

Expert Meeting on Access and Benefit Sharing and Intellectual Property Rights

Details of the Workshop

Dates: 5th to 9th September 2011

Place: Desalegn Hotel, Addis Ababa, Ethiopia

Organisers: Facilitated by the **Access and Benefit Sharing Capacity Development Initiative** in cooperation with the **Ethiopian Institute for Biodiversity Conservation**

Background of the Workshop

The Experts Meeting on Access and Benefit Sharing (ABS) and Intellectual Property Rights (IPRs) was the first meeting discussing ABS implementation in light of the Nagoya Protocol and its links to IPRs in the African context. The workshop provided a dialogue platform to explore the challenges of linking ABS and IPRs in a coherent manner when implementing ABS at the national and sub-regional levels.

The success of this workshop was assured by the very enthusiastic participation of 31 participants including ABS National Focal Points, representatives of national authorities responsible for the protection of IPRs, African key negotiators at the 10th Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) and in the last meetings of the World Intellectual Property Organization (WIPO), international IPRs experts, private sector representatives as well as representatives of relevant regional and international (research) institutions. Over the five day workshop, the participants exchanged views on how IPRs policies could support the implementation of ABS policies and regulations at local, national and sub-regional levels while engaging in lively discussions on the links and practicality of the different instruments (access permit or its equivalent, Mutually Agreed Terms (MAT), international certificate of compliance) to make the ABS system work as proposed in the Nagoya Protocol. Concrete practical experiences on ABS cases that are linked to IPRs were presented and formed the basis of intensive debates.

The objectives of this workshop were as follows:

- 1) To brief the participants on:
 - i. The Nagoya Protocol on ABS with a specific focus on the interlinkages between ABS and IPRs and their significance for the implementation of the ABS Protocol in domestic and sub-regional policies and regulations;
 - ii. The process and status of the negotiations under the WIPO and the World Trade Organisation (WTO) (Trade-Related Aspects of Intellectual Property Rights (TRIPS)-Council) regarding the relevant IPR aspects related to ABS.

- 2) Reflect on Intellectual Property (IP) aspects / considerations that will have to be taken into account in the development and implementation of ABS policies and regulations at the national and sub-regional levels and discuss ways and means (mechanisms) of institutional coordination between the relevant competent national authorities;
- 3) Introduce and discuss the practicality of different IP instruments along the value chain, research and product development process of Genetic Resources (GRs), Biological Resources and Traditional Knowledge (TK) based products; and
- 4) Explore the interfaces of ABS and IPRs regulations on the basis of national ABS cases.

Outcomes of the Workshop

Drawn on very constructive exchanges, group reflection and activities, the outcomes of the workshop were as follows:

- 1) The establishment of a common understanding of the interlinkages of ABS and IPRs and their impact on the implementation of ABS regulations in Africa;
- 2) An improved understanding of how IPRs can be used to strengthen ABS implementation process;
- 3) The identification of the key aspects of the interfaces between ABS and IPRs;
- 4) The identification of capacity development needed for mutually supportive implementation of the Nagoya Protocol and IP instruments;
- 5) Brainstormed information as a basis to support the draft of guidelines for Prior Informed Consent (PIC) and templates for Access Permits, MAT and the International Certificate of Compliance in line with the Nagoya Protocol; and
- 6) A detailed calendar of key ABS and IPRs events and suggested (joint) activities up to CBD COP 11.

Day-to-Day Summary

Day One, 5th September 2011

During the first day of the meeting, participants were:

- Familiarised with the core elements of the Nagoya Protocol, and more particularly with the interlinkages between ABS and IPRs and their significance in the implementation of the Nagoya Protocol in domestic and sub-regional policies and regulations;

- Informed on the process and status of negotiations under the WIPO and the WTO regarding relevant IPRs aspects related to ABS; and
- Introduced to the classical IPRs instruments such as patents, geographical indications (GIs) or trademarks relevant to ABS as well as to '*sui generis*' systems relevant to ABS and the protection of TK.

Presentations:

- The ABS Capacity Development Initiative: Between Supporting Negotiations and Implementation (Suhel al –Janabi, ABS Initiative)
- Biodiversity and ABS in the German Development Cooperation (Dr Christian Glass, BMZ)
- The Nagoya Protocol and its Links to Intellectual Property (Dr Susanne Reyes-Knoche)
- The WIPO Negotiation Process and its Links to ABS (Christoph Spennemann, UNCTAD)
- Intellectual Property Relevant to ABS and TK (Manuel Ruiz Muller, SPDA)
- IPR Instruments: Patent and Geographical Indications (Christoph Spennemann, UNCTAD)
- *Sui Generis* Systems in the Context of ABS/TK (Manuel Ruiz Muller, SPDA)
- Protecting TK – Considerations and Options (Dr Johanna von Braun, Natural Justice)

Day Two, 6th September 2011

During the second day of the workshop, participants:

- Explored the interface between ABS and IPRs through different national case studies.
- Discussed the lessons learnt from these national experiences in context.
- Identified key challenges or issues and key points or features with regards to ABS and IPRs arising from each case study presented and gathered these first pinpointed issues into eight relevant clusters. These were as follows:
 - 1) TK
 - 2) Resource Ownership
 - 3) Valuation, Benefit Sharing and Money
 - 4) ABS and IP Interface
 - 5) Legal and Policy Uncertainty and Lack of Regulations
 - 6) IP and IP Management
 - 7) Capacity Building and Transfer of Technology
 - 8) Monitoring
- Formulated three key questions arising from the observations made with regard to each cluster so as to apply them to various contexts.

Presentations:

- Maruline: Patented Marula Oil (Pierre du Plessis, CRIAA SA-DC)
- South African Case Study on *Sceletium Tortuosum* (Lactitia Tshitwamulomoni, DEA)

- Enzyme Case Study in Lake Bogoria, Kenya (Wilson Busienei, NEMA, Fredrick Otswong'o, KIPI and Peter Munyi, ICIPE)
- Nigerian Case Study on the Larva of African *Chironomid* (Benedicta Falana, FME)
- Collaboration between the Laboratory of Pharmacognosy and the Catholic University of Leuven, Benin (Dr Fernand Gbaguidi, CSTR)
- Agreement on Access to, and Benefit Sharing from Teff Genetic Resources (Dr Gemedo Dalle, IBC)

Day Three, 7th September 2011

After presentation and discussion of the results of the group work on day two, day three aimed to reflect on IPRs issues relevant to the ABS implementation process in domestic and sub-regional policies and regulations by providing:

- A comprehensive overview and analysis of patent cases relevant to ABS in Africa,
- Practical business reflections on IPRs in national ABS regulations and MAT negotiations; and
- An overview on the ABS related activities of relevant regional African institutions such as the African Union Commission, the African Union Scientific, Technical and Research Commission, and the African Regional Intellectual Property Organisation (ARIPO).

A group work served to examine the different approaches and activities to dealing with IPRs in ABS regulations and MAT negotiations at local, national and international levels (on the basis of the eight identified clusters on day two now merged into the four following clusters:

- 1) TK and Resource Ownership
- 2) Capacity Building and Technology Transfer
- 3) Valuation and Benefit Sharing
- 4) Monitoring and IP Management

Presentations:

- Analysis of Patent Cases Relevant to ABS in Africa (Judith Silveston, IP Consultant)
- IPRs in National ABS Regulations and MAT Negotiations, a Business Perspective (Norbert Weitkemper, Vital Solutions)
- The African Union Commission Life and Earth Science Unit (Malhet Teshome, AU Commission)
- A brief Historical Background of the Scientific Technical and Research Commission (Barr A. E. Igbokwe, STRC)
- Regional Approach on the Protection of TK, Expressions of Folklore and GRs (Emmanuel Sackey, ARIPO)

Day Four, 8th September 2011

Day Four first focused on two key topics: (i) disclosure requirement issues alongside the experience of Peru and the Andean Community and (ii) the use of IP systems to track the utilisation of GRs. The rest of the day was devoted to examine the four different "instruments" proposed in the Nagoya Protocol,

namely PIC, MAT, Access Permits and International Certificates. A group work enabled the participants to look in depth into each instrument, how they relate to each other and how they could be used efficiently to make the ABS system work. The following questions were provided to the participants as guidance for their brainstorming on the named instruments:

- 1) What information does an applicant have to provide/give in order for the providers to make an informed decision?
- 2) Which elements need to be incorporated into MAT to make it a workable agreement?
- 3) Which elements of all this need to be provided on the access permit/certificate, to make it a useful compliance tool?

Presentations:

- Disclosure Requirements in the Andean Community and Peru (Manuel Ruiz Muller, SPDA)
- Tracking and Monitoring GRs in the Patent System (Paul Oldham, ESRC Centre for Economic and Social Aspects of Genomics (Cesagen) & UNU)

Day Five, 9th September 2011

During the last day of the meeting, participants discussed the results of the previous day group work on PIC, MAT and Access Permits and agreed on a roadmap to develop draft guidance documents on PIC, MAT, Access Permit and International Certificate of Compliance. As a last exercise, participants elaborated a calendar of key events to CBD COP 11 which will serve as a draft activities plan for the ABS Initiative.

Follow the links below for:

[Workshop Report and Outcomes](#)

[Workshop Outline](#)

[Workshop Programme](#)

List of Participants