institute (KIPI). As I mentioned in my presentation, once you have a national IP strategy, you need a lead institution. Within the Kenyan context, let me state that KIPI is not the lead institution. The lead institution is the National Council for Science and Technology. It is responsible for complementing the country's science, technology and innovation policy. It also coordinates all the stakeholders and, other agencies including my agency, in trying to implement and to deliver the national IP strategy. That is how we have set it up in the Kenyan context. In addition, this was deliberately done taking into account that the institute that I head

KIPI, is largely a regulatory institution dealing with the administration of IPRs, granting of patents, trademarks, utility models, etc. Hence, conflict of interest should not be a reason. Therefore, there is a separate institution that is the lead agency.

The National Council for Science and Technology has been funded and it has put in place an innovation fund to promote innovation. It also ensures that public universities and research institutes research to invent. They should no longer research to publish articles to get promotion. Several things have been set up in this lead agency.

On the features of an IP audit, there are several features or essential requirements in an IP audit. Let me start by noting the objective of an IP audit. The main purpose is to determine the current state of affairs. What is the existing situation? For this reason, one of the fundamentals of the first features of an IP audit is the answers to the following questions – What is the existing legal framework? What laws do we have in place in the country? Do you have laws on patents? Do you have laws on trademarks? Do you have laws on industrial designs? Do you have a law to deal with plant breeders' rights? It will give you the status of the legal regime existing in a country. You will be able, through that, to identify any legal gaps you may have.

Second, the IP audit will reveal the institutional framework you have in your country. Do you have an IP office and is the office effective? The institutional framework that exists in a particular country will be clarified once you conduct an IP audit.

Third, the audit will be able to demonstrate or reveal the human resource capacity that exists in a country. Do you have people to run the IP office? Do you have people who can teach IP awareness in the country? Do you have the scientists who can lead innovation in the country? Do you have an inventors association? Do you have a collective

management organization for copyright and related rights? These questions will be clarified through the IP audit and it will give you a level of awareness.

What is the level of IP awareness? It will determine where to allocate resources. Is it to allocate it to the universities or to the private sector? Where should awareness be focused? These are some of the key issues that the IP audit will be able to highlight.

Let me deal with the question of public policy – LDCs and multinational corporations, more specifically the pharmaceutical industry. There are various provisions that one can use in practical terms to deal with questions and issues of the pharmaceutical industry and genetic drugs. All these are policy options that a country can exercise. Each specific country must choose its policy options.

The first policy option available is the utilization of the compulsory licensing system within the TRIPS Agreement and in some of your national legislations. Let me add that this has been able to work. The threat of issuing a compulsory license has been able to make some of those large multinational companies grant a voluntary license. This applied in South Africa, Thailand and in Kenya, which once threatened some companies. I will not mention their names. We now have eight voluntary licenses and we do make our ARVs.

Another option that can be used as a policy tool is the “Bolar” provision. This specifically relates to those countries that have the capacity to manufacture drugs. Before the patent expires, you can put in place a system that can enable your existing manufacturing industries to be able to manufacture drugs.

Third, and most important, in my context and for the LDC context, are the Parallel Importation Provisions. You need to add to your legal system provisions that allow parallel importation of drugs.

This is another policy option available to a country.

I am quite aware that few LDCs have provisions that allow parallel importation, perhaps largely because most of those TRIPS provisions are not yet applicable. This is the effective tool that can be used to allow generic drugs to enter into our countries.

Others, but that is not within our policy space right now – exclude the entire pharmaceutical sector from patentability. India used that effectively until 2005. These are the various policy options available. I do note that within the Kenyan context, we have passed a new law, Anti-Counterfeit Goods Act, which has caused us problems. I will not mention which country has taken us or is thinking of taking us to the WTO Dispute Settlement Body. I do believe we will reach this stage because of our definition of counterfeit, mostly with respect to drugs. We have defined it in a unique way. If you have the opportunity, Google a copy of our Act and look at our definition that caused a stir in some quarters. It has been commented on in IP-Watch, which is being distributed outside the conference room. These are the options that countries can actually use, defining counterfeits to exclude others. I will be able to tackle more on that on a one and one basis.

Access to knowledge and digital divide. Yes, I do agree that we have linguistic problems with some of the documents that we are discussing. We have numerous publications. Some of us speak French, English, Arabic or other languages. This is a challenge that will live with us forever. How do we deal with this? How can dissemination take place on an effective level when some of these publications cannot be read? The only immediate response that I have is that translation is necessary. Otherwise, we have to look for bilingual people who can be able to come and enhance or do the awareness-raising and discourse. I do believe that each one of us can either communicate in English or in one of the UN languages. It is easy to find a publication on the same topic that meets our

linguistic concerns. I know from the LDC context, in particular from the African context, that we are largely two linguistic groups. Hence, we find some publications in English not available in French.

I wish to seek the support of WIPO to translate some key publications that we might need as LDCs. I would really like to request this support from WIPO through this Forum.

Likewise, with regard to the digital divide, we need to put infrastructure facilities in place. I am not quite sure whether WIPO is the correct forum, but we need to build up our infrastructure in the ICT sector, both nationally and internationally, so that we can access some of these information.

We launched the aRDi system this morning. If we do not have access to the Internet, how will we obtain these documents? How will we make use of it? We have not reached the stage where there is Internet in every household or in every office. We have our usual power problems, etc. This is a challenge that we need to face.

Concerning balancing, my colleague, Professor Maskus, has already explained. Patent documents, yes, these are important issues. I have taken note of the comments. There is a need for reflection on how to draw this balance. As has already been stated, it is a complex issue. One has to view the IP system as a system in itself and also in collaboration with other wider issues. Balancing is an art in itself and it is based on knowledge. You need to have a wider perspective of the issues at hand to be able to draw the balance. Thank you ladies and gentlemen.

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization (WIPO)

First of all, I would like to address the question of formulation of national IP and innovation strategies. In his opening remarks, the Director General pointed out that this was one of the main frameworks within which our efforts to direct capacity-building and technical assistance would be channelled, though not entirely for all countries but for those countries who would be prepared to do so. I would like to say that many countries are embarking on this path. Many countries have already formulated their IP and innovation strategies. Several other countries are in the midst of doing so. In addition, we have received several requests to help countries formulate these strategies.

We have a whole repertoire of tools and mechanisms and methodologies to help countries design, formulate and implement their strategies. On behalf of the Director General and on behalf of WIPO, I would like to offer this to any country which would like to have our support, guidance and technical assistance in this respect. We would be very happy to cooperate with those countries in the same way as has already been done with most of the countries present here.

This would also involve in many respects the policy- and goal-setting in a strategy context when we go into detail. It will invariably bring in the public policy issues. You cannot divorce public policy issues from formulation of strategy public issues. As Professor Odek very rightly said, it is an integral part of that process.

Once again, we will be quite happy to work with countries in confidence when they request us to clarify the legislative options, the flexibilities in international agreements and conventions and the TRIPS-plus provisions, if a country is doing a bilateral or multilateral agreement. We will clarify the question of the kind of balance, to which the

Delegate of Senegal referred, to enable countries to understand the options. Afterwards, countries may take their own decisions.

With regard to Niger's question about how to use patent documents, as far as capacity building in terms of human resources, institution-building, automation/provision of IP and IT infrastructure and the establishment of information centers are concerned, we can discuss with you how to set up a technology development center or a technology diffusion center within an institution or body of the government you identify. We have set up information centers in Tanzania, Ethiopia and Cambodia.

Lastly, I wish to touch on the issue of languages. Something that we do regularly at the request of countries is to help countries technically and financially, as well to the extent possible in translating the relevant WIPO publications into their own local languages. This facility is available. More and more of our publications and tools are also being translated into many languages, particularly in the six official UN languages. This support is also available to countries. If a country would like to have our assistance in translating important documents into its own local language, that facility is available through a request to us.

The capacity-building, technical assistance and development cooperation assistance of WIPO is comprehensive, integrated and coordinated. Please take full advantage of it as we are working with the countries on a one-on-one basis, and also on the regional and subregional context. Thank you very much.

Theme Two – The Strategic Importance of Transfer of Technology and Technological Capacity-Building for the Development of LDCs

His Excellency, Minister Juneydi Saddo Minister for Science and Technology, Ethiopia

● My name is Juneydi Saddo, I am the Minister for Science and Technology. The Ministry just came into being only seven–eight months ago, so I am lucky to be the first Minister of Science and Technology in my country. Our lead speaker is Professor Keith Maskus.

Professor Keith E. Maskus Associate Dean for Social Sciences, University of Colorado, Boulder, Colorado

● Thank you, Mr. Chairman. I was asked in this case to talk about the Importance of Technology Transfer and Capacity-Building. What I will try to do is to summarize economic research evidence on international technology transfer, which for LDCs is probably the most important means of accessing knowledge. Of course, I do want to say in passing that it is just as important to imagine or to think about how technology and information is transferred from domestic agents to other domestic agents, such as from universities to the firms that would commercialize the technology. The United States of America has a long history for doing that, and other countries are trying to replicate what the USA does. If you would like to ask questions about that in the question-and-answer session, I will be happy to address it.

I would like to talk about International Technology Transfer (ITT), and I will try to go through this quickly since time is short. There are many definitions of what really constitutes ITT, and how you consider it I believe depends upon the objective you have in mind. Some people think about ITT as having occurred if you have just access to some information, however that happens. Therefore, if you import for example, a capital good or a wind turbine that you are going to put up for a wind farm, you may not know how that technology works but it is there doing something for your economy. You might want to take a somewhat broader view though, that technologies have to be deployed in domestic enterprises as opposed to affiliated international enterprises. Some think of technologies that are actually learned and used by domestic enterprises as the appropriate definition of technology transfer, arguing that technology is really not transferred until domestic interests can use it, understand it and even finally take control of it and improve on it. It depends on your objective if it is just to use a technology. The first is perfectly fine, but if you want to expand the technical capacity of the economy, the broader definition probably makes more sense.

Technology transfer is of great strategic importance for developing countries trying to catch up to the global frontier. If your policy choice is to try to develop your own technologies, there can be some advantages to doing that. However, it is generally much costlier to do that than to import the technologies and then learn from those imported technologies.

ITT has the capacity to expand productivity both directly by using the new technologies and indirectly through what we call spillovers. The best example is that many international companies, when they locate their facilities in a middle-income or developing country, will share their technologies with domestic suppliers of inputs. That can spill over into more productivity and more learning in those input upstream industries.

ITT is a key input for linking domestic firms to global production networks. To take a very complex issue and simplify it far too much, for the developing world to really take advantage of globalization, it does require greater integration into international production chains, value chains and international production networks. Having access to global technology is really a prerequisite for that.

ITT is the primary means of acquiring technology for dealing with public goods problems. I know that very well. These days, LDCs are thinking about public health technologies and environmental technologies, how to gain access to these and how to deploy them.

The crux of the IP issue in the context of technology transfer – Do you think that technology is better transferred in markets with protected private rights? Do you think that technology is better learned informally where that may be easier to do or where there are less protected private rights? These are complex issues.

Here are the means by which market mediate/channels of ITT happen. You are familiar with all of them – trade in goods and services; foreign direct investment; licensing; outsourcing etc., including public-private partnerships in public goods such as medicines and environmental technologies.

Equally important and perfectly legitimate are non-market channels of learning ITT, through imitation and reverse engineering. Labor turnover is once again a very complex issue made very simple. One reason the Chinese economy has been able to develop its industrial capacity so quickly is that it has a strong human capital base and lots of engineers. Those engineers move very quickly from multinational enterprises into developing their own firms, or into working with domestic enterprises and taking the technology with them or at least what they have learned from that technology.

With regard to temporary migration of scientific and technical personnel, we have very good evidence from surveys done in the developed world that in fact one of the most important means of transfer and technology learning capacity is through studying engineering and science in the United States of America, Europe or Australia, then going back to the home country and developing either your scientific networks or entrepreneurial activities in the private sector.

As far as reading scientific and commercial literature is concerned, we already talked about reading patent applications. Patent applications obviously have the problem that they are overwhelmingly in English, possibly some of the European languages, more than that at least in the United States of America. Even though there is a requirement that patent applications must clarify how to implement a technology, the lawyers would rather not do that so clearly. Hence, it is not so easy to read those patent applications and learn the technology. Indeed, it takes real technical expertise to do so. However, within the OECD countries, I think reading patent application is a real form of learning. We have a lot of studies which are not entirely consistent with each other but I think you can say the following about what really determines the extent of inward market-based international technology transfer: how big is your market? How rapidly is it growing? How close are you to other markets? I realize this is perhaps one of the biggest problems in economic structural terms for LDCs: just not being close enough to international markets and what to do about it.

With regard to human capital base and skills and other factor endowments such as resource endowments and domestic R&D capacity, our surveys clearly show that local firms in developing countries that have their own R&D capacity tend to learn international technologies more quickly, implement adaptations of those technologies into their own economies more quickly and generate more rapid productivity

gains. That would suggest that making sure that local enterprises can invest in R&D capacity can be an important pro development factor.

As for governance and transparency, trade costs are fairly low and investment costs are fairly low, as I am sure you have heard all of this before.

The last point on that slide is contract enforcement and IPRs. I do not want to tell you that those are unimportant. They are important but they really are complementary policies to everything else on that slide. I would argue that simply strengthening the IP regime by itself is not likely to generate much more in the way of domestic innovation and inward technology transfer unless these other elements are also factored in. If you do them all or you do some appropriate subsidies of those, then IP can be an important complementary policy. That is what this slide basically says.

Why do IPRs seem to improve prospects for inward technology transfer? Technology transfer is a costly investment and takes place in uncertain environments. The multinational enterprise is going to invest in technology in your country through an affiliation, through a joint venture, through licensing because it needs to try to overcome those costs. There are market problems that make it difficult to transact, especially with higher-quality technology without contract rights. To simplify again, if I have an advanced technology and am willing to deploy it in your economy, I am not likely to do so unless I am relatively sure that you will not take it and use it without compensating me. Therefore, contract rights do matter there. IPRs can play a positive role in reducing transaction costs, particularly when it comes to licensing contracts for know-how.

Patents and trade secrets can encourage vertical sharing of technologies with upstream suppliers as I was saying – the suppliers of inputs, machinery, even labor to multinational enterprises operating in your economies. That can be an important source

of technology spillover, and patents and trade secrets can matter there.

All of the above benefits are more likely when local firms themselves have sound technical capacities, engineering skills and R&D capacity. Of course, on the negative side, IPRs can raise the costs of imitation and reverse engineering. There is always a balancing act to make sure that you think through. There are some limitations on the scope of the IPRs that are worth thinking through. Do we have any evidence in all of this? I will tell you that we have very little evidence on LDCs, simply because the data we need to study these issues are not generally available in the LDCs. These main points really come from studying the emerging middle-income economies, but I hope there are some lessons to be drawn for your own economies. High-tech trade in both imports and exports tends to rise with the strength of patent rights. This is perhaps surprising.

Foreign direct investment (FDI) and licensing also increase with patent protection in middle-income and large developing countries. The level of sophistication of the technology tends to rise with improvements in the patent regime. There is also a substitution effect away from FDI towards licensing as IPRs improve. As contracts rights become stronger, licensing becomes a more attractive market means of technology transfer.

What should you expect from IPRs reform? Again, as I said earlier there is little evidence of induced innovation by local enterprises in the short run. There is considerable evidence of increase of inward registration of technologies (patents and trademarks) from abroad. Those applications are a signal of an intention to serve a market through billing and affiliation, and through sending more exports to your economy through licensing. All of this suggests there can be dynamic gains from a transparent IPRs system as long as those standards are fairly pro-competitive.

There are some policy questions I would like to generally raise, because you may be thinking about them on ITT itself. Can you erect an infant industry trade into industrial policy with respect to this process of inward technology transfer?

Well, closing the economy through trade quotas or other kinds of restrictions on trade, in an effort to try to build domestic industrial capacity, can make some sense. However, it only makes sense where spillovers are within your economy rather than international. If you build a technological capacity based on that kind of high-cost intervention, you are going to lose those technologies abroad anyway. It will probably also require large markets with substantial demand and inter-industry demand. Therefore, there are spillovers that emerge as well. I would say that this is not a very likely approach for smaller developing economies. In addition, trade protection is a fairly indirect subsidy to R&D and can generate a number of secondary or multiple costly distortions.

Trade Related and Investment Measures (TRIMS) such as local content laws and intermediate input requirements are generally fairly inefficient means of attracting FDI and do not generate much innovation at home. I would just say be careful about those.

You could ask "Is it not true that the larger Asian economies, East Asian economies did that sort of thing? The answer is yes, in some senses, but keep these things in mind. The policy in these economies has favored licensing and joint ventures. If you look at the Chinese experience, for example, you will find that their policy was to try to make sure that inward transfer brought with it technology that would be shared fairly quickly with domestic enterprises. International firms were willing to do that pretty much because China is a large economy with a substantial engineering base and productive labor force. Otherwise, trade policy is fairly open to capital goods imports. Their active general policies are to build domestic technology capacities

through human capital engineering, etc. IPR policies particularly in Korea and Japan favored generalized dissemination in local innovation within the economy.

Incentives for inward FDI such as tax holidays can be justified in some circumstances but probably not in the context of smaller economies where there will be substantial fiscal costs to your budgets. There are reasons to try to use subsidies to build local technology. Here are some arguments in favor of this approach, but there are some problems there as well.

What might be effective host country policies in terms of trying to attract technology? Well, if you have barriers to entry in domestic innovation, by all means try to reduce those barriers. This is part of building a national innovation strategy.

As far as improving the supply of engineering and management skills is concerned, sometimes we think of building human capital strictly in the technical sense. Engineering and science are very important. Equally important are building managerial skills. In fact, those new elements of knowledge can be translated into entrepreneurial activities in the marketplace. Ensuring competition in supplier industries – these are the backward vertical linkages to which I was referring.

Promoting an effective business environment and investment climate – I know you have been told these things before but they do seem to matter.

When it comes to building a domestic capacity for participation and licensing agreements, this is where IP probably comes in most strongly. I think you will find that it really benefited Brazil and Mexico. What those local enterprises have is a capacity actually to participate both legally and economically in licensing agreements. That can mean registering your own IP or your own patents for purposes of trading within the context of licensing agreements. That probably means building real engineering and technical skills.

With regard to pro-competitive IPR standards, you have the slides so I am not going to go through these. These are some examples of the TRIPS flexibilities that I think are especially important in the context of using inward technology transfer to build domestic capacity and an adequate competition policy, which is focused on licensing restrictions. We can talk about that more if you like.

What are some of the global policies we can ask the world to look at, to try to improve or raise the flows of international technology transfer? I make the case all the time within the OECD countries that if you really want to see technology capacity being built in the poorest countries, you are to raise your own market access for their products. After all, if they can export, that creates a bigger market and thus a bigger reason to invest in productive activities.

WIPO is providing technical assistance for capacity-building and technology absorption. Many other organizations are doing this as well, but I think probably not enough yet. I would like to see the wealthier countries remove their fiscal disincentives and their discouragement of international technology transfer to developing countries. This is a technically and politically difficult issue in the United States of America, where we have lost a great deal of jobs in the manufacturing sector and where Congress tends to blame the developing countries acquiring technology for this factor. Nevertheless, there are some disincentives to that transaction in the United States of America and in Europe I would like to see reduced.

As for encouraging differential access strategies, the publishing strategies we heard about earlier that WIPO is working on are a great example. I would like to see the developed world establish policies in which knowledge is made essentially freely available in the developing world, particularly the LDCs, but the licensing terms are graduated to the extent possible.

With regard to greater opportunities for temporary movement of technical workers and for study abroad, I think an important element one can think about is in the context of the WTO Mode 4 negotiations, trying to devise larger temporary visas for technical and scientific personnel to work and study in the developed world.

As for public research programs and the technology needs of developing countries and LDCs, we are not nearly far enough down that road in my view.

When it comes to linking developing countries scientists in a global research grant programs, the National Institutes for Health in the United States of America now actually offers additional points and grant proposals if a research network involves researchers from the developing world in the medical area. I think this is a positive thing.

Finally, with regard to trust funds for supporting inward technology transfer and public goods technologies, it is one thing to invest publicly in new technologies, but we also need to invest in transferring those technologies appropriately into the developing world.

I want to thank you for listening to me again. I know there are a number of questions you may have and I will be happy to answer them.

Mr. Yuke Chin Lee

Intellectual Property Consultant
Malaysian Invention and Design Society
(MINDS), Kuala Lumpur

(a) Linking Universities and Research Centers to Public and Private Sector for the Management, Promotion and Commercialization of IP Assets; Spin-offs and Start-ups

● The first presentation is Linking Universities and Research Centers to Public and Private Sector for the Management, Promotion and Commercialization of IP Assets Spin offs and Start ups. I would like to share with you the Malaysian experience. Malaysia has a dream to become a fully industrialized country by the year 2020. Hence, the country must shift to high-tech industry which requires more creativity, innovation and value-added. The government has a strategy to achieve this goal. The most important strategy is to enhance industry, academic and government collaboration. Why academic? All the top brains of the country can be found in the universities and research institutions. Why industries? These are the people who build factories, create jobs, increase exports and earn hard currency for the country.

Some of the major policies and initiatives taken by the government to enhance the academic, industry and government relationships are as follows: the first strategy is to have an IP policy. The Government of Malaysia has made it mandatory for all universities and research institutions to have their own IP policy.

One of the main strategies in the IP policy is to provide monetary incentives (reward and award) to the researchers. In the recent commercialization model released by the government, upon deduction of reasonable expenses, the disburseable amount/the first 250,000 Malaysian Ringgit will be given to the inventors. The next 1 million Malaysian Ringgit, i.e. 80 percent, will go to the inventors of universities

and research institutions. The exchange rate is 1.00 USD is equivalent to 3.5 Malaysian Ringgit.

The next strategy taken by the government is to enhance industry and university collaboration. We do it through smart partnership so that the final R&D findings are industry friendly. The industries are likely or willing to take them up. With that strategy, the government has established an Innovation and Commercialization Center (ICC) in each of these research institutions and universities. In short, the government wants the research institutions and universities to work with industry, not in the laboratory.

The characteristics of the ICCs are the following:

- ICCs are staffed by experienced market or business people who have ample experience in business and commercialization.
- ICCs handle all negotiations, licensing agreements, marketing and researching the market potential, etc. In addition, the government also requires the Ministry of Science and Technology and Innovation to set up a one-stop innovation center to facilitate commercialization of universities' R&D findings, for example, in the area pertaining to product development, testing, fabrication and prototyping.

The third strategy taken by the Government of Malaysia to enhance university and private sector relationships is to have funds for commercialization. We have to admit that commercialization of invention involves quite high risks because new technologies are involved. Therefore, the government must take the initiative to provide some kind of funding facilities so that IP assets from the universities can quickly be turned into technology-based companies like start-ups and spin-offs at a later stage.

Various funds have been put in place to help Malaysian entrepreneurs buy or acquire technology from the universities or research institutions, obviously to protect the government's interests. These companies must be Malaysian-owned/having a 51 percent share owned by Malaysians. Different types of funding are available. For example, the Commercialization of R&D Fund (CRDF), the Technology Innovation Fund (TIF), the Technology Acquisition Fund (TAF) are available for acquiring technology from overseas or local parties.

The fourth strategy of the Government of Malaysia is the establishment of more venture capital firms set up in the government. First of all, the government must take the initiative. The government itself has formed a few venture capital companies with private banks or investment companies. The first example is the Malaysian Technology Development Corporation (MTDC), and the second is the Malaysian Venture Capital Management Services Company (MAVCAP). This is a government venture with the big corporations or banks of the country, such as the Malaysian Bank, the National Electricity Board and the Telecom Corporation.

The fifth strategy implemented by the Government of Malaysia is to encourage the formation of the invention society, such as the Malaysian Invention Design Society (MINDS), the society I am representing today. This society is very active in organizing national exhibitions. New technologies and small inventions can be marketed or can be presented to the public and to the private sectors through these invention exhibitions. We invite to these exhibitions the venture capitalists, licensing lawyers, industry partners to enable them to shop for the technologies they want.

Mr. Yuke Chin Lee

Intellectual Property Consultant
 Malaysian Invention and Design Society
 (MINDS), Kuala Lumpur

**(b) The Importance of Patent Documents for
 the Extraction of Technological Information
 for Technological Development:
 The Malaysian Experience**

■ This is a Malaysian story. It is a personal story because I was involved in the establishment of the Malaysian Patent Information Center from the very start way back in 1982. I received my first training on patent information and dissemination services at the Australian Patent Office, and subsequently WIPO helped me to build up my expertise in patent information. I then returned to Malaysia and developed the Patent Information and Documentation Center (PIDC). I will tell you the story now.

The IP system has a very important function in providing information for R&D. Most of the time, we recognize the IP system as something giving protection and somehow we are forfeiting its information role. Patent documents in particular contain a wealth of technical information. We are talking about approximately 50 million patent documents. They are all public documents in the public domain. Everybody can access them and read them without infringing anybody's rights. Every year, we are talking about close to 1 million new inventions being added to this public domain. The information is published free of charge. Therefore, patent information is very important and very big. Whether you are technical researchers or business researchers, you can look for patent documents and get the information you want.

I would like to share with you a recent experience. Last year, petroleum prices were skyrocketing everywhere. Malaysia felt the hardship even though it is a small oil-producing country. Malaysians were determined to overcome this dilemma/this hardship. All of a sudden, someone said that he

had invented something using water to run cars. The whole society, the press and the government leaders became very excited. They wanted to invest in water to be used as fuel to run cars. I had heard of this invention many years ago when I was a patent examiner. I therefore did a patent search on the Internet and I came across quite a large amount of prior art/inventions by other people. I alerted the government leaders to inform the public that many of these inventions were actually not new inventions. Somebody else had invented them and our inventors were reinventing the wheel. Using water as fuel is actually very simple – water through electrolysis (water is H₂O), you break down water into hydrogen, into oxygen and then you pipe the free hydrogen and you pipe the free oxygen into the car's internal combustion engine.

Patent information is very important. It is better to do a prior art search before you do your research. Check whether your invention is new or not new in patent documentation. Do not reinvent the wheel. Engineers and businessmen can make use of patent information. The problem is that we tend to be very shy in using patent information. We think that we are copying. What is wrong with copying?

A couple of these leading Asian economies once upon a time were copying. The Europeans, not one particular country, were also copying once upon a time, and they are very advanced now. Therefore, what is wrong with copying? Mind you, imitation is the first step for industrialization – this is what Dr. Mahadi told me when I briefed him.

I will not share with you the benefits of patent information further. I would rather share with you my personal experience on how we established the Patent Information and Documentation Center (PIDC) in Malaysia. I am very happy that I was the person directly involved in establishing PIDC in 1984. The government was very smart because it realized that patent information was very important for the industry and for R&D. Dr. Mahadi wanted to start a new culture in the country by using

information for R&D, especially patent information. Hence, the government decided to place PIDC in the most diversified research institute in Malaysia, the Standards and Industrial Research Institution (SIRIM), the biggest industrial institution in Malaysia. SIRIM has many technology centers under its control. By having the PIDC directly under SIRIM, PIDC has a very good chance to sell information to the Malaysian industries and researchers.

Establishing the PIDC was no joke, because in those days, patent information was not free. Patent documents were published in either 16mm microfilm or microfiche, and you needed to acquire all the necessary equipment to read the documents, hence it was not free as it is today. I still remember we bought some millions of documents from research publications. It was a very expensive investment. The Ministry of Finance complained that they did not have the budget and there was a lot of delay, etc. Thus, we went to see the Prime Minister directly and he approved the project as he considered it important. We then implemented and established the PIDC in Malaysia. PIDC's function has changed a lot due to the transformation of SIRIM into our corporate government company. Through PIDC, we provide various types of technical information based on patent information to industries, engineers and researchers, etc.

Concerning the question raised on the understanding of patent documents, I fully agree with you that patent documents are written in patent jargon and are very difficult to understand. The purpose of PIDC is to have the industries interpret, analyze patent documents and to make patent information easier for industries to understand. Over the years, PIDC has provided many services pertaining to technical information to Malaysian industry, researchers, etc.


PIDC is also involved in a couple of national projects. I personally was involved in the national car project. As you know, Malaysia has been very

adventurous. We have our own car industry. During the period in question, I was actively involved in publishing different types of patents reports pertaining to different types of car components, which the Government of Malaysia wanted to manufacture locally. We supported the government national car project by producing many of the state-of-the-art patent reports.

Of course, when you visit Malaysia you will not see PIDC anymore. It has been replaced by the IP department within SIRIM. SIRIM has been turned into a self-reliant R&D company. It now operates entirely under a private business environment. However, this does not curtail the work of the IP Department in SIRIM. In fact, it helps enhance the work or quality of work of the IP department in SIRIM. It continues to provide patent information searches and other services in support of Malaysian industries and research committees. Thank you.

Discussion

His Excellency, Mr. Juneydi Saddo
Minister for Science and Technology, Ethiopia

 I can tell you how interesting it has been for me to listen to these first-hand authorities and experiences from the Far East and also from Professor Maskus. It is so fascinating talking about technology transfer. It is possible, it is not something mystical, it is something practical and people have done it. Millions have done it. Thank you very much, Mr. Lee and Professor Maskus. Now, I would like to open the discussion up for questions, opinions or comments. Thank you.

Delegation of Bangladesh

● Professor Maskus in his deliberations mentioned some essential determinants of inward market-mediated international transfer of technology. We all know that the determinants he mentioned are not very strong in LDCs – in some cases they are virtually absent. May I add that transfer of technology is also market-driven. I want to know from him whether there is an example of any LDC where a substantial amount of technology has been transferred. Thank you.

Delegation of Cambodia

● My question is directed to Professor Maskus. As you may be aware, Article 66.2 of the TRIPS Agreement states that developed countries have an obligation to transfer their technology to developing countries especially for LDCs. So far, this has not been the case. The developed countries usually say that they have no control over the companies, so it is up to the private companies to do that. Probably the market side of the LDCs is too small to attract such FDI. Based on this Article, could you provide some advice as to what we should do to push for these obligations to be implemented by the developed countries? Thank you.

Delegation of Guinea

● Allow me first and foremost to thank the WIPO Secretariat for having organized this High-Level Forum for LDCs. This is an extremely important opportunity that gives our countries a very clear idea of the importance of IP for our development.

My delegation would have liked to have seen developed or developing countries present here with us in this room, as we are talking about transfer of technologies for LDCs. That having been

said, I have a question that I would like to address to Professor Maskus.

My question is the following. Could you give us an example of a country which has benefited from Article 66.2 of the TRIPS Agreement, which states that developed countries should encourage their companies to transfer technology to LDCs?

I believe my colleague from Cambodia has put a question along similar lines. I would also like to have an answer on this point. Thank you very much.

Delegation of Senegal

● The situation in LDCs is such that when we are giving an opportunity to take part in a meeting such as this one, we feel that we should go back home with something in hand or in our pockets. To be more concrete, I would like to turn to the last speaker who has given us some very valuable information. I must admit that I was left a little hungry when I heard that there are some 50 million patents in the public domain to date and that a million more are added annually. The problem is that you said later on that patent documents come in hard to understand jargon. You have been able to help the private sector in your country access the information contained in these patent documents. You have helped it decode these documents. What would you recommend that LDCs do? What should they create or set up in order to have access to this very precious information in order to be able to manufacture spare parts for cars as you did? If we were to go back home to Dakar tomorrow with the possibility of decoding the information contained in patent documents and the manufactured spare parts, our mission would have been successful. My colleague to my right would also like to put a small question, if he may.

Delegation of Senegal

I would like to seize the opportunity of your having given the floor to the Delegation of Senegal to ask a few more questions. My question does not actually have to do with transfer of technology. It is a cross-cutting issue concerning the position of LDCs and IP. Let me be clear on this. IP for the time being is of particular interest in fields which are not all that tangible – folklore, genetic information, traditional knowledge – things that cannot be easily quantified. Unfortunately, this is where LDCs' interest lies when it comes to IP. LDCs cannot do very much about these aspects. They do not have the necessary technical and administrative capacities. They do not have the means, for example, to prove that certain traditional knowledge has been incorporated in inventions coming from other foreign countries.

Developing countries within WTO in the framework of the TRIPS negotiations are trying to get around this difficulty by introducing a clause that makes it mandatory to disclose such information. This concerns folklore, genetic knowledge, etc. Will this clause be successful? Will such countries be forced to implement it? Developing countries will not have the means of proving that this type of knowledge has been incorporated in foreign inventions.

I would like to know one thing about what WIPO can do. Can WIPO take up the cause of LDCs on this front? Can WIPO become the policeman for IP, helping LDCs which do not have the necessary means to do this sort of work?

A second question concerns the debate around IP. You who are experts on IP, do you think WTO is the best forum to discuss IPRs? WIPO exists, is not this using two fora to discuss this matter? Thank you.

Delegation of Uganda

Mine is a simple question, Mr. Chairman, and it is addressed to Mr. Lee. I hope that I have pronounced your name properly. Not many years ago, Malaysia was the same as most of these 49 LDCs. I believe I am right in terms of the 1970s. I visited Malaysia some time ago and I was quite impressed with your efforts to combat poverty. Poverty levels in most of these LDCs are incredible. Yours is nil or negative. Actually, when I was in the streets of Kuala Lumpur, I asked colleagues that I wanted to see the villages. How do they look like? I looked for poverty I could not see it. Tell us, you and your team, how IP management contributed to that miracle? Thank you.

His Excellency, Mr. Juneydi Saddo Minister for Science and Technology, Ethiopia

Thank you all for asking very valuable questions. I have also one question for you. I am the Chairman but I would like to participate like an audience.

The question concerns the university system back in the late 1970s and early 1980s when you embarked on this rapid economic development program. You talked about not reinventing the wheel because knowledge and technology exist in abundance. However, universities regularly do basic research, fundamental research, etc. Universities in my country are a group which resists new changes. They consider copying or imitating technology in the academic circle. How did you overcome this problem? How did you reposition universities for technology copying, for technology assimilation and for technology inward transfer as Professor Maskus said earlier? Thank you very much.

Professor Keith E. Maskus

Associate Dean for Social Sciences, University of Colorado, Boulder, Colorado

Thank you to everyone for these questions, which are difficult questions. The first one has to do with the essential determinants encouraging technology transfer. It is true that quite often those conditions are not in evidence in the LDCs and they do improve as economies develop.

Can I come up with an example of LDCs where many inward technology transfers happened? I do not think I can actually, unless you are thinking about public technology transfer through the World Bank and the international agriculture organizations.

Where in the poor countries of the world can one actually find international activities of that kind? I would mention places like Viet Nam, which has a fairly large domestic market, a productive labor force and proximity to the Chinese market. You can think of other cases where there are particular circumstances that made the country a prominent location for production. Generally speaking, this is a difficult question.

How do you actually improve these processes efficiently to try to attract inward technology transfer? It requires a substantial amount of investment. It requires making sure that you have access to international markets.

The same question had to do with Article 66.2, which I think is frustrating to everyone who is involved in the TRIPS negotiations. If you read the reports that the developed countries submit to the TRIPS Council on occasion, there is always a long list of things that have happened and that they are doing. They do not amount to much in terms of real technology transfer. Again, I do not think I can give you an example of an LDC where Article 66.2 has made a large difference. Perhaps people at WIPO would know more about this.

How can we try to get this obligation going?

It is a very good question. I suppose that I would suggest building a strategy around something like the following: I am an academic economist, I am not an international negotiator so this is just a general observation without the details. I think there is scope for working on something like access to knowledge agreement that would be advantageous for the LDCs. The proposals for that range from very small to extremely broad. I think trying to negotiate within the context of the WTO greater access for temporary visas so that scientific, technical and managerial personnel would have more access to learning in universities and businesses of the developed world. Probably, one can think about integrating developing country scientists more fully into the granting activities of the developed countries and the middle-income countries, making sure that there is the broadest possible access to new scientific results, new research and data results. Again, we had an example of this earlier with the scientific journal publication and that is a nice start. I would like to see that become much more broadly available in the poor countries of the world. Lastly, I would also try very hard to partner with universities, for example in the developed world.

With regard to licensing arrangements that make access to knowledge easily available and free or as close to free as possible, I think you would get some real returns from doing that.

Can you actually hold the governments of the developed world accountable for Article 66.2?

I doubt that because as you said, they will say we have all these policies in place and we cannot force our firms to transfer technology where they do not think there is a market. That is a fact of life. Ultimately, it is improving the climate for investment in your countries that really matters.

Is the WTO the best forum to discuss IPRs? We have probably gone beyond the time where that question should have been answered, since the

WTO is the location where the TRIPS Agreement exists. For better or worse, it is the most important international agreement on IPRs. I think it is probably an appropriate place to think about many aspects of IP. What seems to emerge is that WIPO is an excellent place for thinking about the technical issues involved in protecting traditional knowledge and genetic resources. The UN is involved as well. Ultimately, in terms of the commercial aspects of that kind of IP activity, I suspect that WTO has to be involved.

Mr. Yuke Chin Lee

Intellectual Property Consultant

Malaysian Invention and Design Society (MINDS), Kuala Lumpur

● The first question is whether the services provided by PIDC are free of charge. They are not free of charge because if they were free of charge people would not value them. Therefore, we provide all these services at very nominal fees – fees that are much cheaper than the private consultants and lawyers in town, very nominal and very competitive fees.

The second question is we know that there are many patent documents that exist. We also know that LDCs have certain limitations in terms of language, facilities, Internet connections etc. My advice is that you establish an IP Information Advisory and Information Center where you provide services to your industry and private inventors so that your efforts would be more focused and more organized. I think WIPO has established such centers in the United Republic of Tanzania, Ethiopia and also Cambodia and they are receiving very good feedback. If people do not have Internet connections, have it in your center and your library so that the industry users can come to your library and use the facilities. If they do not understand

patent documents, your trained people can give them personal coaching and help them analyze documents. I think that is the best way to do it.

The last question is how to switch the mentality of university professors and their research to be more industry-orientated rather than academic. My opinion is that you have to exert a certain amount of pressure, that is, the government should require the professors to concentrate on industrial research rather than academic research. One of the strategies adopted by the Government of Malaysia is that the universities set their own Key Performance In-text (KPI), requiring the professors to do certain things such as filing patent applications. Once your application is filed, the patent office will determine if it is new or not new. If it is not new, your act of cheating can be discovered very easily. In addition, expose your R&D findings from university to the private sector. The industry will then determine whether the inventions are new or not new. Thank you.

Delegation of Nepal

● My comment is on Professor Maskus' statement on transfer of technology, Article 66.2 of TRIPS. I agree with him that the governments of the developed countries cannot prosecute their private sector for not transferring their technology. I think the governments can and should create a positive policy environment that will encourage their private sector to invest in the private sector elsewhere.

Regarding the transfer of technology, I think WIPO can also play a very important role by training private entrepreneurs and giving information to them. This can have a very positive impact on their economy. Thank you.

Delegation of Mali

● Professor Maskus said when answering one of the questions that the most significant determinant for the development of ITT is that LDCs need greater development to foster or encourage ITT. LDCs of course need this transfer of technology in order to foster development so this is a bit of a vicious circle. I just wanted to draw your attention to that aspect of things.

Mr. Narendra Sabharwal

Deputy Director General

World Intellectual Property Organization (WIPO)

● I think there was one part of the question from the Delegation of Senegal that needs some comment. It was about the interest of LDCs in traditional knowledge, folklore, as well as access to genetic resources and what role WIPO has been playing. I think that this is something which was mentioned this morning. The Director General pointed out the intergovernmental process of which we are aware that is looking at the whole issue of IP implications of traditional knowledge, traditional cultural expressions and access to genetic resources. That process is well advanced and in September/October the General Assemblies of WIPO will decide as to how it will go forward.

On the other hand, there are several ongoing technical assistance and capacity-building activities in this area with various countries at their request. Many countries have embarked upon taking an inventory of their traditional knowledge and biodiversity related assets, and they have converted them into traditional knowledge digital libraries. This helps to put the knowledge in an electronic form available in the public domain so that they cannot be used for avoidable patents. A very important step can be taken by creating and archiving the traditional knowledge repertoire or reservoir of a country.

Apart from that, many countries have already embarked on enacting their own legislations. Furthermore, WIPO would be ready to help draft those legislations or to comment on them upon request. There is a whole area of awareness-building and human resources development that is also a part of WIPO's capacity-building efforts.

His Excellency, Mr. Juneydi Saddo

Minister for Science and Technology, Ethiopia

● I would like to answer one question correctly and strongly. Can LDCs copy technology? Yes, it is possible. Forty years ago exactly, the per capita income of Korea was 87 US dollars. What was China in 1979 when Deng Xiaoping changed the whole policy? What was Malaysia in the early 1980's? Now, look at what they are doing. Twenty/thirty years ago, many countries in what are now the emerging economies of East Asia were just LDCs. Therefore, it is possible that LDCs can also copy and repeat this history. For inward technology transfer from foreign countries to domestic economies, the strategy is catching up. The catching-up strategy worked for Japan, Taiwan, Korea, Singapore, Malaysia and Thailand. Many countries are repeating it.

IP information, scientific information from publications, standards and technology purchasing, licensing, outsourcing, offshoring, FDI, imitation and reverse engineering are all forms of technology transfer. The authorities have confirmed this. Therefore, create practical universities. Our academies have to be reoriented and repositioned in line with technology transfer. In addition, create a technologically middle-level skilled workforce. Revamp industries through benchmarking. Benchmark our industries with developed countries and do what they have done. Retrain our workforce. Nothing should be taken for granted.

Theme Three – Sharing of Experience with some LDCs on the Wealth Creation Effect of Trademarks, Service Marks, Geographical Indications and Industrial Designs

Her Excellency, Mrs. Mary Nagu
Minister for Industry, Trade and Marketing,
United Republic of Tanzania

● I would like to introduce the lead speaker, Mr. Getachew Mengistie, Intellectual Property Law Consultant and Attorney. He was also the former Director General of the Ethiopian Intellectual Property Office (EIPO) and we will be able to tap into his experience this afternoon. May I call upon Mr. Mengistie to give his presentation? I do understand he is presenting on points (a) and (b). I do not know whether he should present the two together so that the panelists can react after his presentation.

Mr. Getachew Mengistie
Intellectual Property Law Consultant and Attorney,
former Director General of the Ethiopian
Intellectual Property Office (EIPO), Addis Ababa

● While the PowerPoint is being set up, I would like to take advantage of this opportunity to express my thanks to WIPO and for giving me the opportunity to undertake a case study on the Ethiopian experience as well as present the major findings at this High Level Meeting.

The Ethiopian coffee designations, trademarking and licensing initiative started in 2004. The initiative is being led by the stakeholders committee, which consists of representatives of farmers, exporters and relevant government agencies. The role of the Ethiopian IP Office is merely to facilitate the work of the stakeholders committee as well as to serve as its secretariat. The initiative had enjoyed the technical and advisory support from a Washington based NGO called Light Years IP as well as a pro bono legal service from a US law firm called Arnold & Porter. It secured financial support from donor organizations like the UK Department for International Development, stakeholders and the government.

I would like to highlight the grounds for and objectives of the initiative, the choice made in selecting and using appropriate legal business and marketing tools, the major achievements we have this far and the lessons that Ethiopia and other countries can learn from this initiative.

Ethiopia is renowned for producing some of the finest gourmet coffee in the world. This coffee has distinctive flavor and aroma, which set it apart not only from coffee produced in other countries but also from coffee produced within Ethiopia. This distinctive feature is the result of the hard work of the generation of Ethiopian farmers, so they constitute IP assets. The fine coffee commands a low price on the retail market. If I take Sidamo as an example, in 2006 a pound of Sidamo was sold for 26 dollars. In 2004, a pound of Harar coffee was sold for 24 dollars but Ethiopia sold this coffee for less than a dollar or a dollar in some cases. In fact, the study clearly showed that only 5 to 10 percent of the proceeds go to Ethiopia. Coffee growers receive about 50 cents a pound. The farmers were unable to meet their basic needs such as clothing and food because they were not receiving the right price for their valuable fine coffee. In fact, there are cases whereby our farmers would buy stuff during the peak season and be forced to sell whatever they bought in other

seasons. They were unable to send their children to schools. They were unable to meet their household requirements.

This has forced some of our farmers to cut down valuable coffee trees and plant narcotic chat. Chat has a short-term return but it has serious long-term consequences on the environment, on the genetic resources of the country as well as the productivity of the labor force.

We also noted misappropriation of some of the coffee brands. We found in some countries that coffee brands like Harar were registered and owned by foreign companies. Professor Maskus earlier said that LDCs were endowed with intangible values IP assets but failed to protect these, which might result in misappropriation by others. The initiative aimed to ensure Ethiopia's ownership over its valuable assets and to improve the income of coffee producers, small traders and exporters.

It was also intended to create and strengthen partnerships with foreign companies. By the way, Ethiopia had recognized the value of partnering with coffee importing, roasting and distributing companies. Without such partnerships, there was recognition that whatever objectives we had set might not be realized.

It further aimed at building IP asset protection and management capacity. To meet these goals, we had to make appropriate legal, marketing and business tool choices. We conducted a comprehensive study on the relevant IP tools that would enable us to protect the coffee brands. The tools that we identified were geographical indications, certification marks, and trademarks. The merits and demerits of each of these forms of protection were analyzed.

We also carried out extensive consultations both inside and outside Ethiopia. The stakeholders committee which leads the initiative decided to take the trademark approach. It also decided that

we should try to trademark three of the fine coffee designations due to the long list of fine coffees and resource constraints in Ethiopia. In addition, it determined the list of countries where trademark protection would be lost. The basis for the selection was the countries which were either the major import destinations or the future major destinations of Ethiopian fine coffees.

We applied for trademark protection in 36 countries. To date, we have secured trademark protection for Sidamo, Yirgacheffe and Harar in 29 countries namely, the European Union, the United States of America and Canada. We have received trademark registration for Sidamo and Yirgacheffe in Japan. We encountered a number of problems in Europe, in the United States of America and in Japan in the course of this process.

Owing to time constraints, I will focus on the problem we encountered in Europe. A European company opposed the registration of Sidamo on the grounds that it would create confusion with a mark it owned called Sesemo. Ethiopia felt that there were no reasonable grounds for the opposition on two bases. First, Sesemo is spelt differently from Sidamo. It is not identical. The second ground was that the company registered the name Sesemo for grocery products but Ethiopia thought to register Sidamo for coffee. We made this position known to the company and Ethiopia managed to persuade the company. The company dropped its opposition and we secured the registration of Sidamo in Europe. The registration of the trademarks enabled us to meet one of the objectives that we had set. No one can misappropriate these names in the future. Ethiopia and the stakeholders are the owners of the names.

We had to devise a business strategy for the other objectives we had set to improve the income of coffee growers and small traders. The business strategy we employed was licensing. The objective was to facilitate the use of the Ethiopian brands, capture the goodwill and reputation of our fine

coffee around these brands, and promote the fine coffee as well as the brands.

To achieve these goals, Ethiopia employed a number of strategies, including a free royalty as an incentive. We know that Ethiopia is the owner of the trademark. Trademark is an IP and IP is not free. We know that we have the grounds to seek royalties, but for a number of reasons, the stakeholders decided that the license should be offered free of royalty. In return, we require the licensee to make use of the brands when selling the fine coffees, as well as to educate their customers about the brands and the fine coffees.

To date, we have signed licensing agreements with 96 coffee-importing, -roasting and -distributing companies in North America, Asia, Europe and Africa. We also felt that our licensees might not be in a position to discharge their obligations if they did not receive the fine coffees as Sidamo, Harar and Yirgacheffe from Ethiopia. Therefore, we concluded similar agreements with 47 Ethiopian coffee exporters as well as three coffee producers. Both domestic and foreign licensees have played a critical role in persuading other companies to join the initiative.

This business strategy was also complemented by a marketing strategy. The marketing strategy that was selected by the stakeholders was branding. A UK-based branding company was employed and it developed brands under the direction and supervision of the stakeholders committee. This is the umbrella brand which would be used along with the registered trademarks. This brand is meant to be used for future brands. Very recently, the IPO has sold trademark registrations of two new coffee brands. Therefore, this umbrella brand is open to whatever fine coffee that we may come up with and seek for trademark protection. The individual brands for the registered trademarks you see on the screen now for Harar, Yirgacheffe and Sidamo are aimed to show that these are protected trademarks.

What are our major achievements? The major achievement is the ownership and leadership of the initiative by the stakeholders. We made sure that the stakeholders took the ownership at the inception of the idea. This has helped us speak with one voice when we encountered problems. There were attempts by some of the companies to disunify the stakeholders; however, these failed as a result of the commitment and leadership of the stakeholders themselves.

We also set up institutions and coordination schemes. The overall leader of the institute of the stakeholders committee is responsible for making key policy decisions. A licensing management unit was established within the IPO. In addition, we established focal units in overseas embassies. In Europe, we have a focal point in the Embassy of Ethiopia in London, for North America the focal point is the Embassy in Washington D.C. and for Asia the Embassy in Japan. Members of the licensing management unit as well as the focal units in the overseas embassies have received training in licensing. They are responsible for contacting companies and for monitoring licensee compliance with the terms and conditions of the licensing agreement.

The license distributors also established what we call a network of license of distributors. This is a joint forum where stakeholders and license distributors meet and discuss issues of mutual interest. It was established in February 2007, and a series of meetings were held in 2007 and 2008. The initiative secured support from Parliament, the Prime Minister's Office, different ministries, the general public and stakeholders in Ethiopia. It also enjoyed broad support abroad, including members of Parliaments, renowned personalities, academicians, NGOs, etc.

The initiative improved the negotiating and marketing position of the exporters as well as the coffee producers' unions. I was informed that our coffee producers' unions no longer sell the coffee

at the price offered by the buyer. Now, they ask the buyer to sit down and negotiate the price.

We have also noted an increase in demand for Ethiopian fine coffee. The Ethiopian coffee exporters as well as coffee producers' union report that companies which had never bought Ethiopian fine coffees have begun to ask for it. We have also observed a rise in the price of fine coffee. Prior to 2007, as I explained to you, a pound of coffee was sold for a dollar or less than a dollar. However, in 2007, the exporters and the coffee producers were able to sell the same amount of coffee for 2.20 dollars/2.30 dollars, and this price went up in 2008.

The reports by the Ministry of Trade and Industry in July last year stated that Ethiopia had exported less coffee compared to 2007 but had earned more. In fact, Ethiopian coffee fetches more than half a billion US dollars. When we compare the proceeds since 2007, the difference is one hundred million. This could be attributed to the initiative and the awareness that we managed to create.

What lessons has Ethiopia learned? What lessons could other countries learn from Ethiopia? The first important lesson is top leadership support and direction. I would like to tell you that had it not been for the able and wise leadership of my Prime Minister H.E. Meles Zenawi, ministers and other top officials, I assure you that the initiative would not have moved an inch, let alone registering these remarkable results.

The other lesson that we learned is that IP asset management protection requires know how, technical skills and resources. Professor Maskus indicated that LDCs did not take measures to protect whatever intangible values they had. This relates to the incapacity that these countries face. These countries need technical and financial support at least for the initial stages, from international partners, but they should simultaneously build their requisite capacity.

The ownership and development of stakeholders is critical. By way of conclusion, I would say that if developing countries and LDCs truly wish to realize whatever development aspiration they have, they should embrace IP and use it creatively to cater and promote their interests.

(b) Using Industrial Designs for Value Addition in Products and Services of LDCs – The Experience of Ethiopia

Industrial designs in Ethiopia were not protected for quite a time. The first law in the history of the country was enacted in 1995. Industrial designs are being received and processed by the Ethiopian IPO.

Despite the fact that the Ethiopian IP system is young, it has already succeeded in registering positive results. Industrial design protection in Ethiopia has stimulated the creation, protection and use of industrial designs by our industrialists, handicrafts, etc. It has also facilitated or helped add value to local products. In some of the sectors, the value-added local products have managed to replace goods that we used to import. In addition, such protection has generated competition within the industry and the products sector. We now see better products available on the local market at a better price. Some of the better designed products are being exported to Europe and the United States of America, bringing in hard currency. Owing to time constraints, I will show you just a few of the industrial designs. These are examples of designs that are used in the shoe industry.

Industrial designs are also used in the handicrafts sector. I have taken a designer called Saba Alene as an example. She has secured 37 industrial designs registration certificates. More than 90 percent of her products are made for the United States of America and the European markets. Her designs have won support from very important personalities, such as President Clinton, who is also one of her promoters. These are some of the designs that are used in the handicrafts sector.

The industrial designs are also used in the garment industry. I have taken Hana as an example. Hana is a young designer trained in North America who is involved in the garment and fashion industry. By the way, industrial designs not only helped her to make better products which are demanded both locally and abroad, but they also made her well known. She has been invited to a number of exhibitions and has displayed her products alongside those of such internationally renowned designers as Armani, Gucci and Valentino. These are some of her garments.

Besides, we have industrial designs that are developed to meet a social purpose. An example is this condom tray which was designed to promote the use of condoms in Ethiopia. We believe that this would help break the taboo as well as prevent the spread of HIV-AIDS.

By way of conclusion, I would say that LDCs can use industrial designs as a tool to foster development and world creation.

Her Excellency Mrs. Mary Nagu Minister for Industry, Trade and Marketing, United Republic of Tanzania

On your behalf, I would like to thank my brother, Mr. Getachew Mengistie, for his presentation. He has rightly showed that we have a lot to learn from each other. The fact that we are LDCs does not mean we have nothing to offer each other. Without pre-empting the panelist, I would like to take this opportunity to welcome Mr. Paulin Edou Edou, Director General of the African Intellectual Property Organization (OAPI). I am sure he will be able to intervene and the intervention will definitely be to our advantage.

Mr. Paulin Edou Edou

Director General, African Intellectual Property Organisation (OAPI)

(a) Geographical Indications and its Application in LDCs: The Experience of the African Intellectual Property Organization (OAPI)

Before presenting the topic per se, I would like to thank the Secretariat of WIPO for having invited OAPI to take part in this important Forum. This Forum is all the more important because the themes are not only highly significant but also very vital, judging from the quality and level of the participants, in other words, the decision-makers on aspects of IP in LDCs, such as the ministers and the eminent council of the Board of OAPI.

In such fora, it is often important to raise a fundamental question which is that of knowing what types of economies LDCs want to apply to enable them move out of under development. The reply to this question can be found in the capacity and the will to change from the traditional concept of an economy, based essentially on the sales of raw materials, to an economy which is geared to an economy based on know-how under knowledge.

If you ask a French man what he knows to do best, he will say he knows how to produce wine, cheese or champagne. If you ask a Swiss the same question, he will say chocolate and watches – although, I do not know of any cocoa beans grown in Switzerland. Watches and chocolate play a key role in the present generation of GDP in Switzerland. If you put a similar question to an LDC, be it in Africa, Asia or elsewhere, the question becomes much more difficult. Yet in these countries there is significant potential in the field of know how.

I would like to share some brief comments before I move on to the issue of know-how and geographical indications, the topic with which I have been entrusted. Within the OAPI, we have

tried to bring together general statements of the governments of our Member States. We realized that when the Prime Minister reads the policy before the National Assembly, very few statements relate to invention, innovation or IP. I think that change has to come about through the understanding of IP by political decision-makers. That is the gambit for the development of IP in our Member States.

If I may, ladies and gentlemen, I would now like to speak on the theme given to me but I would first of all briefly introduce my organization.

OAPI is a rather typical IP organization representing 16 member States from developing countries and 12 LDCs. LDCs play a key role by representing some 75 percent of our organization. Some seven million square kilometres over 130 million inhabitants, an area which is extremely wealthy in raw materials, oil, iron, wood, uranium, as well as genetic resources. Despite this potential, OAPI has among its members the poorest members in the world. Some of our States have a GDP which is below 300 dollars.

Let me say a few words about the architecture of the system to help you understand how OAPI system operates. First, there is a common legislation – certain Member States have the same legislation. There is a common office – OAPI is the IP office for the Member States. The procedures are centralized at our headquarters. Our role is to facilitate the transition to geographical indications so as to protect IP and improve commercial exploitation of these assets with a view to contributing to the economic and social development of our Member States. This transition naturally brings me to the role of OAPI and geographical indications, and the conditions required for the favorable implementation of such indications. This is important because a geographical indication is a natural right, as it is something that exists and simply needs to be formalized.

We have a modern legislation very close to the TRIPS Agreement. Here, I am referring to the Annex of the Bangui Agreement, a very broad definition of geographical indications. Geographical indications of agricultural products can have geographical indications protection over crafts, industrial products as well as natural products.

Of course, when you look at the three categories of products, it is hard to imagine a product which is neither agricultural, craft, industrial nor natural. Therefore, there is a very broad definition of geographical indications. These products are eligible to become geographical indications if their quality, reputation or any other determinant of the characteristic is allocated to geographic origin.

With regard to the role of agriculture in the LDCs, OAPI's members and I would like to take an example of the agriculture sector. In Senegal, agriculture accounts for 70 percent of the active population but only contributes 11 percent of GDP. In Mali, 73 percent of the active population lives off agriculture and the sector represents some 40 percent of GDP. In Niger, agriculture represents 40 percent of GDP whereas agricultural commercial exports only account for 4 percent. Manufacturing industries in Niger represent 8 percent of GDP and primarily consist of food and textiles companies.

The conclusion one can draw when looking at these statistics which are a few years old is that agriculture represents a very large percentage of the active population but there is no correlation between the role of agriculture, employment and its contribution to GNP. Yet these countries, through their geographical indications potential, can participate in a greater development of agriculture and hence contribute more to national wealth.

A number of products are very well known but have no protection in terms of geographical indications. Some examples are gari of Savalou, pineapples of Sekou and Allada, peanut oil of Agonlin (Benin), ziama coffee, red oil of Boké,

mamou peppers of Guinea, karité butter of Numanapuli, green beans of Sourrou (Burkina Faso), galmi onion and diffa pepper of Niger and the boghé mint and tokomadji yam of Mauritania. These are just a few examples. When we look at all this potential of geographical indications, we believe that OAPI Member States can benefit from using geographical indications for their economic development, by recognizing product quality, developing existing distribution network, increasing producer incomes and stepping up production itself, which is very low and does not even meet natural demand. This could also make it possible to find new outlets for the export of agricultural products, thereby boosting rural development. OAPI is also aware of the fact that geographical indications in these countries can help agriculture to really play a key role in national wealth generation.

What initiatives have been taken by OAPI to enable geographical indications to truly fulfil its role as a development tool? First, the development of the pilot project which of course is the protection and promotion of geographical indications within our Member States, a project which was initiated in partnership with WIPO, the National Institute of Industrial Property in France (INPI) and the National Institute of Appellation of Origin in France (INAO). This enabled us to negotiate an agreement with the French development agency (AFD) and to sign a financing agreement of 1 million Euros with it. A project leader was appointed, and at present we are identifying the eligible products which can benefit from the geographical indications. We are also on a pilot basis establishing national committees for geographical indications within Member States.

In conclusion, I can say that geographical indications represent a genuine potential for LDC members of OAPI. With the promotion and recognition of geographical indications which has been initiated by OAPI, numerous geographical indications could benefit from such protection. In addition, geographical indications as other IP

elements could play a key role in the generation of national wealth and national income.

Discussion

Her Excellency Mrs. Mary Nagu
Minister for Industry, Trade and Marketing,
United Republic of Tanzania

● Ladies and gentlemen, I wish to thank Mr. Pauline Edou Edou for his relevant presentation. He has indicated to us that we can revert to this Organization in Africa and use our geographical indications to share the benefits that have been accruing to other people without having that knowledge. Now that we have this knowledge, I think that we may be able to use whatever we learn from each other to make progress.

Delegation of Cambodia

● Cambodia intends to develop geographical indications laws to protect our commodities. Mr. Mengistie explained geographical indications and trademark. This is very useful to Cambodia at this stage. We would like to ask Mr. Mengistie the following question on the choice of appropriate IP. Correct me if I am mistaken. You chose the protection of your coffee through trademark successfully. My question is: why did you not choose the protection of your coffees through geographical indications? If you chose the protection through geographical indications, what would the result have been?

Delegation of the United Republic of Tanzania

● My question relates to the one asked by the previous speaker on the protection of Ethiopian coffees using trademarks. I just wanted to know

the ownership of those trademarks. Are they owned collectively? Who exactly owns them? As you know, trademarks to be effective must be owned by someone recognized.

Delegation of Guinea

● I would like to thank the two speakers for the quality of their presentations and for all the relevant information they have just shared with us. In particular, as regards the Ethiopian coffees and also products which can be protected by means of geographical indications, as just indicated by Mr. Edou Edou. My question concerns the three products from Guinea, mentioned by Mr. Edou Edou. He mentioned pepper from Mamou, tea from Mancenta and a third product which now slips my mind. My question also relates to two other products which were planned to have geographical indications, pineapple from Mafahaya and lépis from Futah. What has happened to these two last products? Thank you.

Delegation of Samoa

● First, I would like to thank WIPO for inviting me to participate in this high-level event and for organizing the Forum. I have an interest in the presentation on the Ethiopian coffee. I am interested in how the initiative started. You said that the initiative started in 2004. I understood from the presentation that many issues came into play before you actually decided to register the brand as a trademark. Was it the case of misappropriation when the coffee brands were registered by foreign companies that resulted in this initiative, or was it the case of long returns to farmers which resulted in the initiative taken? How did it become an issue of trademarks under IP? Thank you.

Delegation of Sudan

● Sudan wishes to express its appreciation for this Forum. My question is: do you think that we should protect geographical indications through trademarks, through collective marks and certificate marks, or do you think it is better to protect geographical indications through bilateral agreements between countries and bilateral lists? Thank you.

Delegation of Rwanda

● I would like to invite the Representative of Ethiopia to Rwanda because they have advanced a lot and we need their experience. Thank you very much.

Delegation of Senegal

● I would like to ask a question concerning chocolate as we are in Switzerland. The Representative of OAPI mentioned chocolate which is produced with cocoa. We do not produce cocoa in Senegal, but we belong to a region where cocoa is produced from other countries. Recently, the EU decided to authorize the usage of other fats rather than cocoa to manufacture chocolates. It is understood that a decision of this type will reduce the value of cocoa. Cocoa will be less valuable commercially because of this decision. My questions are the following: Would the West African cocoa-producing countries have the possibility of appealing this decision? Chocolates made with fats other than cocoa should not be called chocolate. Can we launch an appeal of this type?

Delegation of Madagascar

● My question goes to Mr. Mengistie. You talked about designs exported to the United States of America and Europe. Were they protected in those countries?

Her Excellency Mrs. Mary Nagu
Minister for Industry, Trade and Marketing,
United Republic of Tanzania

● Finally, let me ask a question or make a suggestion. From what we have learned and from sharing the experience, how can we help Ethiopia share its experience in practical terms in our countries? How can OAPI facilitate this with the backing of WIPO? As LDCs, I think that would do us a great favor to enable us to use geographical indications to protect what has already been benefiting others and to reap the existing benefits.

Please, Mr. Edou Edou your intervention in response to the questions that have been put to you.

Mr. Paulin Edou Edou
Director General, African Intellectual Property
Organization (OAPI)

● To be quite clear, I would like to start by saying that our geographical indications project is a very young project. The operational phase only started about three months ago. This is not really a project which can be considered as a fully-fledged experience. We are looking to others who have experience in this field for inspiration. That is why we are cooperating with France, for example. We are trying to see how France sets up its own geographical indications system. We are in our learning stages and we are young.

With regard to the questions on identifying products, the list I gave is not a full list. I just gave certain indications of geographical indications. We received suggestions for products which might qualify, then worked with French experts in order to study the lists to identify which products amongst those lists that could really benefit from geographical indications. Therefore, the lists are not definitive.

Concerning cocoa, it is difficult for me to answer that question. It is a question which has to do with international and commercial policies. Can cocoa-producing countries prevent those who use other fats than cocoa from calling their products chocolate? I am not competent to answer that question. Maybe the ministers present might be able to give at least the beginning of an answer. I would therefore not like to tread on ground which does not in fact come within my field of knowledge.

Mr. Getachew Mengistie

Intellectual Property Law Consultant and Attorney, former Director General of the Ethiopian Intellectual Property Office (EIPO), Addis Ababa

■ If I may start with the invitation made by Rwanda, supported by Tanzania, I would like to make it clear that I have accepted the invitation and I am available whenever I am called to share the Ethiopian experience. I personally believe that if Africa wants to be a different Africa in this twenty-first century, it should embark on using IP as a development tool. The continent is endowed with IP assets, but these assets are not protected and exploited. In fact, what we see is the assets being misappropriated by foreigners. This should stop.

Why did Cambodia choose trademarks instead of geographical indications? Geographical indications protect the origin or the name of the geographical location where a product originates. The attributes, the qualities of the products are linked to the

geographical location. To use geographical indications as a tool, at least we should determine that these requirements are made.

When we come to the Ethiopian fine coffee designations, some of the names are not geographical names where the coffee originates. Let me take Harar as an example. There is a city called Harar, but that city never grows coffee. The coffee that is identified as Harar grows in the western and eastern areas as well as Asi. Hence, it is not something that is limited to a specific location. Ethiopia is endowed with huge genetic resources. Studies showed that Ethiopia has about 6,000 coffee accessions. Ethiopia has only given 4 to 5 percent of its accessions to the world. There is the possibility of finding, for example, a certain coffee with a certain coffee profile because of this genetic variation. If I take Yirgacheffe as an example, on the side of Yirgacheffe you may get coffee that meets the Yirgacheffe coffee profile, but on the other side the coffee is different. Thus, this was one consideration.

The other consideration was that these fine coffees were known by the coffee brands and sold on the retail market. We did some studies in the United States of America and we found that some Americans opt for Harar and some opt for Sidamo. We decided to choose the trademark approach because of these considerations.

My colleague from Tanzania asked who owned the trademarks. The trademarks are filed in the name of Ethiopia and Ethiopia is the owner of the trademark. However, when it comes to the use and exploitation of the trademarks, this is done by the stakeholders group namely, the farmers and the coffee exporters.

Her Excellency Mrs. Mary Nagu
Minister for Industry, Trade and Marketing,
United Republic of Tanzania

There is one thing that I need WIPO to respond to and this is about the chocolate issue.

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization (WIPO)

This is a question which is very broad and has various legal and other dimensions. I can request my colleagues concerned who are dealing with this to get in touch with our questionnaire to see what clarifications can be offered. Thank you.

Her Excellency Mrs. Mary Nagu
Minister for Industry, Trade and Marketing,
United Republic of Tanzania

I think you will agree with me that the presentations were of high quality, very relevant and very beneficial. We have learned that there is a lot to share among the LDCs and for our own betterment. In order for this to be of effective use, we have the services of OAPI and WIPO, which can facilitate the sharing of experiences among ourselves because we need to create wealth and we need to use that wealth to extricate ourselves from poverty. We do not want to remain LDCs. There is opportunity and ability among us. I therefore thank you very much for this very interesting discussion and for the interesting presentations. Again, it is my honor and my pleasure to have been the moderator of this session. Thank you.

Theme Four – Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth and Development of LDCs

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization (WIPO)

We start today with consideration of Theme Four: Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth and Development of LDCs. To moderate this session, we have the honor to have His Excellency Mr. Richard Fienena, Minister of Economy and Industry from Madagascar.

His Excellency Mr. Richard Fienena
Minister of Economy and Industry, Madagascar

This is the second day of our High-Level Forum. Our topic this morning is the Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth and Development of LDCs. Today, we will be discussing the second main branch of IP. As lead speaker, we have Mr. Daniel Gervais, Professor of Law, Nashville School of Law and our panelist is Mr. David Uwemedimo, Director of Legal Affairs, International Confederation of Societies of Authors and Composers (CISAC) in Paris. As you know, we only have one hour for the presentations and debate so I will not launch into a long speech. I prefer to give the floor to our lead speaker. Mr. Gervais you have the floor.

Mr. Daniel J. Gervais

Professor of Law, Director, Technology
and Entertainment Law Program
Vanderbilt University Law School, Nashville

I have prepared my speaking notes in English but I would be pleased to answer any questions you might want to ask me in French. Excellencies, ladies and gentlemen, let me first thank WIPO for this invitation. I feel at home since I used to work here. I am very glad to be here and to see some familiar faces and meet new ones.

The topic this morning is perhaps one of the most complex, but at the same time one of the most powerful signs or symbols of the implementation of IP in developing countries. Collective management in particular is one aspect that can immediately produce effects, and which has therefore drawn a lot of attention in recent years as countries try to figure out the best way to set up and enhance their collective management system. To understand collective management and the role of copyright, I think we have to briefly look at what history can teach us in this area. Copyright as the name indicates, in English at least, was initially just the right to make copies, essentially copies of books. That sounds fair if you are a novelist or perhaps a photographer. It may not be as fair for people who make movies, write theatrical plays or music because we as users of their works typically access them by listening, by watching those works as they are performed whether in public or from a recording. It would be fairly easy to understand if all that the radio station had to do to play a song lawfully was to buy a legal copy of that song. Alternatively, if all that a movie theatre had to do to perform a film up in front of a public audience was to buy a DVD. Then the revenues for authors of the film and the music would drop dramatically. This is why copyright also involves not just the right to make copies but also the right to perform a work publicly in front of a live audience or from a recording. When radio was invented, the difference was that live performances could be transmitted

over long distances and therefore copyright had to be adjusted. That is why right of public performance was combined with the right to communicate to the public, a protected work at a distance. This now applies to television, to cable, to satellite and as we will see in the second part of my intervention this morning to the Internet as well.

The purpose of this evolution of copyright was to capture the value of public uses of protected material, especially when this material is used for commercial purposes by broadcasters, concert organizers, theatre owners etc. These types of uses are commercial in nature. Not all uses of copyright material have music for example as their primary focus. One example is restaurants or hotels that play live or recorded music. Arguably, these restaurants or hotels would be in the same category, making more profit because the music makes their establishment a more desirable place to spend money on a meal. Should these establishments pay for the music that they use? The copyright answer under international treaty is yes, because the use of the music is in public and even more so because it is commercial in nature. In fact, historically this is precisely what prompted collective management of copyright into existence. I am told that this is a true story: a French music composer was having dinner in a Parisian restaurant and heard his music performed by a live band in the restaurant. He then told the restaurant owner: "I will not pay your bill Sir until you pay for my music." The idea here may sound good, but what was the restaurant owner supposed to do, and what does a theatre owner supposed to do in those circumstances? It is clearly unworkable for that restaurant owner to try to find the author of every piece of music that the restaurant intends to play. Imagine that the restaurant is actually just allowing patrons to listen to radio stations that is broadcast and therefore rebroadcast or performed publicly in the restaurant. How is this restaurant owner supposed to first of all, know who the author of each song is, find the author and do all this before the song is actually performed to make

sure it is legal? It is difficult; actually it is impossible for the restaurant owner. It is similarly impossible to do this for a radio station, a television station or any major user of music. As I said, this is what led to the establishment of collectives.

These collectives pool the rights for a certain category of work, such as music, then license them as a package to the user. For example, collectives can now license over 99 percent of the world's music to any broadcaster anywhere in the world typically in exchange for an annual fee. Then the broadcaster does not have to clear every song. He can basically play whenever or whatever he or she wants.

Let us take a few minutes to look at how this actually happens in practice. Now, when I use the term collective the problem is that there is no single definition of what a copyright collective is, although I think that everyone will agree that a collective is first and foremost a pool of rights, which is then licensed to users, fees are collected and then ultimately paid to the rights holders. Beyond that, however, there are dozens of different models and ways in which collectives are supervised by the States, so let us look a little closer.

One issue that varies enormously from one country to another is whether collectives need a license to operate. Can someone basically just set up an organization and call it a copyright collective or must they go to the State to obtain the authorization to perform this function? As the next speaker will discuss, there is undeniably a public interest component in having well-functioning copyright collectives. Trust in their operations is a component of the public's trust in the copyright system itself. Therefore, it make sense for many countries where new collectives are being formed to set up an approval process to ensure that new collectives are in fact set up properly initially, as this will then typically reduce a number of obstacles further down the road. We can come back to this during the discussion. Collectives obviously, more

importantly must have something to license. They need to acquire the rights that will form the pool of rights they will license. The easiest way to do this is to sign contracts with individual authors or rights holders. The contract could take the form of the full assignment, in other words the right is transferred from the author to the collective. It could also be a simple authorization to license; the author saying to the collective you can now license on my behalf but I as the author retain the title if you will or the copyright itself.

However, this is only a partial solution because most collectives operate on a national basis. That means that if they were to function only by contract they would only acquire rights to their domestic repertory or pool of rights. However, users typically want at least a worldwide repertory, and therefore collectives will normally sign agreements with other collectives in other countries that manage similar types of rights. Then they will exchange repertories; collective A will tell Collective B, "here is the authorization to license my repertory in your country in exchange for the right to license your repertory in my country." This is known as reciprocal representation. These collectives will then go to users and ask for payment for the use of these repertories and often, as one might expect, they do not agree on small details like the price.

What should happen in those cases? In some jurisdictions, the matter is left to civil courts. Experience has shown this is usually not an optimal solution. For one thing, it takes a long time to settle the matter and civil courts are usually not experts in this area of law. Actually, it is not just the area of law but all the economics that support collective management. In fact, I would say that experience has shown that arguably the most successful and efficient collectives have access to specialized dispute settlement bodies set up by the State, such as a neutral Copyright Board or Tribunal or other price-setting authority. This in fact is one of the key decisions that each government must

take, namely, how to regulate copyright fees when collectives and their users disagree.

In the field of music, which is the bulk of collective management, larger users are first broadcasters whether State or private. There are also large hotels and large resorts and when they are owned by international chains they are used to paying for their music. Therefore, having a visit from that local collective will not come as a surprise for them. Still, this does not mean they will agree on the price. These prices are typically charged as a percentage of the revenues made by the users, such as advertising revenue. For some users, for instance a public broadcaster which does not use advertising, the price cannot be calculated on that basis and would typically therefore be a lump-sum payment.

We have seen that collectives must be set up properly, then they must acquire the rights to license, they must set a price for the works that they license and then they will need to distribute those funds to the rights holders, a process which requires data. Many collectives work with larger users such as broadcasters to create logs of the works that are used. However, for a hotel or a restaurant to be forced to log every song that is played on the premises is difficult if not impossible. Therefore, collectives will more typically use surveys. They will survey a certain number of users in each category of use for a certain number of weeks per year. Then they need to take the data which will be typically say, title of songs against a database and perhaps Mr. Uwemedimo can say more about this. CISAC actually develop and manages a worldwide database of rights and if you are a member of CISAC, you can match the data you receive from users against that database. When you have collected funds, you can match the use of the works to certain rights holders and then you can pay as a collective each rights holder based on the use of the funds.

As I said, a collective is normally a national organization and so they will pay their domestic authors and rights holders, and typically will pay foreign authors and rights holders through the foreign collective with which they have a contract. The basic function of a collective is to license, collect and distribute. I do want to emphasize that in fact, a collective can do more than just perform these financial functions. A collective obviously is important because by allowing domestic authors and rights holders to receive funds for the use of their music, this will allow a domestic professional industry to develop or to grow. Nevertheless, as I said there is a function beyond this which collectives can perform.

Some collectives will for example, run awards, ceremonies or subsidies programs of that nature to promote and develop local talents. I know some collectives also, for example, organize music composition classes, many will run a copyright awareness campaign. I believe this is still the case that under CISAC rules, up to 10 percent of revenues collected by collectives can be used for such purposes.

A large part of the work of running a collective is clearly data processing operations. Therefore, information technology is crucial and I think CISAC may have help available for new collectives in this area. I would like to suggest that where appropriate in certain parts of the world, two, three, or more collectives from different countries could actually get together and share the burden of developing the information systems they need to function. I have seen this in certain regions, and it can be a very effective way to save time and money in setting up a collective.

You may have noted that I keep mentioning collectives being national organizations: this is because in almost every country there is only one collective in each sector. Having more than one especially in a smaller economy has historically proven less efficient than one with proper

governmental supervision. You may have also noticed that I have been speaking mostly about music. I do want to emphasize that music is the bulk of collective management. To give you a rough idea, in 2008 based on my estimates, about 14 billion dollars transited through collectives worldwide; about 10 of those 14 billion dollars were for music, so it is definitely the bulk. The other 4 billion dollars includes licensing such as reprography, the second largest area, which is the licensing of photocopying and digital copying of books, journals, newspapers etc. This is also something I suggest it is important in a developing economy to allow the local publishing industry to be compensated for uses of works that cannot be prevented, that are in fact desirable in many cases, but that also have an impact on the market for local authors and publishers. There is a federation of collectives in this area, namely, the International Federation of Reprographic Rights Organization (IFRO), that can assist in setting up collectives in this area. Users that would typically be licensed by a reprography collective include schools and higher education users, but also larger corporate users and sometimes certain governmental users as well.

In short, collectives in at least music and reprography are indispensable in my view for the development of a national, professional industry in the areas of music, book and journal publishing. Those collectives can be good partners in developing local culture and innovation but need to be carefully supervised, especially in their early stages, especially as I said in their first years of operation to ensure that they incorporate and reflect best practices in terms of efficiency, transparency and other key principles. This is essential to gain the trust of the users they will be licensing.

Setting up and managing a new collective, something I personally have had the pleasure of doing in a few different countries, requires an enormous amount of dedication as well as specialized training. There is no school of collective

management, at least not yet, but would be leaders of those organizations can get training, and in fact do, by observing the work of other collectives, typically in countries in the same region but they could also be collectives in other parts of the world.

In conclusion, I will simply say this: I think a good collective management subsystem is a strategic tool in developing local innovation potential.

I will stop here and open the floor, with the Chair's permission, for discussion or questions. Thank you very much.

Mr. David Uwemedimo

Director of Legal Affairs

International Confederation of Societies of Authors and Composers (CISAC), Paris

(a) Copyright and Related Rights: Striking the Balance Between Protection and the Public Interest

On behalf of a non-governmental organization, I would like to say before beginning how honored we are to be given the floor before so many distinguished public figures. Our presence today demonstrates that the IP field is the sum total of its component parts and that each of these parts has a critical role to play in the development of the IP industries of the world.

The subject on which I have been asked to speak to you today is a bit of a mouthful, as you can see from the screen. Therefore, what I propose to do is to split up the presentation up into four discrete parts. First of all, I propose to discuss the growth of copyright and the contribution of copyright to the development of all countries, including LDCs. Second, I propose to talk about copyright and the contribution of copyright in relation to collective management. What exactly can collective management do for the development of countries? After having finished those two sections, I will then

go on to talk about the relationship between the public interest and IP.

If I may, Mr. Chairman, I will start with the first of those four headings which is CISAC. As Daniel has said, CISAC is an international confederation based in Paris. We were formed in 1926 and we have some 225 societies in 118 countries around the world. The chances are there is a society in each of your countries. The sum total generated by these societies as Daniel stated amounts to billions of dollars each year. There are probably approximately three million creators that form a part of the CISAC family. Again, it is probably no exaggeration to say that any creator in your territory whose works are exploited to any significant extent will be a member of a CISAC society or have some close link with a CISAC society around the world.

The purpose of CISAC is to promote the development of the legal, economic and moral interests of the creator in the four corners of the earth. There is a great deal more that I could say about CISAC, but I do not want to take up too much of your precious time on this particular subject. I have done a written presentation and I believe that it will be made available. Further information on CISAC can also be obtained from CISAC's , at www.cisac.org.

I propose to move to the second part of this presentation, which talks about the role of copyright and its contribution to the development of LDCs. I think we all know that copyright plays an important role in promoting public interest. Strong copyright protection encourages creativity. Creativity encourages the cultural industries, and if the cultural industries are encouraged, then the benefits of the public interest are clear for all to see. The benefits of copyright are not just cultural but also economic. WIPO itself is the expert on putting together the baseline for the methodology for accessing the economic contribution of copyright to the world's economies. Using a guide which WIPO has produced, there have been several

surveys which have been carried out around the world that demonstrate beyond any doubt that copyright is an economic stimulus which can advance the course of any country. In my written paper I give quite a few examples, but for purposes of brevity and since time is of the essence, I propose to choose just two examples in this presentation.

I will take one large example, which is the United States of America, and then I will take a small to medium-sized country, which is Latvia. First, if I may, I will start with the United States of America. A survey which was carried out in 2004 demonstrated that the copyright industries contributed 12 percent to the GDP of the United States of America. Translating that into dollars gave the figure of 1.25 trillion US dollars contributed to the US economy by the copyright industries of America. Some 11.47 million workers gained their income through the copyright industries. The United States of America was able to generate almost 90 billion dollars in sales as a direct result of copyright. One does not have to look at such large figures to see what contribution copyright can make to the public interest.

I will take the second example, which is Latvia, a small to medium-sized society. The figures are equally worthy of note. There was a survey carried out in February 2005 which demonstrated that some 4 percent of the Latvian economy was connected in some way to the copyright industries. This equated to a generation of 315 million euros for the good of the Latvian economy. Exports in Latvia generated by the copyright industries worked out to some 35 million US dollars. Therefore, distinguished participants, the empirical evidence is there, the objective evidence is there: copyright can make a contribution to the economy. It matters not whether one is a small to medium-sized country or whether one is a larger country – the evidence is there. Hence, if I have a message which I would like to share with you today, I would say that it is in the interests of all of us to ensure

that copyright is encouraged. I do have many more examples but, as I said, there are written paper and I propose not to deal with them during the course of this presentation.

I would like to move on to the third part of my presentation: the role of collective management and the contribution which collective management can make to the development of LDCs. Daniel has already summarized how the collective management system works, and I do not propose to say very much more about it. However, what I would say is that societies are non-profit-making associations of composers, authors and publishers set up by creators for the benefit of creators and run by creators. As Daniel has said, a society collects licenses on a blanket basis from the users of copyright material, not just on behalf of the members of society but also on behalf of the 3 million creators around the world. The blanket license issued by collective management organizations entitles the user to perform or broadcast each and every work within the repertoire of societies.

Moving on to the crux of the matter, what is the advantage of collective administration, collective management? Well, I would say that there are advantages for both creator and user. Thus, collective management offers advantages for society as a whole.

The first of these three advantages is the advantage of the creator. Can you imagine, if you are a creator, how could you ensure that you receive royalties when your works are exploited in the United States of America, Russia or Europe? How could you do it by yourself? The answer of course is that you cannot. Collective management is there to do collectively that which the individual creator cannot do by himself. By establishing a system of collective management, a worldwide system of collective management, it means that the creator can receive royalties from around the world. If the creator, for example a Senegalese

creator, is receiving royalties for the exploitation of his work in the United States of America, that is money that is being generated for the Senegalese economy. That is a benefit flowing directly from the United States of America to Senegal, thereby encouraging the economic development of Senegal. As Daniel has said, there are billions of dollars passing within the system, and we just need a small fraction of those billions of dollars to pass through the LDCs to see what a difference copyright can make for LDCs.

The system of collective management also benefits the user. Again, take the example of a single radio station in Nigeria. How is it that a radio station in Nigeria can possibly receive all the information about the use of a work? How can it clear rights in advance for its use of copyright materials? The benefits of the collective management system mean that it is free of all these obligations. All it has to do is to obtain a single license from its local copyright society, and by virtue of this single license, it is freed of the concerns and of the fear of infringing copyright. It can be sure that the chances of its infringing copyright, after it has taken out a license, will be virtually nil.

The third advantage is the advantage for the consumer and the advantage for society. It follows clearly that if there is a system in place which benefits the creator and the user, there is also a system which would benefit the consumer, because the consumer would have access to the world's repertoire of copyright music in a seamless and efficient fashion. This really shows the advantages of collective management for the public interest.

If I may now move on, the fourth subject of my presentation is the issue of balancing the interest of the various parties in the copyright field. CISAC could say right at the outset that it fully accepts that there are certain groups which require special consideration when it comes to copyright. The World Blind Union estimates that some 180 million

persons are either blind or visually impaired in some way. Of those 180 million, they only have access to some 5 percent of published books, which means that 95 percent of all published books are not currently available to the blind. That is not in the interest of the visually impaired persons and that is not in the interest of the creator either. It is in the interest of the creator to try to ensure maximum exploitation of his copyrighted works. All that the creator asks in return is that that exploitation takes place within a properly regulated copyright system.

How does CISAC believe that the right balance can be struck? How can CISAC believe that exceptions and limitations to the strong exclusive rights can work in the public interest? CISAC would say that that balance already exists within the international conventions and treaties. There have been rules that have been fashioned and put in place over the decade that maintain the balance between the legitimate interests of the creator on the one hand and the reasonable expectation of the user on the other hand. CISAC would say that that balance could be found within the so-called three-step test. This is a test which can be found in many of the treaties. It is in Article 9.2 of the Paris Convention, Article 10 of the WIPO Copyright Treaty and it is also in TRIPS, in Article 13. How does this three-step test work? How does it balance the interest of the various parties? Well, it says that national countries can lay down exceptions provided that three criteria are met. The three criteria are: (1) in certain special cases; (2) whether there is no conflict in the normal exploitation of the work; and (3) where the exception cannot unreasonably prejudice the legitimate interests of the creator.

If I may very quickly move on to the conclusion, CISAC acknowledges the importance of balancing the interests of all within the IP field. CISAC accepts that exceptions and limitations have a very important part to play in this balancing act. CISAC believes that the three-step test is a critical tool that helps to strike that balance. Above all, CISAC

would ask that the message that we should take home is that with the digital environment, it is more important now than it has ever been that copyright should be reborn. Copyright should be there to assist the creator and to assist society as a whole. The message we should take is that copyright is a bridge, not a barrier to progress. In addition, the copyright owner and the rights user are not opponents, they are not competitors: they are complementary players in the cultural field. Finally, collective management is not a tool which can be used against the public interest but rather an inherent and important part of that public interest. Thank you.

Mr. Daniel J. Gervais

Professor of Law, Director, Technology and Entertainment Law Program
Vanderbilt University Law School, Nashville

(b) Copyright Collective Management Societies and New Technologies

● The second part of the presentation I have this morning cannot begin by just saying collectives have a role to play and licensing new technologies. Let us focus for a few minutes first on what the challenge actually is. I think we would all agree that the Internet from not just a copyright perspective but generally is both a very good thing and a very bad thing. That is why it is so hard to find the proper way to regulate it. The benefit, and I would focus mostly on copyright here, is that it allows free worldwide dissemination of locally produced works from every nation. Therefore, it does not matter where you are from if you have written music, produced a short film or written a text. You can blog about it, you can send it to anybody you want essentially free of charge, except for your access to the Internet. Compared to previous methods of dissemination of culture, the Internet is an incredible step forward. It is not just a mode of sending material; it is also an incredible

archive of existing culture. One of the very controversial topics perhaps will come up during our discussion is the Google box initiative, where Google is basically putting tens of thousands of previously published books on the Internet, but that is only one example of this archive function. The Internet can actually make copies of non-previously digitally available material and we hope, unless some major catastrophe happens, that this will be available forever.

We have this incredible dissemination function, this incredible archiving function but on the other side, it also allows the dissemination of things that we perhaps would prefer not to see disseminated. Again, from a more copyright perspective, it allows unpaid users of copyrighted material to go on a massive scale. It is easy at this point to say well copyright does not work. That has been said many times, by many people for many years talking about the Internet. That is not quite the case. Let us see again what the challenge is.

The copyright system was set up initially in the early 18th century to prevent the copying of books. The idea was to allow scarcity in the market. Obviously if everybody could publish any book without authorization, the market would fail. Publishers would have no encouragement or incentive to bring out new books, because they knew that if a book sold well, somebody else would copy it and the market would fail. Over the years, as I said in the first part of my presentation, when radio, television, cable and satellite etc. were invented, this other side of copyright right was created: the right to perform publicly or to communicate the work at a distance. If you think about it, really all the people who were performing the publishing function, the transmitting function and the concert organization function were professionals. These are people who are supposed to be able to deal with copyright effectively. People who own concert halls, dance halls or radio stations should expect to have something to do with copyright. That is their job, and they are supposed

to be able to deal with transaction costs, transaction obstacles, because again, that is part of what they do.

The problem with the Internet is that instead of having as its primary focus professional users, it targets all of us individual users. Therefore, the copyright system that was designed for one type of user is really now trying to function in a very different environment. A second part of the challenge: Is it exactly the same rights that are involved? Is it just the right to make copies, just the right to transmit at a distance the material that is protected by copyright? The answer to that came in 1996 when WIPO adopted two treaties that you are probably familiar with: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which make it clear that making copyright material available on the Internet requires the authorization of the copyright holder. The treaties also make it illegal to circumvent so called technological protection measures. This really means a fairly simple thing, that when material is made available in digital form but is locked up with some technology that prevents access, this could be as simple as a password. Then circumventing that technological protection measure to access the work is illegal, unless an exception applies. That is all really focusing on one thing, how to stop, how to prevent and how to block access to material.

The fact is that when you create something, normally you do not want to prevent people from accessing the material. When somebody writes a song, it is not the first thing they think about to say, "Oh, I do not want anyone to hear it," "I have made a movie but I do not want anybody to see it." Obviously, that is not the case. Most people want to have the song or the film or the book to be distributed as widely as possible. In many cases, however, they also want to be paid for it and that really is the challenge.

Copyright is not broken, the system in legal terms works quite well, because it says you need an

authorization to access material on the Internet. It may be functioning less well at this particular point in time. You have to make sure that if you want to be paid you can be paid for the use of your material. This is in fact where collectives have a potentially significant role to play, when you talk about technology such as technological protection measures, when you say rights holders have the right to prohibit, again, that is assuming we all want to stop material from being disseminated.

Collectives have the power of yes, which is not insignificant. They have the power to tell users, yes, you can use it, but you know what, you are going to have to pay for it. The question is who should pay and in which circumstances. There are circumstances where payment may not be appropriate. David referred to access by people with visual difficulties, blind people. Well perhaps in those cases, they should not pay, but that is for international treaties and each government to make proper exceptions for use of the material. There are cases where payment is in fact appropriate. Let me take a few that I hope are not too controversial. Let us say you are a large multinational corporation, and you use tons of journal articles as part of your research and development projects. You basically subscribe to this online version of published scientific journals or even just the paper version. You have somebody in your company scan it and then e-mail it to 5,000 people within the company. Should not that be a use that the company should be required to license? The answer in my view is yes. Well who can do this? You can do it by trying to find the author of the article or going to the publisher and negotiating a one-off license for that particular use. Alternatively, you could also say, "You know what; we actually do this 216 times a day on average. I do not have time to find the publisher for each article. I am going to go to a collective, get a license and get it done on an annual fee basis." Well, that sounds efficient and in fact, this is precisely what reprography collectives do.

Let me take perhaps a common example, how about music. We all listen to music in a variety of ways. Assume you want music in digital form. Well, you can take a CD and make a copy. In many countries, there will be an exemption in national law that will allow you to make a private copy of that music. Can you send it to someone else? Can you put it on your ? Can you upload it as background of a video that you are uploading on some site like YouTube or Facebook? Well, people do it now but that does not mean that it is legal. It certainly does not mean that it is licensed. Should it be? Is that not the future of the Internet – to have more access to licensing options for that type of use? If the answer is yes, and I believe it is, although obviously I cannot prove it, I am simply saying, assume that there is this future, that there is more access by individuals to this material that has been licensed for reuse on a massive scale by individuals. Then obviously, this use has to be licensed by a collective.

Let us take a very concrete example. You want to upload a song by my compatriot Céline Dion as part of the background of a video you want to put on YouTube. What are you supposed to do? Look up Céline Dion in the phonebook? I doubt that you are going to find her name, and if you do, I do not think she will pick up the phone. Guess what? She is actually not the right person you want to talk to. You want to talk to her music publisher. Do you know who her music publisher is? Does the average Internet user have the duty to find out who the publisher is? You can see how that quickly makes no sense when you keep asking those questions. Again, if this kind of use were to be licensed it would have to be licensed through a collective system. From the journal article example, we are seeing now that collectives can play a very significant role in allowing legal use on a massive scale of Internet-based usage of material. I believe that collectives have a very interesting future in the area of Internet-based distribution.

CISAC members, for example, already now license something called streaming. For example, for a typical over-the-air radio station with an Internet channel that broadcasts in parallel to over-the-air broadcast, this activity has been licensed for several years by CISAC members. More controversial is that any reuse of the music by professionals like broadcasters: for example, this use is already licensed by collectives.

To sum up on this point because there is so much more to say on new technologies but I suspect that many of you may have questions, the challenge does not come from the structure of copyright as much as it comes from the fact that the nature of the user has changed. We have moved from an era of purely professional users to an era of individual end-users. Collectives are not used to dealing with individual end-users. Perhaps they would have to or would have to at least find a way to license these individual end-users through third parties. The evidence we are seeing now in the marketplace is that collectives can in fact find ways to make massive users and reusers on the Internet illegal, and have therefore a role to play in making sure that copyright works not just in traditional media but also in new media as well. I think I should probably stop here and just see where the discussion might take us because I suspect there might be different directions. Thank you.

Discussion

His Excellency Mr. Richard Fienena
Minister of Economy and Industry, Madagascar

● Thank you to both speakers and both panelists. We have already overrun the time allotted us. I would therefore like to ask participants to put their questions in as concise a manner as possible. I give the floor to Senegal.

Delegation of Senegal

● It will be the first and last time I take the floor because I have to take a flight at 2.00 p.m. I would like to seize this opportunity to express on behalf of our government and our Minister our heartfelt thanks to the Director General of WIPO for the invitation extended to our country to attend this very important meeting. The Delegation of Senegal is fully satisfied by the arrangements made by WIPO for its stay in Geneva, and we would like to thank and congratulate the Director General and his colleagues. We would also like to thank the Coordination Council of the LDCs and its Chairman for the smooth meeting arrangements. Furthermore, we would like to thank the moderators, lead speakers and panelists.

Globalization has turned our world into a huge village. Exchanges take place at the speed of light. Trade barriers and protectionist regimes are unfair in the face of free exchange at a time where we are still mourning the King of Pop Music who owed his fame to copyright and IP in general – copyright which will ensure that his heirs enjoy a vast fortune. How many of Michael Jackson's records have been uploaded and downloaded illegally over the Internet? How much does this represent in money loss for his family and heirs? We are living in a period where new technologies offer new possibilities for creation and innovation, but also for counterfeiting, industrial spying and many other illegal activities. In this context, it is most relevant for WIPO to convene such a high-level event, giving us an opportunity to reflect on IP and its contribution to development and prosperity.

I will not put any question. I would simply like to give you my contribution in order to tell you about our experience in the field of copyright. For several decades, we have had a competent copyright office over the whole of the national territory. We find it important to mention the significant progress made in these past years. We have a new law adopted in January 2009 ensuring a copyright protection and

neighboring right protection. This is something new in Senegal; we are ensuring protection through copyright and neighboring rights to performers, producers and broadcasters. We also have a Law 2008 10 on the Information Society which regulates creative works in the digital environment. Finally, we have a new law on cyber crime. All this shows that protection of rights is an important mission for our State, which is why it has created a brigade against counterfeiting – a group of people who will have powers throughout the national territory.

Senegal would also like to thank WIPO for the strategic plan it has decided to set up in the field of copyright. We have received help from WIPO in this field. We are also very happy to have witnessed the creation of the aRD system. Innovation and creation are dear to our hearts and we will certainly make full use of this new opportunity. This is our contribution with many thanks again for this very important Forum. Thank you.

Delegation of Cambodia

I would like to thank both speakers for their very useful information related to copyright. I have the following two questions. First, I want to ask whether there is a link between collective management and copyright law enforcement. Perhaps you could inform us what best practice we could use in relation to this topic. The second question concerns royalty fees and charges. I think that in the copyright area, there are many actors including government who play an important role in terms of law enforcement and protection. What are the royalty charges? Are they divided equally or not, or are they distributed among the players including government? The government sometimes has to charge for its services as well as for revenue purposes. Could you tell us what sort of reasonable fee or charge that the government should levy in this respect? Thank you.

Delegation of Burundi

I would also like to extend my thanks to the panelists for their eloquent presentations on a topic that is very topical, and on which much has been said and written. Experts in IP law know a great deal about this subject, and probably also have to plead cases before various courts. I would be interested in the success stories of collective management societies in LDCs. Can you give us examples of successes achieved through this type of initiative? We know that commercial radios in Africa broadcast music or various radio programs, but we do not know whether or not the royalties for these works have been paid before they are broadcast.

As to works published by publishing houses in respect of all the terms of use, sometimes the author will find his/her work on the Internet published by well-known publishing houses. What remedies can the author avail himself of in order to assert his rights? Should he take legal action against the publishing house that did not protect his work or sue the host of the Internet site that allowed publication of the work on the site?

My last question pertains to current initiatives for archiving on the Internet that we see in various national libraries. For example, the French National Library has a huge repertoire of works published on the Internet that we can read in their entirety. Can we say that there is an infringement of copyright in this regard or that it is lawful? Thank you.

Delegation of the United Republic of Tanzania

I would like to join the others in congratulating the two presenters on their very able presentations. I have two small questions. The first was just asked in part by the previous speaker from Burundi. Actually, I wanted to hear from the second speaker on the examples of the performance from LDCs.

You have given us examples from the United States of America and also examples from Latvia. I would like to really hear something from the LDCs, because there are some LDCs which are also members of the organization.

The second question regards the specific role that CISAC plays in terms of the relationship between CISAC itself and its members.

The third question goes to the Professor. He said something to the effect that government/public-led collective societies do better than private-led ones. I am not sure that I understood him correctly. Perhaps he could elaborate on this.

Delegation of Sudan

I would like to join my colleagues in extending my thanks to the panelists for their excellent presentations. I would like to inform my colleagues here that the Minister of Culture and News just recently established a collective management body in Sudan. I would like to know what help or experience CISAC could give us to assist us in our endeavors. Thank you.

Delegation of Ethiopia

I would like to thank the presenters and I have one question. It refers to countries that have already established their copyright collective management society but have not yet worked out all the details.

In principle, copyright is automatic by nature but there is a demand from the public for registration of copyright. However, our law does not allow that. Is there a possibility that the copyright management societies could handle the registration of copyright works? There is also confusion as to

the deposit of the copyright works themselves with the national library. Most of the time, it falls to the national library to deposit the works of the copyright owner. Do you know of any other case, perhaps from your own experience or worldwide, where registration of copyright works and copyright owners themselves can be conducted either by a national IP office or by the collective society itself? Thank you.

Delegation of Samoa

Samoa is a small country in the South Pacific with a population of 178,000 people. We have a Copyright Act that was enacted and came into force in 1998. Since this legislation was enacted, there has been three copyright cases so far on which the courts have successfully ruled. I fully appreciate the presentations by the resource persons. I also understood from the previous presentations and from other fora that copyright management or collective organizations are supposed to be non-governmental entities. The question is the following: in the case of a small economy, would you advise the government to start off by establishing such an entity or a collective? Once it is up and running, for example after a period of three to five years, then the government could transfer it to a private entity or a so called legally registered society, which would pick up where the government left off. I have raised this question out of concerns relating to resources and the cost, for small island States like ours, of establishing such a mechanism. Thank you.

Delegation of Lesotho

I think I am a bit sceptical. I think I am from a group of those who, as you said, claim that copyright actually does not work. Unfortunately, I am from the government so I am obliged to make

sure it works. You said that one of the challenges is the issue of price between the copyright or the producers and the users of their product. Let us say that all goes well until the time comes for the producers to share the royalties. How do we determine who gets how much of the royalty? I think there will always be an argument that “no, you’re not as popular a singer as I. Your song is only played once a month, whereas mine is played every day” etc. How do you take care of such things? Thank you.

Mr. Daniel J. Gervais

**Professor of Law, Director, Technology and Entertainment Law Program
Vanderbilt University Law School, Nashville**

With regard to the role of enforcement that collectives can or should play, this would obviously depend on the national situation to a certain extent. As I mentioned, I think all collectives have not just a possibility but a duty in fact to participate in awareness campaigns. Yet what is the role in copyright enforcement, for example in an unclear situation where a particular type of user should be licensed? I could see a collective being involved in a test case before the courts in the country concerned. I could see a collective obviously if there is a tariff. Assume that a price has been set by the competent authority and then a particular user says that a given hotel or restaurant refuses to pay. I obviously would see the collective going to court to collect that license fee. However, collectives are not the police. I do not see a collective basically fulfilling the function of the police. I do not think that in most cases that would be appropriate. Therefore, there is an enforcement role, but it is not the copyright police. In fact, it remains to be discussed whether copyright should be seen as something where the police should be involved, except for professional and commercial piracy.

In terms of the fees, I think it is perfectly appropriate for the government to pay the licensing fee for setting up a collective. I think it is appropriate for a copyright tribunal or board to function, if not in terms of cost recovery, at least to charge some fees like any civil court would. Beyond that, I am not sure what an appropriate fee for the government would be. Typically, the income of a collective is not its own income. It is income that belongs to the rights holders. Typically, therefore, the tax authorities would not tax the collective but would wait for the rights holders to be paid and then tax them. I do not know if this answers your question.

Let us now go to the question raised by Burundi. I have had the pleasure of visiting several collective management societies in developing countries and in LDCs, including Burkina Faso and Senegal. I could mention other examples in the Caribbean; a regional approach has been adopted and seems quite effective. Hence, we do have success stories. The question is do we want to prevent access at all costs or do we want to organize the market and set up a structure that makes it possible for rights holders to collect fees? Collective management is one of the best ways to go about this.

With regard to archiving by national libraries, for a long time now, these libraries have been granted exceptions in the realm of copyright because they play a role that is in the public interest. The public library of France is currently setting up an interesting system but it raises a difficult issue – the issue of orphan works, in other words works for which we do not know where the author is or who the rights holder is today. This is a problem with which a number of national libraries have to deal with when it comes to archiving. In some cases, governments have set out exceptions that abide by the three step test mentioned by Mr. Uwemedimo.

In the case of Samoa, there was a question concerning the role of government and whether

collectives should be public or private. That is a complex question. In large markets with a very substantial number of users, it is entirely possible for a collective to be entirely private from the initial stages, in other words to secure the initial funding to set it up. In smaller markets, that may not be realistic and so a public private partnership or even in some cases an entirely public institution may be preferable. The problem that arises at this point is really that of defining the separation between the State and the organization, especially when it comes to setting prices. It is difficult for the government to set a price as a neutral third party when it is an entirely public institution, but it can be done. There are ways to make this happen through, as I mentioned in my first presentation, neutral third parties or copyright boards or tribunals. Therefore, there is this mix of public and private that is entirely possible, as is a regional perspective. In the case of Samoa for example, they have a number of collectives collaborating, for example, on the information technology aspects of collective management.

To the question from Ethiopia about registration of copyright, I wish to say that there is a misunderstood prohibition in the Berne Convention on formalities. I say "misunderstood" because I have heard a number of things about it, but it is the case that a government cannot impose copyright registration as a condition for the existence of this right. Thus, you cannot have a system that says if you do not register your copyright it does not exist. That is clearly a violation of the Convention, no doubt about it. Beyond that, however, things are a bit murky. For example, in the United States of America, if you do not register your copyright you have it but enforcing it will be more difficult and some remedies will be unavailable. That is probably compatible with the Convention. You can see how careful I am being. However, to the question as you posed it, then I think it is possible for a collective. In fact, I do not see how a collective could function without asking its members, the authors and rights holders it represents, to register

their works. Otherwise, how would you know which rights you are actually administering? That is not a prohibited formality under the Convention. It is the same thing as an enforcement action, where you have to convince the court that you are the author and the rights holder of the work. That would require some documentation, but it is the same thing.

You mentioned something else that is prohibited – it is possible for the government to insist on deposit in the national library of the copy of any new work. That is legal. What is not permitted under the Convention is to say if you do not do that, we will remove the copyright from that work: for example, there could be a new set of fines if you forget as a publisher or an author to deposit your work, but you cannot remove copyright protection from that undeposited work.

Finally, with regard to the question from the Honorable Minister of Lesotho as to who gets how much, obviously, that can be contentious and the best approach is to avoid possible problems by adopting a very objective text as to who gets what. For example, at least some larger users could be surveyed, or even better, full logs could be kept. Subsequently, these logs would become the basis for distribution – each song was used a certain number of times over the year. Broadcasters used to say, "Oh this is so much work, I cannot possibly do this. I have to fill out this paper logs". In fact, it can all be done by a very simple computer program run by the broadcasters. Some stations now actually use a computer to send the music; they do not use CDs anymore. In fact this can all be done automatically. I guess my point is very simple: if you have data and you follow the data to distribute the funds, then it is very hard for the rights holders to say this was unfair. Beyond that, though, the reality on the ground is that many collectives have distribution keys and systems that are not purely data-driven. They use other factors. For example, they might say this kind of music was worth more than that kind of music. That is when

questions might come up, but because there is no set rule, those things do happen. I suspect CISAC may have something to say about that so I will stop here.

Mr. David Uwemedimo

Director of Legal Affairs

International Confederation of Societies of Authors and Composers (CISAC), Paris

I am going to be brief because Daniel has already covered quite a lot of the responses. Starting with the first one in relation to the role of enforcement, I would agree that generally copyright is a private right, and normally it will be for the private individual or the collective management organization to enforce the rights on behalf of the creator. There are, of course, certain provisions in law relating to piracy in which governments would be involved. Essentially, however, copyright is a private right and the obligation for enforcement would therefore fall on the individual or his collective management organization.

Turning to the question of success stories, an example of success stories was not given necessarily from here but what was given from the floor. Obviously, I might be biased because I represent the societies themselves, but you yourselves have heard from Senegal, where Senegal has itself testified that within Senegal there is a well-established and properly functioning collective management organization. I have visited Senegal on many occasions; I have visited BSDA and can also testify that collective management can and does work in Africa.

Moving on to the question of what exactly can an author do when his works are exploited on the Internet, this is a problem. The birth of the new technologies has created not only opportunities but also challenges for creators. The multiplicity of ways of exploiting creative works is of course one

of the problems with which creators are confronted. That is exactly why collective management is more important today than ever before. Only if the three million creators of the world pool their resources will they be able to deal with the worldwide problem of unauthorized use of their copyright material.

Moving on if I may to Tanzania, where incidentally I was last week on behalf of WIPO and also on behalf of my organization CISAC, this can work. The Copyright Society of Tanzania (COSOTA) is a young organization as is the Copyright Society of Zanzibar (COSOZA). They are young organizations and they have the full support of the African community and CISAC. As you well know, they are beginning the licensing process and the collection and distribution of royalties. That process has already begun very successfully. Rome was not built in a day – it does take time. To give you a concrete example, just down the road from Tanzania we have South Africa where we have a collective management organization, the Southern African Music Rights Organisation (SAMRO), which collects tens of millions of dollars annually on behalf of African composers and other composers. We do conduct economic studies to determine exactly where money is generated and where the benefits are. I would be pleased to pass on further information to you.

Moving on if I may to the question of the role that CISAC might play in developing a society, I think this came from Sudan. We are of course there to perform that very function and that is what we do every single day of the year. We would be very interested in establishing contact with you and finding ways of developing collective management structures within Sudan.

Moving on to registration, I believe that Daniel has already answered that question so I propose not to deal anymore in relation to that particular question.

Moving on to the issue from Samoa on the subject of small countries, there are a great many small

countries in the world, and CISAC and more particularly WIPO has a wealth of experience in setting up organizations and structures within societies that are not necessarily very numerous. I can see that there are some people in the room across the aisle here who have had considerable experience with exactly how to set up organizations where the population is small. The suggestion that Daniel gave of having a cluster of organizations or a cluster of societies is something with which WIPO and the gentlemen in this room have a great deal of experience. We would be delighted to talk to you about the situation in Samoa, and I am sure that WIPO would like to do so as well.

Moving on if I may to the final question, which is from Lesotho, on how exactly you determine the role, I think Daniel has answered this in a nutshell. I would be pleased to give more information after this meeting. It is very complex issue and I would be delighted to have a discussion with you. I would also like to have a discussion with you about your questions on copyright. Perhaps after this meeting we could have a few words. Thank you.

His Excellency Mr. Richard Fienena
Minister for Economy and Industry, Madagascar

● We have gone quite a bit past the time we were allotted for this session. I would like to thank our two experts for their excellent presentations. I would also like to thank all of the delegates who took part in the debate, but before closing I would like to give the floor to Mr. Sabharwal.

Mr. Narendra Sabharwal
Deputy Director General
World Intellectual Property Organization (WIPO)

● I will be very brief. I would just like to inform all of the distinguished participants that establishing

collective management societies, training them and ensuring that they work for the benefit of the countries and their members is one of the very important capacity-building activities that WIPO undertakes. In fact, we have a Division that concentrates on developing guidelines and policies for the collective management societies. In this room, we have a large number of experts who are working very closely with the countries involved in helping them make their societies viable and ensure that they derive the right benefits from them. This whole package of services covers the entire process, from establishing the societies, setting up their laws and regulations and training the personnel to helping them computerize. We have a very important software which is called WIPO Cost which is essentially meant for the benefit of collective management societies.

Apart from this, assistance is available for setting up societies and networking them at the regional level. It was already mentioned that in the South Pacific we have already done a study which is available for setting up a regional network. In the Caribbean, the Caribbean copyright link is a very successful example of a regional copyright network, and similar examples in Africa are also success stories. There are a number of success stories and WIPO is at the disposal of our Member States to give them assistance on all possible aspects of the establishment of copyright societies.

Lastly, may I also say that we have very robust cooperation with CISAC and with all other international agencies that work in the field of copyright and in the field of collective management, and we are extremely pleased at our cooperation with them. Our colleagues will be very happy to interact with you during the coffee break, so please ask any other questions that you may like to follow up with them. Thank you very much.

Theme Five – Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions: Preserving Traditional and Cultural Assets and Creating Wealth

Mr. Narendra Sabharwal

Deputy Director General

World Intellectual Property Organization (WIPO)

● We will now start with our deliberation on Theme Five, and I have the pleasure to introduce to you our Moderator for the session, His Excellency Mr. Roger Dovonou, Minister of Industry from Benin. He will be moderating the session on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions: Preserving Traditional and Cultural Assets and Creating Wealth.

His Excellency Mr. Roger Dovonou Minister for Industry, Benin

● We are now beginning our session on Theme Five: Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions: Preserving Traditional and Cultural Assets and Creating Wealth. I think each and every one of our countries has many resources of the type just mentioned. We have to learn how to best exploit these resources with a view to our development. We are very happy to see that WIPO has decided to include this theme in our Forum, and that WIPO has in fact been working on this theme since the creation of

the intergovernmental committee in 1999. Identifying the resources which are part of our traditional knowledge and setting up the appropriate legal system to protect traditional knowledge are extremely important. At the start of our meeting, WIPO's Director General told us about difficulties encountered in the past two sessions of the intergovernmental committee. This is a great concern and shows how important the organization and Member States consider this topic to be. The topic is difficult, that is something we acknowledge, but we have speakers of great expertise and I am sure that our fears will be allayed once we have heard them. Without further ado, I would now like to give the floor to our lead speaker, Mr. Wend Wendland. He will be the one to introduce this topic. You have the floor, Sir.

Mr. Wend Wendland

Acting Director and Head, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, WIPO

● It gives me great pleasure to be here with you today. The theme of this session gives rise to many complex questions as the Chairman has rightly said. LDCs are rich in traditional knowledge, genetic resources and expressions of folklore. The precise intersection with the IP system is a complex one and gives rise to and concerns many questions. I hope that in my presentation and in the others that will follow, we will try to flesh out the different issues for you, to identify the interface between the IP system and traditional knowledge, folklore and so on. As there are many acronyms in the IP world, it might be useful if I were to set out at least the terms that I will be using in my presentation. Traditional Knowledge or (TK), I will use this term to refer to the substance or content of technical knowledge that has arisen in a traditional context that might be knowledge relating to biodiversity, medicine, agriculture, nutrition and so on. Traditional Cultural Expressions or

Expressions of Folklore, or if I may use the acronym (TCEs,) will refer to the tangible and intangible forms in which knowledge and culture find expression, how they are visible and how they are manifested in the form of music, designs, performances, literature, architecture etc. Genetic Resources (GRs) are defined in the Convention of Biological Diversity to refer to genetic material of actual or potential value, and again if I may use the term GRs on occasion to refer to this important area. Traditional Knowledge as a term is sometimes also used in a broader and more holistic sense to include both traditional knowledge in the narrow, technical sense to which I have referred and expressions of folklore. Sometimes we use TK in a latter sense of things, a broader sense and sometimes in a more narrow way.

If I had only one minute to speak to you and I had only one slide to use, I would put up this slide, because I think this really encapsulates the challenges in the TK field. These are I think the four key questions that any legislator or policy-maker will need to ask himself or herself. What is it that one wishes to protect? What is TK, what is folklore, why would one want to protect it? What are the goals that one is trying to achieve: are they economic or cultural? Who are the intended beneficiaries of such protection? Fourth, in what ways should TK, folklore and GRs be protected? We will come back to these questions, and I think they will underpin most of my presentation.

My presentation will be in three parts: it will begin with a look at the interface between IP systems, TK, folklore and GRs, identifying precisely the IP questions that arise in relation to these areas. What IP traces are there for you to make and what options are there for addressing the goals that you might set for yourself – the goals that you would set in answering the important question of why to protect TK and folklore. Second, I will give you a brief update on the state of play in the IGC to which the Chairman referred. Third, there will be a brief update on our capacity-building program,

which actually accounts for the bulk of our work and takes up most of our time.

Let us now take a step back and try to identify the precise interface between IP questions on the hand and TK, TCEs and GRs on the other. Many countries, including LDCs, are interested in integrating traditional knowledge, genetic resources and folklore into national planning, in strategies to create wealth and to facilitate economic and cultural development. What different objectives are usually identified in relation to TK, TCEs and GRs? Countries generally speak of the wish to integrate TK, TCEs and GRs in order to affirm their value for the country and, particularly the value of the maintenance of the communities for TK holders that are the custodians and the practitioners of TK and TCEs.

Second, there is very often recognition of the value of TK and TCEs in addressing global policy challenges such as food security, access to health care, cultural diversity, the preservation of cultural heritage and the conservation of biodiversity.

Third, a reference is very often made to the need to protect TK from unauthorized misappropriation or exploitation by third parties.

Finally, TK and TCEs are often referred to in an economic context. They are regarded as economic assets, as a source of inspiration and as a means of generating wealth. Naturally, I am sure you will understand that the IP system contradicts all of these goals. The precise interface or the precise contribution of IP, principles and systems is relevant to only some of the goals. I would suggest two goals in particular where the IP system may have a role to play: first, the goal relating to the protection of TK and TCEs from unauthorized misappropriation by third parties; and second, the commercialization of TK and TCEs as a source of inspiration, the use of TK as an intellectual asset and as a source of inspiration for creators and innovators. I suggest these two might be the two specific goals relating

to TK and TCEs where the IP system has something to say.

If I were to take this a bit further, it might be useful to distinguish between innovations and creations that are based on TK and TCEs, contemporary music, contemporary pharmaceutical products on the one hand, and traditional knowledge as such or expressions of folklore as such on the other hand: what one might refer to as underlying folklore and TK, perhaps folklore and TK in the strict sense of the term.

With regard to innovations that are derived from TK and TCEs, these are of course largely protectable by the current system. Dr. Matsabisa will shortly tell you about an example of where a remedy based on South African traditional medicinal knowledge is patentable. There are examples both in the TK stricter sense of area and the folklore area where contemporary creations are protectable under the current patent, and certainly even more easily so under a copyright system. There are some complex questions. One of these is of course that if the creator or the inventor is not from within the culture, is not a member of the community or the country in which the TK resides, should that third party, that foreigner, if I may use that term, have a duty to share benefits with the community concerned? Should that third party have the obligation to seek the prior and informed consent of the group before he/she uses the TK as a source of inspiration? The underlying TK, the base if one may call it that, which is generally in the public domain under the current IP system, is unprotected by the current system. This form of TK and TCEs are certainly the subject of extensive programs for their preservation, sustainable use and promotion, but the question that WIPO faces is should that base be protectable in an IP sense? Should that public domain, TK and TCEs be subject to some sort of a property right or some sort of a right of control as one finds within the IP system?

It is also useful to pause and consider what we mean by protecting TK and TCEs. As some of you are aware, we conducted extensive fact-finding activities when the program began in early 1998. One of the things which we learned was to make a distinction between the positive protection of TK and its defensive protection. The people with whom we were speaking realized that there were two distinct needs. Some TK holders were seeking an IP like property rights, to positively protect TK like a patent or like a copyright. One can use that right to prevent the unauthorized use of the TK or you can use the right to license it so that you can conduct business on the basis of the right. However, we also learned that there were many people who wished TK to be IP-free, to be defensively protected against IPRs, and there are many strategies that seek this as a particular goal.

Going back to the earlier slide about the four key questions, one of the questions that we always come back to is why? What are the objectives that one is trying to achieve in protecting TK and TCEs? One can break this down and ask oneself, what is it that you wish to stop other people from doing with your TK and folklore, or what do you wish your TK holder to be able to do with their TK? Is it to prevent unauthorized use by third parties? Is it to ensure attribution and respect for the TK and TCEs? Is it to generate benefits and ensure that there is benefit-sharing? There are a number of goals that one can achieve in relation to TK.

Having set the goals, the next question then is what options are there for achieving the goals? There are really three clusters of options: the first set of options lie in the legislative and policy area. Yes, one can intervene in a legislative sense to protect TK and TCEs depending again on one's goals. Here again, the options break down into a sort of cascade down into a menu of options. You can protect TK and TCEs to some degree within the existing IP system, you can protect TK and TCEs by establishing a separate special law, what is called a *sui generis* law for TK and TCEs. One can also have

recourse to customary laws and one can also of course use non IP laws, laws related to biodiversity, cultural heritage, trade practices, labelling, etc., can also be useful in protecting TK and TCEs.

Let me say something very rapidly about the use of existing IP system. In principle it is useful, again depending on the goals you are trying to achieve. As I already mentioned, contemporary versions of the underlying TK and TCEs are protectable by the current system, particularly copyright. The Berne Convention on Copyright has an article, Article 15.4, specifically designed to protect folklore. Let me mention one other that came up this morning, I think the WPPT, the Treaty from 1996 provides for the first time international protection for performances of expressions of folklore. There are others which I will not take the time to mention. There are other aspects of the current IP systems which can be usefully employed to protect TK and TCEs to some degree, again depending on the goals that you have set for yourselves. However, most WIPO Member States believe that the existing system does not provide a sufficiently comprehensive response to TK and TCEs and that there is a need for a special sui generis separate system. In establishing such a system, again we return to the four key questions, what is TK and TCEs, what are the goals for such protection, who would benefit therefrom, and precisely how would one do so, what kinds of rights would you vest in TK and TCEs? Again, these questions break down into a number of sub questions, so I shall perhaps not take too much time on this because we are running slightly behind. There are a number of interesting questions that one can then ask oneself, if one wishes to draft a law aimed at separate protection for TK and TCEs. It is important to note that solutions are not only found in law: there are many practical things that one can do in the form of databases, guidelines and contracts, and of course training is also vital. However good your law might be, if the officials have to implement the law and the TK holders who have to exercise

rights under the law are not familiar with the law, the law is not really useful in practice.

In summary of this part of the presentation, these are the six key steps I would suggest for any country wishing to establish a policy. Maybe a good first step would be to establish a policy on IP and TK, TCEs and GRs: what, why, who and for whose benefit? In addition, setting up an effective program of implementation is another important step.

Very briefly, an update on the IGC: I am very happy to answer questions on that, perhaps in the question-and-answer session. I would simply like to recall the IGC was established in late 2000. It has met 14 times in its nine or so years and the most recent session took place only a few weeks ago. The IGC is really the space for three main questions. What would the content of an instrument or any other outcome of its work be? What would it actually say? What would the answers be to those four questions?

Second, what would the legal status of that outcome be, principally binding or non binding? Third, what working methods should the IGC employ to advance its work? There has been some discussion and intercessional process to make the work advance more quickly.

Finally, as I mentioned, our capacity-building program is extensive and takes up most of our time. The TK program at WIPO comprises the IGC, which is one part and the capacity-building work is the other part. We carry out a wide variety of activities ranging from awareness-raising to helping with the drafting of laws and policies and running practical training programs. We have a wide range of materials, case studies, databases, etc., all of which are accessible and available to you. We also have a new newsletter which I encourage you to sign up to. It appears every two months, and we report therein on what we are doing. There are also more frequent e-mail updates if there are urgent new documents or new publications which

we can alert you to, and if you send an e-mail to the following e-mail address: grtkf@wipo.int, we will sign you up for the newsletter.

If I may end Mr. Chairman, with just a demonstration of the kind of practical work that we do, documentation of TK and TCEs is a controversial question that raises certain IP questions. In response to this, we have launched a very hands-on practical training program on cultural documentation, archiving and IP management. The training program combines the preservation of cultural heritage with its legal protection; it facilitates the preservation of cultural heritage but also new creativities that contribute to cultural diversity. In very brief terms, the training program comprises practical training on how an indigenous group can document its own traditional cultural expressions and knowledge systems, how it can archive and catalogue its recordings, what IP issues arise in doing so and how it can manage those IP issues. We have a pilot program that has just concluded with the Masai people of Kenya and the National Museum of Kenya. If I may, I would like to end with a couple of photographs from the training program. It all began with a consultation with the community in northern Kenya two years ago, where we discussed the project. Everything was very much led by them: they identified the need for the training program and designed the program with us. This was the training program itself: it was held in Washington with two excellent institutions who have great expertise in the documentation of indigenous cultures. It ended just last week with a hand-over of equipment that we bought for this particular group. Therefore, they have been trained on how to do so and how to manage IPRs. Our has a wealth of information on the training program, and I strongly encourage you to contact us and to look at our . Mr. Chairman, I thank you very much and look forward to questions and discussions. Thank you.

Mr. Motlalepula Gilbert Matsabisa
 Director, Indigenous Knowledge Systems
 (Health) Lead Programme (IKS)
 South African Medical Research Council,
 Cape Town

(a) Exploitation of Traditional Knowledge and Folklore and its Contribution to Sustainable Development in LDCs: From Farm to Pharma, the Experience of South Africa from Research to Commercialization

I would like to do my presentation in three formats. First, I was asked to give a South African experience and a South African progress in terms of traditional medicine research or traditional medical knowledge. Second, I would like to talk about a new program that the government has established on the farm to pharma. Last, I wish to give the best practice examples from the Medical Research Council, a program which I run on community entrepreneurship development and business development. In addition, I would like to provide the best example in terms of the patent exploitation based on traditional medical knowledge and how we intend doing benefit-sharing. Finally, I will talk briefly about the benefit-sharing model that we have established.

The Medical Research Council is a science council, and the interest for today is how does a Science Council do translational research and applied research based on traditional knowledge and how does this research has an impact on the daily lives of ordinary people and communities? We conduct our research based on knowledge that comes from people as part of the program. We have a vision of building a healthy nation through research but I will not go through all that: in short, the intention is to improve the nation's health and we improve that nation's health also using traditional medical knowledge research. In terms of the country's progress again, I have compiled a list of initiatives, a list of policies that South Africa has developed that relates to traditional or indigenous knowledge

systems. In 2004, the country developed a policy which was presented here at WIPO. The Department of Science and Technology has a policy on IP generated from government-funded research, and that talks about how IP should actually be shared and how IP should contribute to the general economy. The former Department of Environmental Affairs and Tourism has the Biodiversity Management Act. Chapter 6 of that Act talks about bioprospecting and it actually requires prior informed consent for researchers who do basic research for them to go and get information or to be involved in research with communities. The same Act also speaks about prior informed consent and issues of benefit-sharing for bioprospectors. When you apply for your bioprospecting permit, we feel that there should be a benefitsharing model that the company or the institution has identified with that particular community. We also have a National Traditional Health Practitioners Act through the Department of Health. Again, the National Department of Health has established a Directorate that deals with traditional medicine and it develops policies around the practice of traditional medicines. We have a national bioprospecting platform which is something that has recently been developed. It is an intergovernmental platform where the farm to pharma, which I want to talk about, resides.

In terms of traditional knowledge, the Department of Science and Technology is developing a digital library where you can document traditional practices, practices knowledge or traditional information. The Department of Trade and Industry back at home has amended our patent laws to include indigenous knowledge systems. It is now a requirement that when you patent anything on medicinal plants or traditional medicines, that patent needs in fact to talk to about the origins and the source of that knowledge. I think I will give that as an example in terms of what the Medical Research Council has done on its patents. Again, the Department of Trade and Industry has an IP and indigenous knowledge protection policy that talks

about how to interface the protection and the commercialization of traditional knowledge systems. The Department of Science and Technology is also forming a body called TIA, the Technology Innovation Agency, to commercialize all research based on traditional knowledge.

To move into the farm-to-pharma which I will explain, I really needed to give the background in terms of where this starts. The National Research Strategy which was developed in 2002 deals with technological innovation as a key driver to economic growth and wealth creation. Because of that, the Department of Science and Technology, through its 10-year plan, identified five grand challenges. The first of those five grand challenges are space science and technology, energy security, global climate change signs, farm to pharma and human and social dynamics. What I have been asked to talk about today is farm to pharma, which is really an interface between indigenous knowledge, biodiversity and biotechnology. We are really asking how these three can be brought together for economic growth and wealth creation.

The farm-to-pharma challenge really states that we want to be one of the top three emerging economies in the global pharmaceutical industry. That is really the intention of the farm-to-pharma, but the pharmaceutical industry needs to be based on innovation, using the nation's indigenous knowledge systems. We want to create a herbal medicine or a traditional medicine pharmaceutical industry. What will be the focus areas? There are three focus areas that we want to develop through the farm-to-pharma and through our national bioprospecting platform. The first of those is traditional medicines and pharmaceuticals, food and nutraceuticals and industrial biotechnology. These are captured in this interface that I have talked about. Briefly, I think what the farm-to-pharma strategy looks like is really biotechnology, indigenous relief systems and bioprospecting platform. Looking at the three, I think phytomedicine is what I refer to as

traditional medicines, pharmaceuticals we have just changed that and food and nutraceuticals. Underneath that, we look at drug discovery, adaptation and validation; issues of clinical trials until we come to commercialization through our government-established biotechnology, regional innovation centers, or through the DST established TIA and our Department of Trade and Industry. This picture shows us the interface. The whole idea of a pharma is actually your indigenous communities, your ordinary person at the community who can be trained and developed to contribute and take part in the development of the knowledge until you have a product which is a pharmaceutical product. That is really the interface we are thinking about between the farm-to-pharma.

Within the Medical Research Council therefore, there is a special program that I run which is on indigenous knowledge systems. In summary, we do research and development on traditional medicines. The four core research activities really show the interrelatedness and how our indigenous communities are involved right through the process of our research until we commercialize, and how that research needs to have an impact on the daily lives of communities. Our research and development is where our ordinary traditional health practitioners get involved from the beginning in terms of doing our observational studies and our clinical trials. They get involved in terms of how we formulate their traditional medicinal product.

The second core activity is our knowledge development and our knowledge management. Not only do we train students and scientists, but we also train traditional health practitioners to help them better understand the processes that are involved in drug discovery, in drug development and in our research and development. We want to create and build a spirit of trust so that they are aware of the issues that traditional medicine research records.

IKS utilization and business development means that we need therefore to do applied and translational research so that the research we do can be commercialized. We talk about establishing a strategic business unit within the Medical Research Council that will then commercialize our research outputs. The last point in terms of community and social impact is that we want them to see that research is having a meaningful impact on the daily lives of our communities, and we will give examples of those in the next slides.

This is really just marketing that the program focuses on malaria, hypertension, HIV/Aids, tuberculosis, cancer and diabetes. In addition, we do drug discovery and drug development; we develop new research methods that are appropriate for the conditions we want to research; establish hyperclinical trial platforms and also our primate unit where we do the safety and toxicology of traditional medicinal products. We want to add value onto these products. I think that in terms of training and knowledge development, it is really about training and creating databases. We have piloted numerous databases in South Africa enabling us to pinpoint where the traditional healers are and what their expertises are. We have created a geographical positioning system of traditional healers, so that with a click of your mouse you can tell that in Cape Town, there is a traditional healer in this place and this is what he/she does. We have a document of the current uses and the current formulations that traditional healers, traditional people or indigenous knowledge holders are using. This is proprietary information that will be subject to confidentiality and patenting.

We talked about spinout companies that MRC needs to commercialize our research outputs. Those companies then need to establish what we call private community partnerships. I will talk mostly about this because we want to create a sense of ownership, a sense of leadership for the communities, and an empowerment for communities. This is why within the program we

have established an entrepreneurship and business development project that is geared to our traditional people, communities and our traditional healers.

The existence of such a program depends on the trust that we have developed over time with our communities, so I will refer to our laboratories, as we have a leading laboratory of our traditional health practitioners and our indigenous communities. We have a pilot cultivation site where we grow all of the plants on which we do research, so that we know that we can have learning curves in terms of agriculture for commercial cultivation. We run a number of school community outreach programs to create awareness in terms of what the program is doing, do research and discovery work and also do our formulation and marketing.

We are driven by a few ethical and research principles. I think these principles are in terms of the research review process and of what we want to do to enhance the relations between us and the communities, in terms of those principles of confidentiality, principles of respect, principles of communication and empowerment. I will run through these, but what is really important is that as an institution we are saying that research makes no difference to the economy, health and quality of life of people unless such research is translated – into policy, practice, promotion, and products. This is what we are doing in terms of the process. Now, what are the best examples? If you use what we know for instance, the aim of the project in terms of community, empowerment and community business development is to promote the application of scientific research into practical implementation of projects. We want to create wealth for our communities to make sure that communities take leadership in terms of commercial development of the product. The program is based on the production and industrialization: we are not simply talking about selling traditional medicines on the streets; rather, we are talking about the industrialization and the contribution of traditional medicines to the

secondary economies. Once again, this is based on scientifically validated medicinal plants.

Based on what we are saying, I just want to talk about how we use what we know in terms of industrial viabilities to support the model that we are using. One always talks about the needs for economic growth, markets, commercial viability and technical viability so that your businesses can grow. However, in terms of traditional medical knowledge and business development, we feel that there needs to be entrepreneurial viability to train people, to train communities to understand and talk a business language.

The second or third aspect of that is that there must be institutional support, which needs to come through the local authorities or local government or at least from your science council to give a scientific backing of your research product that needs to come from government ministries. In our case, it comes through the Department of Trade and Industry, Department of Science and Technology, Department of Health and also through our biotechnology regional innovation centers. This has created a model that we have used for our community business development based on traditional medicinal plants. That is what we referred to as institutional viability. The best examples are negotiations and discussions: we identify what we call the poverty notes, we identify the plants grow there, and then the Medical Research Council will conduct the scientific research, train the communities and find a pharmaceutical industry that will then become part of this program.

We have a number of projects that we have started in Mbobela, Mpumalanga, there are two in the Eastern Cape, the Breede River valley project, where we have now started planting medicinal plants. All these projects have industry supporting them. The market industry gives the technical requirements for the quality of medicinal plants that they want to do. We have now seen growth in

three new projects where industry has come up and said it was interested in the model and wanted to support these communities. These people are now making money, are self-sustaining, have bought themselves cars and tractors. A time will come when MRC will say we have done enough: we are pulling out because these people can now begin to talk a business language with the companies that are involved. This just shows the number of jobs that have been created through this process; it shows monthly salary increases for a community that was reliant on cultivating the fields, with uncertainties of whether they would make money at the end of the day. We are talking about a person who can now say I am taking about 4000 rand back home because of traditional medicinal plants.

I mentioned a number of these partnerships that support institutional viability run by the private sector or municipalities. These are examples of projects that we have now implemented where communities are now running their own businesses. Briefly, just to show the scope in terms of where these projects are in South Africa that we have been supporting and that are now becoming self-sufficient, where they have exports and can rely on the project for their own livelihoods: these projects have taught people to become reliable, responsible and to manage their own assets.

In closing, we have a traditional medicine that we have patented for the development of malaria. It is about the principles that institutions or research institutions need to have, the principle of equality with their communities, the principle that we understand that medicinal plants would have multi-pharmaceutical activities, because one of these plants in fact had no use in terms of malaria, but through serendipity, we discovered that the plant in fact does have novel molecules that are effective against malaria. We have a number of patents and a PCT on this. The principle that we have in terms of sharing is that, even though it did not come through knowledge, directed by the fact that it is a


medicinal plant used in traditional medicine, irrespective of whether we find something different, we still want them to share the benefits with our communities.

In conclusion, we have therefore developed a beneficiary model which talks about the principle of equality whereby we share the royalties and the benefits derived from this patent equally with our communities. Consequently, the government is giving thought to establishing a national trust fund on bioprospecting where such funds would then go on to the National Trust Fund. We have gone further to say, you then need to have a community fund because a particular person comes from a particular community. How could that community benefit? The model goes further to say, however, we understand the collective nature sometimes of traditional medical knowledge, but there are those individuals who have that knowledge and how would that individual benefit? Thus, the model talks about the individual benefiting. We also understand that you may have an individual who supplies the information but does not supply the genetic material, and we say that the individual needs to benefit. In conclusion, we have developed our business models, these are workable models, and we want to expand them. We have been approached by the Africa Forum to pilot some of these models in some of the countries in Africa. Thank you.

Mr. Gift Huggins Sibanda

Director General, African Regional Intellectual Property Organization (ARIPO), Harare

(b) Protecting Traditional Knowledge and Folklore in LDCs

 I would have loved to respond to the statements that were made by the Director General during the opening regarding the cooperation between ARIPO and WIPO. I am pleased to state

that cooperation is actually at a high level. I have been asked to talk about the Protection of Traditional Knowledge and Folklore in LDCs. I have to state that the outline of my presentation will cover only three or four areas, that is, the mandate given to the organization on the protection of traditional knowledge and expressions of folklore, and then of course, the implementation of the mandate and ARIPO's involvement in this traditional knowledge and expressions of folklore. In addition, I will briefly talk about the future activities that have been undertaken by the organization towards the implementation of this folklore.

The mandate on genetic resources and expressions of folklore was given to the organization in 2000, and implementation started in 2002. You must recall that when the organization was initially established, it was only responsible for the protection of IP, and this particular mandate is in addition to the one given to the organization. You will see that among the Member States of the organization, we have about 11 countries that are LDCs and only five are developing countries, so obviously most of the work that the organization is doing is actually work which is in support of the LDCs. In the implementation mode, we are looking at about three areas. The first one is the protection of traditional knowledge and folklore. Under this area, we have three components: development of legislation on traditional knowledge and expressions of folklore; documentation initiatives undertaken by the organization; and, lately, capacity-building and awareness creation.

The other component has to do with the protection of genetic resources, and under this purview we have the development of assets to the beneficiary. We have actually come up with guidelines for this particular area, and of course, we have established a center of excellence in the teaching of biodiversity.

The third part deals with the protection of new plant varieties. We actually had a workshop on plant varieties only last week. Under this

component, we have the development of regional frameworks for the protection of new varieties of plants providing technical support to the Member States of ARIPO. These are the two components that we have.

What is our road map in the implementation of this mandate? We are looking mainly at the issues of legislative development. As you may well recall, when you have a new mandate obviously it is very important to amend your legislations to include that particular new mandate. An amendment has been made to the ARIPO Protocol or to the ARIPO Protocol on Patents and Industrial Designs to incorporate issues of traditional knowledge and expressions of folklore. Again, you have to make sure that when you come up with a mandate you develop a concept paper. That concept paper has been developed, and it is our marketing paper when we are doing the consultations in our respective Member States, and of course, the consultations take different forms. The first thing that we take into account is to make sure that there is a nod from the policy-makers, the people responsible for coming up with policies. That has already been achieved, but again further discussions and consultations will be undertaken during the next Council of Ministers, which is expected to take place in November of this year.

It is important to ensure that you have expert review meetings to look at the issues that you have come up with so that whatever you come up with is something that can be accepted. You must know that in the African region we have two regional organizations, OAPI, which is represented by Mr. Edou Edou and ARIPO. When this issue of traditional knowledge came to the fore, it was very important to continue consultations with OAPI, so that whatever document we come up with, it should be a document that is actually consistent with the process of legislation that is taking place under the OAPI system. There were a lot of ARIPO/OAPI harmonization processes in developing this legislation framework.

When you are coming up with this mandate, you have to make sure that you do a lot of consultations, you have to deal with the stakeholders, and that has been done at a national and regional level. Under this process, one of the issues that we fleshed out was the development of the ARIPO traditional knowledge database, a very important step. We believe that with this Protocol, we can come up with a digital library. The purpose is to promote documentation and preserve and maintain traditional knowledge. Second, we have to make sure that we provide a means to assist patent search procedures and identify prior art. The third one is to identify communities which might be entitled to benefit-sharing and assign exclusive rights; that too is very important. Then fourth, provide the means for recording the existence of traditional knowledge over which positive rights have been recognized under national or customary laws. Lastly, we have to make sure that this particular database should serve as the mechanism for obtaining protection of traditional knowledge through a sui generis database for protection.

ARIPO has also been heavily involved in international levels; we have actually participated in nearly all the sessions of IGC. Other than just participating, ARIPO has been instrumental in the submission of the African Group proposal to the IGC. Third, ARIPO has collaborated closely with WIPO in the development of regional frameworks in Asia, Arab and Caribbean regions. ARIPO represented WIPO and provided an update of the IGC at the Southern African Development Community indigenous knowledge system workshop, which was held last month in the Seychelles.

What are our future activities, what do we intend to do in future? We intend to make sure that we include mainly the collection of data for the development of the digital library. We also want to support the development of a legal framework in Member States. In addition, we plan to adopt a protocol for the protection of traditional knowledge and expressions of folklore. This will be tabled before the next Council of Ministers session, which

is going to be held in Gaborone, Botswana in November. It is our hope that once we have the nod from the Ministers, then a diplomatic conference will be held so that this particular protocol can be adopted.

We have already come up with the framework and we have got about four parts. The first part deals with preliminary provisions. The second part deals with the protection of traditional knowledge, and a document has been sent to all Member States, so we are looking at that document as of now. The third part deals with the protection of expressions of folklore, and we have some components that this section deals with. Finally, we have the general provisions. We have also come up with the draft regulations, prepared by a delegate from Uganda, which will form part of the document submitted to the Council of Ministers. There are also such components as licensing agreements, registration procedures, mainly dealing with issues to do with the implementation of the Protocol itself.

In conclusion, I have to mention that protection of traditional knowledge and expressions of folklore for LDCs in whatever form is desirable to avoid depreciation and misappropriation of these resources. Absence of any protection will continue to deprive indigenous communities of their intrinsic rights to their traditional knowledge and expressions of folklore. Obviously, prosperity and development will continue to evade the LDCs. Finally, the divide between the developed world and the developing without the benefits from these resources will remain unbridged. Thank you.

Discussion

Delegation of Ethiopia

● My question goes to the first speaker who mentioned cultural heritage. Does it fall under the mandate or what is the interface with UNESCO? Thank you.

Delegation of Mali

I would like to thank the speakers for their excellent coverage of the subjects. Mali has a rich cultural heritage. We have the oldest tradition in terms of traditional medicine and traditional pharmacopeia. We have had a Traditional Medicines Division since 1968, so this activity is quite long-standing in our country. Unfortunately, we do not really take full advantage of it because we do not have a full IP strategy. Therefore, my government is planning to establish a policy and a strategy on IP in the next few days, and particular focus will be on genetic resources and traditional knowledge.

My question is what advice would the experts give Mali to help us in setting up our system to protect traditional knowledge, and more particularly genetic resources? Should we have a sui generis system, a patent system? I would like to hear the views of the experts.

My second question has to do with the work of the IGC on the genetic resources debate which is ongoing at WIPO. How can we devise a legal instrument? Mali wanted a binding legal instrument while some countries which I shall not name were against the idea of a binding legal instrument. Could I ask the Deputy Director General of WIPO what progress has been made on this instrument, which is of the utmost importance for our country? Thank you.

Delegation of Nepal

First of all, I would like to thank the presenters for their very comprehensive and excellent presentations. Nepal is very rich in traditional knowledge, folklore and traditional cultural expressions. We have several indigenous communities, and it would be very difficult for us to determine which indigenous community owns which sort of traditional knowledge or folklore or

traditional cultural expressions. Therefore, I would like to know how we can determine which cultural expressions belong to whom. Second, if only one community owns those cultural expressions of folklore how do we distribute the benefits to them? Thank you.

Delegation of Burkina Faso

I thank all the speakers. This is the first time I have taken the floor in this Forum, and I would like to begin by thanking WIPO for having invited us to this very important meeting which gives us a key opportunity, as my country also possesses a great deal of folklore, genetic resources and traditional knowledge. I believe that the Forum could help our country deal with the problems of IP to move towards development, because currently, the majority of the population lives off these resources. I was particularly interested in the last presentation, which showed that, first we have to organize databases. If you want to protect something, you have to know where it is and have data. Therefore, databases are extremely important. To what extent can WIPO, ARIPO, OAPI help countries set up these databases? As you know, in terms of medicinal plants these countries have always had their genetic resources pillaged, stolen. Therefore, first of all we need to enable each country to set up its own database, and secondly, hopefully to be able to guarantee the protection of these resources. Thank you.

Mr. Wend Wendland

Acting Director and Head, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, WIPO

I wish to recall that Ethiopia's question was about cultural heritage and the intersection between the work of WIPO and UNESCO.

Indeed, as you rightly pointed out, the subject matter is similar or the same while the two organization's objectives are different. UNESCO focuses on the preservation or safeguarding of TK and TCEs with a view to their maintenance, revitalization, transmission, promotion and so on. WIPO's work focuses on its legal protection: protection against unauthorized copying and unauthorized use. Thus, preservation for UNESCO as against protection for WIPO is the basic difference.

The question from the Delegate of Mali was that he wished to establish a national policy on TK and GRs in particular and wondered what advice we could have for him. My contribution would be simply to say that I would focus on objectives first and foremost. What do you wish to achieve in the larger scheme? Then there are two sub-questions I would ask. First, what forms of TK and GRs do you have in your country? Second, are they actual cases of misappropriation? This will help you focus on the forms of TK and GRs that are vulnerable to misappropriation in the IP sense, in the WIPO sense of the term.

With regard to the question from Nepal, indeed it is difficult, of course culture moves with people. As people have migrated for various reasons over thousands of years, due to slavery, war, migration etc., of course it is very difficult to identify that a given expression of culture or a given remedy belongs to only this group and not to that group. It is a perplexing question; it is one that we are asked very often and it is one that runs through the course of our work. In the case of shared TK and shared folklore between different groups in different countries, again one would think of possibly contracts, some sort of regional protection system as the answer to that sort of question.

Finally, on Burkina Faso's question on databases, what WIPO could contribute is IP advice. Therefore, if you wish to establish a database, that is a decision only you can make, and if you wish to

do so we have tools to provide you with advice on the IP implications of documenting TK and folklore.

The other question was the African proposal, a long-standing proposal for an internationally legally binding instrument in the IGC on TK and TCEs. As you know, there has not been a forward movement on that proposal within the IGC. All that we can say is that it is a matter for decision by the Member States. The Secretariat facilitates the sessions and we prepare some of the documentation. The content of the outcome and the legal status of that outcome is a matter for the Member States.

Mr. Motlalepula Gilbert Matsabisa
 Director, Indigenous Knowledge Systems
 (Health) Lead Programme (IKS)
 South African Medical Research Council,
 Cape Town

● I would like to start with Nepal. It is very difficult for one to identify the rightful communities. For instance, you have information that spans from rural areas into urban areas. What is the community? It all depends in terms of what policies are being set up. What we have done in terms of South Africa was to say indigenous knowledge, medicinal plants flora and fauna, genetic resources in fact belong to the people of the country. Therefore, everybody in the country has to benefit. This is why one of the clauses in our Biodiversity Management Act states that if you cannot identify the community, you should request the Minister to assist you in identifying such a community. That is why it is important to establish the national trust funds. If there are any benefits that need to accrue, based on your genetic resources and the fact that you cannot identify the community, at least there is a national trust fund which can actually be used for developmental projects, etc. It may work, it may not work, but it is very difficult to identify those communities.

As far as the question from Burkina Faso on setting up databases is concerned, again, we know that it is individual institutions that tend to do research, that tend to have all this information. Hence, we are saying a policy could perhaps be developed in terms of what would be the requirements for a publicly funded research. As an example, we have national research funding agencies that have databases. As to who they are funded, on what research they have done, we have gone around collecting all this information because the government wants to centralize all the databases. In this case, you go back to your research institution to try to identify those researchers.

Mr. Gift Huggins Sibanda

Director General, African Regional Intellectual Property Organization (ARIPO), Harare

● Burkina Faso is a member of OAPI, and I do recall that OAPI in cooperation with WIPO and the EPO, ran a special workshop two years ago devoted to the development of databases. I think it has been going on for two years, and during those discussions they did indicate how best you can develop these databases. It is the same situation with ARIPO. We have organized two workshops on the development of databases. Our idea is really not to come up with individual databases in these Member States, but to come up with a centralized database where you can actually get information. This is cheaper than having separate databases.

Theme Six – Regional Cooperation in IP: Promoting Synergies and Building Partnerships

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State for Justice and Constitutional Affairs, Uganda

● The theme for this session is Theme Six – Regional Cooperation in IP: Promoting Synergies and Building Partnerships. We have very able speakers and panelists and they do not need a commercial. However, I have been requested to adjust the program slightly because one of the presenters on the Role of OAPI in IP Institution Building for LDCs will be catching an early flight this afternoon, the panelist Mr. Edou Edou. Any questions put to him will be taken up by Mr. James Otieno Odek and Mr. Gift Sibanda. Therefore, without wasting time, as this is the last session of our allocation, we would like to finish when we are all fresh. Mr. Edou Edou's presentation on the role of OAPI in IP institution building for LDCs follows.

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute (KIPI), Nairobi

● The topic of my presentation is Regional Cooperation in IP: Promoting Synergies and Building Partnerships. As has been my tradition, there is only one message I would like you to carry home with you, and the message is what appears on the screen, that IP is regional and multilateral in nature. In this era of globalization and digitization, the era of individualism, isolationism and Robinson Crusoe has no place. Cooperation, integration and

engagement are the modus operandi. I do hope that you know the story of Robinson Crusoe and Man Friday being alone. I will use that as our starting point to discuss this simple question, why regional cooperation and IP? Do we need to have a regional cooperation in IP discourse? The answer is an unequivocal yes. There is a need for regional cooperation in IP matters. Why do we need regional cooperation? There are several reasons.

The first is that IP deals with tradable goods. The products and the services which contain IPRs cross national boundaries. So long as countries are busy trading with each other, we have goods crossing national boundaries and within them, there is a patent, a trademark or an industrial design. These products as they cross national boundaries do not respect those boundaries. Hence, individual national IP systems are inadequate to address the challenges posed by goods crossing national frontiers. Questions of enforcement or infringement of IPRs cannot be adequately addressed through a national regime. We need regional cooperation at least or multilateral cooperation to be able to address the challenges posed by goods crossing national frontiers.

The other reason why we need regional cooperation is trade facilitation. IP is a trade facilitation tool. How does it facilitate trade? Businessmen, as they move their tradable goods across national frontiers, need to protect their IPRs. As we are all aware, IPRs are territorial in nature. However, businessmen, the private sector, or industrialists for that matter, require a system where they can be able to register IPRs in different territories in different countries. For this reason, a simplified regional or multilateral system for registration of patents and trademarks is essential. This can only be achieved through regional cooperation. You provide your businessmen, your private sector or your industrialists with a system through which they can effectively register trademarks or patents in different countries. I would like to take this opportunity to add that, as

LDC countries, we need to join regional cooperation systems to facilitate trade by providing a simplified registration system at a regional or global level. For those of you who are familiar with the Madrid system, this is precisely what it does at a global level. For those of you who are familiar with the PCT system, this is precisely what it does at the global level: facilitating trade for the private sector and for businessmen; providing them with a simplified registration system that can facilitate the movement of goods and services at a regional or global level.

Another reason why regional cooperation on IP is more or less relevant to LDCs is the pooling of resources. We in the LDC countries suffer from one weakness, limited human resource capacities, limited infrastructural facilities and limited skills in conducting patent searches, examination processes, limited learning material etc. When we join together in a regional system, we are able to pool our committed resources and put in place an effective system that we can utilize. In the African context, we have ARIPO and OAPI. One of the advantages of these two organizations is the benefits we are deriving as member countries from the pooling of our limited resources. Now, we are able at least to point that we have human resource capacities, infrastructural facilities, etc. Therefore, pooling of resources is another compelling reason why countries need to adopt regional cooperation in IP matters.

The other justification for regional cooperation is what I call utilitarianism, which I will simplify as harmonization and approximation of laws. Countries have been known to add that there is a need to harmonize and approximate their laws. Such a process of harmonization and approximation is easy to achieve in a regional framework. This provides another impetus, another encouragement for countries to adopt a regional outlook for approaching IP issues.

Other reasons are networking, building networks and synergies, as we are doing here. I hope we have been able to network and have contacts with each other. This is another thing that a regional approach provides: an opportunity to network, an opportunity to share experiences, an opportunity to learn from each other. Networking is an important thing that regional cooperation on IP matters does provide.

Another justification for the regional approach is that there are certain contemporary multilateral IP issues that cannot be addressed at a national level, such as issues dealing with TK, TCEs, biopiracy, climate change, food security and lately public health. Regional cooperation or multilateral cooperation is very essential.

The other advantage of a regional approach is what I call systems guarantee and establishing a rule-based system. Most of our countries in the LDC context do not have adequate legal frameworks or adequate administrative machinery to administer IPRs system. When we come together in a regional framework, we set up a system that has integrity, a system that removes discretion, and arbitrariness in administering IPRs. These are important attributes of a regional system: this system's guarantee is actually provided through a regional framework, and the rule-based system is established if we take a regional approach.

An additional issues that militates in favor of regional cooperation is the question of technical assistance. We in developing countries and by extension LDCs require technical assistance. It is easier to administer a technical assistance program through regional cooperation or regional programs than through national programs. We have some programs that are common, some issues that are specific to given geographical areas. Technical assistance programs are easier to deliver on a regional dimension than on a national platform. One of the reasons why a regional approach is good, other than the commonality of the problems,

is geographical distance. It would not be economically wise to send a technical expert to assist country A, yet country B next door also requires the same assistance. By pooling technical programs on a regional level, it is easy to fulfil our technical assistance mandates. Likewise, technology diffusion issues, issues to do with technology transfer and technology diffusion, are easier to administer or deal with at a regional level.

Thus, these are some of the compelling reasons why a regional approach is advisable. In the current world, there are so many regional organizations that have come in place to be able to address IP issues at a regional level. The most common and outstanding to many of us is the EPO, taking a regional approach to administering the IP system. We also have the Eurasian Patent Office that has taken a regional approach to administering the IP system. We have so many other examples; you can see them in my paper, of bodies that have adopted a regional approach. Last but not least, on our African continent we have ARIPO and OAPI that have opted for a regional approach. The message that I am getting across is that it is important to take regional initiatives to address IP issues. There are sound economic, practical and political justifications why a regional approach in dealing with IP issues is important.

Let me emphasize that the fact that a country can take a regional approach does not mean that regionalism is superior to a national approach. That needs to be clear. I am not saying that a regional approach is a substitute for a national approach. On the contrary, the two should be complimentary. You start small at a national level by biting off what you can chew but then expand to the regional level, to be able to cooperate and collaborate with geographically neighboring countries.

In conclusion, allow me to go back to my message that in IP matters cooperation, integration and engagement are the modus operandi. There is no way a country can deal with the diverse and

challenges of IP system at a national level. Of late, you have the H1N1 flu, to take a public health issue, that cannot be dealt with from a national perspective. You can put all your border controls but people still fly and they will spread the disease up and about. A regional approach or a multilateral effort is the only way to deal with some of these issues.

Ladies and gentlemen, thank you for listening. I now take this opportunity to reiterate that within the African set-up we have ARIPO and OAPI that have taken a regional approach. I am happy to know that the next presenter will elucidate more on what the African continent has done in this regional approach. If there is any African country or any LDC that has not joined any regional framework, I hope I have given you sufficient grounds to join the bandwagon. Let us together cooperate and pull forward the IP agenda. Thank you.

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State
for Justice and Constitutional Affairs, Uganda

Thank you so much, Professor, for setting the pace. You are the best example; you kept it short and sweet. Those who come after you should follow your example.

Mr. Paulin Edou Edou
Director General, African Intellectual Property
Organisation (OAPI)

(b) The Role of OAPI in IP Institution Building for LDCs

● My brother who preceded me certainly facilitated my task. I will speak more in detail of the organizations that have been established by OAPI with the assistance of its Member States. First, I would like to say that the development of IP

in a country or in a region, as we are an integrated framework, depends on the type of institutions that are established. This is important to keep in mind; it depends on the quality of the people who actually work in these organizations. These two factors go hand in hand because if you have good institutions but not the right people, quite clearly, you will not be able to reach your aims. OAPI is fully aware of this, and has since its inception made efforts to implement a certain number of structures. As I did yesterday, if I may backtrack a bit in my presentation, which I gave very quickly, I will introduce it very briefly. I spoke of the role of OAPI in the creation of development of institutions within IP

ARIPO represents 16 States, 12 countries and 130 million inhabitants of a potentially wealthy area with all the natural resources one could think of. Nevertheless, OAPI has amongst its members the poorest countries in the world; in fact, some of these countries have a GDP which is below 300 dollars. The architecture of the system is a common legislation. Professor Otieno Odek said that what is of interest is having a common legislation and I think he is perfectly right. OAPI has therefore decided to have a common legislative structure, a common office. The only administrative service which can grant you a patent or a trademark is OAPI. The consequence of these two principles is centralized procedures within the organization.

Our activities are aimed at protecting IP on the one hand and also encouraging commercial use of these assets because protection is not an end in itself. One cannot simply protect IP but you also need to ensure its marketing, because its marketing is what generates wealth and employment. We are interested in participating closely in the economic and social development of our Member States.

What is the exact role of OAPI in the development of IP structures? First, a look at the economic situation of its Member States shows that OAPI

must work hand in hand with Member States to overcome their developmental problems. To start with, the issue of reinforcing food safety is one of the major concerns of our Member States.

Another is access to water and electricity. The third concern is overcoming public health issues, then protection of the environment. Yet another is the implementation of production which can generate wealth and employment. Along with the economic role of IP, it also has not only a legal value but also an economic value and a social value. In other words, IP should be able to generate wealth and solve social issues such as public health. In a context in which the economy is basically geared to the sale of raw materials, IP will target the acquisition of foreign technology with a view to generating added value in an economy geared to raw materials.

If we look at the types of institutions we have deployed to help our Member States encourage the use of IP, we find first of all regional institutions and national institutions. Among the regional institutions we find assistance in management of IP in LDCs. Why managing IP? One of the key issues in LDCs today is a question of management of IP. For 42 years, we have been speaking of IP within our Member States but there has never been any development of IP. That is why we felt that it was a priority to implement a structure that could stimulate the use of IP in Member States. We have been considering organizing an international conference on IP and development. This international conference took place in Dakar in November, and provided an opportunity for political and economic decision-makers to deal with IP and to define future outlooks with a view to ensuring its inclusion in the development policies of our countries. Parallel to this international conference, we deemed it useful to implement a follow-up committee to deal with IP-related decisions. Why a follow up committee? Well, because most of the resolutions in our fora or conferences often simply collect dust on shelves after the actual meeting, so a follow-up committee could in this way monitor

the implementation of the decisions taken. We then have the assistance institutions for creation and use of IP assets within LDCs. This is the core of IP.

How do we go from a concept or an idea to an actual product that is the invention to the actual production which will increase national wealth? We felt it was necessary to reform what was created over 10 years ago, namely, is the African Exhibition of Invention and Technological Innovation, renewing this body because this exhibition needs to stimulate creativity and the submission of patents. It also aims at giving advice to inventors and assisting inventors. Once you finish an exhibition of this sort, what happens? What do inventors do? Are they simply left to their own devices? Should we not be helping them or advising them to submit applications for patents? That is what we want to do by reforming this exhibition. Finally, the African Exhibition of Invention and Technological Innovation, which meets every two years in one of the Member States of OAPI, also serves as an exchange forum between creators or inventors and businessmen so that license agreements or contracts can be signed in order to use as IP. We have also thought of reforming the assistance fund for the promotion of invention and innovation structure which has been in existence for OAPI for a number of years, as this structure has not yielded the expected results. We feel that the fund should be much more an organization of assistance and advice. The Member States will decide on this at a forthcoming board meeting, where they will establish a guarantee fund, after which we will seek funding to implement a number of projects.

In addition to the regional institutions, we also have national institutions which support the development of IP in LDCs. First and foremost, we have institutions that can stimulate IP information and promotion. The central element, the hub of the wheel as it were, is information. Without information, we will not know what we want to establish and we will not know whether we are

achieving the desired result. Many of our research institutions wrongly believe that research is an interesting activity with no application. This is why many research findings are sitting on the shelves of our research centers. I might add that ninety nine percent of these are State-funded institutions. We also decided that we should set up IP documentation centers in Member States, and we are starting to do this now. We now have five of these centers under construction in the different Member States. These will enable scientists, researchers, students and anyone else, in fact including, the business community to obtain the right information from the documentation center and perhaps, why not, set up their own businesses using this information. We need to make sure that this information is available to users, so we devised a system that will enable us to refine the technical information and rework it so that it can be usable for ordinary/lay people. Finally, we feel these documentation centers will stimulate the establishment of new businesses, which after all is the aim of all IP activities.

Among the national institutions, we also have institutions which can stimulate the exploitation of IP assets. The Ministerial Conference in Dakar adopted a resolution stating that each Member State should have a national coordinating committee for IP. What would an IP coordinating committee do? You know as well as I do that IP is a cross-cutting issue which involves several ministries in our countries. If we do not have a mechanism for coordinating the various ministries and agencies, IP information will be scattered and governments will not be in a position to decide on a single line of action. This is why we decided to establish these coordinating committees. We are trying to encourage the States to set these bodies up so that each Member State can have its IP coordinating committee.

We want to create innovation project incubators in universities and research centers. This was another one of the aims of the Dakar Conference. These

incubators are going to build bridges between information held by universities or research centers and the business community. They are a sort of nurseries where researchers, scientists, academics can provide information which can then be used. You know that universities and research centers are hubs of creativity. There is no better place to look for creative and innovative ideas than in universities and research centers, and we believe that leaving them to their own devices would be a big mistake and would certainly not stimulate the exploitation of IP.

Finally, by using these project incubators we want to assist researchers in making better use of the information they possess. All of this information is just sitting in drawers on shelves, all of the research findings, statistics and data. This must be taken off the shelves and used on the ground for economic and industrial development. Of course, the end goal is to move from this idea, this theory, to the building of new businesses.

Today, information is wealth, wealth is information, and there is no other resource which is so important. However, the problem between the North and the South is that the Northern countries use information well and the Southern countries do not. That is the only difference. If countries in the South used information rationally and wisely, they would also have embarked on the same IP development processes as the North.

In conclusion, among the national institutions, we also have those that can provide better guarantees and protection for IPRs. In this room, we all know that proper protection of IPRs by the courts is a vehicle for promoting private investment. I think that all IP development action should aim to set up a proper legal framework for protecting IPRs. This is why we are now initiating action, not only to stimulate the establishment of collective management societies for copyright but also to increase capacity in countries which already have collective management systems. We are also

thinking of reforming the higher commission for legal remedies. We have three bodies, we have the Council, another body and then the higher commission, which is like an appeals court for decisions taken by the Director General with which the applicants do not agree. We want to break this Commission down into three chambers: an administrative chamber which would continue to review the decisions of the Director General; a judicial chamber which would be an appeals chamber for judicial decisions; and finally an arbitration and mediation chamber which would attempt to resolve disputes. We no longer believe that our system can be based on the judicial solution of disputes. We have to have a multi-pronged system.

Finally, we have the reform of our judicial system. Our courts are like GPs: they have to deal with all different areas, social issues, family issues, IP issues and commercial disputes. Within our courts, we need to have special sections devoted to IP disputes. We are not talking about broadening them to the entire country, but we could have, in larger cities, sections of the courts which would be exclusively devoted to IP issues. Thank you.

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State
for Justice and Constitutional Affairs, Uganda

● That was Mr. Paulin Edou Edou, OAPI. He has been very detailed because he will not be here to listen to the questions, so he has pre-empted them. He has to leave now to catch a plane back to Yaoundé, but in the most unlikely event that there are any questions, they will be handled by Mr. Sibanda.

Mr. Gift Huggins Sibanda

Director General, African Regional Intellectual Property Organization (ARIPO), Harare

(a) The Role of the African Regional Intellectual Property Organization (ARIPO) in IP Institution-Building for LDCs

● I will be talking about ARIPO, and for those of you who may not be familiar with the organization, I will first of all talk about the organization itself. After that, I will dwell on some of its recent activities, and of course, some of the planned activities we want to carry out in the near future.

ARIPO is an intergovernmental organization that was established in 1976 by means of a Diplomatic Conference held in Lusaka. This particular agreement had the aim of pooling the resources of the developing countries, so that when they pool together they can actually channel them to the promotion, development and harmonization of IP laws and policies in the region. According to the Lusaka Agreement, any country that is a member of the United Nations Economic Commission for Africa and the African Union is actually eligible to become a member of the Organization. Currently, we have 16 Member States, and these are the ones listed in the PowerPoint slide. I have to indicate that there are other members that are observer States. These are member countries that have already indicated their desire to join the organization but have not yet joined. We have several countries, Angola, Burundi, Egypt, Eritrea, Ethiopia, Liberia, Mauritius, Nigeria, Rwanda, Seychelles and South Africa. One of the first countries to sign the Lusaka Agreement was Mauritius, although it is not yet a member of the Organization. I was just speaking with the Minister of Ethiopia and he has indicated that we should contact the Government of Ethiopia as soon as possible so that they can start making arrangements to joining this organization. Again, we have received a communication from Angola, which has also indicated that we should extend an

invitation for them to join the organization. We are also discussing the issue of membership of the Organization with the Government of South Africa. The geographical distribution of Member States is indicated on this map. There are three countries in West Africa: Gambia, Sierra Leone and Ghana. There is a major workshop taking place in Ghana next week for West African countries. In East Africa, there are five countries: Sudan, Uganda, Kenya, the United Republic of Tanzania and Somalia, all of which are represented here today except Somalia. In Central and Southern Africa, we have seven countries: Zambia, Malawi, Zimbabwe, Mozambique, Swaziland, Lesotho and Botswana.

How is this organization governed? There is a supreme organ of the organization which is the Council of Ministers, a policy body, that is supposed to meet once every two years. I am pleased to state that the Chair of this particular organ is represented here today – H.E. Mrs. Mpeo Mahase Moiloa. The Administrative Council Chairperson is also here, Sentšuo Ntseliseng Mohau also from Lesotho. This is a forum of experts who determine the development of the organization.

What is ARIPO's mandate? Under the Lusaka Agreement, we have a number of points which illustrate the mandate of the organization. The first one is the promotion, harmonization and development of IP laws. It is only through a regional system that you can actually have the approximation of laws so that they are in harmony. The next thing is the establishment of common services and organs for IP coordination development and harmonization. The organization has come up with certain protocols, i.e. the Harare Protocol which deals with the protection of patents, industrial designs and utility models. Under this system, instead of lodging your application in the individual 16 Member States, you can lodge a single application in one country, and then you will obtain protection in these 16 Member States. This is also the case with trademarks, utility models and industrial designs. In addition, the organization is

mandated to establish training schemes, organize conferences, seminars, and meetings in the field of IP, and to promote the exchange of ideas and research in the field of IP.

What are the activities that have been carried out by the organization? These are clearly spelled out in the strategic plan which was adopted in 2005. The purpose of the strategic plan is orientated strategy, by which the organization's objectives are effectively achieved within a given period. It also provides a systematic approach for enhanced efficiency in the operations of the organization. Thirdly, it gives ARIPO a clear focus and direction for advertising its activities. Finally, it also provides a basis for measuring and evaluating the work of the organization.

The strategic goals are five. The first deals with the improvement of infrastructure and efficient management of financial and administrative support processes. The second pertains to the promotion, development and harmonization of IP laws. The third goal relates to the delivery of quality services in grant, registration and administration of IPRs. The fourth concerns the enhancement of cooperation, partnership and institutional linkages, while the last one has to do with capacity-building. What are the activities that have been carried out recently under these strategic goals? Under strategic goal No. 1 – the development of Internet digital library for IP domains, including TK, and of course, the rendering of support to WIPO's automation initiatives has also been achieved. In fact, we have a WIPO consultant deployed at the ARIPO headquarters. We have also been supporting WIPO activities on the installation of WIPOCOS. We have been assisting WIPO in IP automation activities. Other than that, we recently launched a museum for selected African inventions. We think this is very important because if somebody comes and sees these inventions, as an African, maybe we can encourage him or her to do more inventions.

What are our future activities? We would want to introduce an IP exhibition to be held concurrently with the meetings of the organization's organs. The Administrative Council is held annually and the Council of Ministers once every two years. Then, we are looking to pursue the institutional development, including the construction of hostels to support the training activities. We already have the training center at ARIPO, but we need to have hostels so that the training activities can be supported through having a place for participants to stay. In this connection, we have just purchased an additional plot of land and we intend to extend the headquarters of the organization. Obviously, when we have more accommodation, we envisage a situation where we are going to have more activities. Most importantly, we are already in the process of establishing online linkages with ARIPO Member States. We are conducting a pilot project with the Kenya Industrial Property Office (KIPI), whereby instead of sending documentation using paper we can now send the documents to all Member States online. This project is also being implemented with the assistance of WIPO.

Under Strategic Goal No.2, we have already launched the ARIPO legal instrument for the protection of TK. I have already talked about this and we have the document in place. What is required now is to organize a diplomatic conference with a view to its adoption. The legal instrument that was launched in Maputo was a document intended to guide Member States on how best to draft legislation on traditional knowledge and expressions of folklore. We have also noticed that we have a problem with the trademark system. Member States have just completed a study which we have conducted jointly with the International Trademark Association. This is a study which assesses the situation of trademarks in our Member States. Ideally, if this study is finished, we will try to see how best we can improve the Bangui Protocol while at the same time improving the trademark system among Member States. We are also trying to support the initiatives which came from the Council of Ministers, i.e. the establishment

of specialized ministries in Member States for IP. The other important thing that we should be doing shortly is to conduct studies on the contribution of copyright industries to the national economy.

Concerning Strategic Goal No.3, delivery of quality services, again we are busy trying to establish a search engine so that we improve our search services. For the time being, ARIPO is in a position to handle search services and searches for Member States. I think up to now it is the only institution that does substantive examination in the African region. The Director General mentioned that there is a lot of cooperation with ARIPO in developing PatentScope. I have just been informed today that we have the scanners and soon will be scanning data, so that this data is used to develop the PatentScope initiative.

With regard to activities under Strategic Goal No.4, a great deal has been done with the World Bank. We have come up with a study on the improvement of assets to HIV/AIDS medicines in Africa, which will be presented to the Council of Ministers at its next session. We have come up with a monogram on ARVs AIDS drugs, which are protected in ARIPO Member States. This is very important because ideally, we are trying to see how best we can customize IP information so that it can be used by other people than those already well versed with IP. The point has often been made that there is a need to support Member States with the development of guidelines on TRIPS flexibilities as well as on IP policies. We have already come up with this document but we are also told that WIPO is busy working on that, and we would want to see how we can together, come up with these guidelines so that we can assist our Member States.

As for planned activities, we are trying to make sure that we increase the mandate of the organization. We have to include other issues such as plant varieties and geographical indications that are not covered in depth under ARIPO. It is important for us to establish proper synergies with

Member States. So far, we have only been in contact with the focal points, i.e. the patent offices, but it is now our desire to make sure that these contacts are extended to other focal points such as research institutions and universities.

Last is Strategic Goal No.5, which is to do with capacity-building. I am pleased to report that, within the cooperation with WIPO and the Africa University, we have a project dealing with the teaching of IP at a Master's degree level. Last year, we had 22 students and it is our intention to increase the number. This year, we have 33, and next year the number may increase. The Organization has a regional training center, and every year we come up with a training calendar which comprises 12 programs, i.e. on average one activity every month. We intend to increase the number of universities which are teaching IP. We currently only have one, so ideally it has to increase so that at least every region in Africa has at least a Master's degree training institute. These are some of the issues. I cannot mention all of them due to time constraints, but all these are indicated in the document in the corresponding folder.

In conclusion, development of legal and institutional framework in LDCs is being realized through IP awareness-building programs in Member States, through training activities at the ARIPO regional training center, through the development of IP promotion units at universities, through such services which are provided by the organization, and finally through a centralized system of filing, search and examination. Thank you.

Discussion

Delegation of Rwanda

● I have a comment on the presentations and I apologize if my consideration is not appropriate, because we did not have time to listen carefully in

detail to all the presentations. If I compare the visions of the two Organizations, but once again, I apologize, it seems to me that OAPI is more engaged in assisting members, taking advantage of IP, going from information to creativity and business-oriented, while I have the impression that ARIPO is more engaged in administration, cooperation but not really embracing the vision of ARIPO. You will tell me, Sir, that I am wrong and I would like to be wrong. My question is do the two organizations talk among themselves or are we just Francophones and Anglophones? You can harmonize and benefit from each other's experience.

Second question, in the WTO negotiations we are engaged in negotiating disclosure of origin.

His Excellency Mr. Fredrick Ruhindi Deputy Attorney General and Minister of State for Justice and Constitutional Affairs, Uganda

● In Africa, we are no longer Anglophone or Francophone, we are Africaphone. Do you get the point? Very good.

Delegation of Rwanda

● Absolutely, I embrace your views. With regard to the disclosure of origin that we are negotiating in the WTO negotiations in TRIPS Agreement, for some we should disclose the origin of the providing country and for others it should be of the originating country. For example, if an Indian company isolates biological materials from a plant in Uganda, and if a US company wants to patent their discovery, the US company will disclose the origin of the providing country, that is India, but not of the originating country, Uganda. What would be your advice in this complex issue? I hope I am clear. Thank you.

Delegation of Ethiopia

I am still confused as to the establishment of the Pan African IP Organisation and the existence of these two organizations, ARIPO and OAPI. What is the current position of these organizations, I mean ARIPO and OAPI, on the establishment of the Pan African IP Organisation (PIPO)? Thank you.

Delegation of Mali

My first question goes to Professor Odek since he spoke about the need for integration of IP activities in the various States. I know that you are one of the authors of the statutes of PIPO, and we have heard recently that the Heads of State concerned have endorsed these statutes. We also know that the countries have different laws with regard to IP. Are we going to tend towards harmonization under the auspices of the PIPO, and if such is not the case, does Professor Odek think that we should set this course? Should we not try to harmonize our laws on IP among various States, especially within ARIPO and OAPI?

My second question is addressed to the Director General of OAPI. He said that universities and research centers are really the hubs of creativity and the centers of excellence. We agree that the universities and research centers do not file any patent applications – that is what I have noted. Has OAPI taken any steps to encourage research centers and universities to take part in adding value and really using the IP resources? Thank you.

Mr. Gift Huggins Sibanda

Director General, African Regional Intellectual Property Organization (ARIPO), Harare

The first question concerned cooperation between ARIPO and OAPI. I have to state that we

have two cooperation agreements between OAPI and ARIPO. The first cooperation agreement is a general cooperation accord on most of the activities of OAPI, i.e. on the mandates with which these two organizations have been entrusted. The second agreement deals specifically with cooperation in the field of training. We are supposed to be exchanging some experiences in our training activities. These are the two cooperation agreements that we have. Other than that, when it comes to certain issues, I did mention this morning that when we were developing a legal framework for the protection of traditional knowledge and expressions of folklore, we had an expert group from ARIPO and OAPI. Whatever document we came up with, was a document which had a lot in common between the two institutions.

Concerning the second question, there are two organizations and we have been told that there is an initiative to come up with PIPO. It was realized the total number of Member States for these two organizations is 32, i.e. is 16 plus 16. I think the African Union's idea is to come up with a policy-making institution that will guide the African countries in the development of IP. It is not an administrative institution; it is just a policy body that will be dealing with policy issues. Otherwise, the issues of administration of IP are dealt with by ARIPO and OAPI, and of course, Member States that are still not party to either ARIPO or OAPI. Ideally, all other Member States should be in a position to join the organization because both the Bangui Agreement and the Lusaka Agreement allow any Member State that is a member of the African Union or the United Nations Economic Commission for Africa to join the organization.

Mr. Paulin Edou Edou

Director General, African Intellectual Property Organisation (OAPI)

Regarding the question raised on PIPO, I would simply like to say that when this product was

submitted to us initially, we looked at it, reflected on whether it was a good idea or not. The Heads of State decided that we should be in contact with the AU, ARIPO and our Organization to define, to lay the foundation for a PIPO. However, we realized that it would be very unwieldy – a Secretariat, a Coordination Committee, a Council, administrators, at least 10 bodies that would be excessively costly for the AU and African countries. If you look at the example of the European Union, there is the EPO, there is the Eurasian Patent Office, and these are technical entities that are operational, but are not so to speak EU bodies. Since the AU has drawn inspiration from the EU, we thought we should look to EU bodies as a model. We think that those who first devised the idea of the Pan African Organization had perhaps not analyzed the reality in sufficient depth. The Administrative Council of OAPI did study the issue and decided that we were not yet ready to take part in this initiative for the time being.

Rwanda raised the issue of disclosure of origin. Currently, as far as I know, the issue of disclosure of origin of genetic resources has not yet been settled at WIPO or WTO. No international treaty has settled the matter to date. This is still a debated matter and there are significant interests at stake whether or not to declare the genetic origin of a plant that made it possible to carry out an invention. This is of great strategic importance and this issue is still being debated between the North and the South. No one is really willing to compromise. However, countries such as Switzerland think that it would be quite possible to amend various treaties such as the PCT to introduce the disclosure of the genetic origin of a substance that made it possible to embody an invention. Please correct me if I am wrong. but I think that is the current situation regarding that matter.

Mali spoke of centers of excellence that do not play an active role in using IP. We find it regrettable they have a somewhat different position regarding

inventions and truly utilizing the full potential of IP. OAPI cannot really exert any pressure on these centers. I think national governments need to encourage these research centers to take part in the various fairs or exhibitions on innovative technologies. What exactly is the role of these research centers today? Have we given any thought to the matter? Ninety percent of them depend on the State for their funding, for their research activities – that is the reality. They are civil servants and they do carry out inventions, but there are inventions devised by employees. Who then is the patent holder? The State is their employer and these employees cannot become patent holders. That is at least what our statutes or by laws provide for. Therefore, we need to create a situation in which it is in the best interests of these people to file a patent application because there is not any particular incentive for them to file an application. Currently, if a patent is granted, it is the government or the research center for which that person works who will reap the benefits. Therefore, we need to try to strike the right balance between what should be collected by the inventor himself and his employing organization. We see that sometimes for very little money, someone will sell an invention to a foreign company, an invention that could be the source of great economic profit. Thank you.

Mr. Gift Huggins Sibanda

Director General, African Regional Intellectual Property Organization (ARIPO), Harare

● There is a communication to do with Pan African IP Organisation (PIPO), which states that PIPO did not come as an agenda item in the last Assembly of Heads of States. The progress report of PIPO was sent to them, and PIPO was referred back to the Ministers. Thank you.

Delegation of Sudan

With regard to the Pan African IP Organization, I think that as stated by Mr. Sibanda it is concerned with making policies. What about the Council of Ministers in the organization and its concern with public policies? There might be contradictions later. Can we have an answer in this area, please?

Professor James Otieno-Odek
Managing Director, Kenya Industrial Property Institute (KIPI), Nairobi

When the idea was mooted to form PIPO, there were two main options. One was whether we intended to form an IP administration office, so that we would have a single African patent, whereby you can make an application to get an African patent or not. Upon deliberation, it was clearly agreed that Africa was not yet ready to have a scenario where we can issue an African patent. The consequence thereof was that the draft statutes of PIPO do not establish a single IP office in Africa. Second, the Council of Ministers for Science and Technology resolved that what was going to be set up was a Pan African Forum where we can discuss IP issues of interest to Africa. It was recognized that there is no forum at present where we as Africans could meet and discuss our issues as pertains to IP. Many a time we have to meet in Geneva under the invitation and auspices of WIPO. It was felt that there was a need for a Forum where we could meet as Africans, discuss and dialogue on our unique experiences and formulate a common position on IP issues.

In summary, what happened at Libya when the Heads of States met two/three weeks ago was that the agenda of PIPO was not presented. The progress report was given. The progress report is the Articles constituting PIPO were approved by the Ministers for Science and Technology for the continent. The Heads of States have already

adopted a resolution to the effect that PIPO shall be established. What the Heads of States referred back to the Ministers is to sort out the administrative structure, how PIPO shall relate to the African Union.

Most specifically to the question of Sudan, PIPO as a Forum was intended to enable the experts in Africa to meet and advise the Ministers to make a policy decision. In particular, when you speak of traditional knowledge, genetic resources, we do not have a common African position. That was to be the forum to discuss contemporary issues relating to IP in Africa.

Mr. Chairman, let me just take another second to respond to a question from Rwanda that has not been answered, relating to disclosure requirements within the WTO system and the advice that one would give. Now, we are still negotiating the two competing issues, yes, disclosure but disclosure as to what, originating country or providing country. For us in Africa the advice I would give is that our concern is to prevent misappropriation of our genetic resources. Our concern is the recognition of our proprietary rights with regards to genetic resources. Our concern is the affirmation of ownership of our genetic resources and preventing bad patents. When you take all these four issues, then the direction that we are going is that we need the prior informed consent of the originating country so the advice is originating not providing.

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State for Justice and Constitutional Affairs, Uganda

Thank you so much. You have been an excellent audience. I have enjoyed being your Chair for this Session.

Conclusions and Closing Ceremony

His Excellency Mr. Dilip Barua
Minister for Industries, Government of the
People's Republic of Bangladesh
Chairman of the Coordination council of Least
Developed Countries (LDCs)

Excellencies, Honorable distinguished guests who have participated in this auspicious occasion, since the morning's session, I have received some comments from delegations on the draft Declaration. I have understood the concerns of my LDC brothers and sisters who speak French, because the draft is in English only. I am very sorry that we are not able to translate the document into French given the short time. I am therefore asking my delegation to read out the document so that you can hear it in French. I am also requesting the Secretariat to circulate the latest version to you all. Thank you.

Delegation of Bangladesh

I will read the text slowly so that it is translated clearly. "Draft Geneva Ministerial Declaration – Agenda for the Strategic Use of IP for Prosperity and Development of the LDCs Adopted at the High-Level Forum on IP for the LDCs," and then we put the date and place before the preambular part.

The preambular part reads as follows. We have been receiving some comments and we have tried to incorporate those that are editorial and minor in nature in the text. There are some additional comments that we have received, and at the end of reading the draft we will mention a couple of paragraphs and an idea that we have received from two delegations.

First, let me begin by reading the preambular part:

"We, the Ministers participating in the High Level Forum on Intellectual Property for the Least Developed Countries (LDCs): the Strategic Use of Intellectual Property for Prosperity and Development organized by the World Intellectual Property Organization in Geneva on 23 and 24 July 2009;

Having discussed the policy and technical issues regarding the integration of intellectual property in the national development strategies of the LDCs for prosperity and development and the challenges faced by them and the opportunities available to them in this regard;

Recalling the Agenda for Action for the Least Developed Countries in the World Intellectual Property Organization adopted in Geneva on 12 December 2007 by the High Level Forum on Intellectual Property for the LDCs: Building Capacity and A Knowledge Base for Wealth Creation, Social and Cultural Development and calling for its continued implementation;

Recognizing that despite their efforts to build up sustainable national IP institutions and capacity, the LDCs face severe constraints such as a shortage of resources and a weak and sometimes non-existent intellectual property infrastructure and policy framework;

Recognizing further that intellectual property protection is having an increasing impact on our countries' technological, economic, cultural and social progress, and that the creation, protection, management and use of intellectual property rights would contribute to economic development by facilitating the transfer of technology, increasing employment and creating wealth;

Noting that the WIPO Development Agenda has agreed on a number of recommendations to support IP institutions and capacity building in the

LDCs to promote national development as well as to promote awareness in the LDCs;

Reaffirming the vital importance of improving the institutional and policy framework for the modernization and development of the intellectual property systems and institutions of the LDCs;

Realizing the importance of intellectual property to critical policy fields of food security, sustainable agriculture, health, education, employment, trade, investment, culture and heritage, environment and scientific and technological development;

Appreciating the initiative of the Director General of WIPO for establishing innovation and technological support centers for technological capacity building for development in the LDCs;

Acknowledging that rapid changes in digital technology have made copyright economically important, and that the contributions of copyright systems to national economies are noteworthy in terms of their contribution to economic, social and cultural development;”

Now, I come to the operative parts:

1. *Urge* WIPO to contribute to the realization of the United Nations Millennium Development Goals especially in the context of using IP as a tool for development and request WIPO to cooperate fully with LDCs delegation for the preparation of the Fourth United Nations Conference for LDCs in 2011;
2. *Call upon* WIPO to fully implement the WIPO Development Agenda recommendations pertaining to the LDCs, from its regular budget and through generation of additional resources for supporting IP-related activities in the LDCs;
3. *Welcome* the launching of the Access to Research and Development of Innovation (aRD*i*) service during this Forum for enhancing the access of the LDCs to technological information and appreciate the Director General’s efforts as well as the role of the participating private sector entities in its realization;
4. *Emphasize* the importance of addressing the challenges facing our countries regarding IP institution-building with a renewed sense of purpose and seeking to strengthening regional and international cooperation in the use of intellectual property to promote poverty alleviation, national prosperity and development;
5. *Decide* to participate actively in deliberations in various international fora, particularly within WIPO, on the wealth-creation effect of intellectual property including at the national level in formulating strategies, policies, plans and mechanisms;
6. *Decide* to further strengthen the protection and use of national cultural and artistic creations, particularly relating to traditional cultural expressions such as folklore, through the copyright and related rights systems and other appropriate mechanisms and call upon WIPO to render assistance to the LDCs in this regard;
7. *Decide* to intensify cooperation with WIPO to scale up the use of trademarks, service marks, designs and geographical indications in economic activities, especially in branding selected export products of LDCs;
8. *Urge* WIPO to enhance its assistance to the LDCs in meeting all their IP objectives; in particular, attention to be paid to supporting creative, inventive and innovative activity in our countries across all economic sectors including through the involvement of universities, R&D institutions and technical skills development institutions, and in this context emphasize the need for commercialization of research output through linkage with the market and the private sector;

9. *Calls upon* WIPO to support LDCs in improving the competitiveness of their enterprises, including small, medium and micro enterprises, through enhancing their ability to gain regular access to new ideas and technologies;
10. *Requests* WIPO to assist LDCs in promoting public private partnerships to facilitate development friendly IP utilization in these countries;
11. *Express* their appreciation to the WIPO Director General for his efforts to generate additional resources for the development of IP institutions and systems for the benefit of LDCs and encourage him to further pursue his efforts for the establishment of the Funds in Trust or similar resources for the benefit of LDCs as agreed in recommendation 2 of the WIPO Development Agenda in particular for the use of LDCs;
12. *Urge* all donors to actively support and participate in the efforts of the Director General to establish Funds in Trust for the benefit of LDCs;
13. *Decide* to raise the profile and inclusivity of the future High Level Forums to enhance the visibility of LDCs in WIPO;
14. *Call upon* the Director General to ensure that the outcome of this High Level Forum is fully taken into account by WIPO and that the Division for the Least Developed Countries prepare periodic reports on its implementation;
15. *Take note* with appreciation the Director General's continued efforts to strengthen the LDCs Division and emphasize the need for deploying further financial and human resources to enhance the delivery capacity of the Division in response to the growing IP-related needs of the LDCs;
16. *Emphasize* the need for enhancing coordination of LDCs delegations in WIPO with a view to

working closely with the Division for Least Developed Countries on the implementation of this Agenda and promoting more WIPO activities related to the LDCs;

17. *Extend* our appreciation and gratitude to the Director General of WIPO for his new initiatives for the benefits of LDCs, the excellent arrangements made for the Conference and for his warm hospitality during the Conference."

"Geneva, Switzerland, and the date"

In addition, we have received two comments, two specific paragraphs. Let me read them both for the consideration of the floor. The first input that we received goes like this:

"Underscore the importance of creating, enabling national framework for the use of intellectual property in economic, social and cultural development, and in that context *seek* to cooperate with WIPO in formulating national innovation strategies taking into account the level of development of each individual LDC."

This builds on, I believe, from the initial remarks also made by the Director General, when he mentioned formulating national innovation strategies that will have linkages with overall development activity in our countries.

The second input that we have received goes like this:

"Call upon the Director General for a separate section of Program and Budget for the LDCs in its biennial program and budget."

With this I submit the text for your consideration. Thank you.

His Excellency Mr. Fredrick Ruhindi
Deputy Attorney General and Minister of State
for Justice and Constitutional Affairs, Uganda

● My delegation supports this initiative and commends you and other colleagues who initiated this idea. In operative paragraph 12, namely “urge all donors”; I think it is better to say development partners rather than donors.

In one of the preambular paragraphs, which starts with “realizing the importance of intellectual property, incorporates the fields such as food security, sustainable culture, health, education, employment, trade investment culture and heritage wealth and scientific involvement”; I think this one is quite a mouthful, because all we are really talking about is social and economic transformation. I think we can say for social and economic transformation or even broader in perspective than narrowing it down. I hate the use of expressions such as sustainable agriculture or sustainable growth. These are words used by those fellows who do not want us to develop. Sustainable growth, what is sustainable growth? It is like telling a woman who is pregnant to have sustained pregnancy. There must be transformation of the child within the mother’s womb; there must be birth and growth. We are talking about social transformation, not sustainable growth. Thank you.

Delegation of Burundi

● I also fully support this initiative to adopt a Ministerial Declaration at the end of this Forum. I would like to make a few suggestions, three in fact.

The first is the industrial application in LDCs of patents in a public domain, so that IP can be a true vehicle for stimulating foreign direct investment.

The second suggestion is to request that WIPO provide institutional support to national IP

organizations in LDCs, especially as regards developing infrastructure, promoting technology transfer and training managerial level staff.

My third suggestion would be to request that WIPO build the capacity of OAPI and ARIPO while respecting the principle of subsidiarity. Those are my three suggestions. Thank you.

His Excellency Mr. Dilip Barua
Minister for Industries, Government of the
People’s Republic of Bangladesh
Chairman of the Coordination Council of Least
Developed Countries (LDCs)

● We will work with your delegation to accommodate your suggestions. Thank you.

Delegation of Nepal

● Actually, I do not have any comment; I just want to support your two edits. For the sake of uniformity of language, I would suggest removing the ‘s’ from “calls” in paragraph 9, because we have used only plural sentences. Similarly, in paragraph 10 “requests”. All other words above are in the plural, so I do not think that it is necessary. Thank you.

His Excellency Mr. Dilip Barua
Minister for Industries, Government of the
People’s Republic of Bangladesh
Chairman of the Coordination Council of Least
Developed Countries (LDCs)

● You are quite right; we have done it in a hurry so we will correct it properly. Thank you. I see no further comments, so may we adopt this historical declaration by acclamation, as adopted with these provisos.

Delegation of Mali

I would like to make a final suggestion. Did we talk about the fight against piracy in the music field? I would have wished to see a request to WIPO to take measures to combat piracy in the field of music because this is a potential source of revenue for the LDCs. Thank you.

His Excellency Mr. Dilip Barua

Minister for Industries, Government of the People's Republic of Bangladesh
Chairman of the Coordination Council of Least Developed Countries (LDCs)

That is a good point. We will also include this point. Thank you. Now can we adopt this Declaration with the amendments?

His Excellency Mr. Fredrick Ruhindi

Deputy Attorney General and Minister of State for Justice and Constitutional Affairs, Uganda

Mr. Chairman, I move that this historic Declaration be hereby adopted as amended.

His Excellency Mr. Dilip Barua

Minister for Industries, Government of the People's Republic of Bangladesh
Chairman of the Coordination Council of Least Developed Countries (LDCs)

Thank you all for taking this historical adopted document, now it is finalized as you amended. Thank you Excellencies. We will circulate this amended Declaration to all the delegations who participated and also to the Embassies.

ANNEX 1

PROGRAM

Thursday, July 23, 2009

9.00 – 10.00 Registration

10.00 – 10.30 Opening Ceremony

Welcome addresses by:

Dr. Francis Gurry, Director General, World Intellectual Property Organization (WIPO), Geneva

His Excellency Mr. Dilip Barua, Minister for Industries, Government of the People's Republic of Bangladesh; Chairman of the Coordination Council of the Least Developed Countries (LDCs), Dhaka

10.30 – 12.00 **Special Plenary:** The Strategic Use of Intellectual Property (IP) for Prosperity and Development

Addresses by:

His Excellency Mr. Roger Dovonou, Minister for Industry, Minister of Industry, Cotonou

His Excellency Mr. Juneydi Saddo, Minister for Science and Technology, Ministry of Science and Technology, Addis Ababa

Her Excellency Mrs. Mpeo Mahase Moilola, Minister for Law and Constitutional Affairs, Maseru

His Excellency Mr. Richard Fienena, Minister for Economy and Industry, Ministry of Economy and Industry, Antananarivo

His Excellency Mr. Mohamed Rasheed, Minister for Economic Development, Ministry of Economic Development, Male

His Excellency Mr. Ahmadou Abdoulaye Diallo, Minister for Industry, Investments and Trade, Ministry of Industry, Investments and Trade, Bamako

His Excellency Mr. Dan Bahadur Chaudhary, State Minister for Industries, Ministry of Industry, Kathmandu

His Excellency Mr. Fredrick Ruhindi, Deputy Attorney General and Minister of State, Ministry of Justice and Constitutional Affairs, Kampala

Her Excellency Mrs. Mary Nagu, Minister for Industry, Trade and Marketing, Ministry of Industry, Trade and Marketing, Dar-es-Salaam

12.00 – 12.15 Presentation on the Access to Research for Development and Innovation Service (ARDI) for LDCs

Speaker: Mr. Yo Takagi, Executive Director, Global Intellectual Property Infrastructure Department, WIPO

12.15 – 13.00 **Inauguration of Access to Research for Development and Innovation Service (ARDI)**

Inaugural speeches by:

Dr. Francis Gurry

H.E. Mr. Dilip Barua

Mr. Sergei Ordzhonikidze, Director General, United Nations Office in Geneva (UNOG), Geneva

Mr. Jens Bammel, Secretary General, International Publishers Association (IPA), Geneva

13.00 – 14.30 Lunch Break

Theme One: Integrating IP into National Development Policy and Strategies of the LDCs

Moderator: H.E. Mrs. Mpeo Mahase Moiloa

14.30 – 15.00 Lead Speaker: Mr. James Otieno-Odek, Managing Director, Kenya Industrial Property Institute (KIPI), Ministry of Industrialization, Nairobi

15.00 – 15.15 (a) The Role of IP in Reducing Poverty, Fostering Development and Wealth Creation

Panelist: Mr. Keith E. Maskus, Associate Dean for Social Sciences, University of Colorado, Boulder, Colorado

15.15 – 15.30 (b) IP and Public Policy Issues

Panelist: Mr. James Otieno-Odek

Theme Two: The Strategic Importance of Transfer of Technology and Technological Capacity Building for the Development of LDCs

Moderator: H.E. Mr. Juneydi Saddo

15.30 – 16.00 Lead Speaker: Mr. Keith E. Maskus

16.00 – 16.15 (a) Linking Universities and Research Centers to Public and Private Sector for the Management, Promotion and Commercialization of IP Assets; Spin-offs and Start-ups

Panelist: Mr. Yuke Chin Lee, IP Consultant, Malaysian Invention and Design Society (MINDS), Kuala Lumpur

16.15 – 16.30 (b) The Importance of Patent Documents for the Extraction of Technological Information for Technological Development: The Malaysian Experience

Panelist: Mr. Yuke Chin Lee

16.30 – 16.45 Coffee Break

Theme Three: Sharing of Experience with some LDCs on the Wealth Creation Effect of Trademarks, Service Marks, Geographical Indications and Industrial Designs

Moderator: H.E. Mrs. Mary Nagu

16.45 – 17.15 Lead Speaker: Mr. Getachew Mengistie, IP Law Consultant and Attorney; former Director General of the Ethiopian Intellectual Property Office (EIPO), Addis Ababa

17.15 – 17.30 (a) Geographical Indications and its application in LDCs: The experience of the African Intellectual Property Organization (OAPI)

Panelist: Mr. Paulin Edou Edou, Director General, African Intellectual Property Organization (OAPI), Yaoundé

17.30 – 17.45 (b) Using Industrial Designs for Value Addition in Products and Services of LDCs

Panelist: Mr. Getachew Mengistie

17.45 – 18.00 Discussions

18.00 WIPO Reception

Friday, July 24, 2009

Theme Four: Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth and Development of LDCs

Moderator: H.E. Mr. Richard Fienena

10.00 – 10.30 Lead Speaker: Mr. Daniel J. Gervais, Professor of Law, Director, Technology and Entertainment Law Program, Vanderbilt University Law School, Nashville

10.30 – 10.45 (a) Copyright and Related Rights: Striking the Balance Between Protection and the Public Interest

Panelist: Mr. David Uwemedimo, Director of Legal Affairs, International Confederation of Societies of Authors and Composers (CISAC), Paris

10.45 – 11.00 (b) Copyright Collective Management Societies and New Technologies

Panelist: Mr. Daniel J. Gervais

11.00 – 11.15 Coffee Break

Theme Five: Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions: Preserving Traditional and Cultural Assets and Creating Wealth

Moderator: H.E. Mr. Roger Dovonou

11.15 – 11.45 Lead Speaker: Mr. Wend Wendland, Acting Director and Head, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, WIPO

11.45 – 12.00 (a) Exploitation of Traditional Knowledge and Folklore and its Contribution to Sustainable Development in LDCs: from Farm to Pharma, the Experience of South Africa from Research to Commercialization

Panelist: Mr. Motlalepula Gilbert Matsabisa, Director, Indigenous Knowledge Systems (Health) Lead Programme (IKS), South African Medical Research Council, Cape Town

12.00 – 12.15 (b) Protecting Traditional Knowledge and Folklore in LDCs

Panelist: Mr. Gift Huggins Sibanda, Director General, African Regional Intellectual Property Organization (ARIPO), Harare

12.15 – 12.30 Discussions

12.30 – 14.00 Lunch Break

Theme Six: Regional Cooperation in IP: Promoting Synergies and Building Partnerships

Moderator: H.E. Mr. Fredrick Ruhindi

14.00 – 14.30 Lead Speaker: Mr. James Otieno-Odek

14.30 – 14.45 (a) The Role of the African Regional Intellectual Property Organization (ARIPO)
in IP Institution Building for LDCs

Panelist: Mr. Gift Huggins Sibanda

14.45 – 15.00 (b) The Role of OAPI in IP Institution Building for LDCs

Panelist: Mr. Paulin Edou Edou

15.00 – 15.15 Discussions

15.15 – 15.30 Coffee Break

15.30 – 18.00 Conclusions and Closing Ceremony

List of Participants

I. Members (in French alphabetical order)

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Mozammil SHINWARI, Adviser to Minister, Ministry of Commerce and Industry, Kabul

Akhshid JAVID, Third Secretary, Permanent Mission, Geneva

BANGLADESH

Dilip BARUA, Minister for Industries, Ministry of Industries, Dhaka

Md. Abdul HANNAN, Ambassador, Permanent Representative, Permanent Mission, Geneva

Md. Enamul HOQUE, Joint Secretary, Department of Patents, Designs and Trademarks, Dhaka

Muhammed Enayet MOWLA, Minister, Permanent Mission, Geneva

Faiyaz Murshid KAZI, First Secretary, Permanent Mission, Geneva

Mohammed Nore-ALAM, First Secretary, Permanent Mission, Geneva

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Roger DOVONOU, ministre de l'industrie, Ministère de l'industrie, Cotonou

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Fredrick RUHINDI, Deputy Attorney General and Minister of State, Ministry of Justice and Constitutional Affairs, Kampala

Maurice KAGIMU, Ambassador, Permanent Mission, Geneva

Kyomuhendo BISEREKO, Registrar General, Ministry of Justice and Constitutional Affairs, Uganda Registration Services Bureau, Kampala

Benjamin MUKABIRE, Second Secretary, Permanent Mission, Geneva

CENTRAL AFRICAN REPUBLIC

Jean-Louis NDIBA, directeur général du développement industriel, Ministère du commerce et de l'industrie, Bangui

DEMOCRATIC REPUBLIC OF THE CONGO

Antoine MINDUA KESIA-MBE, ambassadeur, représentant permanent, Mission permanente, Genève

Sébastien MUTOMB MUJING, ministre conseiller, Mission permanente, Genève

Fidèle SAMBASSI KHAKESSA, ministre conseiller, Mission permanente, Genève

Henriette KAYEMBE (Mme), premier conseiller, Mission permanente, Genève

UNITED REPUBLIC OF TANZANIA

Mary NAGU (Mrs.), Minister for Industry, Trade and Marketing, Ministry of Industry, Trade and Marketing, Dar-es-Salaam

Esteriano Emmanuel MAHINGILA, Chief Executive Officer, Registrar, Ministry of Industry, Trade and Marketing, Dar-es-Salaam

RWANDA

Venetia SEBUDANDI (Mme), ambassadeur, représentant permanent, Mission permanente, Genève

Cynthia L. KAMIKAZI (Mme), Multilateral Officer, Permanent Mission, Geneva

Sophie Sonia NZEYIMANA, Trade and Development Advisor, Permanent Mission, Geneva

SENEGAL

Babacar Carlos MBAYE, ambassadeur, représentant permanent, Mission permanente, Genève

Mare LO, directeur de Cabinet du ministre d'état, Ministère des mines, de l'industrie, de la transformation alimentaire des produits Agricoles et des PME, Dakar

N'Dèye Adji DIOP SALL (Mme), chef du Service de la propriété intellectuelle, Ministère des mines, de l'industrie de la transformation alimentaire des produits agricoles et des PMA, Dakar

Ibou BOYE, deuxième conseiller, Mission permanente, Genève

SUDAN

John Ukec Lueth UKEC, Ambassador, Permanent Representative, Permanent Mission, Geneva

John Simon YOR, Ambassador, Director of International Law and Treaties Department, Ministry of Foreign Affairs, Khartoum

Hurria Ismail ABDEL MOHSIN (Mrs.), Acting Registrar General of Intellectual Property, Intellectual Property Office, Ministry of Justice, Khartoum

Osman MOHAMMED, First Secretary, Permanent Mission, Geneva

CHAD

Allazam Mahamat ADOUDOU, directeur de l'action coopérative, Ministère du commerce et de l'industrie, N'djamena

Ndade Mandagua DJIMASBEYE (Mme), conseiller économique, Mission permanente, Genève

TOGO

Komlan Abalo AHENOU, chef de la division de la propriété industrielle, Institut national de la propriété industrielle et de la technologie (INPIT), Lomé

YEMEN

Fadhil AL-MAGHAFI, Minister, Permanent Mission, Geneva

Fawaz AL-RASSAS, Second Secretary, Permanent Mission, Geneva

Nagib HAMIM, Attaché (Commercial Affairs), Permanent Mission, Geneva

ZAMBIA

Darlington MWAPE, Ambassador, Permanent Representative, Permanent Mission, Geneva

Anessie Michael Banda BOBO (Mrs.), Registrar, Patents and Companies Registration Office (PACRO), Lusaka

Christopher M. SITWALA, First Secretary (Legal), Permanent Mission, Geneva

Lillian BWALYA (Mrs.), First Secretary (Trade), Permanent Mission, Geneva

II. International Intergovernmental Organizations

Office des Nations Unies à Genève (ONUG)/United Nations Office at Geneva (UNOG)

Sergei ORDZHONIKIDZE, Director General, United Nations Office in Geneva (UNOG), Geneva

Organisation Régionale Africaine de la Propriété Intellectuelle (ARIPO)/african Regional Intellectual Property Organization (ARIPO)

Gift Huggins SIBANDA, Director General, Harare

Organisation Africaine de la Propriété Intellectuelle (Oapi)/african Intellectual Property Organisation (OAPI)

Paulin EDOU EDOU, directeur général, Yaoundé

III. International Non-Governmental Organizations

International Association of Scientific, Technical and Medical Publishers (STM)

Maurice LONG, Director, Publishing Partnership Programmes, Oxford

Carlo Scollo Lavizzari, Legal Counsel, Bâle

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Jens BAMMEL, Secretary General, Geneva

IV. Speakers (in the order of their presentations)

James OTIENO-ODEK, Managing Director, Kenya Industrial Property Institute (KIPI), Ministry of Industrialization, Nairobi

Keith E. MASKUS, Associate Dean for Social Sciences, College of Arts and Sciences, Professor, Dpt. of Economics, University of Colorado, Boulder

Yuke Chin LEE, Intellectual Property Consultant, Malaysian Invention and Design Society (MINDS), Kuala Lumpur

Getachew MENGISTIE, Intellectual Property Law Consultant and Attorney, former Director General of the Ethiopian Intellectual Property Office (EIPO), Addis Ababa

Paulin EDOU EDOU, Director General, African Intellectual Property Organization (OAPI), Yaoundé

Daniel J. GERVAIS, Professor of Law, Director, Technology and Entertainment Law Program, Vanderbilt University Law School, Nashville

David UWEMEDIMO, Director of Legal Affairs, International Confederation of Societies of Authors and Composers (CISAC), Paris

Wend WENDLAND, Acting Director and Head, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, WIPO

Motlalepula Gilbert MATSABISA, Director, Indigenous Knowledge Systems (Health) Lead Programme (IKS), South African Medical Research Council, Cape Town

Gift Huggins SIBANDA, Director General, African Regional Intellectual Property Organization (ARIPO), Harare

V. Secretariat of the World Intellectual Property Organization (WIPO)

Francis GURRY, directeur général/Director General

Narendra K. SABHARWAL, vice-directeur général, Secteur de la Coopération pour le développement/Deputy Director General, Cooperation for Development Sector

Kifle SHENKORU, directeur, Division pour les pays les moins avancés/Director, Division for Least Developed Countries

Ministerial Declaration on Intellectual Property for the Least Developed Countries

An Agenda for the Strategic Use of Intellectual Property for Prosperity and Development in the Least Developed Countries

We, the Ministers participating in the High-Level Forum on Intellectual Property for the Least Developed Countries (LDCs): the Strategic Use of Intellectual Property for Prosperity and Development organized by the World Intellectual Property Organization in Geneva on July 23 and 24, 2009;

Having discussed the policy and technical issues regarding the integration of intellectual property into the national development strategies of LDCs for prosperity and development, the challenges faced by them and the opportunities available to them in this regard;

Recalling the Agenda for Action for the Least Developed Countries in the World Intellectual Property Organization, adopted in Geneva on December 12, 2007 by the High-Level Forum on Intellectual Property for the LDCs: Building Capacity and a Knowledge Base for Wealth Creation, Social and Cultural Development, and calling for its continued implementation;

Recognizing that, despite their efforts to build up sustainable national IP institutions and capacity, LDCs face severe constraints such as a shortage of resources and a weak and sometimes non-existent intellectual property infrastructure and policy framework;

Recognizing further that intellectual property protection is having an increasing impact on our countries' technological, economic, cultural and social progress, and that the creation, protection, management and use of intellectual property rights would contribute to economic development by facilitating the transfer of technology, increasing employment and creating wealth;

Noting that the WIPO Development Agenda has agreed on a number of recommendations to support IP institutions and capacity building in LDCs in order to promote national development;

Reaffirming the vital importance of improving the institutional and policy framework for the modernization and development of the intellectual property systems and institutions of LDCs;

Realizing the importance of intellectual property for social and economic transformation in LDCs;

Appreciating the initiative of the Director General of WIPO for establishing innovation and technological support centers for technological capacity building for development;

Acknowledging that rapid changes in digital technology have made copyright economically important, and that the contributions of copyright systems to national economies are noteworthy in terms of their contribution to economic, social and cultural development;

18. Urge WIPO to contribute to the realization of the United Nations Millennium Development Goals, especially in the context of using IP as a tool for development, and request WIPO to cooperate fully with the LDC delegation for the preparation of the Fourth United Nations Conference for LDCs in 2011;
19. Call upon WIPO to fully implement the WIPO Development Agenda recommendations pertaining to LDCs from its regular budget and through generation of additional resources for supporting IP-related activities in LDCs;
20. Welcome the launching of the Access to Research and Development of Innovation (ARDI) service during this Forum, for enhancing the access of LDCs to technological information, and appreciate the Director General's efforts, as well as the role of the participating private sector entities, in its realization;
21. Emphasize the importance of addressing the challenges facing our countries regarding IP institution-building with a renewed sense of purpose and seek to strengthen regional and international cooperation in the use of intellectual property to promote poverty alleviation, national prosperity and development, as well as awareness raising on IP issues;
22. Call on WIPO to foster institutional support for national intellectual property institutions, including in the field of technology transfer infrastructure and the training of executive staff;
23. Urge the senior management of WIPO to take all measures necessary to promote the industrial application by LDCs of patents which have fallen into the public domain, as this will transform intellectual property into a tool for supporting the flow of direct foreign investment into LDCs;
24. Decide to participate actively in deliberations in various international fora, particularly within WIPO, on the wealth-creation effect of intellectual property, including at the national level, in formulating strategies, policies, plans and mechanisms;
25. Decide to further strengthen the protection and use of national cultural and artistic creations, particularly relating to traditional cultural expressions such as folklore, through the copyright and related rights systems and other appropriate mechanisms, and call upon WIPO to render assistance to LDCs in this regard;
26. Decide to intensify cooperation with WIPO to scale up the use of trademarks, service marks, designs and geographical indications in economic activities, especially in branding selected export products of LDCs;
27. Urge WIPO to enhance its assistance to LDCs in meeting all their IP objectives; in particular, attention should be paid to supporting creative, inventive and innovative activity in our countries across all economic sectors, including through the involvement of universities, R&D institutions and technical skills development institutions, and in this context emphasize the need for commercialization of research output through linkage with the market and the private sector;
28. Underscore the importance of creating and enabling a national framework for the use of intellectual property in economic, social and cultural development, and in that context seek to cooperate with WIPO in formulating national innovation strategies, taking into account the level of development of each LDC;

29. Urge WIPO to support LDCs in the fight against the piracy of the musical works of their performers and musicians;
30. Call upon WIPO to support LDCs in improving the competitiveness of their enterprises, including small, medium and micro enterprises, through enhancing their ability to gain regular access to new ideas and technologies;
31. Call on WIPO to provide further capacity-building assistance for OAPI and ARIPO, under the principle of cooperation and solidarity;
32. Request WIPO to assist LDCs in promoting public-private partnerships to facilitate development-friendly IP utilization in these countries;
33. Express our appreciation to the WIPO Director General for his efforts to generate additional resources for the development of IP institutions and systems for the benefit of LDCs, and encourage him to further pursue his efforts for the establishment of the Funds in Trust or similar resources for the benefit of LDCs, as agreed in Recommendation 2 of the WIPO Development Agenda, in particular for use by LDCs;
34. Urge all development partners to actively support and participate in the efforts of the Director General to establish Funds in Trust for the benefit of LDCs;
35. Decide to raise the profile and inclusivity of the future High-Level Forums to enhance the visibility of LDCs;
36. Call upon the Director General to ensure that the outcome of this High-Level Forum is fully taken into account by WIPO and that the Division for Least-Developed Countries prepares periodic reports on its implementation;
37. Take note with appreciation the Director General's continued efforts to strengthen the Division for Least-Developed Countries and emphasize the need for deploying further financial and human resources to enhance the delivery capacity of the Division in response to the growing IP-related needs of LDCs;
38. Call upon the Director General for a separate section of program and budget for LDCs in WIPO's biannual program and budget;
39. Emphasize the need for enhancing coordination of LDC delegations in WIPO with a view to working closely with the Division for Least-Developed Countries on the implementation of this Agenda, and promoting more WIPO activities related to LDCs;
40. Extend our appreciation and gratitude to the Director General of WIPO for his new initiatives for the benefits of LDCs, for the excellent arrangements made for the Conference, and for his warm hospitality during the Conference.

Geneva, Switzerland, July 24, 2009

