Intellectual Property and Innovation Audit, Valuation, and Commercialisation in Kenya

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Abstract

The overarching argument in this paper is two-pronged. First, it is asserted that Kenya has a lot of potential for innovation, technology development, and the creation of intellectual property intensive goods, services, and works. However, there are serious weaknesses or limitations in the legal and regulatory frameworks on intellectual property and innovation valuation, and commercialisation as well as general corporate and constitutional governance. The second argument is to the effect that scholarship and practice in business and law in Kenya need to urgently focus on intellectual property audit, valuation, commercialization, securitization and taxation. This will enable innovators and all key stakeholders to benefit from the copyright, trade mark, patent, trade secret, utility model, industrial design, plant or animal breeder’s rights and other forms of intellectual property and innovation that have been developed and that need to be nurtured.

Key Words. Intellectual property, innovation valuation, commericalisation

PROLEGOMENON TO INTELLECTUAL PROPERTY AND INNOVATION AUDIT, VALUATION AND COMMERCIALISATION

Intellectual property has been regarded as the recognition, protection and promotion of the work or product of the mind; of human creativity embodied in tangible form (Sihanya, 2016a). This is done through substantive, procedural and evidentiary law on rewards, incentives as well as legal mechanisms for the enforcement or vindication of these rights in the case of infringement.

Intellectual property is broadly divided into two categories, namely, industrial property and copyright and related rights.1 Industrial property consists of at least ten sets of protected rights.2

1Some IP scholars and lawyers claim that PBR or plant variety protection (PVP) is the third distinct doctrine or category of IP and that it is not part of industrial property. They do not account for animal breeder’s right (ABR). I treat ABR as significant in Kenya and Africa and, like PBR, ABR belongs to industrial property rights. And there is need for a clear legal framework on ABR.

Under this, there is patent, which is the certificate granted to an inventor, and the property rights of a patentee. Another protected right is the utility model (UM or petty patent) which is used to protect and promote innovations that are new and industrially applicable (GoK, 2001, section 82(2)). Some of the utility models (UMs) that have been granted protection and registered in Kenya include detachable concrete structures, smart GPS alarm, virtual currency or requester device, and virtual currency or mobile device (Kenya Industrial Property, 2016).

The other right classified under industrial property is trade secret (TS). This is any confidential business information which provides an enterprise a competitive edge. For it to be protected, it must satisfy three criteria: first, it must be secret in the sense of not being generally known. Second, it must have commercial value because of the confidentiality or secrecy. And third, there must be an obligation to keep the information confidential (Talhiya Sheikh, 2015). Examples in Kenya include the numerous non-disclosure agreements (NDAs), non-compete agreements, and contracts in restraint of trade in the Kenyan and African sole proprietorship, firms, corporations or organizations dealing with education, training and mentoring; lawyering and litigation; manufacturing; or distribution and delivery of various goods and services. An example is the black syrup base of Coca Cola drink.

Moreover, trade mark (TM, SM, or ®) as an industrial property is a bundle of intellectual property (IP) rights granted to distinguish the goods and services of one trade mark owner, enterprise or undertaking from those of the competitors, while the unfair competition (UC) regime of industrial property is applied in act of competition contrary to fair or honest practices in industrial and commercial matters is unfair competition.

For its part, geographical indication (GI) is defined under article 22 of the TRIPs Agreement. Section 2 of the Geographical Indication Bill also defines GI stating that:

‘Geographical Indication’ in relation to goods or services, means a description or presentation used to indicate the geographical origin, in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of goods or services are exclusively or essentially attributable to geographical environment, including natural factors, human factors or both.

This is in relation to situations where indication of source is a significant factor in terms of quality or sentimental value or association generally. For example, Champagne, Chablis and Cognac are French drinks, which derive their names from their geographical origins and relate to certain quality standards (Sihanya, 2016b). Some key examples from Africa include Mzimba woodlands of South Africa known for Marula fruits, penja pepper in Cameroon, Oku honey in Cameroon and Zama-macenta coffee in Guinea. It is notable in this regard that Kenya has a lot of candidates for GI, if only it could enact a law and negotiate these in the international regime. Good examples could include Kisii Soapstone, mnazi (coconut palm, from Coastal Kenya), Kitui honey, Kamba carvings, special tea (such as those from Kericho, Nandi and Limuru) and coffee (from Mt Kenya region and the Aberdares) (Daily Nation, 2008).

Another notable industrial property right is mask work or layout design of integrated circuits. This is defined under the Washington Treaty on Intellectual Property in Respect of Integrated Circuits of 1989 as:

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4 The syrup is not patented but is protected under trade secrets law. See Sabra Charrand (2001) “Patents; many companies will forgo patents in an effort to safeguard their trade secrets,” The New York Times, New York, 5/2/2001

5 See section 5 of the Trade Marks Act; section 21 of the Competition Act, 2010.


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http://uonresearch.org/irs
The three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

A generally accepted definition of plant breeder’s rights (PBR) or Plant Variety Protection (PVP) recognises rights granted to the breeder of a new variety of plant that give the breeder exclusive control over the propagating material. Thus, PBR is exclusive rights over the commercial production and marketing of the reproductive or vegetative propagating material of the protected variety.\(^7\) In Kenya, PBR and PVP are defined under the Seeds and Plant Varieties Act 2012 at section 2 as "rights granted under section 17." For protection to be accorded, the seed or plant must be distinct, uniform and stable (DUS). In Kenya, PBR protection has been extended to products, owned by the Kenya Seed Company,\(^8\) Pioneer Hybrid, Monsanto Kenya, and Simlaw seeds.

The other recognised industrial property is industrial design (ID). This is protected on the basis of the originality of a combination of lines or colours that give rise to the appearance or look and feel of a product; ID includes graphic designs, fashion designs textile designs (GoK, 2001, Section 84) Industrial design can be used to protect shapes, configurations, patterns or ornaments. Other items which may be the subject matter of industrial design include toys, games, and electrical equipment.

The second major doctrine of IP is copyright. Broadly, copyright refers to a set of exclusive rights enjoyed by the author or creator of an original work. These include the right to reproduce (e.g. hand written, photocopy, print, scan, photograph, snapshot, downloads), distribute or adapt the work. Copyright does not protect ideas, only their expression or fixation. In most jurisdictions copyright arises upon fixation and does not need to be registered. Copyright owners have the exclusive constitutional and statutory right to exercise control over copying and other exploitation of the works for a specific period of time, after which the work is said to enter the public domain (Sihanya, 2016a).

Copyright confers two forms of rights: moral rights\(^9\) and economic rights. Moral rights consist of four categories. First, the right to be named. Second, the right to integrity. Third, the freedom from false attribution. And fourth, the right to privacy. Economic rights relate to an author’s or an entrepreneur’s right to secure economic and financial benefits from investing in a work (Sihanya, 2016a).

Innovation has been defined as a new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter, which is not obvious, or any new and useful improvement thereof. It is not obvious, capable of being used or applied in trade or industry and includes an alleged invention (GoK, 2001, Section 2).

There are three components of innovation. First, is the discovery aspect. Second, is creativity. And third, the inventive step (Sihanya, 2006). These three components can be viewed in two different aspects. First, as making an invention or writing of a book. Second, innovation as involving packaging or marketing strategies to exploit creativity or a technology and capture the financial and related benefits from the creativity (Sihanya, 2001).

From the 1950s, the role of innovation and technology in socio-economic development began to be recognised. With it came numerous public policy and governance issues. Article 11 of the

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\(^7\)Significantly, hardly any important IP scholar or lawyer discusses animal breeder’s rights (ABR). They do not account animal breeder’s right. I treat ABR as significant in Kenya and Africa and like plant breeder’s rights (PBRs) belong to industrial property rights.

\(^8\)Some of their products include duma, popo and mbuni for maize seeds; serena and seredo for sorghum seeds; as well as hero and chozi for wheat seeds.

\(^9\)Moral rights were conferred by section 7(3) of Kenya’s Copyright Act 1966 at the end of a section which otherwise dealt more exhaustively with economic rights. Section 32 of the Copyright Act 2001 exclusively addresses the "moral rights of an author."
Constitution of Kenya 2010, among others, now protects and promotes intellectual property and innovation.

Given the contextual meaning of copyright, trade mark, patent, trade secrets and related forms of intellectual property (IP), what is the role of IP and innovation in Kenya’s industrialisation, technology transfer and capital accumulation? IP and innovation are no longer mere intellectual or technical questions. There is therefore the need for analysis of the political economy and equity regarding the interests of individuals, households, corporations, and particularly tribes and regions in Kenya (Sihanya, 2016a).

METHODOLOGY OF INTELLECTUAL PROPERTY, INNOVATION AND TRANSFER OF TECHNOLOGY IN KENYA AND AFRICA

There are no explicit formulae or methodology for IP valuation under the Constitutions, statutes, rules, regulations or national IP policies in Kenya, Uganda, Tanzania, Ghana, South Africa and Nigeria. Public discourse may be a guide to the development of an IP valuation methodology. Two examples may suffice. First, when a good, service or works are dear, many in Kenya and elsewhere often likely to say it costs "an arm and a leg (of a goat?)". Second, when anything is affordable or cheap, they say "it goes for a (copyrightable?) song." Some jurisdictions like the US, Germany, United Kingdom and Japan have developed relevant formulae especially through litigation. The most comprehensive framework is found in patent litigation which now has the following four guidelines in the context of economic damages: lost profits, price erosion, entire market value rule, and reasonable royalty (Perry et al., 2006; Thomas et al., 2006).

In trade mark, some of the evolving formulae relate to the demand approach, and brand profitability (Dublin, 2006). This is closely related to emerging work on the generic approaches to trade mark valuation. In this line, Corbett et al. (2006) have argued thus:

Trademark values are typically valued for one of three purposes: (1) in the context of a licensing transaction or acquisition, including as part of a business acquisition; (2) for regulatory compliance such as in transfer pricing; and (3) in the context of litigation. The economic principles behind the valuation remain essentially the same in each context.

They proceed to discuss the three main approaches in the context of trade mark licensing: the cost approach; the market approach; and the income approach. However, not much work has, however, been done, especially in Kenya, Ghana, Nigeria, South Africa, Uganda, Tanzania, and other African countries on auditing and valuation of copyright and trade secret.

Implicit Formulae on IP Valuation

Nonetheless, implicit formulae are emerging in Kenya, Nigeria, South Africa and other African states regarding the valuation of IP. The three-pronged typology developed by Corbett, Rao and Teece, are noteworthy namely, (1) IP valuation in licensing or business acquisition; (2) IP valuation for regulatory compliance – especially tax compliance; and (3) IP valuation in litigation (Corbett et al., 2006).

10 It costs a lot of money.
11 It is too cheap to be true.
IP Valuation in Licensing

IP valuation is increasingly becoming an important, if somewhat incidental, aspect of licensing, franchising, joint venture or strategic alliance and other forms of transactions involving innovation, creativity, IP or technology transfer in Kenya and Africa generally. Indeed, IP valuation is now playing a role in the transfer, merger or acquisition of business (interests).

Comparatively, the audit and valuation of real estate and personal property is more established than in IP. For instance, there are statutes, clearer guidelines, formulae or methodology and institutions in land valuation. However, IP transactions such as licensing, franchising and joint ventures involve various types of payments (such as royalties). Whereas some of these valuation methods are specific to the relevant transactions, others are generic and thus regulated and analysed on the basis of cost or income analysis, or under a market model-based approach to valuation. But there are challenges involved which include estimating the actual or reasonably attributable costs in terms of the market rate for the relevant form of IP, and most transactions thus far seem to focus on copyright and trade mark.

Remarkably some asset acquisitions have given hints on the value, of the IP, if not necessarily the methodology of computing the values of IP. A case in point is the acquisition of the Kimbo, a cooking fat brand, by Bidco Co. Ltd from Unilever, who had acquired it from East Africa Industries Ltd. The trade mark acquisition helped Bidco to penetrate the Kenyan cooking oil market.

Valuation vis-a-vis Tax-Compliance and Transfer-Pricing through Imports and Exports of IP and Innovation in Kenya

Taxing IP and innovation is becoming popular among tax administrators aiming to enhance revenue collection and to broaden the tax bracket. However, there are some challenges to this. The first is in relation to how to value the various forms of IP (especially copyright, trade mark, patent, trade secret, utility model or industrial design) for purposes of taxation. The other relates to the inadequacy in the legal framework to encompass IP related incomes. While the third relates to the perceived vindictiveness or regulatory and even state capture of the tax administrators by the competitors.

Moreover, how the tax administrator is to address the issue of transactions by related or affiliated companies within Kenya (some of which are outside Kenya) was a major challenge in the immediate post-independence period (especially in the 1960s-1980s). The main challenges have been hidden profits, repatriation of profits, limited re-investment, overpricing (or over invoicing) imports, underpricing (or under invoicing) exports, money laundering, incorporation or investing in tax heavens, and related transfer pricing as well as tax avoidance and evasion schemes. These are still recurrent and into the 2010s.

In principle improvements in the investment climate are supposed to cover the whole range of issues from macroeconomic management, to infrastructure and skills, to the policies and institutions that most closely affect private investors. In practice the investment climate agenda has centred on narrow regulatory reform. Most relate to developments in ICT,
online and mobile technologies or innovations that facilitate disaggregation of business. A major objective is with a view to minimising costs and tax liability, while maximizing profit.

Thus, intellectual property (IP), innovation and technology transfer (ToT) are a fast growing sector yet there are no clear rules on taxing the transactions. There has been disputation between the Kenya Revenue Authority (KRA) and one of its employees, Mr Samson Ngengi Njuguna. Mr Ngengi went to the Kenya High Court in November 2012 seeking orders to bar KRA from procuring or implementing a rental tax mapping and collection system until his efforts in developing a similar system are recognised and he is adequately compensated. The matter was later referred to arbitration (Sihanya, 2016a).

**IP Valuation in Litigation**

Disputes regarding innovation, IP and technology transfer are usually resolved through alternative dispute resolution (ADR) mechanisms or by litigation. In this regard, lawyers, magistrates, judges and even clients or innovators have developed or internalized some principles, rules, formulae and methodologies to address IP valuation. Three are key.

1. **IP valuation for purposes of injunctions** - Injunctions are usually issued on the principle that damages would not be sufficient. Thus, some form of valuation or assessment must be done to determine whether or not an injunction should be issued.

2. **IP valuation for assessing damages** - Damages are usually awarded on the basis of the actual loss suffered by the claimant. In the case of IP, damages would be issued to compensate the owner for the actual loss suffered due to the infringement. The damages may also be integrated to get the innovator or IP owner to where they would have been financially or economically had the infringement not occurred. Damages may also be awarded in some cases as a punitive measure to deter the infringement or prospective infringement of an IP right.

3. **IP valuation in the account of profits** - In an action for account of profits, the infringer is required to give a statement of the income received and costs incurred. In this case reasonable profits from the relevant IP are computed and turned over to the IP owner or plaintiff.

There are arguments and perceptions that accounting for profits may be a higher than compensatory damages partly because IP infringement has greater focus or expertise on commercializing the IP or innovation.

**INTER-MULTI-TRANSDISCIPLINARY RESEARCH METHODOLOGY ON INTELLECTUAL PROPERTY, INNOVATION AND TRANSFER OF TECHNOLOGY**

Interdisciplinary research is the study or research that draws from two or more disciplines in order to gain a more or well developed perspective regarding a certain topic or field. It has been defined as "the product of a set of social forces of normalization and education, reward and

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20 Chief Executive of the New Zealand Customs Service v. Nike New Zealand Limited, Civil Application Number 124 of 2002 (New Zealand, unreported).


punishment, through which the academic’s head gets constructed, and the academic becomes the kind of academic that he or she is.’ (Balkin, 1996).

IP is an interdisciplinary field as it covers all sectors of the economy including the legal, business, medical, agricultural, industrial, and education fields. Moreover, the arts, humanities and social sciences are sites of innovation or creativity as well as contributors to the analysis, debates, prescription, and reform of innovation policies. There are important interdisciplinary contributions in literature, sociology, anthropology, cultural studies, political science, history and economics.

It is impossible to think of intellectual property rights in isolation from the outputs of innovation and creativity. IP legislation embodies the outcome of political debate between cultural, industrial and commercial interests and IP specialists. Intellectual property litigation locates IP law at the cutting edge of science, technology, and the arts. Intellectual property rights pervade global social and economic life. International governments’ technology transfer and enterprise agendas show they consider interdisciplinary IP education and research to be vital for continued economic growth.

Various authors observe and reflect upon the impact of intellectual property law and policy for society and culture more broadly. No longer an arcane and technical area of the law best left to legal specialists, intellectual property law has evolved into a site of contention over what it means to think, to create, and to participate in culture and in society.

**ROLE OF CAPITAL FORMATION AND ACCUMULATION FROM INNOVATION IN KENYA**

Capital formation and capital accumulation includes assets that are deployed or invested in trade or commerce, manufacturing, and service delivery. Significantly, the world is becoming a technological hub and that income gains are driven by accumulation of capital rather than pioneering of inventions (alone) (Mankiw et al., 1992). Therefore capital formation and accumulation is a crucial aspect to the improvement of our Kenyan economy.

Innovations can be used to promote and improve local and foreign investments and also Kenya’s growth. Calestous Juma and Lee Yee-Cheong highlighted the important role that innovation and innovation policy plays in development (Juma and Yee-Cheong, 2005). The Government both at national and county level should encourage capital accumulation and growth by developing policies that adhere to a common set of principles such as competitive pressures, free flow of information, trade in ideas and technologies, and a focus on shifting norms and culture. By doing so, they will be creating a favourable environment for inventors and innovators to practice their craft. A conducive business environment facilitates capital accumulation and innovation. In order to create a conducive business environment there is need for the establishment of growth enhancing governance innovations laws and policies.

Over a long period of time large firms that are well financed by investors have had a competitive edge over micro small and medium enterprises (MSMEs) firms and solo inventors and innovators. However, MSMEs have become more engaged in the commercialization and development of innovations. They play a key role when it comes to capital formation and accumulation from innovations and inventions (European Patent Office, 2017). They develop and commercialize innovations, they adopt innovations developed by other organizations, and they provide ideas and inputs to ideas generation that are exploited by large firms, universities and research organizations and other small firms.

The Kenya Government’s 2016 report on Micro, Small and Medium Enterprises (MSMEs) Survey indicated that close to 400 thousand MSMEs did not last up to the second year in the previous five years. This raises concern over sustainability in this critical area. The report further indicated that close to 2.2 million MSMEs had closed in the previous five years, 2016 inclusive.
The report further found that a significant 46 per cent of the MSMEs surveyed died in their first year of establishment. The 2016 National MSME Survey sought to provide comprehensive data, at national and county levels, on the characteristics, operations, dynamics and evolving nature of micro, small, and medium-scale enterprises in Kenya (KNBS, 2016).

Kenya has made some steps in developing a comprehensive innovation policy that allows for an even playing ground for large firms and MSMEs in innovation and inventions. However, there is a lot of room for improvement, especially in terms of implementation. For example, the relationship between research institutions and industry has remained disjointed (Ndemo, 2015). There is also the need to protect and promote small or sole inventors and innovators from having their works stolen by large firms or already established corporations who have the financial muscle.

One of the major reasons why majority of small or sole start up inventors and innovators fail in Kenya is because they seek investments or grants too early so that they can be able to finance their operations. They then end up giving a large percentage of their businesses to investors who finance them who end up taking control of the businesses.

The national IP regime and policy should be modeled to provide for the protection of these small or sole inventors and innovators by having their works legally owned and protected. However, the SMEs and sole inventors have faced numerous challenges including the lack of financial power to advance their research on these inventions and innovations. The big or already established firms take advantage of such challenges by offering to pay small inventors and innovators an insignificant fee while they themselves gain the rights to these innovations developing them further and making huge profits (McGuirk et al., 2015).

**ROLE OF UNIVERSITIES AND RESEARCH INSTITUTIONS IN CAPITAL FORMATION AND ACCUMULATION FROM INNOVATION IN KENYA**

Universities historically focused on teaching and academic research. New universities merely copied the programmes, curricula and syllabi of their predecessors. Thus many Kenyan universities have merely copied the University of Nairobi (UoN), the oldest and largest in Kenya. Some had a lot of promise and had the opportunity to focus on niche fields for example: Moi University (ICT and technology or information technology generally), Kenyatta University (education, literature and cultural studies), Egerton University (agriculture), Jomo Kenyatta University of Agriculture and Technology (JKUAT) (agriculture and technology), and Strathmore University (accounting and business; ICT).

Some universities are now engaged in commercializing the research findings. Some Kenyan public and private universities play a leading role in advancing the frontiers of science, technology, innovation and cultural creativity. There is a need to establish and strengthen innovation, transfer of technology and structures for IP administration in Kenyan universities to coordinate the development, commercialization and dissemination of innovation within academia, industry and public spaces (Sihanya, 2016a).

Universities play a major role in research and development (R&D). Their role and mandate in national development is increasingly becoming important. The primary and traditional role of universities was to transmit skills, knowledge, attitude, values and innovation (SKAVI) especially through education, training, research, innovation and mentoring (ETRIM). Over the years, the importance of research and dissemination of research findings or outreach in the Kenyan and African society has been underscored. Through research, and the research results or findings, universities are expected to contribute to the improvement of the quality of life and to social and technological change.

The University of Nairobi has embarked on a business incubation project and related projects with the National Government agencies and private corporations as well as state departments
to help in the development, dissemination and utilization of science, technology and innovation (STI). There are concerns regarding application, commercialization and efficient utilization of STI that has been or is being developed. There are also concerns that innovations and creativity in the arts, humanities and social sciences should be encouraged and nurtured. These should get appropriate support even as the relevant agencies also improve support for patentable technologies, inventions and innovations.

In the medium to long term, this calls for institutional (re)design in at least three ways. First, universities should enhance practical and income orientation in their programmes. They should enrich or move beyond the privately sponsored Module II or direct paying student model that began in the late 1990s. While this model has provided opportunity to thousands of students and earned universities a lot of money, it has weaknesses. These include focus on teaching or training using already generated knowledge, some of which is dated. My argument is that all students who qualify for university or college education and training should be given adequate concessionary and long term loans. They should pursue degrees or diploma and even doctoral programmes. And university staff should be compensated and remunerated appropriately including in terms of salaries, allowances and research grants, rather than the basis of participation in module II where the payment to staff has always delayed, declined and even collapsed in most universities anyway.

There is also general complacency among some university managers whereby teaching or training units focus mere clerical and accounting work involving collecting student fees rather than pro-active research and development activities such as cutting edge research or job focused post graduate training based on a needs assessing of the academy, the national and county government, industries and civil society organizations.

Second, some scholars like the Kenya School of Government’s Prof Calestous Juma has suggested that the relevant Government Ministries, Departments, and Agencies (MDAs) be converted into universities (Juma, 2016). The third model is probably more focused centres and institutes.

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS OF IP AUDIT, VALUATION, COMMERCIALIZATION, SECURITISATION AND TAXATION IN KENYA AND AFRICA

The main objective of this article was to analyse the status and trends in IP valuation in Kenya and relevant African countries. The overarching argument was that the scholarship and practice in business and law in Kenya needs to focus needs to focus in intellectual property audit, valuation, commercialization, securitisation and taxation. Much have been done to ensure the audit, valuation, commercialization, securitization and taxation of IP and innovation in Kenya and generally in Africa.

My overarching argument in this article is that the various statutes and regulations that govern IP, Kenya lack the legal, institutional and structural mechanisms to equitably and efficiently implement the audit, valuation, commercialisation, securitisation and taxation of IP and innovation. There is need for the National Government to work with the 47 County Governments, the Kenya Industrial Property Institute (KIPI), Kenya Copyright Board (KECOBO), Kenya Plant Health

23A challenge is that universities develop appropriate programs with the relevant agencies of the National Government and the relevant 47 County Governments.

24There is a running debate in which some government officials express preference for STI in comparison to the arts, humanities and social sciences. Deputy President William Ruto expressed such sentiments while serving as Minister for Higher Education in the Grand Coalition Government. He has not retracted. Cf. BA. Ogot (2009) "Rereading the history and historiography of epistemic domination and resistance in Africa," 52.01 African Studies Review 1-22.
Inspectorate Service (KEPHIS), Kenya Revenue Authority (KRA), Kenya Bureau of Standards (KEBS), Anti-Counterfeit Agency (ACA) and the Industrial Property Tribunal.

There is need to restructure and operationalise institutions that have been proposed before, such as a Kenya Copyright Tribunal in place of the Competent Authority. There is also need to harmonize and coordinate the work of the numerous stakeholders in the academy, industry, informal sector and civil society organisation.

Second, the Government, the private sector as well as educational institutions have not invested much in developing and promoting research and development. Third, the taxation of IP, innovation and transfer of technology transactions are of great interest to most governments only for the purpose of broadening the tax base and increasing tax income. This is done without similar level of investment on IP and innovation with regards to audit, valuation and commercialization and securitization.

Valuation, commercialization and application of IP and innovation should therefore be addressed at national level within the various disciplines including the legal, business, medical, agricultural, industrial, and education field. This will help achieve sustainable development goals (SGDs) and Vision 2030 which recognize and emphasize on the role of research and development (R&D), science and technology and innovation in improving the economy and human development.

Reform requires serious consideration of at least three important phenomena. First, establishing and reviewing the extant situation regarding IP audit assignments, valuation, and commercialization. Second, introducing or establishing new norms, institutions, administrative procedures or structural relations where none existed to effectively secure IP audit, valuation, commercialization and taxation. This includes multi, trans and inter-disciplinarity in skilling, re-skilling and multi skilling. And third, strengthening extant progressive phenomena in intellectual property and innovation audit, valuation and commercialisation in Kenya.

There is urgent need for at least five reforms in audit, valuation, commercialisation, securitisation and taxation in Kenya. First, the review of constitutional provisions on constitutionalising IP protection, promotion and administration in a view to enact appropriate legislation, registration and policies to implement and enforce IP audit. Second, clarification and elaboration of administrative rules, regulations and procedures to promote IP audit, valuation, securitization and commercialisation of the respective intellectual property (IP) doctrine.

Third, establishment or strengthening of innovation, intellectual property (IP) and transfer of technology (ToT) administration systems to verify and ensure that commercialisation and securitization of IP. Fourth, review of the juridical and regulatory framework with emphasis on administrative or procedural aspects of IP auditing and securitisation and commercialization of IP. And fifth, review of the architecture or infrastructure of IP valuation and audit, including commercialisation and securitisation.

These proposed reforms are not exhaustive but just the starting point of what should be done in terms of research and implementation in Kenya in order to ensure that there is equity and appropriate or adequate promotion and protection of intellectual property audit, valuation, commercialisation, securitisation and taxation in Kenya.

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