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PAPER ON:

**PROCESS TO DATE FOR WORLD HEALTH ORGANISATION'S  
INTERGOVERNMENTAL WORKING GROUP ON PUBLIC HEALTH,  
INNOVATION AND INTELLECTUAL PROPERTY RIGHTS: AFRICAN  
PERSPECTIVE**

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FOR PRESENTATION AT:

**THE SECOND REGIONAL MEETING OF THE AFRICAN CIVIL SOCIETY  
COALITION ON THE INTERGOVERNMENTAL WORKING GROUP ON PUBLIC  
HEALTH, INNOVATION AND INTELLECTUAL PROPERTY RIGHTS**

ORGANISED BY:

**HEALTH ACTION INTERNATIONAL (HAI) AFRICA**

AT:

**KIBO PALACE HOTEL, ARUSHA, TANZANIA**

ON:

**3<sup>RD</sup> – 4<sup>TH</sup> APRIL 2008**

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**PROCESS TO DATE FOR WORLD HEALTH ORGANISATION'S  
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1.0 PREAMBLE

The World Health Organization established an Intergovernmental Working Group (IGWG) on Public Health, Innovation and Intellectual Property to prepare a global strategy and plan of action on essential health research to address conditions that disproportionately affect developing countries. The IGWG has since held two sessions to negotiate the document. The next IGWG meeting is scheduled in April/May 2008 with the aim of finalizing the document before presentation to the next World Health Assembly provisioned for May 2008. Africa as the AFRO Region has been participating in the negotiations with common position.

As part of the preparations for IGWG meeting of April/May 2008, the Health Action International Africa has organised a regional meeting on Intellectual Property, Innovation and Health to be held in Arusha from 3<sup>rd</sup> – 4<sup>th</sup> April 2008. Mr Mboi E. Misati, who has been part of the Kenyan (read African) negotiators for the IGWG, has been invited as a participant to the meeting and presenter of this paper.

This paper simply highlights the process in developing AFRO approach to the negotiations, the common AFRO Position(s) and achievements and challenges so far.

**A. THE BRAZAVILLE AFRICAN CONSULTATIONS**

1. The World Health Organisation organised a Regional Consultation on the WHO-IGWG on Public Health Innovation and Intellectual Property Rights held in Brazzaville, Congo from 3<sup>rd</sup> – 5<sup>th</sup> September 2007.
2. The specific objectives of the Consultation were inter alia:
  - 2.1 Build WHO Members States capacity to better understand in their own context the Public Health, Innovation and Intellectual Property Issues and their implications to on access to pharmaceutical products;
  - 2.2 Better Inform Delegates from Member States and Provide Forum for Discussion on Issues of Relevance to the Region; and
  - 2.3 Empower Member States with Information and Knowledge for an Informed Negotiation during the Second session of the Inter-Governmental Working Group on Intellectual Property Rights, Innovation and Public Health in November 2007, which aims to Finalise the Draft Global Strategy and Plan of Action.
3. Each Country in the Region (WHO/AFRO) was supposed to send a representative to the Consultations who will in return share the outcomes of

the Consultation to stakeholders in home country, and subsequently attend the IGWG Session in November 2007 in Geneva.

4. The consultative meeting was attended by a total of 59 participants comprising of the Vice Chairman and Rapporteur of the IGWG and 41 delegates from 37 Member States of the WHO African Region (AFRO) and various other stakeholders.
5. The meeting consulted in all the elements of the Draft Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (WHO document A/PHI/IGWG/2/2 dated 31<sup>st</sup> July 2007). The official report of the Consultations is annexed to this paper
6. As the way forward:
  - 6.1 It was strongly agreed that Issues in Paragraph 3 above be implemented; and
  - 6.2 South Africa offered to host a follow-up meeting to fine-tune the Regional Position and meet travel and accommodation expenses for selected (about 15) experts of scheduled for 8<sup>th</sup> – 9<sup>th</sup> October 2007. WHO offered to chip in as necessary.

## **B. THE JOHANNESBURG AFRICAN CONSULTIVE PROCESS**

7. As agreed, The Government of the Republic of South Africa hosted and partially supported the follow-up consultation in Johannesburg from 8<sup>th</sup> – 9<sup>th</sup> October 2007 by inviting 37 AFRO countries.
8. The Johannesburg consultative meeting was attended by a total of 17 delegates and the Vice Chairman and Rapporteur of the IGWG, and various other stakeholders.
9. The meeting further consulted in all the elements of the Draft Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (WHO document A/PHI/IGWG/2/2 dated 31<sup>st</sup> July 2007) taking into consideration the outcome of the Brazzaville consultations. The official report of the Johannesburg Consultations is also annexed to this paper.
10. Although the consultations agreed on a common position, it could not be adopted as the AFRO Position since some countries were not represented in Brazzaville and Johannesburg.
11. As the way forward, it was agreed that the AFRO hold consultations in Geneva just before the Second Session of the IGWG in November 2007 to adopt a common position.

## **C. THE GENEVA AFRICAN CONSULTIVE PROCESS**

12. As agreed in Johannesburg, the AFRO Region (African Group) met on 1<sup>st</sup> and 2<sup>nd</sup> November 2007 at the WHO headquarters to strategise for the Negotiations and adopt a common position.
13. The AFRO Region adopted a common position based on, among others, the outcomes of the consultations held at Brazzaville and Johannesburg. This common position is annexed to this paper.
14. Various AFRO countries were assigned the Negotiations agenda items as per attached **Annex 3**. The Purpose of this assignment was to:
  - 14.1 Consolidate the AFRO position on the respective agenda items;
  - 14.2 Articulate and defend the respective positions during the negotiations;  
and
  - 14.3 Report the outcome of the negotiations during AFRO meetings that were held every morning prior to the formal start of the Session.

#### **D. THE 2<sup>ND</sup> IGWG SESSION NEGOTIATIONS**

15. The Session was split into two open-ended parallel drafting groups:
  - 15.1 **GROUP A:** Chaired by Dr. Viroj Tangcharoensanthien of Thailand that was assigned the opening paragraphs (Context, Aim, Focus and Principles) and Elements 5 and 6.
  - 15.2 **GROUP B:** Chaired by Mr. N. Dayal of India that was assigned Elements 1, 2, 3, 4, 7 and 8 plus A Global Responsibility for Action.
16. Group B thereafter established an open-ended **Sub-drafting Group B** to work on Plan of Action as regards Elements 1 and 2.
17. The working method for the drafting groups was to accept all positions of the WHO Regions, negotiate them and draft the negotiated text, bracketing the non-consensus issues.
18. The assigning of the subject matter was done ad hoc and by the adjournment of the Session on 10<sup>th</sup> November 2008, Elements 7 and 8 had not been assigned and thus not negotiated.
19. The Drafting Groups were open to all Members and Experts but not the NGOs who only participated in the main plenary (Committee of the Whole).
20. The AFRO Position was well articulated and defended in both Groups A and B.
21. The final outcomes of negotiations for both drafting groups are contained in the annexed documents A/PHI/IGWG/2/Conf.Paper No.1 Rev. 1 of 14<sup>th</sup> December 2007 and A/PHI/IGWG/2/2.

## E. NEGOTIATIONS OBSERVATIONS

22. As anticipated, the developing countries “led” by Kenya and Brazil generally ganged against the developed countries “headed” by the USA.

23. AFRO virtually pushed through its position.

24. The following AFRO concerns were virtually incorporated in the Draft Strategy and Plan of Action progress report as tabulated below:

<b>Element</b>	<b>Kenyan (AFRO) Position</b>	<b>Status (10<sup>th</sup> Nov 2007) A/PHI/IGWG/2/Conf.Paper No.1 and A/PHI/IGWG/2</b>
As Applicable	Involvement, as stakeholders and specific action, of other UN agencies (like WIPO, WTO, etc.) and regional bodies (ARIPO, OAPI, COMESA, SADC, EAC, AU, etc.) that have similar mandates notwithstanding their independence in operations. This will avoid duplication and facilitate systematic and substantive implementation.	In definition of Stakeholders page 2 of document A/PHI/IGWG/2/2
As Applicable	Improvement of Progress Indicators to make them more SMART.	A/PHI/IGWG/2/2
1, & 2	Consideration of traditional knowledge in R&D and as constituents of the compound libraries to facilitate prior art for patents regime and the anticipated disclosure and benefit sharing.	Paragraph 3.4(b) of Doc. A/PHI/IGWG/2/Conf.Paper No.1
2, 4 & 5	Exploitation of IP documents to avoid wastage of R&D funds and effort on the already known and facilitate technology transfer	Paragraph 5 of Doc. A/PHI/IGWG/2/Conf.Paper No.1
3	Institutional and human resource capacity building including creation of public awareness and formal education in IPR to enhance local exploitation of the IPR systems in developing countries.	Paragraphs 3.2 (d) and 5.1 (b) of Doc. A/PHI/IGWG/2/Conf.Paper No.1
3	Alternative incentives, beside IPR regime, to stimulate and promote local innovation (e.g. awards, prizes, competitions, etc.)	Paragraph 3.5 of Doc. A/PHI/IGWG/2/Conf.Paper No.1
3	IPR policies in tertiary educational and R&D institutions to avail certainty and systematic benefit sharing between innovators and institutions thus stimulating and promoting local innovation	??? (to establish status soon)
4	Establishment of Technology Transfer Offices in tertiary educational and R&D institutions to facilitate technology audits and industrial linkage thus enabling commercialisation of locally generated technologies.	Paragraph 4.2 (c) of Doc. A/PHI/IGWG/2/Conf.Paper No.1
6	Promotion and support of generic entry in markets of developing countries through use of	Not Negotiated

	TRIPS flexibilities especially exhaustion and bolar provisions, and public domain technologies.	
6 & 7	Exploration of pooled procurement models as cost-effective mechanism in affordability and access of pharmaceutical products in developing countries.	Not Negotiated
8	Monitoring and evaluation reports be actionable and not just for noting by WHO governing bodies	Paragraph 8 of Doc. A/PHI/IGWG/2/Conf.Paper No.1

## F. THE WHO-IGWG2 DECISIONS

25. The WHO Secretariat, in consultation with the IGWG bureau, was to prepare and issue the progress report so far (already done) clearly indicating the following:

- 25.1 Textual language that is already agreed (achieved consensus);
- 25.2 Bracketed texts (parts discussed but where no consensus reached yet), and
- 25.3 The parts of the texts yet to be discussed.

26. As regards the final progress report:

- 26.1 No re-opening at all of the consensus text;
- 26.2 No further comments will be submitted on bracketed text (texts discussed, but without reaching consensus). At the next meeting, the texts not yet agreed are to be discussed, but no new texts will be introduced on them; and
- 26.3 The WHO Members may make, by January 2008, any further comments on the parts of the Draft not yet discussed, and the secretariat will issue a paper with these comments.

27. The WHO Secretariat, in consultation with the IGWG bureau, was then to present the progress report to the WHO Executive Board meeting scheduled from 21<sup>st</sup> – 26<sup>th</sup> January 2008.

28. An open-ended meeting of the Sub-Drafting Group on Elements 1 and 2 of the Plan of Action will be held immediately after this January meeting of the Executive Board.

29. The next Session of the IGWG was tentatively scheduled to finalise its work from 28<sup>th</sup> April – 3<sup>rd</sup> May 2008 just before (back-to-back with) the meeting of the World Health Assembly (WHA) in 2008.

30. The IGWG will then report on the progress of its work on the Draft Global Strategy and Plan of Action to the 2008 WHA for further instructions.

#### **G. PLAN OF ACTION SUB-DRAFTING GROUP PROGRESS**

31. The Sub-Group met in Geneva from 17<sup>th</sup> – 19<sup>th</sup> March 2008.

32. The sub-group addressed indicators and made some progress for actions in all eight elements.

33. Lack of consensus in some areas of the Global Strategy was a hindrance to the progress of the Sub-Group since it could be quite premature or difficult to agree to indicators based on un-agreed strategy. A Report on the status of discussions at the end of 18 March 2008 can be availed on request.

#### **H. CONCLUSION / RECOMMENDATIONS**

34. To the best of my knowledge and believe, AFRO and developing countries successfully articulated and defended respective interests during the 2<sup>nd</sup> Session of the WHO-IGWG on the Draft Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property.

35. However, some interests are not yet realised because either the respective issues have not yet been negotiated or are still bracketed (no consensus on them reached yet).

36. AFRO should prepare well for the 3<sup>rd</sup> Session in April/May 2008 for furthering the remaining interests.

37. Expertise and support of all stakeholders is fundamental in this process.