

## **Training**

### **„ABS and Intellectual Property Rights“**

*13h to 14th June 2012, Bujumbura, Burundi*

## **REPORT**

## **Background**

With the adoption of the Nagoya Protocol on “Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising out from their Utilization” many countries are expected to develop new Access and Benefit Sharing (ABS) frameworks or revise existing frameworks in the near future. In most countries these frameworks will not stand in isolation but are intimately connected to other regulatory frameworks, both on a national as well as international level.

One of these frameworks is the system for the protection of Intellectual Property Rights (IPRs). IPRs are relevant to ABS because most research and development based on genetic resources and/or traditional knowledge (TK) will eventually be subject to the protection of IPRs, mostly through patents. Once a patent is granted any claim contained in the patent will be of exclusive commercial use by the holder of the patent for a period of 20 years. The undifferentiated granting of patents for inventions related to genetic resources and associated TK has lead to repeated cases of misappropriation of TK as it was not recognized in any way by the patent applicant nor were any benefit shared with the TK holders. At the same time certain IPRs have also been discussed as possible tools for indigenous and local communities to protect traditional knowledge against such misappropriation and/or for their own economic aspirations.

## **Objectives**

Indigenous and Local Communities (ILCs) as the holders of TK and in some cases also genetic resources, are in great need to familiarise themselves with IPRs and the opportunities and challenges they may pose. In this sense, the objective of this training has been to

- brief participants on the links between ABS and IPRs and their significance for ILCs,
- explain how the IPRs system is linked to ABS, both substantively and institutionally,
- provide a basic understanding of relevant IPRs such as patents and geographical indications (GIs),
- introduce alternative TK protection models (also referred to as sui generis systems), and
- provide a platform for dialogue where ILCs can discuss and share concrete practical experience on the interface between IPRs and ABS

## **Expected outcomes**

- Awareness on the interface between ABS and IPRs with specific relevance for ILCs.
- Increased understanding of specific IPRs of particular relevance to ABS, such as patents and GIs and the opportunities and challenges they pose for the protection of TK.
- Basic understanding of the institutional landscape of intellectual property policy-making and possible avenues of ILC engagement into relevant national and international fora.

## **Participants**

25 participants from ILCs in Africa participated in the workshop. They were drawn from the participants of the African regional workshop for indigenous and local community representatives on Article 8j and ABS, organized by the Secretariat of the Convention on Biological Diversity, the ABS Capacity Development Initiative, the (Indigenous Information Network), Indigenous People of Africa Coordinating Committee (IPACC) and Unissons-nous pour la Promotion des Batwa (UNIPROBA), from 9-12 June in Bujumbura, Burundi.

## **Contact**

*Dr. Susanne von Saint André*

ABS Capacity Development Initiative

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Postfach 5180 - 65726 Eschborn - Germany

E [Susanne.vonSaintAndre@giz.de](mailto:Susanne.vonSaintAndre@giz.de)

I [www.abs-initiative.info](http://www.abs-initiative.info)

## Report

The training workshop on ABS and IPRs was the first of its kind organized by the ABS Capacity Development Initiative and was put together as one of the recommendations from the Expert Meeting on „ABS and Intellectual Property Rights“ hosted by the Ethiopian Institute of Biodiversity Conservation on September 5 to 9, 2011 in Addis Ababa.

The overall level of understanding of IPRs by participants at the training workshop was diverse, and to a large extent, limited. Its subsequent aim was to deepen this understanding so that ILC representatives would be in a better position to deal with issues related to IPRs and engage strategically in the respective policy making fora.

The method of training was mixed between lectures on different aspects of IPRs, discussions and group exercises or role plays. Substantially emphasis was placed on providing an introductory background on the following fields:

- a) a general introduction to IPRs
- b) a better understanding of patents and the three patentability criteria
- c) an overview of the limitations of patent law for protecting TK and what other forms of protection exist, ranging from GIs, databases to sui generis systems
- d) the Nagoya Protocol and its links to IPRs
- e) an institutional overview of where issues related to IPRs and ABS are dealt with politically at the national, regional and international level

### Box 1: The Institutional Landscape of IPRs and ABS

Forum	Issue	Activity
CBD	ABS, TK, Genetic Resources (GR), conservation	Art. 8j Working Group, expert meetings, COPs, SCBD-trainings and other activities, ABS Initiative trainings
Nagoya Protocol	ABS, TK, Genetic Resources, compliance, PIC, MAT	ICNP, National Focal Points
WTO/TRIPs	Disclosure, patentability criteria	National Focal Points
WIPO	TK, genetic resources, disclosure, patentability criteria	IGC (GR, TK, TCE), PCT, development committee
UNCTAD	GR, TK, IP	
FAO	Food security, nutrition, farmers rights, TK, GR for agriculture, animal genetic resources, benefit sharing	ITPGRFA, advisory groups, guidelines, policy on indigenous people, working groups, specialised trainings

Furthermore, participants identified the following national governmental institutions as possible relevant fora with respect to the interface of IPRs and ABS:

Ministries of Trade, Finance, Justice, Environment, Science and Technology, Foreign Affairs, Agriculture, Land, Forest and Culture; Presidential Commissions, Prime Minister's Offices, IP Offices, Law Offices and Parliament.

Due to the relative short nature of the workshop and limited amount of training that could happen within such a short period, the workshop ended with a feedback session that also identified priority areas for future trainings.

At the end of the workshop participants listed a number of recommendations for future activities on the topic of ABS and IPRs. The recommendations can be split into two broad categories: a) request for further and more in-depth trainings, and b) request for the Initiative's guidance on specifically challenging aspects. The following is a list of the recommendations made:

### **Recommendations for further trainings**

- Patent Law
- Geographical Indications
- Copyright
- IPRs & Information technology and the use of TK Databases
- Negotiation skills for IPRs
- Biocultural Community Protocols
- „Train the trainers“
- Protection of TK
- Historic origin of CBD, WTO / TRIPS and WIPO

Further in depth attention to:

- How to address TK protection across state boundaries
- How to integrate the certificate of origin into international and national IPRs regimes
- The relationship between the Nagoya Protocol and IPRs
- Material Transfer Agreements
- How do IPRs fit into the biotrade value chain
- Development of material for „IPRs simply explained“ in English and French
- How do we take a biocultural rights approach to IPRs and the protection of TK
- Relevance of IPRs and its link to ABS on the community level
- Developing strategic engagement with WIPO and WTO with respect to IPRs and TK
- Conceptualising options of how to define ‚community‘ in the context of ABS and IPRs

## **Agenda**

### **Organizers**

*Dr. Susanne von Saint André*  
ABS Capacity Development Initiative  
Deutsche Gesellschaft für Internationale  
Zusammenarbeit (GIZ) GmbH  
Postfach 5180 - 65726 Eschborn - Germany  
E [Susanne.vonSaintAndre@giz.de](mailto:Susanne.vonSaintAndre@giz.de)  
I [www.abs-initiative.info](http://www.abs-initiative.info)

*Dr. Johanna von Braun*  
Natural Justice - Lawyers for Communities  
and the Environment  
c/o GEF Small Grants Programme  
UNDP (Daily News Building)  
220 East 42nd Street, 21st Floor (Room  
2120)  
New York, N.Y. 10017  
USA  
E [Johanna@naturaljustice.org](mailto:Johanna@naturaljustice.org)

### **Programme**

#### Session 1 - Introduction

Opening remarks & training course objectives  
*Susanne von Saint André*

What is Intellectual Property (IP) and why does it matter?  
*Johanna von Braun*

#### Session 2 – Introduction to Patent Law

An Introduction to patent law  
*Susanne von Saint André*

Group Work on Patentability Criteria

#### Session 3 - Protecting TK

Patents, other types of IPRs (GIs) and beyond  
*Johanna von Braun*

#### Session 4 – IPRs and ABS

ABS Negotiation Role Play  
The Nagoya Protocol on ABS and its links to IPRs  
*Susanne von Saint André*

Institutional Overview of relevant global IPR Policy-Making in the context of ABS  
*Susanne von Saint André, Johanna von Braun*

#### Session 5 - Feedback and Way Forward