

# PROTECTING EXPRESSIONS OF FOLKLORE IN TANZANIA:

## ASSESSING THE SUITABILITY OF COPYRIGHT LAW

*Jovine Costantine\**

### Abstract

*This article examines the suitability of copyright law in protecting expressions of folklore in Tanzania. The pertinent question is why protection of expressions of folklore matters? To address the question, it is worth to note that expressions of folklore have intrinsic social, cultural and spiritual value in addition to economic, scientific, intellectual and educational value. Traditional cultures are not static, but are diverse frameworks for innovation and creativity that both benefit indigenous and local communities and have the potential to benefit society in general. In that regard, efforts have been made both at regional and international level to protect the expressions of folklore against misappropriation or prejudicial actions. Initially, expressions of*

*folklore were protected under copyright law and other laws like trade mark. However, data collected and analyzed by using doctrinal and comparative legal research indicates that Copyright law is no longer good to protect expressions of folklore. This is because expressions of folklore have unique characteristics such as passing from one generation to another and being used according to customary law. Therefore, the copyright law that protects works within specific time is not suitable to protect expressions of folklore. It is further noted that several countries including some East African Community States have abolished the system of protecting expressions of folklore under the copyright law and other laws like trade mark and industrial design laws. Instead, expressions of folklore are being protected under a unique regime i.e., sui generis law which embrace the unique characteristics of expressions of folklore. This is elucidated by countries such as Kenya and Zambia. The contribution indicates that, to date Tanzania is still protecting expressions of folklore under the copyright law. Finally, the author recommends Tanzania to have a specific law for protecting expressions of folklore.*

---

\*LLB (Tumaini University in Tanzania), Post Graduate Diploma in Legal Practice (the Law School of Tanzania), LLM-Commercial Law (Mzumbe University in Tanzania); Senior Resident Magistrate, the Judiciary of Tanzania, PhD Candidate Faculty of Law Open University of Tanzania. Contact [jovine.constantine@judiciary.go.tz](mailto:jovine.constantine@judiciary.go.tz) and [jovinebishanga@gmail.com](mailto:jovinebishanga@gmail.com)

**Key words:** protection of expressions of folklore, copyright law, law reform

## 1. Introduction

Expressions of folklore have intrinsic social, cultural and spiritual value in addition to economic, scientific, intellectual and educational value. Traditional cultures are not static, but are diverse frameworks for innovation and creativity that both benefit indigenous and local communities and have the potential to benefit society in general. Efforts have been made both at regional and international level to promote and protect the same against misappropriation.<sup>1</sup> Initially, the expressions of folklore were protected under the copyright law. Currently, a study shift has been made and thus numerous countries have a specific law for protecting expressions of folklore. However, in Tanzania expressions of folklore are protected under the Copyright law.<sup>2</sup>In that regard, this article examines the suitability of copyright law in protecting expression of folklore in Tanzania. Thus, the article investigates how expressions of folklore are protected in Tanzania. In addition, the article discusses unique characteristics of expressions of folklore and a suitable law for protecting the same.

This article is divided into six sections, after the introduction which contains the thesis statement and the objectives, section 2 is on methodology employed, and section 3 gives a brief account on the concept of expressions of folklore, section 4 highlights issues for protecting expression of folklore in Tanzania. Section 5 discusses the suitability of copyright law in protecting expressions of folklore, and section 6 concludes with the way forward.

1 ARIPO Secretariat., Explanatory Guide to the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, 2012, p.2

2 The Copyright and Neighbouring Act, Cap 2018 applies to Mainland Tanzania while The Copyright Act of 2013 applies to Tanzania Zanzibar.

## 2. Methodology

The article employed doctrinal legal research and comparative legal research. Doctrinal legal research entails the use of primary and secondary sources of law. Doctrinal research is concerned with the analysis of the legal doctrine and how it has been developed and applied. It is also known as pure theoretical research or black letter research.<sup>3</sup>Thus, the author opted for doctrinal legal research on account that traditionally, doctrinal legal research is the main methodology of legal research.<sup>4</sup> The author collected and examined the Copyright and Neighboring Rights,<sup>5</sup>the Protection of Traditional and Cultural Expressions Act<sup>6</sup> and Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore<sup>7</sup>with the view to explore how expressions of folklore are protected in Tanzania, Kenya and Zambia.

Specifically, under this methodology, the author analyzed the existing legislation, reports, case laws, and other publications and assess how expressions of folklore are protected against misappropriation. The methodology demanded the use of different legal methods including inductive and deductive legal reasoning as well as rules of statutory interpretation to critically analyse the collected primary and secondary data against the backdrop of the thesis statement. Therefore, this methodology was selected to address the issue as to whether the Copyright law is suitable for protection of expressions of folklore in Tanzania.

On the other hand, the comparison between Tanzania, Kenya and Zambia was made to

3 Ibid, p. 20.

4 Makulilo A.B., Protection of Personal Data in Sub-Saharan Africa, PhD Thesis, University of Bremen, Germany, 2012, p.12 describes doctrinal research as the main methodology of legal research because it primarily focuses on what the law is as opposed to what the law ought to be.

5 Act, Cap 218 RE 2019, the Law of Mainland Tanzania and the Copyright Act, the Law of Tanzania Zanzibar.

6 Act No. 33 of 2016 RE 2018, the Law of Republic of Kenya.

7 Act No.16 of 2016, the Law of Republic of Zambia.

assess and illustrate the best practices for protecting expressions of folklore. Thus, comparative legal research was invoked to complement doctrinal legal research. Finally, the methodology further helped a researcher to make a comparative analysis of laws on the protection of expressions of folklore between Tanzania, Kenya and Zambia. Kenya and Zambia were selected as a benchmark for protecting expressions of folklore. Such selection was based on the fact that Tanzania, Kenya and Zambia are members of Africa Regional Intellectual Property Organizations (ARIPO) which sets minimum standard for protecting expressions of folklore in African region.

### 3. Understanding the Concept of Expressions of Folklore

There is no internationally accepted definition of expressions of folklore. However, expressions of folklore can be described as the forms in which traditional culture and knowledge are embodied or expressed and may be tangible, intangible or a combination of the two. Traditional cultural expressions are widely diverse and include dances, songs, music, stories, art, handicrafts, musical instruments, words, names, performances, textiles, carpets and jewelry designs and forms of architecture. Examples of combined expressions of folklore are a piece of textile depicting a legend in stylized designs; a dance in which traditional costumes and masks are used linked to the performance; and the recitation of tales using representative paintings.<sup>8</sup>

Expressions of folklore or traditional cultural expressions cover all tangible or intangible forms in which traditional knowledge and culture are expressed, appear or are manifested. It includes verbal expressions,

such as stories; epic poems, legends, poetry, enigmas and other narratives; words, signs, names and symbols, musical expressions (such as songs and instrumental music), corporal expressions, such as dances, plays, ceremonies, rituals and other interpretations or performances, regardless of whether they are set or not on any type of support).<sup>9</sup> It further includes tangible expressions, such as; works of art and, in particular, drawings, paintings (including body paintings), wood carvings, sculptures, pottery, terra cotta, mosaics, cabinet work, iron works, jewellery, basketry, embroidery, knitting, textiles, glassware, tapestries, clothing; handicrafts, musical instruments; and architectural works.<sup>10</sup> Example Kamba handicrafts in Kenya.

From a legal point of view, expressions of folklore entail any forms whether tangible and intangible, in which folklore and traditional culture and knowledge are expressed, appear or are manifested. It comprises both intangible and tangible expressions.<sup>11</sup> Intangible expressions first include verbal expressions such as stories, epics, legends, poetry, riddles and other narratives including words, signs, names and symbols. It also includes musical expressions such as folk songs and instrumental folk music. Lastly, intangible expressions include expressions incorporating movement or action, such as dances, plays, ceremonies, rituals and other performances; whether or not reduced to a material form. On the other hand, tangible expressions are productions of folk art, drawings, designs, paintings (including body painting) carvings, sculptures, pottery, terracotta, mosaic, metalwork, woodwork, jewellery baskets,

<sup>9</sup> WIPO Protection of Traditional Cultural Expressions/Folkloric Expressions, Reviewed Objectives and Principles, Ninth session of the Intergovernmental Committee on intellectual property and genetic resources, traditional knowledge and folklore, Geneva, WIPO/GRTKF/IC/9/4, 9 January 2006.

<sup>10</sup> Ibid.

<sup>11</sup> See section 2 of the Kenyan Act No. 33 of 2016 on the protection of Traditional Knowledge and Cultural Expressions.

<sup>8</sup> Charles, B.S., Modern Indigenous Curriculum Teaching, Indigenous knowledge of Handcraft at Same Colleges in Finland and Norway, thesis McGill University, Montreal, 2001, p.2.

needlework, bead-work, textiles, glassware, carpets, costumes and handicrafts. Tangible expressions also include musical instruments and Architectural forms which are the products of creative intellectual activity, including individual and communal creativity or combination of tangible and intangible.<sup>12</sup>

Further to that, expressions of folklore mean production of characteristic elements of the traditional cultural heritage, constituted by the whole store of literary and artistic works created on the national territory by unknown or unidentified authors presumed to be nationals or to belong to the country's ethnic communities, and which are handed down from the traditional artistic or literary aspirations of a community.<sup>13</sup>In addition, expressions of folklore entail all literary and artistic productions created on the national territory and passed from generation to generation and constituting one of the basic elements of the national traditional cultural heritage. Traditional cultural expressions have intrinsic social, cultural and spiritual value in addition to economic, scientific, intellectual and educational value. Traditional cultures and knowledge systems are not static, but are diverse frameworks for innovation and creativity that both benefit indigenous and local communities and have the potential to benefit society in general.<sup>14</sup>

Finally, expressions of folklore have their own characteristics: are the products of creative intellectual activity; are handed down from one generation to another, orally or by imitation; reflect a community's cultural and social identity; consist of characteristic elements of a community's

<sup>12</sup> Ibid.

<sup>13</sup> Article 2.1 of Panama Law on Copyright and Neighboring Rights and Enacting Other Provisions, Law No. 15 of August 8, 1994.

<sup>14</sup> Charles B.S., *Modern Indigenous Curriculum Teaching, Indigenous Knowledge of Handcraft at Same Colleges in Finland and Norway*, thesis McGill University, Montreal, 2001, p.2.

heritage; are made by authors unknown and/or by individuals communally recognized as having the right or responsibility to do so; are often created for spiritual and religious purposes; often make use of natural resources; and are constantly evolving within a community.<sup>15</sup>

#### **4. Protection of Expressions of Folklore in Tanzania**

There is no specific law for protecting expressions of folklore in Tanzania. However, article 24 of the Constitution of United Republic of Tanzania of 1977<sup>16</sup> provides for the right to own property and that every person has the right to protection of his property. Besides, article 23 (2)<sup>17</sup> recognize the right to just remuneration that every person including author of expressions of folklore is entitled to remuneration for his work. Therefore, the Constitution recognizes the protection of intellectual property and cultural heritage including expression of folklore. That is to say, the protection of various artistic works including expression of folklore are among of the rights recognized under the Constitution. Apart from the Constitution, expressions of folklore are protected under the Copyright and Neighboring Rights Act and Copyright Act, 2013.<sup>18</sup> In particular, Part III and Part IV of the two Acts respectively provide for protection of expressions of folklore against illicit exploitation as elaborated below.

The Copyright and Neighboring Rights Act<sup>19</sup> is the main legislation in Tanzania for the protection of copyright and neighboring rights in literary, artistic works and folklore and other related matters. In safeguarding expression of folklore, under Part III; the

<sup>15</sup> Ibid.

<sup>16</sup> The Constitution of United Republic of Tanzania, 1977 as amended from time to time.

<sup>17</sup> Ibid.

<sup>18</sup> Cap 218 of Mainland Tanzania and the Copyright Act, 2013 of Zanzibar.

<sup>19</sup> Cap 218 as amended in 2019.

Act provides for protection of expression of folklore against illicit exploitation. The law recognizes and protects expression of folklore such as folk tales, folk songs, folk dances, traditional musical instruments, and production of folk arts, particular drawings, painting, baskets and others.<sup>20</sup>The Act,<sup>21</sup> *inter alia*, promotes creations of traditional and expressions of folklore. The Act further protects expressions of folklore by rendering certain uses thereof subject to authorization and determining offenses against lawful interests relating to their integrity and protects lawful interest of performing artists, producers of phonographs and broadcasting organizations relating to their productions, by granting them relevant rights.

In addition, the Act acknowledges that protection of expressions of folklore applies to expressions of folklore developed and maintained in the United Republic of Tanzania. On the other hand, foreign expressions of folklore are protected in Tanzania provided that the country of the community from which such expressions have been derived, grants similar protection to expressions of folklore developed and maintained in the United Republic of Tanzania.<sup>22</sup>The Act articulates that when a person use expression of folklore in connection with any communication to the public has to acknowledge the source by mentioning the community and geographical place from where the expression of folklore has been derived.<sup>23</sup>

Another important legislation is the National Arts Council which provides the responsibility of the National Arts Council which oversee expressions of folklore. The Act mandates the National Art Council to revive and promote the development

and production of artistic works including the production and use of indigenous and additional musical instruments, songs, poetry, and traditional dancing with a view to reviving and promoting Tanzania culture.<sup>24</sup>The Council has also the mandate<sup>25</sup> to authorize for the utilization of expression of folklore, to fix amount of collection fees from such authorization for the purpose of promoting and safeguarding national culture in Tanzania. However, fees collected by the competent Authority are used only for the purpose of promoting and safeguarding national culture. In addition, the Act is silent on the matter concerning the distribution of benefit accrued from such authorization. The law also is silence on whether authors of expression of folklore have the right to authorize for the use of their artistic works to other persons or to enter into written agreement in assigning the work on their own. The Act<sup>26</sup>provides that the protection of expressions of folklore in Tanzania is in line with the law protecting industrial property or any other law or international treaty to which the United Republic of Tanzania is a party. Nevertheless, law protecting industrial property is not suitable for protecting expressions of folklore. This is because industrial property rights are protected for a limited duration. This critic is explained in detail in the next sessions which addresses the suitability of the Copyright law in protecting expressions of folklore.

The Copyright Act, 2013 is another main legislation in Tanzania for the protection of copyright and neighboring rights in literary, artistic works and folklore and other related matters. It operates in Tanzania Zanzibar. The Act covers protection of expression of folklore against illicit exploitation. The law recognizes and protects expression of

20 Cap 218 as amended in 2019, s.24.

21 Cap 218 as amended in 2019.

22 Cap 218 as amended in 2019, s.3 (6).

23 Cap 218, s.17.

24 The National Art Council Act, Cap 204 as amended by the Written Law (Miscellaneous Amendment) Act, No.5 of 2019.

25 See Cap: 218 as amended in 2019, s.29.

26 Cap 218 as amended in 2019.

folklore such as folk tales, folk songs, folk dances, traditional musical instruments, production of folk arts, particular drawings, painting, baskets and others.<sup>27</sup>The Act recognizes the law protecting industrial property. The Industrial Property law<sup>28</sup> normally protects the works for a specified duration. This is not the case for expressions of folklore. As it has already been indicated, expressions are everlasting and they pass from one generation to another generation. Therefore, they cannot be protected within a specified period of time. Furthermore, the law is silent on prior fulfillment of other requirement when making authorization, such as prior informed consent from expressions of folklore owners. Thus, as already indicated, the above critics and other criticism are explained in detail in section 5 which addresses the suitability of Copyright law in protecting expressions of folklore.

On the other hand, the Copyright Act<sup>29</sup> recognizes the application of International Conventions or other international agreement on protection of expressions of folklore to which the United Republic of Tanzania is a party. Regarding to conventions and treaties, Tanzania is a member of Berne Convention for the Protection of Literary and Artistic Works of 1886 as revised in 1967. The Berne Convention provide for principles of copyright laws which have been reflected in various national jurisdictions including Tanzania who is the member and a signatory to the Convention since July 1994.<sup>30</sup>The convention under Article 2 provides for Literary and artistic works deserving protection, the requirements and the obligation to countries to protect the literal and artistic works of authors in the union.<sup>31</sup>Furthermore, article 15 (4) (a) (b) of

27 The Copyright Act, 2013, s.27 to s.33.

28 The Copyright Act, 2013, s.33 (2).

29 The Act, s. 44 (2).

30 See [https://www.wipo.int/treaties/en/notification/berne/treaty\\_berne\\_156.html](https://www.wipo.int/treaties/en/notification/berne/treaty_berne_156.html), accessed on 21<sup>st</sup> May, 2022.

31 ARIPO Report of 2019 accessed from [www.aripo.org](http://www.aripo.org) is relevant here.

the Berne Convention provides that in the case of unpublished works where the author is unknown, but there is reasonable ground to presume that they are citizens of the country concerned of the Union, then it is upon that country to designate the competent authority to represent the author. The Competent Authority is also entitled to protect and enforce author's rights in the countries of the Union. Therefore, this article of Berne Convention, according to the intention of revision conference, implies the possibility of granting protection for expression of folklore.<sup>32</sup> However, the convention protects literary works under limited time. Thus, expressions of folklore which passes from one generation to another generation have to be protected in its own scheme based on its characteristics.

Further to that, Tanzania is a signatory of the Convention on the Protection of the Diversity of Cultural Expressions, 2005. Article 1 of the Convention<sup>33</sup> aims at strengthening international cooperation and solidarity in a spirit of partnership with a view, in particular to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions. The article also gives recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meanings. The article reaffirms the Sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on the territory. Furthermore, it promotes respect for diversity of cultural expressions and raise awareness of the value at the local, national and international levels. In particular, it protects and promotes the diversity of cultural expressions.<sup>34</sup> In

32 See <https://www.itt.nissat.tripod.com/itt9903/folklore.htm>, accessed on 21<sup>st</sup> May, 2022.

33 UNESCO Convention of 2005 which came into force on 18<sup>th</sup> March, 2007.

34 Ibid.

addition, article 8 requires member States to take all appropriate measures to protect and preserve cultural expressions in a manner consistent with the provisions of the Convention. Tanzania is one of the members required to take appropriate measures to protect and preserve cultural expressions. This is for the reason that pursuant to article 26 of the Convention, Tanzania ratified the Convention on 18<sup>th</sup> October, 2011. Despite such ratification, still Tanzania protects expressions of folklore under the Copyright law. In that regard, the next subsection discusses the suitability of the Copyright law in protecting expressions of folklore.

### **5. Suitability of Copyright Law for Protection of Expressions of Folklore**

As it has already been discussed, in Tanzania expressions of folklore are protected under the copyright law. However, both at regional and international level, it is suggested<sup>35</sup> that *sui generis* law is suitable for protection of expressions of folklore while copyright law is not suitable to protect expressions of folklore. This position is also elucidated by case laws and prominent authors about protection of expressions of folklore.<sup>36</sup> In the first place, it suggested that although creative works typically fall under the aegis of copyright law, traditional cultural expressions often cannot satisfy the prerequisites for obtaining copyright protections. To fill this void, a number of West African jurisdictions have enacted statutory regimes designed to provide additional protection for traditional cultural expressions. This includes to grant traditional communities a tort-like remedy against exploitative or highly prejudicial uses of their traditional cultural expressions.<sup>37</sup>

Apart from that, surveys of national experience with the IP protection of TCEs have mentioned the following shortcomings in the conventional IP system in relation to Traditional Cultural Expressions:<sup>38</sup> difficulty meeting certain formal requirements of IP protection such as originality for Traditional Cultural Expressions. This may be due at least in part to the fact that Traditional Cultural Expressions often date back prior to the time periods associated with conventional IP systems, or are developed in a more diffuse, cumulative and collective manner, making specific steps such as invention or authorship difficult to establish at a fixed time. Requirements in many IP laws for protected subject matter to be fixed in material form, given that traditional cultural expressions are often preserved and transmitted by oral, narrative and other non-material forms.

Other shortcomings are the frequent informal nature of traditional cultural expressions and the customary laws and protocols that define ownership, or other relationships, such as custodianship and guardianship, and that form the basis of claims of custodianship, cultural affinity and community responsibility and the concern that protection systems should correspond to a positive duty to preserve and maintain traditional cultural expressions, and not merely provide the means to prevent others from making unauthorized use (which is the characteristic function of IP rights).<sup>39</sup>

The last shortcomings are the perceived tension between individualistic notions of IP rights (the single author or inventor) as against the tendency for traditional cultural expressions to be originated, held and managed in a collective environment, often making it difficult to identify the specific author, and or analogous creator that IP law

35 By Amegatcher, A.O., Ghanaian Law of Copyright, 2<sup>nd</sup> Edition, Omega Law Publishers, United Kingdom, 2014, p.40 that *sui generis* law is suitable for protection of expressions of folklore.

36 Nwauche E. S., *Protecting expressions of folklore within the right to culture in Africa*, PER/PERJ 2010, p.82.

37 A paper on legal frameworks for protecting Traditional Cultural Expressions in West African by Elizabeth Barad and Jason Spears, New York City Bar Association African Affairs Committee.

38 Georges S. S., Research Paper No 17 on National Policies and Legal Frameworks Governing Traditional Knowledge and effective Intellectual Property Systems in Southern and Eastern Africa: The Case of Traditional Healers in Tanzania, the African Technology Policy Studies Network, 2012 accessed on 20 April, 2022 from [www.wipo.int](http://www.wipo.int)

39 Ibid.

is assumed to require, and limitations on the term of protection in IP systems. Calls for better recognition of traditional cultural expressions often highlight the inappropriate nature of relatively brief terms of protection in conventional IP systems, as interests and need for protection are seen as enduring beyond individual life spans for traditional cultural expressions subject matter.<sup>40</sup>

It is also internationally argued that, copyright Act is not good law for protection of expressions of folklore. This is so because the characteristics of expressions of folklore are very unique. It is further argued that, expressions of folklore are suitably protected by a *sui generis* law. It is also for reasons that *sui generis* law provides comprehensive mechanisms for protection of expressions of folklore.<sup>41</sup>

On the other hand, Case law from Australia and Canada points to the difficulty of deploying copyright in the protection of expressions of folklore for a number of reasons. First, is the question of ownership. While copyright law protects individual ownership, expressions or folklore are communally owned. In the Australian case<sup>42</sup> the Court pointed out that copyright law does not provide adequate recognition of Aboriginal communal claims and thus not suitable for protecting expressions of folklore.

Further to that, some limited success was recorded in the case<sup>43</sup> where a group of Aboriginal painters instituted a copyright infringement case for an unauthorized use of sacred aboriginal paintings in a carpet. Secondly, copyright law usually requires fixation in any material form, while a large part of folklore is oral. Related to this point is the fact that expressions of folklore often

lie between ideas and expression and make it difficult to afford copyright protection to them. Thirdly, copyright protection is limited in duration - usually the author's life and fifty years after the author's death - while expressions of folklore are often timeless and would suffer because they have no identifiable author, and also because some of the expressions of folklore are made in an incremental manner over a long period of time. Fourthly, the works that are derived from expressions of folklore can become subject to copyright protection and be protected on their own. Such copyright protection has been the principal form of misappropriation of expressions of folklore. When a copyright work embodies an expression of folklore, the consequence is that the copyright owner has the right to bar or restrict how the community can use the expression of folklore they created. Accordingly, a community that seeks to use its own expression of folklore without permission is a copyright infringer.<sup>44</sup>

From the shortcoming of the copyright law on protection of expressions of folklore, it is suggested that countries must adopt or design a specific law for protection of expressions of folklore. Others call such mechanisms as a *sui generis* system. In other words, the inability of the copyright law to effectively deal with the protection of expressions of folklore led to calls for better protection. Such better protection includes designing *sui generis* system or specific law over the subject matter. Some countries have responded by enacting specific laws. A good example is from the selected countries, namely, Zambia and Kenya, which do not protect expressions of folklore under the Copyright Act. To address the deficiencies of Copyright law, the two countries enacted a specific law for protecting expressions of folklore.<sup>45</sup> Such initiatives were taken on

40 Ibid.

41 Georges S. S., Research Paper No 17 on National Policies and Legal Frameworks Governing Traditional Knowledge and effective Intellectual Property Systems in Southern and Eastern Africa: The Case of Traditional Healers in Tanzania, the African Technology Policy Studies Network, 2012, accessed from [www.wipo.int](http://www.wipo.int).

42 *Yumulul v. Reserve Bank of Australia* (1991) 21 IPR 481.

43 *Milpururu v. Indofurn Pty Ltd* (1995) 30 IPR 209.

44 Nwauche E.S., *Protecting expressions of folklore within the right to culture in Africa*, PER/PERJ 2010, p.82.

45 Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore, Act No.16 of 2016 and the protection of Traditional and Cultural Expressions Act, No.33 of 2016 RE 2018, respectively.

account that expression of folklore have unique characteristics. Such characteristics include the fact that most expressions of folklore are by word of mouth and pass from one generation to another generation.

In Zambia, the protection of Traditional knowledge, Genetic Resources and Expressions of Folklore Act,<sup>46</sup> provides for a transparent legal framework for the protection of, access to, and use of, traditional knowledge, genetic resources and expressions of folklore. It also guarantees equitable sharing of benefits and effective participation of holders; to recognize the spiritual, cultural, social, political and economic value of traditional knowledge, genetic resources and expressions of folklore of holders.

The long title of the Act acknowledges that Zambia promotes the preservation, wider application and development of traditional knowledge, genetic resources and expressions of folklore. It also recognizes, protects and support the inalienable rights of traditional communities, individuals and groups over their traditional knowledge, genetic resources and expressions of folklore.

The Act underlines the principle that confers rights on traditional communities, individuals and groups and promote fair and equitable distribution of the benefits derived from the exploitation of traditional knowledge, genetic resources and expressions of folklore. Lastly, the Act promotes the use of traditional knowledge, genetic resources and expressions of folklore for the benefit of traditional communities, the country and mankind in general; to ensure that exploitation of traditional knowledge, genetic resources and expressions of folklore takes place with the prior informed consent of a traditional community, individual or group; to prevent the granting of patents based on traditional knowledge, genetic resources and expressions of folklore

<sup>46</sup> Act No.16 of 2016.

without the prior informed consent of a traditional community, individual or group.

On the other hand, Kenya protection of Traditional knowledge and cultural expressions Act of Kenya<sup>47</sup> provides a framework for the protection and promotion of traditional knowledge and cultural expressions. Like the Zambia Act, the Kenyan Act contains various principles which covers the unique characteristics of expressions of folklore.<sup>48</sup> This is not the case in Tanzania. As discussed in section 4, the protection of expressions of folklore in Tanzania is embodied in the Copyright law which is no longer suitable for protection of expressions of folklore. From the above analysis and discussion, there is a need for Tanzania to adopt or enact a specific law for protecting expressions of folklore.

## 6. Conclusion and way forward

It has been established that copyright law is not suitable for protection of expressions of folklore. Efforts have been made at both regional and international level to redesign mechanisms for protecting expressions of folklore. Such mechanisms have been subscribed for Kenya and Zambia. However, Tanzania is still protecting expressions of folklore under the Copyright law. As clearly discussed in this article, Copyright law is no longer a good law for protecting expressions of folklore. Thus, Tanzania is required to adopt a new approach of protecting expressions of folklore. In particular, the best approach is to design a specific law for protecting expressions of folklore in Tanzania.

<sup>47</sup> Enacted in 2016 and revised in 2018.

<sup>48</sup> The Act, No. 33 of 2016.