

Workshop on TK Documentation in Africa

11 -14 December 2013, Breakwater Lodge, Cape Town, South Africa

Background

Traditional knowledge (TK) has been and continues to be integral to the ways of life of indigenous peoples and local communities in Africa. Such communities have developed complex systems of knowledge, innovations and practices that guide their use of local resources in sustainable and useful ways. TK can provide truly valuable benefits to both the custodians of the knowledge and wider society, including the conservation and sustainable use of biodiversity; partnerships between communities and the wider market to exchange their products and expertise; the pharmaceutical, alimentary, and cosmetic industries can combine traditional knowledge with modern science to develop new products.

The recently adopted Nagoya Protocol, a supplementary agreement to the CBD, develops the legal framework of the CBD for the effective fair and equitable sharing of the benefits (ABS) arising from the utilization of traditional knowledge associated with genetic resources (aTK). It represents an important tool for a greater legal certainty and transparency for both providers and users of a TK and for strengthening the ability of indigenous peoples and local communities to benefit from its appropriate use. Similarly, the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is currently negotiating a legal regime that will provide guidance for the effective intellectual property protection of TK.

Nevertheless, if great progress has been made in terms of legal recognition of local knowledge and rights, some aspects of the implementation of the traditional knowledge provisions remain unclear and require additional work.

Firstly, the Nagoya Protocol's success requires identifying what is the potential of aTK for economic enhancement (traditional medicines, cosmetics, agriculture, natural resources conservation and sustainable use, etc.), developing an understanding of by whom and how a TK is held, considering inventorying existing sources of traditional knowledge and creating a framework for conserving, accessing and using them. Some TK has been recorded in scientific literature, some is held in museums and ethnobiological databases, while most is *living* TK, orally transmitted within local communities. Few countries, such as South Africa, have a documentation system in place similar to the Indian TK Digital Library or the Peruvian Knowledge Registry.

A second issue relates to the relationship between documentation, legal protection of a TK and the intellectual property rights (IPR). Depending on how it is held, in what form and by whom, TK is subject to very different forms of intellectual property rights (IPR): It may be protected by patents or geographical indications, held in the public domain, under copyright or trademarks. On occasion, such legal instruments are able to provide protection against acts of biopiracy (appropriation of IPR on TK without consent and benefit sharing), add additional financial value to TK and sometimes they are not the most appropriate mechanisms for TK.

The ABS Capacity Development Initiative

In February 2013, in Bengaluru India, the ABS Capacity Development Initiative supported the participation of a group of representatives from the research community and from ILCs, to a workshop on TK Documentation for African countries, which was organized by the National Biodiversity Authority of India. In response to the many questions that the workshop raised, the ABS Initiative commissioned and funded the French Museum National d'Histoire Naturelle to carry out a study on the mapping of aTK, stakeholders and access conditions regarding *in-situ* and *ex-situ* collections, in three Francophone countries (Senegal, Cameroon and Benin).

Cape Town Workshop

In order to continue the work initiated with the Museum National d'Histoire Naturelle, the ABS Initiative, the South African Department for Science and Technology (DST), the Intellectual Property Law and Policy Research Unit of the University of Cape Town and Natural Justice: *lawyers for communities and the environment* will hold a meeting on aTK Documentation in Africa, offering a platform for critical discussions on aTK documentation and its relationship with IPRs.

The meeting will be hosted by the 3rd Global Congress on Intellectual Property and the Public Interest and Open A.I.R. Conference on Innovation and Intellectual Property in Africa (<http://www.openair.org.za/capetown2013>), with the first day and a half proceeding in conjunction with the TK track of the Congress. The meeting will welcome ABS National Focal Points, representatives of competent national authorities, representatives of relevant research institutions, indigenous peoples and local communities, relevant international organizations, civil society, the private sector and intellectual property rights experts.

Objectives

The workshop will focus on the following objectives:

- Presentation of the study of the Museum National d'Histoire Naturelle on *ex-situ* and *in-situ* collections;
- Explore how and by whom TK is being currently held *in situ* and *ex situ* in other African countries;
- Share examples and experience from countries that have TK Databases;
- Understand to whom TK held in databases is, or should be, accessible and under what conditions;
- Explore the potentials and the risks posed by the documentation of aTK and investigate possible approaches to counter those risks;
- Discuss whether the documentation would be on national, regional or/local level and the most appropriate models.
- Exchange on possible TK documentation models and relationship with IPR protection.

Outputs

In line with these objectives the workshop is expected to achieve the following outputs:

- Reflections on the objectives of documenting TK in Africa;
- Recommendations on TK documentation for an effective national implementation of the Nagoya Protocol;
- Understand how TK documentation in Africa can promote the rights of TK-holding communities (prior informed consent, fair and equitable sharing of benefits, respect of customary laws and community protocols);
- Understand the relationship between TK documentation and IPRs.

Following the workshop, a booklet based on the outputs, experiences and ideas shared during the workshop will be produced, including 3 papers selected from participants of the IP Congress on TK Documentations and IPRs.

Participants

Up to 60 participants from selected African countries including ABS National Focal Points, representatives of relevant national and regional (research) institutions, NGOs, indigenous and local communities, as well as representatives of the private sector involved in bio-trade and bio-prospecting. These participants invited by the Initiative will be joined for 2 days by interested experts on intellectual property rights who are attending the Open A.I.R. Conference on Innovation and Intellectual Property in Africa.

Simultaneous interpretation English/French/English will be available for the plenary sessions of the workshop.

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