



Republic of Zambia

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

NATIONAL INTELLECTUAL PROPERTY POLICY

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FOREWORD

Intellectual Property is steadily being recognised as a tool for promoting socio-economic development of nations. Development of nations is gradually becoming dependant on creations of the human mind and the application of such knowledge and ideas as intellectual capital in various areas of development which has significantly contributed to the creation of wealth in these nations. Industrialised countries have effectively utilised Intellectual Property as a tool for social and economic development while developing countries including Zambia have continued to lag behind in this area. The Ministry of Commerce Trade and Industry (MCTI), through the Patents and Companies Registration Office (PACRO), has formulated a National Intellectual Property Policy. This policy is aimed at encouraging inventors, innovators and creators to work diligently knowing well that their works will not only give them benefits in form of recognition and royalties but also contribute to national development. The economic development of Zambia will therefore rest on her ability to provide effective legal protection to Intellectual Property and knowledge generated by human intellectual activity and reward inventors, innovators and creators for their efforts.

The Policy will provide guidance on all matters related to Intellectual Property in Zambia and achieve set objectives which include the need to encourage the use and development of appropriate Intellectual Property protection systems, facilitate reform of local legislation and domestication of relevant international agreements that relate to Intellectual Property. It will also encourage research and development and collaboration between research institutions and industry and provide support and guidance from the point of developing and conceptualizing ideas to production and commercialization of goods and services.

The formulation of a National Intellectual Property Policy was necessitated by the observation that over the years, there has been no Policy in Zambia leading to a major constraint in the appreciation of the importance of the role Intellectual Property plays in the sustainable socio-economic, cultural and industrial development of Zambia. Once functional, the policy will facilitate the revision of Intellectual Property laws in order to make them relevant to issues of protection and management of Intellectual Property benefits, provide a favourable investment climate for both local and foreign companies, encourage innovation and creativity for purposes of boosting social, cultural, industrial and economic development, ensure adequate and appropriate protection, recognition and respect and enforcement of IPRs. This policy will also facilitate the formulation of institutional Intellectual Property policies and provide guidelines for their implementation. Indeed, I am greatly honoured and privileged to present the National Intellectual Property Policy as a critical step towards deriving benefits from National Intellectual Property for the economic development of Zambia.

I am certain that this policy will provide good guidance to government and other stakeholders on how to deal with all Intellectual Property related matters, nationally, regionally and internationally.

Hon. Felix Mutati MP.
MINISTER OF COMMERCE, TRADE AND INDUSTRY.

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My Ministry is indebted to the multi-sectoral National Intellectual Property Working Group under the auspices of the Patents and Companies Registration office (PACRO) which worked tirelessly to collate data and develop the policy document in consultation with numerous stakeholders.

My Ministry is also indebted to various government departments and ministries as well as stakeholders from the academia, private sector and civil society for participating in the consultative process leading to the formulation of this policy.

Further, I extend gratitude to all individuals that participated in drafting this document. Gratitude is further extended to all who participated in their individual capacity in the drafting of this document.

Also, I am grateful to the World Intellectual Property Organization (WIPO) in Geneva for providing unflinching support to this process; through providing relevant information which added value to preparation of the whole policy document.

Compliments would not be complete without mentioning the invaluable contribution made by the Zimbabwe-based African Regional Intellectual Property Office (ARIPO) in the development of this policy.

Finally, I wish to thank the office of the Registrar of the Patents and Companies Registration Office (PACRO) for taking a leading role in the development of this policy.

Dr. James Mulungushi.
Permanent Secretary,
MINISTRY OF COMMERCE, TRADE AND INDUSTRY.

WORKING DEFINITIONS

Acts of Unfair Competition

Means anti-competitive acts or torts that cause economic injury to a business through deceptive or wrongful business practice.

Appellation of Origin

Means the geographical name of a country, region or specific place which serves to designate a product originating therefrom by virtue of the characteristic qualities of that product due exclusively or essentially to the geographical environment, including natural or human factors or both natural and human factors.

Assignment

Means the sale and transfer of ownership in IPRs and other tangible and intangible assets to an Assignee by the Assignor.

Copyright and Related Rights

Means a legal term describing rights given to creators for their literary and artistic works.

Commercial Rights

Means rights of copyright holders that prohibit third parties from exploiting copyrighted works without the express permission right holders.

Domain Names

Means easy-to-remember names used to access sites on the World Wide Web (Internet).

Domestication of Treaties

Means enactment of an enabling statute to operationalise the treaty within a state.

E-commerce

Means the selling and buying of both tangible and intangible goods and services using electronic means. This is mostly done via the Internet or using electronic card machines.

Expressions of Folklore

Means productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community.

Geographical Indications (GI)

Means a name or symbol which indicates a certain geographical origin of a given product which corresponds to a specific geographical location of origin.

Genetic Resources

Means any material of plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.

Industrial Property

Means patents, trademarks, industrial designs, trade secrets, geographical indications and other components of intellectual property other than copyright and related rights.

Integrated Circuit

Means a product in its final form or intermediate form, in which the elements, at least one of which is an active element, and some or all of the inter-connections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

Intellectual Property

Means creations of the human mind such as copyright and industrial property.

Know-How

Means any confidential or non-confidential information and includes expertise or knowledge of how to perform a useful function in a proven and efficient way.

Lay out-design Topography

Means 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.

Licensing

Means permission granted to practice all or part of a proprietary rights granted by the licensor to the licensee.

Literary and Artistic Works

Means 'works' which include every production in the literary, scientific and artistic domain.

Moral Rights

Means rights of copyright holders that prohibit third parties from misrepresenting or discrediting right holders.

Patent

Means an exclusive right granted by the state to an inventor or other person deriving their Rights from the invention for a fixed period of time in exchange for the regulated public disclosure of all details of the invention.

Patentee

Means a person to whom a patent is granted.

Patent Protection

Means an exclusive statutory right granted to an inventor, and any other person deriving their rights from the invention for a fixed period.

Plant Breeders Rights

Means an exclusive right granted to plant breeders as an incentive for investing in breeding new plant species.

Plant Variety

Means a plant grouping within a single taxon of the lowest known rank which is identified by the expression of the characteristics resulting from a given genotype or combination of genotypes distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged.

Prior Informed Consent

Means a legal condition whereby a person can be said to have consented based upon an appreciation and understanding of the facts and their implications.

Public Domain

Means information, knowledge and technology that is available and free to be used by any person.

Registered Design

Means the ornamental or aesthetic aspect of an article; the visual design of objects that make an article attractive and appealing.

Reservation

Means a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State.

Reverse Engineering

Means the process of discovering the technological principals of a device or object or system or substance through an adductive analysis of its structure, function and operation.

Royalty

Means the payment made by a licensee to a licensor under a license or sale agreement of IPRs.

Trade Mark

Means a mark, sign or symbol used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark.

Trade Secrets

Means confidential, scientific, technical, business, commercial and financial information, or data used in research, business, commerce or industry not publicly known.

Transfer of Technology

Means the moving of technology from a licensor to a licensee. Teaching and illustration in formal or informal training can also constitute transfer of technology.

TRIPS

Means the Agreement on Trade Related Aspects of Intellectual Property Rights.

Utility Models

Means an invention which does not meet all the requirements for patentability in order to obtain patent protection in that it does not involve an inventive step or is not novel but has an industrial use. A utility model is also known as a petty patent.

ACRONYMS

ABS	Access and Benefit Sharing
ARIPO	African Regional Intellectual Property Organization
CBD	Convention on Biological Diversity
COMESA	Common Market for Eastern and Southern Africa
CMO	Collective Management Organization
CSO	Central Statistics Office
FDI	Foreign Direct Investment
FNDP	Fifth National Development Plan
GI	Geographical Indication
GATT	General Agreement on Tariffs and Trade
GRZ	Government of the Republic of Zambia
ICT	Information and Communications Technologies
IP	Intellectual Property
IPRs	Intellectual Property Rights
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LDC	Least Developed Country
MCTI	Ministry of Commerce, Trade and Industry
MIBS	Ministry of Information and Broadcasting Services
MSME	Medium, Small and Micro Enterprises
NISIR	National Institute for Scientific and Industrial Research
NSTC	National Science and Technology Council
NTBC	National Technology Business Centre
PACRO	Patents and Companies Registration Office
PCT	Patent Cooperation Treaty
R & D	Research & Development
STDF	Science and Technology Development Fund
TCEs	Traditional and Cultural Expressions
TK	Traditional Knowledge
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNZA	University of Zambia

UPOV	International Convention for the Protection of New Varieties of Plants
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Producers and Phonograms Treaty
WSIS	World Summit on Information Society
WTO	World Trade Organization
YIF	Youth Innovation Fund
ZAMCOPS	Zambia Music Copyright Protection Society
ZCC	Zambia Competition Commission
ZRRS	Zambia Reprographic Rights Society

CHAPTER ONE

1.00 INTRODUCTION

As a country, Zambia has not utilized the full potential of Intellectual Property as a tool for social and economic development although intellectual property legislation has been in existence dating back to the pre-independence days. This is so because, despite there being many stakeholders in the Intellectual Property field, a significant number of them are not aware of their role in intellectual property development and utilization. Examples of these are the actors in the informal sector, viz, the Medium, Small-to-Micro scale Enterprises (MSMEs), and in the formal sector, the business community, universities and Research and Development institutions which are the main creators of Intellectual Property. Other stakeholders are in Copyright and Related Rights namely musicians, producers, distribution agents, broadcasters and broadcasting institutions.

In addition, Zambia has an abundance of Genetic Resources, Folklore and Traditional Knowledge whose intellectual property rights can significantly contribute to the social and economic development of the country if properly and effectively harnessed.

The formulation of this policy is therefore aimed at encouraging inventors, innovators and creators to work hard so as to reap the benefits of intellectual property rights for example through payment of royalties. The ethical basis of this policy, in principle, with regard to appropriate Intellectual Property protection is to promote policy objectives that are consistent with widely accepted ethical norms and values. In this regard the policy will endeavour to reflect and promote an inherent entitlement for reward and recognition for one's intellectual and creative contributions on one hand while on the other, promote a strong utilitarian flavor to Intellectual Property law and policy, as a conscious tool to promote social welfare.

The TRIPS Agreement provides that the protection and enforcement of Intellectual Property Rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

This policy will, therefore, endeavour to optimize the economic value of IP and integrate it in national development programmes in line with the Fifth National Development Plan and the Vision 2030.

1.10 BACKGROUND

The development of any country to a large extent depends on human intellect and what it can create or produce through the use of knowledge as a commodity and capital. Developed nations largely owe their success to a diversity of innovations and inventions, which made mankind progress from the days of the Wright brothers with their test flights to modern day supersonic jets, from the hourglass to deep sea and space chronometers. Probably the best invention for mankind is the wheel. Since its invention, the wheel has been utilized in almost any apparatus one can think of. It has made life easier in more ways than what the inventor could have imagined. Copyright has contributed greatly to the social, economic and cultural development in society in a similar way.

Because of the value which has been recognized in the creation and use of intellectual property for economic development, Zambia has taken strides to develop the Zambian Intellectual Property regime. This has been evidenced by the existing legislation on intellectual property, such as copyrights, patents, trademarks and industrial designs, dating back to the pre-independence era. However, the above legislation has not been effectively applied for successful exploitation of IPRs for national development and economic prosperity. After independence, Zambia joined forces with other countries globally in the creation, acquisition, and protection of intellectual property. Since then, apart from being a member of the World Intellectual Property Organization (WIPO), Zambia has also become a member of the African Regional Intellectual Property Office (ARIPO) based in Harare, Zimbabwe.

Despite a number of national and international developments in the field of Intellectual Property, through the Berne Convention, Harare Protocol, Paris Convention, Rome Convention, and the TRIPs Agreement, Zambia has had no policy to guide the use and exploitation of Intellectual Property. Although the number of patents, trademarks and industrial designs registered under PACRO has increased enormously in the recent past, there has not been a matched growth in intellectual property legislative reform. For instance, the Patents, Trademarks and Registered Industrial Designs Acts have remained unchanged since independence despite the dynamic nature of Intellectual Property.

1.20 INTELLECTUAL PROPERTY AWARENESS

Another important challenge with regard to Intellectual Property protection in Zambia is low levels of awareness among industrialists, business houses, researchers, scientists, artists, technocrats, policy makers and the general public. Intellectual Property awareness is divided into the following three broad categories:

- Those who are aware of Intellectual Property but not able to use it;

- Those who are aware of Intellectual Property and able to use it; and
- Those not aware of the potential and benefits of Intellectual Property.

This policy therefore envisages a situation where issues concerning Intellectual Property awareness will be addressed by a vigorous and deliberate campaign of outreach programmes and education covering the existing social and education strata in the country.

1.30 SITUATION ANALYSIS

The issue of Intellectual Property is growing in importance, especially in the industrialised countries, while least developed countries like Zambia continue to lag behind in the use and application of Intellectual Property to foster sustainable socio-economic, cultural and industrial development. Various stakeholders, inter alia, Research and Development Institutions, Industry and government have however, recognised Intellectual Property as a tool for cultural and economic development and industrial progress in Zambia.

Though there has been obvious evidence of Intellectual Property activities in Zambia, there are few formal records of the Intellectual Property situation in the country, other than the data kept by PACRO in Zambia and Copyright Registrar under the Ministry of Information and Broadcasting Services.

It is also widely acknowledged that Intellectual Property plays a vital role in sustainable development of Zambia as there has been evidence of the use of Intellectual Property by the enactment of legislation on intellectual property, namely patents, trademarks and registered industrial designs, and copyright dating back to the pre-independence era.

1.31 Intellectual Property Rights (IPRS) Protection

Intellectual Property Rights protection in Zambia currently extends to patents, trademarks, industrial designs, and copyright and related rights. The following pieces of legislation under the Zambian laws offer Intellectual Property Rights protection to these Intellectual Property assets in the country.

(i) Patents Act Cap 400 of the Laws of Zambia

The Patents Act Cap 400 provides for Patent protection in Zambia. Under this law, the protection lasts sixteen years. In the TRIPS Agreement, protection is for twenty years. Zambia, being a Least Developed Country (LDC), will be required to conform to all TRIPS obligations by 2013 for subject matter relating to patents in general and 2016 for public health matters.

International patent protection is provided for by virtue of Zambia acceding to international treaties such as the Paris Convention, the TRIPS Agreement, the Harare Protocol and procedural guidelines under the Patent Cooperation Treaty which provides a mechanism for international application for patent protection.

(ii) Trademarks Act Cap 401 of the Laws of Zambia

Under the Zambian law, the Trademark Act Cap 401 protects trademarks only for goods. The Act does not provide for the protection of service marks and other types of traditional and acceptable non-traditional marks. In Zambia, protection is initially for a period of seven (7) years, and then thereafter renewal may be effected every 14 years for an indefinite period. Internationally, the Madrid Protocol provides protection for a minimum period of ten (10) years.

(iii) Registered Industrial Designs Act Chapter 402 of the Laws of Zambia

The Registered Industrial Designs Act Chapter 402 provides for intellectual property rights that protect the visual design of objects or models that are not purely utilitarian and without taking into account the technical features. The registration of a design under Zambian law gives to the registered proprietor copyright protection in the registered design for a period of five years from the date of registration after which it can be renewed for another two five year periods.

(iv) Copyright and Related Performances Rights Act Chapter 407 of the Laws of Zambia.

Copyright and performance rights are protected under cap 407 Copyright law only covers the particular form or manner in which ideas or information has been manifested or expressed. A copyright automatically exists upon authorship of works that are fixed in some permanent form such as books, paintings, drawings, performance recordings, and computer programs. Copyright protection lasts 50 years plus the life of the author.

(v) Competition and Fair Trading Act Chapter 417 of the Laws of Zambia

The Competition and Fair Trading Act Chapter 417 encourages competition in the economy by prohibiting anti-competitive trade practices and regulates monopolies and concentrations of economic power while at the same time aims at protecting consumer's welfare. The Act also aims at strengthening the efficiency of production and distribution of goods and services. It also secures the best possible conditions for the freedom of trade and aims to expand the base of entrepreneurship.

(vi) *Plant Breeders Rights Act No 18 of 2007.*

The Plant Breeders Rights Act No 18 of 2007 provides for plant breeder's rights and the registration of plant varieties. The Act provides for the registration of plant varieties; promotes and encourages the development of new plant varieties and protects the rights of plant breeders with respect to varieties of plants. The Act also administers the documentation and the characterisation of varieties and maintains the catalogues of registered varieties of plants, seeds and germplasm amongst other things.

1.32 Intellectual Property Administration in Zambia

Intellectual Property administration in Zambia is handled by two different government institutions. Industrial Property is administered under the MCTI and by PACRO, a quasi government body. PACRO provides of a legal system for the registration and protection of commercial and industrial property rights and, through this, provides a legal and public depository of this information tendered for these registrations.

Copyright is under the Ministry of Information and Broadcasting Services (MIBS) and is administered by the office of the Registrar of Copyrights. The functions of the office of the Registrar of Copyrights include provision of legal copyright protection in literary, musical and artistic works, computer programs, audiovisual works, sound recordings, broadcasts and cable programs and to make provision for legal rights in performances.

There are other formal arrangements under the Ministry of Agriculture and Cooperatives, Ministry of Health, Ministry of Education and other relevant Ministries which need to be harmonized to ensure effective coordination and maximum exploitation of IP in addition to avoiding omissions in the system of managing IP in Zambia.

1.32 International Agreements

Zambia is party to some international Agreements that govern the protection and administration of Intellectual Property Rights and has facilitated the domestication of some of these agreements to promote firstly, Intellectual Property, respect, recognition, protection and enforcement and secondly, international trade. In this regard, Zambia is party to the following International Agreements:

- a. Paris Convention for the Protection of Industrial Property (1883).
- b. Berne Convention for the Protection of Literary and Artistic Works (1886).
- c. WIPO Convention (1967).
- d. Patent Cooperation Treaty (1978).
- e. Madrid Protocol relating to the Madrid Agreement concerning the Registration of Marks (1989).

Zambia is also in the process of acceding to the following Treaties:

- i. The Singapore Trademark Law Treaty.
- ii. International Convention for the Protection of Varieties of Plants (UPOV).
- iii. WIPO Copyright Treaty (WCT).
- iv. WIPO Phonograph and Performers Treaty (WPPT).

1.40 RELATED NATIONAL POLICIES

The following national policies have direct or indirect linkages with intellectual property;

(i) Agriculture Policy

The National Agricultural Policy was adopted in 2004. One of the key objectives of the Policy for the period 2005-2015 is to ensure national and household food security through, *inter alia*, dependable and efficient annual production of adequate food crops. One of the sectoral strategies expected to contribute to achieving this objective is the development and promotion of appropriate technologies through the development and promotion of crop varieties and other agricultural technologies.

(ii) Biotechnology Policy

The National Biotechnology and Biosafety Policy was adopted in 2003. It provides guidance on the judicious use and regulation of modern biotechnology for sustainable socio-economic development of Zambia. The objective of the policy is to support the development of research and industrial capacity to safely apply biotechnology techniques for the enhancement of Zambia's socio economic and environmental wellbeing. One of the policy's guiding principles is the recognition of rights of innovators over genetic resources and technologies. The IP policy takes cognizance of this and aims to protect Intellectual Property Rights in biotechnology.

(iii) Commerce Trade and Industry Policy

The Commercial, Trade and Industrial Policy, which was adopted in 1996, prioritizes the development of an enabling economic environment. The key objectives of this policy are to

facilitate the generation and acquisition of new technologies to support value-adding, industrial processes and assist to increase levels of efficiency, production and competitiveness by domestic firms to withstand increasing competition in domestic and international markets.

(iv) Education Policy

The National Policy on Education was adopted in 1996. The Ministry of Education's mission statement as outlined in this policy is to guide the provision of education for all Zambians in order to pursue knowledge and skills; manifest excellence in performance and moral uprightness; defend democratic ideals and accept and value other persons on the basis of their personal worth and dignity, irrespective of gender, religion, ethnic, origin and any other discriminatory characteristic. Intellectual property plays a vital role in education since it is in schools and other higher learning institutions that creative minds begin to work. In Zambia, students at various levels of education, discover new innovations for solving problems. In this way, they are exposed to science, literary and artistic work, music, and commerce, all of which can be protected by intellectual property systems. At present, intellectual property does not form part of the primary and secondary school or tertiary education curriculum in Zambia. It is only offered in the School of Law at the University of Zambia. The benefits of intellectual property protection are therefore not fully being understood. It is therefore, important to include intellectual property courses or modules in the national school curricula, at primary, secondary, and tertiary levels.

(v) Energy Policy

The National Energy Policy of 2007 is Zambia's working document on energy issues. The Policy's overall objective is to ensure the adequate generation, acquisition and supply of energy from various sources, which are dependable at the lowest economic, financial, social and environmental cost, consistent with national development goals. The policy alludes to the fact that in the wake of the rising cost of energy, research in new technologies of energy production is essential. Research and Development institutions should therefore carry out research in alternative energy technologies such as wind, solar, and mini-hydro power generation to reduce the cost of energy. Biofuel energy technologies should also be explored with a view to alleviating the shortage of energy in the country. The IP policy will facilitate the protection of these energy technologies.

(vi) Environment Policy

The National Policy on Environment of 2007 seeks to provide a basis for developing mechanisms for guiding the overall management of the country's environment and its resources. In achieving this, the policy will also endeavour to provide a means for the conservation of biodiversity while ensuring equitable sharing of benefits. The policy will also promote environmental protection and pollution control through supporting the adoption of environmentally friendly technologies.

(vii) Forest Policy

The National Forestry policy was adopted in 1998. Its main objective is to manage the nation's natural forest resources in a sustainable manner to maximize benefits to the nation. One of the key objectives of the policy is to promote use and dissemination of indigenous knowledge on medicinal and other properties of Zambia's indigenous forest resources while promoting equitable sharing of benefits. The policy specially aims to assist the forest dependent communities retain their ecological integrity. The IP policy will aim to facilitate the achievement of these goals through conservation of traditional knowledge and genetic resources using Intellectual Property Rights (IPRs).

(viii) Health Research Policy

The National Health Research policy is still in draft form. Its objectives are to coordinate and monitor research activities in the health sector. This policy prioritises the need for generating evidence based information for the development of the national health sector. The potential of Intellectual Property in contributing to the efficient and effective performance of the health sector is very high especially in the area of innovations arising out of health research activities in the country. The policy also seeks to increase R&D in medical solutions for medical problems with a view to increasing effective access to medicines for Zambians by enhancing the capacity of local manufacturing and pharmaceutical companies.

(ix) Information and Communications Technology (ICT) Policy

The National ICT Policy was adopted in 2005. Its objective is to transform Zambia into an information and knowledge-based society and economy supported by consistent development of, and pervasive access to ICTs by all citizens by 2030. The policy has embraced Information and Communication Technology as an enabler of social and economic development. It is anticipated that, with the IP policy in place, various ICT based innovations and inventions which require appropriate IP protection will be developed. The IP policy will therefore, provide a basis for application and use of Intellectual Property in the emerging ICT industry in the country.

(x) Mining Policy

The National Mining Policy was adopted in 1996. Its main objective is to facilitate the empowerment of Zambians to become owners/shareholders in the mining industry while promoting the application of Research and Development (R&D) in the mining sector. The IP Policy will seek to facilitate the adoption and application of mining technologies which will promote local entrepreneurship to increase employment for Zambians.

(xi) Science and Technology Policy

The National Science and Technology Policy was adopted in 1995. The Mission the Policy is to promote and exploit science and technology as an instrument for developing an environmentally friendly indigenous technological capacity for socio-economic development in order to improve the quality of life in Zambia. The science and technology system in Zambia as stipulated in the policy is intended to serve an individual's socio and economic well-being and to enhance the utilization of the abundant natural resources at the country's disposal. The IP policy will facilitate the protection of technological innovations, inventions and copyrights and related rights.

(xii) Youth Policy

The National Youth Policy was adopted in 2005. Its overall objective is to provide integrated and comprehensive development of youths' potential and adequately prepare them for self supporting and responsible adults. The Policy endeavours to achieve this by enabling the youth participate in initiatives of entrepreneurship, small business management and innovation. The IP policy aims to promote these initiatives.

1.50 THEMATIC ISSUES

(i) Ethical issues

Ethical norms serve the aims or goals of research and apply to people, who conduct scientific research or other scholarly or creative activities.

(ii) Millennium Development Goals (MDGs)

The eight Millennium Development Goals (MDGs) that were adopted by 189 nations and signed by 147 heads of state and governments during the United Nations Millennium Summit in September 2000 form a blueprint agreed to by all the world's countries and the leading development institutions for the development of all nations. They will be taken into consideration during the implementation of this Intellectual Property policy. The MDGs are to be achieved by 2015 in response to the world's main development challenges.

The eight MDGs which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education will form the guiding principles of this policy. They have galvanized unprecedented efforts to meet the needs of the world's poorest. Intellectual Property can be used as a tool to alleviate poverty, promote education for all, and enable all to have access to ITCs and a better standard of living in order to achieve the MDGs.

(iii) Fifth National Development Plan (2006 – 2010)

The Fifth National Development Plan (FNDP) is the blueprint of the government's priorities that will be implemented between 2006 and 2010. This is part of the long term programme in which a number of activities will be undertaken under five-year development plans starting with the FNDP leading to the realisation of Vision 2030.

One of the goals of the FNDP is the Government's recognition that wealth creation through sustained economic growth constitutes the most important element in poverty reduction and, consequently, a very high premium is being placed on growth-stimulating interventions. The National IP Policy, in light of the goals of the FNDP, seeks to provide an environment where knowledge and creativity will spur economic development of the country.

(iv) Vision 2030

Vision 2030 is the national long-term planning instrument prepared in consultation with line ministries, provinces, districts, the donor community and civil society to set Zambia's long-term vision. It reflects the collective understanding, aspirations and determination of the Zambian people to be a '*prosperous middle-income country*' by 2030.

One of the targets of the vision is that Zambia shall between 2007 and 2030 be a nation that would be continuously and steadily making progress in establishing a scientific and progressive society that is innovative and forward-looking, and that is not only a technology consumer but also a contributor to the global and future scientific and technological advances of humanity.

1.60 GUIDING PRINCIPLES

1.61 National Aspirations

The National IP Policy seeks to provide a basis for effective utilization and development of IP as an instrument for attaining socio-economic development through wealth creation that sustains economic growth. In achieving this, the policy will bring into effect the following key actions:

- a) Raise awareness on Intellectual Property as among other things comprising intellectual capital to be utilized as a commodity to enable Zambia become true knowledge economy
- b) Provide for effective protection systems;
- c) Provide for the effective enforcement of Intellectual Property Rights; and
- d) Promote licensing and collaborative research in areas of research and development in all fields of technology and creative arts.

1.62 International Obligations

This principle takes cognizance of the importance of international obligations with regard to Intellectual Property and therefore emphasizes the need for this policy to operate within and with other international and regional instruments which the state has acceded to.

1.63 Effective Protection Systems

The policy recognizes that all protection measures aimed at various aspects of Intellectual Property will be effective and broad. In this regard the protection system will also cover Intellectual Property aspects that may not perfectly fit in conventional Intellectual Property area, such as Traditional Knowledge.

1.64 Access and Benefit Sharing (ABS)

This policy appreciates the importance of Access and Benefit Sharing (ABS) mechanisms when dealing with certain IP resources. In this regard, important principles that govern access to IP resources and benefit sharing arising out of these resources will be given appropriate consideration. An equitable balance between the rights and interests of those that develop, preserve and sustain these IP assets and those that use and benefit from their use must be achieved to ensure communities in Zambia are recognized as sources of the resources and have a share in the profits or benefits of IP resources that are exploited.

1.65 Prior Informed Consent (PIC)

The policy is cognizant of the importance of Prior Informed Consent (PIC) when dealing with Intellectual Property issues that relate to the local communities and their resources, *inter alia*, embodying genetic resources, expressions of folklore and traditional knowledge. In this case all activities including processes that deal with local communities and their resources will only be undertaken upon getting prior informed consent.

1.66 Disclosure of Knowledge Related to Certain Intellectual Property Rights

Intellectual Property Rights holders are obliged, in return for protection of their rights, to publicly disclose information on their works in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovative endeavors by others. Recognition of genetic resources, expressions of folklore and traditional knowledge should be acknowledged and adequate compensation given to the communities from which these resources are derived.

This policy will influence the strengthening of legislative and policy frameworks not only for Intellectual Property Rights protection, but also for the full disclosure of valuable information that would inspire future generations of researchers and inventors to undertake inventive and innovative endeavors.

The policy will also influence the establishment of appropriate data banks to ensure that there is a useful repository of all known technologies and knowledge.

1.67 Licensing, Commercialization and Marketing of IP

Licensing facilitates the transfer of knowledge and technology as research outcomes from inventors, innovators, researchers and scientists into income, while commercialization is the process of transforming ideas into finished marketable products ready for the market. Marketing is the process of attracting potential customers and clients to one's products or services and it involves researching, promoting, selling, and distributing of products or services. In the context of IP, commercialization, licensing and marketing play a crucial role in utilizing technology and unlocking resources that have been spent in development of inventions/innovations. The process of licensing inventions/innovations is achieved through the grant of licenses which are legal instruments through which owners of certain legal rights may transfer rights to third parties.

In Zambia and the world-over it has been recognized that effective licensing of IP enables Inventors, Universities and Research and Development Institutions to sell rights in their works to individuals or companies who are better placed to commercialize and market the works in return for payment of royalties.

In the handling of IP licensing procedures between parties, this Policy provides the following general guidelines:

1.67.1 IP Audit and Protection Valuation

It is important that all inventors, creators of works, universities and Research and Development institutions undertake an IP audit and valuation exercise which aims at determining the economic value of products, technologies and Intellectual Property Rights (IPRs) through adequate protection mechanisms provided for by law and international conventions. Proper audit and valuing of IP assets is critical to ensure successful commercial transactions, handling of litigations, assessment of damages, etc, or discussions with tax authorities to determine the transfer pricing of the IP asset.

1.67.2 Confidentiality Agreements.

In licensing of certain IP assets, the parties involved must endeavour to develop confidentiality agreements which will safe-guard research data, sources of materials, know-how, manuals,

reports, methods of production, designs of specialised proprietary equipment and other non-scientific business information.

1.67.3 Material Transfer Agreement (MTA)

Any research material for exportation or importation requires a Material Transfer Agreement (MTA) detailing the type of materials, anticipated use, limitations on use, location of storage, duration of such storage, transfer and termination of use of such materials subject to any law, regulations and enactment in Zambia. An MTA is a written contract between a *provider* and a *recipient* of research material. It defines, *inter alia*, the rights of the provider and the recipient with respect to Intellectual Property (actual and potential), liability, confidentiality of provided information, publication of recipient research results, and other associated legal formalities that the provider and recipient may wish to cover in the transaction or are obliged to protect or undertake. All universities, Research and Development Institutions, inventors, and creators of works, who wish to undertake Transfer of Materials must provide for minimum standards on provisions of an MTA.

1.67.4 Technology Licensing Agreement (TLA)

This Policy appreciates the role Technology Transfer plays in introducing innovative technologies onto the market for industrial application and for use by consumers. It involves along a value-adding chain from basic or applied research to the commercialization of products or services. A variety of strategic partnerships or alliances can be used to implement technology transfer using Technology Licensing Agreements. The TLA, in this regard is a contractual arrangement, such as R&D cooperation agreements with Industry, joint ventures, or agreements for the transfer of Intellectual Property Rights (IPR) for commercialization purposes and benefits of society.

1.67.5 Fees and Royalties

The Policy takes cognizance of the need for appropriate payment of fees and royalties to be paid under any IP licensing undertaking. In this regard the contracting parties must agree on the level of fees and royalties to be paid taking into account various factors such as the amount of revenue the product is expected to generate once commercialized.

CHAPTER TWO

VISION AND RATIONALE

2.00 VISION

To ensure the effective and efficient use of IP as a tool for stimulating socio-economic, industrial, technological and cultural development.

2.10 RATIONALE

Zambia faces challenges to effectively use IP as a tool for social-economic, industrial, technological and cultural development. The major challenges that impede the effective use of IP for economic development include lack of policy, inadequate legislative framework, insufficient awareness of the vital role played by IP in national development and limited capacity in terms of human resources and infrastructure to support development, use and exploitation of IP. These coupled with the existing institutional and administrative framework have made it difficult for the nation to derive adequate benefits from the nation's Intellectual Property resources.

In this regard, the policy prioritizes the development of an enabling Intellectual Property environment that will, *inter alia*, adequately address the following key issues;

- Development of Intellectual Property legislation and administration that will encourage technological development and innovation;
- Regulation of Intellectual Property Rights in a pro-competitive manner appropriate to national levels of development;
- Developing Protection of systems for plant varieties and plant genetic material;
- Recognition of Indigenous knowledge within the formal Intellectual Property system;
- Regulation of access to and implementation of benefit sharing for national biological and non biological resources;
- Domesticating international obligations related to Intellectual Property that are beneficial to the nation; and
- Encouraging the development of institutional Intellectual Property Policies
- Recognition that funding towards IP education at all levels of education; investment in R&D and establishment of institutions (R&D) organizations, universities, companies, non-profit organizations and infrastructure needs to be prioritized.

The Government, in close cooperation with the private sector, NGOs, Civil Society and Academia will ensure that there is a favourable environment that will give adequate support to the development of Intellectual Property. Government support in this regard will include reviewing of

the existing policy and legislative framework that relates to Intellectual Property so as to make it compliant with actual needs and future requirements and also facilitate the development of appropriate institutional arrangements.

2.11 GENERAL POLICY OBJECTIVES AND STRATEGIES

The general policy objectives are both in the long-term and short-term as follows,

2.12 Long-term Objectives

The long-term objectives are to;

- i. Make intellectual property a practical development tool in Zambia as a way to a knowledge- driven society.
- ii. Encourage innovation and creativity at all levels of Zambian Society as a pre-condition for accelerating socio-economic development.

2.13 Short-term Objectives

The short-term objectives are to;

- i. Provide for the development of appropriate and up-to-date national Intellectual Property legislation.
- ii. Domesticated relevant and acceptable international instruments that relate to intellectual property.
- iii. Create a supportive environment for innovation and creativity including encouraging the funding of R&D activities, innovation, creativity and IP education.
- iv. Participate in international fora to promote and represent Zambia's interests in IP.

2.14 Strategies

The strategies for achieving the general policy objectives will, among others, include the following:

- Creating Public Awareness on IP issues;
- Improving and introducing IP education in schools and tertiary institutions;
- Providing incentives for innovations and creativity;

- Enactment and amendment of relevant legislation, including domestication of relevant international instruments;
- Promote creation of Incubation centres, and
- Financing of innovation and creativity.

CHAPTER THREE

INDUSTRIAL PROPERTY PROTECTION

3.00 Introduction

Industrial property is a subset of intellectual property comprising *inter alia* Patents, Utility Models, Trademarks, Trade Secrets, Industrial Designs, Geographical Indications and Service Marks.

Industrial Property protection makes it possible for creators of innovations (goods, processes, apparatus, etc) to be established more readily, to penetrate new markets with minimum risk and to amortize the investments made in the research that led to the innovations.

3.10 Patents

Zambia's current patent system does not adequately cover all aspects of Intellectual Property. As a result of this situation, nation has not derived full benefits that are inherent in a strong patent regime.

3.11 Objectives

- To promote the utilisation of the patent system in different fields of science and technology;
- To amend relevant legislation;
- To harmonise legislation with relevant and acceptable international treaties;
- To participate in international fora debating development of International patent systems;
- To establish an IP information centre.

3.12 Strategies

- Create Awareness and Outreach to different communities;
- Revise the Patents Act in accordance with national aspirations and international treaties.
- Establish institutional Patent guidelines
- Prioritise and increase funding in R& D activities.

3.20 Utility Models

The current Zambian IP legislation does not include the protection of Utility Models. There is, therefore, need to amend the Patent Act to include this area of Intellectual Property so as to take into account the level of development and technological advancement in Zambia.

3.21 Objectives

- To amend legislation to provide for protection of Utility Models for inventions and innovations that do not meet the patentability criteria and to reward innovators of inventions under this class of patents;
- To raise stakeholder awareness on Utility Models;
- To ensure that industry, researchers and scientists are aware of the provisions for protection of inventions and innovations under Utility Models.

3.22 Strategies

- Amend the Patents Act and provide guidelines on protection of utility models
- Encourage the rapid evolution of indigenous innovativeness, particularly in Medium Small-to-Micro scale Enterprises; and
- Create awareness and Outreach IP programmes for communities.

3.30 Trade Marks

Trademarks play an important role in the Zambian economy. The registration of Trade Marks is governed by the Trade Marks Act. At the moment the Trade Marks Act does not provide for registration of Service Marks. As Zambia has acceded to the Madrid Protocol, there is need to amend the relevant IP legislation to accommodate registration of service marks and other acceptable non-traditional marks.

3.31 Objectives

- To promote the use of Trademarks among MSMEs as well as large scale enterprises;
- To encourage Foreign Direct Investment through the protection of marks;
- To maintain a balance between the interests of rights owners and users;
- To promote best practices in branding and promote valuable brand names through a national branding programme; and
- To ensure that common and generic marks (symbols) remain in the public domain and available for use to any person.

3.32 Strategies

- Make the existing registration system more efficient through automation and facilitating access to the PACRO database;
- Strengthen the existing registration system;
- Amend the Trademarks Act to comply with required minimum international Standards;
- Facilitate the strengthening of enforcement of rights conferred on both owners and users; and
- Promote awareness and Outreach programmes for different communities.

3.40 Service Marks

Service Marks play an important role in the field of commerce and trade. As an indicator of source, they identify the service provider and also act as a symbol of quality in distinguishing the services being provided by one undertaking from that of a competitor.

3.41 Objectives

- To promote the use of strong and valuable Service marks among MSMEs.
- To formulate legislation for the promotion and protection of national and private Service Marks.

3.42 Strategies

- Update through revision of the current Trademarks Act to incorporate service marks.
- Create awareness and outreach programmes on the role of Service Marks in MSMEs.
- Promote the development of branding of programmes national and private marks.
- Promote branding for goods and services.

3.50 Integrated Circuit Layout (ICL)

An ICL is a product in its final form or intermediate form, in which the elements, at least one of which is an active element, and some or all of the inter-connections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

3.51 Objectives

- To provide for the protection of integrated circuits and layout designs.
- To encourage financing of R&D in ICL technology.

3.52 Strategies

- Provide for relevant legislation through the accession of the Washington Treaty;
- Create awareness amongst developers of circuit designs and the general public;
- Develop an industry that can develop ICLs.

3.60 Trade Secrets

The use of trade secrets or undisclosed information in commerce, trade, R&D and industry in Zambia has been practised widely. Through the use of trade secrets, businesses obtain economic advantage over competitors. Recognition of Trade secrets is an obligation under the TRIPS Agreement. This policy aims to enhance the legal recognition of Trade secrets in Zambia.

3.61 Objectives

- To provide for recognition of Trade secrets as a means of protecting IPRs and maintaining lead time for researchers and inventors against competitors.

3.62 Strategies

- Create awareness and educational outreach activities on recognition of Trade Secrets.
- Create awareness programmes to enable businesses and industries weigh the benefits of protecting IPRs through Trade Secrets.
- Amend the Patents and the Trade Marks Acts to make them TRIPS compliant.

3.70 Industrial Designs

Industrial designs are extensively used in the course of commerce and trade in Zambia. They add commercial value to the product and increase its marketability. At present industrial designs are extensively used by MSMEs, local handcraft industry and large scale businesses but the owners of these designs do not appreciate the importance of protection. In this regard, the policy will encourage design owners to protect their rights through the Registered Designs Act.

3.71 Objectives

- To promote the registration of novel industrial designs among MSMEs, local handicraft industry and large scale businesses;
- To encourage research and innovation in Registered Industrial Designs in R&D institutions, universities and industry.

3.72 Strategies

- Create awareness on the benefits of ownership of intellectual property assets in an enterprise vis-à-vis Registered Industrial Designs;
- Facilitate research and development in industrial design;
- Provide incentives (e.g. tax rebates) to local innovators to use and register industrial designs; and
- Improve efficiency of Industrial design registration including the provision of electronic registration.

3.80 Geographical Indications (GIs) and Appellations of Origin

Geographical Indications and Appellations of Origin play an important role in preserving the rights of indigenous people and valuable national brands in relation to products emanating from a given geographical area. This policy will promote the use and protection of GIs and Appellations of Origin.

3.81 Objectives

- To provide for recognition of Geographical Indications(GIs),
- To provide protection and promote the use of indications of source, geographical indications and appellations of origin of local agricultural products, cultural crafts, wines and spirits that originate from specific regions of Zambia.

3.82 Strategies

- Develop awareness and outreach programmes for sensitizing the public on GI and Appellations of Origin.
- Provide for protection of GIs and Appellations of Origin in the national Trademark and unfair competition legislation.
- Provide public access to the registry of GIs.
- Provide for bilateral collaboration on common GIs with other countries.
- Conduct inventory and create a database for GIs and Appellations of Origin in Zambia.

CHAPTER FOUR

COPYRIGHT AND RELATED RIGHTS

4.00 Introduction

Copyright is a bundle of exclusive legal rights concerned with protection of literary and artistic works, often referred to as 'works'. The aim of copyright is to promote science, culture and the arts. This is done through granting creators automatic rights and at the same time striking a three way balance between these rights, and those of entrepreneurs such as publishers, broadcasters, and record companies and the interest of the public.

Copyright protects works that represent the original expression of thoughts and ideas. Copyright confers moral and economic rights to its owners. All performers and producers of literary and artistic works are entitled to a bundle of rights in recognition of their works. Ideas and thoughts as such are not protected. This policy will provide a platform for recognition of those specific rights of performers and producers.

4.10 Economic Rights

Copyright owners have the exclusive right, for economic gain, of authorization of reproduction, translation, adaptation and communication to the public, by whatever means, and derivation of their protected works. This policy therefore seeks to address and protect the rights of authors and owners of copyrighted works.

This policy also seeks to address and protect the rights of performers of copyrighted works to reproduce, broadcast live performances to the public, by whatever means, for economic gain, and prohibit the importation or reproduction of these works without authorization by the right owners.

4.11 Objectives

- To promote the protection of all original expressions of copyrightable ideas as long as such ideas are expressed in accordance with international treaties to which Zambia is party;
- To provide for recognition of neighbouring rights;
- To ensure works that add value to our cultural development and civilization are produced;
- To protect the economic and moral interests of copyright owners.

4.12 Strategies

- Create awareness and outreach programmes on the rights of performers and producers;
- Lobby for enforcement of rights through strengthening appropriate legislation;
- Promote teaching of the value of culture in primary and secondary schools;
- Update the content of curricula in primary and secondary schools so as to promote the teaching of cultural subjects;
- Provide for protection of copyright and related rights in view of the developments in ICTs, digital and Internet.
- Make provision for principles of resale, rights of creators of works and the extension of rights in Zambia.
- Encourage funding of creative projects and creativity by individuals and industry.
- Strengthen the collective management of organizations for the benefit of the copyright owners.

4.20 Rights of Broadcasters

Broadcasters have the right to the signal they provide. The policy recognizes the rights of broadcasters over their signals.

4.21 Objectives

- To protect the Rights of Broadcasters against piracy of their live broadcasts transmitted through satellite and other communication signals.

4.22 Strategies

- Provide for legislation to protect broadcaster's rights through accession to the Rome Convention;
- Create awareness amongst broadcasting stations on the need to protect rights of broadcasters' signals.

4.30 Database Rights

A database is a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means. In essence, the works arranged on a database must be non-interactive so as to enable database users to retrieve them individually either electronically or otherwise.

4.31 Objectives

- To protect the economic and moral rights and interests of database owners.

4.32 Strategies

- Provide for database protection under the existing Copyright law.
- Create awareness on databases and associated rights of database owners and the value of protection.

4.40 Moral Rights

Moral rights have often been associated rights of the copyright holders to be given proper acknowledgment of their works and not have them modified without their permission and not to use the work in a manner which discredits them.

4.41 Objectives

- To recognize the right of integrity and right of paternity of the right holder.

4.42 Strategies

- Sensitize right holders on their moral rights to their works and to provide for protection of moral rights for an indefinite term of protection.

CHAPTER FIVE

ELECTRONIC COMMERCE

5.00 Introduction

Electronic Commerce (e-commerce) is the selling and buying of both tangible and intangible goods and services using electronic means. This is mostly done via the Internet or using electronic card machines.

As the commercialization of electronic commerce continues to gain momentum, protection of intellectual property rights is greatly challenged and the traditional national legal systems for protecting the rights of entrepreneurs and IPRs owners assume a new dimension for protecting these rights.

The traditional way of protecting and enforcing intellectual property rights in the course of trade has been compelled to evolve by the prevailing circumstances that recognize the sale and purchase of goods without any physical contact between vendor and purchaser of goods or services. As such, unique intellectual property challenges arise from the intersection of a global multipurpose medium, the Internet, with intellectual property systems designed for a physical and territorial world.

This policy will therefore attempt to foster laws that will take cognizance of the diverse national laws of various countries that participate in this global economy through the Internet. It will harmonize our national laws with diverse intellectual property legal systems, procedures and cultural norms traditionally based on jurisdiction or geography with the current trends of protection and enforcement of Intellectual Property Rights on the Internet in order to facilitate international trade via electronic means.

It is in the interest of the government and all stakeholders engaged in the use and development of electronic commerce to facilitate the development of a predictable legal framework for protection of rights of parties to electronic contracts, intellectual property rights protection and enforcement that would recognize domain names and how they may affect the usage and protection of various Intellectual Property in the face of infringements.

5.10 Domain Names

As domain names provide the basic connection between the physical and the virtual world and act as an indicator of source, it is imperative to have a more reliable and predictable registration system that will also recognize the rights of intellectual property owners while preserving the interests of users. In most cases, domain names stem from registered Intellectual Property Rights,

and as such there is need to harmonize the laws that protect the registration of domain names under Domain Names System (DNS) with that of Intellectual property.

This Policy will therefore harmonize the DNS and intellectual property registration regime through enhancing the intellectual property protection laws that would preserve the rights of intellectual property rights holders while at the same time enshrining the interests of the public.

5.11 Objectives

- To provide for the protection of domain names through registration;
- To preserve the interests of users.

5.12 Strategies

- Provide for protection domain names through their inclusion in the Trademarks Act and Competition Act;
- Create awareness amongst users of domain names, and trademarks in electronic commerce.
- Provide or enable a system and mechanism for dispute settlement relating to domain name conflicts.

CHAPTER SIX

TRADITIONAL CULTURAL EXPRESSIONS (TCEs) AND FOLKLORE

6.00 Introduction

Traditional and Cultural Expressions and Folklore have existed since time immemorial. This knowledge resource has played a vital role in moulding a community into a well organized and governable society even before the advent of colonialism. TCEs and Folklore provided education, health system, entertainment and regulated the day to day life in a given community.

TCEs and Folklore are inherited from past generations by new generations and are handed down orally in rural communities. Traditional Cultural Expressions and Folklore have been vital to the development of communities because apart from the entertaining aspect there is the facet of imparting traditional values and norms to young generations as well as promotion of indigenous cultural innovations.

TCEs and Folklore are not protected and are therefore being indiscriminately exploited and utilized particularly in the new global order where the holders have no protection or benefit and there is therefore a need for a systematic way of identifying the community right holders, collating data and distributing benefits.

6.10 Rights of Holders

Rights of holders are rights inherent in all persons of a community who hold knowledge of TCEs and folklore. The policy will, in this regard, provide for recognition of those rights by way of rewarding holders of TCEs and Folklore to a community held by the community or in trust where appropriate by the government as opposed to individuals.

6.11 Objectives

- To protect traditional cultural expressions of folklore against misappropriation, misuse, and exploitation beyond their traditional context;
- To recognize and reward holders of TCEs and Folklore and the relevant communities.

6.12 Strategies

- Create systems that will govern protection, utilization and further development of TCEs and Folklore.

- Support awareness programmes;
- Develop guidelines for the protection of TCEs and Folklore and exploitation of TCEs;
- Create a national database of owners of TCEs and Folklore;
- Provide guidelines for benefit sharing mechanisms between the user or exploiter of TCEs and the affected community;
- Ensure the acknowledgement and recognition of the source of TCEs and mandate all users to acknowledge the source accordingly;
- By the nature of TCEs, provide for the longest term of protection possible to protect the affected communities in Zambia;
- Collaborate efforts and strategies with other countries with a rich source of TCEs and Folklore including regional arrangements under the African Union, ARIPO, SADC and COMESA.

CHAPTER SEVEN

TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES

7.00 Introduction

Zambia is endowed with an abundant heritage of a diversity of cultures, languages and biological diversity. This great heritage is expressed through traditional knowledge systems, traditional knowledge and indigenous innovations. Traditional knowledge systems are functional entities and institutions that serve as custodians of specialised areas of traditional knowledge and indigenous innovations.

Indigenous innovation is any generation of a new or improvement methods of using traditional knowledge. Traditional knowledge and indigenous innovations systems have contributed significantly to the present body of knowledge possessed by scientists, such as *inter alia*, ethnobotanists, ethnopharmacologists, and by agriculturists, foresters, and food technologists.

Genetic Resources that are of value and relate to traditional Knowledge systems in terms of use include human, animal, plant and micro-organisms that are utilized by humans to support their livelihood. These include human, plant and animal genetic resources relevant for food and agriculture. Through many generations, local farmers and communities have developed valuable genetic diversity found in traditional crop varieties and animal breeds, which provide raw materials for the creation of new improved crop varieties and animal breeds. Over generations, a great deal of knowledge and practices related to production, utilization and conservation of these resources have been generated. There is, however, limited documentation pertaining to traditional use and value of these resources.

7.10 Rights of Traditional Knowledge Holders as they relate to Genetic Resources

Holders of traditional knowledge are entitled to certain rights as knowledge holders. The policy will provide a means for rewarding holders of such knowledge with a goal of promoting traditional and indigenous innovation.

The contributions of holders of Traditional Knowledge have not been recognized and therefore their rights are not protected. Further, holders of TK are not adequately rewarded under existing national and international legal systems. This policy will seek to address this anomaly.

7.11 Objectives

- To protect the rights of Traditional Knowledge holders;
- To recognize and reward holders of Traditional Knowledge as it relates to Genetic Resources.

7.12 Strategies

- Enact relevant national legislation;
- Create Traditional Knowledge data bases;
- Create systems to administer traditional knowledge;
- Create data bases on traditional use of genetic resources;
- Develop mechanisms for resource benefit sharing.

CHAPTER EIGHT

NEW PLANT VARIETIES

8.00 Introduction

New plant variety protection regimes seek to recognize, protect and reward the intellectual property of a breeder or group of breeders for the effort put into the development of a new plant variety which is distinct, uniform and stable. New plant varieties are normally the subject matter for protection and grant of breeders' rights.

The protection of new plant varieties is provided for internationally under the UPOV convention for nationals of member states.

8.10 Plant Breeders Rights

Zambia's Plant Breeder's Rights Act No. 18 was enacted in 2007 to provide for the protection of plant breeder's rights and the registration of new plant varieties. Plant breeders are entitled to rights arising out of their works and hence benefits from the recognition of the rights that accrue to them. The Plant Breeder's Rights Act also provides for the protection of farmers rights through exemptions to plant breeders rights under s8 (2) which stipulates that a farmer may save, exchange or use part of the seed from the first crop of a plant which the farmer has grown for sowing in the farmer's field to produce a second and subsequent crop in line with the UPOV Convention of 1978.

The policy will provide for the development of frameworks for recognizing the plant breeders' rights in line with the Plant Breeders Rights Act. Benefits under Plant Breeder's Rights include the provision of incentives to breeders for further investment and effort in the development of new plant varieties and have therefore the effect of propelling agricultural development in the countries with adequate policy and legal framework promoting such protection.

8.11 Objectives

- To enhance the implementation of the Plant Breeders Act;
- To ensure food security and diversity of plants.

8.12 Strategies

- Creation of breeders reward systems;
- Creation of awareness;
- Ensure protection of farmers rights;

- Promote collaboration between farmers, R&D institutions and industry;
- Facilitate Zambia's accession to 1978 UPOV convention in order to benefit from technical cooperation, support and interaction under the convention.

CHAPTER NINE

IMPLEMENTATION FRAMEWORK

9.00 *Time Frame for Implementation*

The Intellectual Property Policy will be implemented over a ten-year period, beginning 2009. Implementation of various policies will be aligned with the various international treaties.

9.10 *Institutional Arrangements*

The main institution in implementing Intellectual Property Policy is the Ministry of Commerce Trade and Industry (MCTI). Though this is the case, copyright and related rights issues are dealt with by the Ministry of Information and Broadcasting Services under the Registrar of Copyright's office. The Patents and Companies Registration Office (PACRO), an executive Agency of MCTI, is the key institution discharging functions concerning Industrial Property and deals with:

- Administering the Patents, Trademarks, Registered Design, Business Names and Companies Acts;
- Promotion of IP protection and technology innovation, collaboration with line ministries;
- Provision of advise to Government and the business sector on IP issues; and
- Provision of a link for IP owners regionally and internationally.

The Ministry of Agriculture and Cooperatives (MACO) through the Seed Control and Certification Institute (SCCI) will work in conjunction with PACRO on industrial property matters concerning agriculture.

The Intellectual Property policy recognizes the need for MCTI to facilitate and take a leadership role in driving the aspirations of this policy. Various government ministries and statutory bodies will play different roles assigned to them through their respective statutes. In this regard, the key stakeholders who will be involved in the implementation process are:

- Chamber of Mines
- Collective Management Organisations
- Law Association Zambia
- Manufacturers Association of Zambia
- Ministry of Agriculture and Cooperatives
- Ministry of Commerce, Trade and Industry
- Ministry of Community Development and Social Services

- Ministry of Energy and Water Development
- Ministry of Finance and National Planning
- Ministry of Information and Broadcasting Services
- Ministry of Foreign Affairs
- Ministry of Health
- Ministry of Home Affairs
- Ministry of Justice
- Ministry of Mines and Minerals development
- Ministry of Science, Technology and Vocational Training
- Ministry of Tourism, Environment and Natural Resources
- Research and Development Institutions
- Rural Electrification Authority
- The Copperbelt University
- The University of Zambia
- The Open University
- Zambia Association of Chambers of Commerce and Industry
- Zambia Competition Commission
- Zambia Music Copyright Protection Society
- Zambia National Farmers Union
- Zambia Reprographic Rights Society

The stakeholders who will back the implementation of the sensitization programme will include among others, the Zambia Association of Manufacturers, the Private institutions in the Manufacturing Sector, Zambia Chambers of Small and Medium Business Association (ZCSMBA), Zambia Association of Chambers of Commerce and Industry (ZACCI), and the Zambia National Farmers Union (ZNFU).

All stakeholders will ensure that the subject of Intellectual Property and Intellectual Property Rights protection is fully encompassed in their sectoral policies.

9.11 Legal framework

The Patents, Registered Industrial Designs and Trade Marks Acts, are the main pieces of legislation which will be used for the administration of Industrial property in the country. Issues of Copyright are under the Copyright and Performances Act administered by the Ministry of Information and Broadcasting. Apart from these four Acts, legislation which governs matters of intellectual property under the Ministry of Science, Technology and Vocational Training which encompasses activities of the National Science and Technology Council (NSTC), the National Institute for Scientific and Industrial Research (NISIR) and the National Technology Business Centre (NTBC) will be employed. Legislation governing the Ministry of Finance and National Planning, Ministry of Agriculture and Cooperatives, the Central Statistical Office, the Zambia

Development Agency and the Zambia Competition Commission will also be crucial in the implementation of this policy.

9.12 Enforcement of Intellectual Property Rights

The main aim of the IP system is to recognise and award benefits to right owners. IPRs have no real value unless they can be enforced. Therefore this policy recognises the importance of establishing IP enforcement mechanisms to ensure that right holders and the general public benefit from the IP system. Zambia is a member of the WTO/TRIPS agreement which places an obligation on member states to provide for procedures that are to be at the disposal of right holders. Although IP rights are private rights and are enforceable by means of civil litigation, the prevalence of counterfeiting and piracy and the economic damage caused thereby has led to an increased importance of criminal sanctions. The policy will therefore promote enforcement initiatives currently being implemented by IP law enforcement agencies such as the IP department of the Zambia Police Service, the Zambia Revenue Authority, the Drug Enforcement Commission and other relevant institutions.

The policy aims to promote awareness on IP issues so as to enlighten the public and other rights holders on enforcement issues. In doing so, the policy will facilitate the provision of information on IP by PACRO to relevant enforcement agencies and courts of law in the process of enforcement and litigation emanating from IPRs infringement. PACRO will encourage rights holders to also use Alternative Dispute Resolution methods such as arbitration, wherever possible, to settle IP infringement matters to speed up resolutions.

9.13 Resource Mobilization

The implementation of IP Policy shall be funded from the following sources:

- i. Government budgetary provision; and
- ii. Cooperating partners.

9.14 Role of Government in the Implementation of the Policy

The principal responsibility of the Central Government in the implementation of the policy will be to mobilize domestic resources, and provide MCTI, MIBS, MSTVT, Ministry of Community Development and Social Services with necessary financial resources to ensure successful implementation of the proposed government strategies and activities.

9.15 Role of Cooperating Partners

The Ministries of Commerce, Trade and Industry and Information and Broadcasting Services will work with various cooperating partners in the field of Intellectual Property. These include, *inter alia*, WIPO, WTO, UNCTAD, ARIPO, and UNDP. The Ministries will actively participate in activities of regional integration Secretariats such as COMESA and SADC.

9.16 Monitoring and Evaluation

MCTI will be the principal institution responsible for the implementation, monitoring and evaluation of the Intellectual Property policy on behalf of the government of the Republic of the Republic of Zambia. It will achieve this through its departments, agencies, and statutory bodies within and outside the MCTI. Specifically, PACRO will take the leading role in all Monitoring and Evaluation (M&E) activities of this policy as it will host the Secretariat of the M&E Committee.

In monitoring the implementation of this policy, PACRO will work in close collaboration with other stakeholders through consultative meetings and physical monitoring of various activities of the IP policy as outlined above. PACRO will prepare periodic progress reports on the implementation of the policy to be submitted to the MCTI for validation and further action. The IP Policy will be reviewed after 5 years or at any other time as need arises to evaluate the progress of implementation.