Access and Benefit Sharing

The ABS Capacity Development Initiative

Training on ABS and Intellectual Property Rights for National Focal Points

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Background

The training on Access and Benefit-Sharing (ABS) and intellectual property rights (IPRS) which took place in Gaborone was the first comprehensive training on ABS and IPRs developed by the ABS Capacity Development Initiative (ABS Initiative). The programme was based on the recommendations made at an expert meeting on ABS and IPRs which took place in Addis Ababa, Ethiopia in September 2011 and on the outcomes of a two day pilot training on the same theme, provided to a selected group of representatives of Indigenous People and Local Communities (ILCs) in Burundi in June 2012. With the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol), many countries are likely to develop new ABS frameworks or to revise existing frameworks in the near future. In most countries, these frameworks will not stand in isolation but will be intimately connected to other regulatory frameworks, both at national and international level.

One of these connecting frameworks is the system for the protection of IPRs. IPRs are relevant to ABS because often research and development of genetic resources and/or traditional knowledge will lead, directly or indirectly, to products and processes that eventually may be subject to intellectual property protection, mostly through patents. Once a patent is granted, exclusive commercial use is accorded to the holder of the patent. This has repeatedly led to the misappropriation of genetic resources and /or associated traditional knowledge. At the same time, certain collective IPRS, such as geographical indications have also been discussed as possible tools for ILCs or other interested parties in biodiversity-rich countries to identify and add value to products associated with their traditional territories, conceived in their natural and cultural dimensions, as well as to protect traditional knowledge or genetic resources against such misappropriation for their own economic aspirations.

Objectives of the Training

This training is the first in a series of four, designed for Anglophone, Francophone and Lusophone countries with the view to providing a more in-depth understanding of the linkages between ABS and IPRs to all relevant stakeholders, including ILCs at large. Both the expert meeting and the pilot training emphasised the need for national focal points, ILCs and other relevant stakeholders to familiarise themselves with IPRs and the opportunities and challenges they may pose. With this in mind, the objectives of the training were to:

- brief participants on the links between ABS and IPRs and their significance for national focal points;
- 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;
- explain alternative traditional knowledge protection models (also referred to as *sui generis* systems); and
- provide a platform for dialogue where national focal points and other relevant stakeholders can discuss and share concrete and practical experiences on the interface between ABS and IPRs; and examine possible regional approaches to cope more effectively with these issues.

Outcomes

The training brought together thirty-six ABS national focal points, representatives of government agencies and intellectual property officers from seventeen Anglophone African countries. Over the course of five days, participants attended lectures on the different aspects of the relationship between IPRs and ABS, engaged in constructive discussions and explored this freshly acquired expertise through practical group exercises.

The first part of the training focussed on providing participants with a comprehensive overview and understanding of the various IPRs relevant to ABS and the protection of traditional knowledge.

The second part was dedicated to reviewing the role of relevant international fora and instruments in influencing classical intellectual property systems and the potential development of a *sui generis* system of protection for traditional knowledge associated with the use of genetic resources.

The third and last part of the training looked at the different applicable legal tools in the context of ABS and provided useful recommendations, including key negotiation tips and hints, to address IPRs in a coordinated and coherent manner for more effective ABS implementation at national level.

Based on very comprehensive lectures, productive exchanges, group work and activities, the overall outcomes of the training were as follows:

- An increased awareness among participants of the interface between ABS and IPRs with specific relevance for ABS national focal points.
- An increased understanding of specific IPRs of particular relevance to ABS, such as patents and geographical indications, as well as of the opportunities and challenges they pose for the protection of genetic resources and/or (associated) traditional knowledge, biodiversity conservation and sustainable use.
- An increased understanding of specialised ABS regimes, such as the multilateral ABS system of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), and how they relate to the Convention on Biological Diversity (CBD) and the Nagoya Protocol.
- A basic understanding of the institutional landscape of intellectual property policy making and possible avenues of national focal points' engagement into relevant national, regional and international fora.
- An exchange of experience on a regional level with the aim to identify and develop solutions to transboundary challenges regarding these issues.

Process

Welcome and Introduction

Official Opening

Charlotte Sluka from the ABS Initiative and Alex Banda, the Senior Programme Officer dealing with Environment and Sustainable Development at the Southern African Development Community (SADC) welcomed the participants.

Session 1: What is Intellectual Property and why does It Matter in the Context of ABS?

Objectives of the Session

1) To provide a general introduction to the concept of intellectual property and how it relates to the use of genetic resources and the associated traditional knowledge.
2) To briefly introduce the classical IPRs instruments, such as patents, geographical indications, copyrights and trademarks, etc.
3) To discuss the relevance of some of these tools for the protection of traditional knowledge, as well as for promoting biocultural products and processes.

Summary and Objectives

This first session of the training provided a brief but comprehensive overview of intellectual property and the different types of IPRs. Concepts of tangible vs. intangible cultural heritage were discussed as well as how cultural heritage protections instruments relate to ABS and may affect the use of genetic resources and/or (associated) traditional knowledge. A few examples of how different forms of IPRs can affect countries within the broader field of ABS were presented in order to provide the basis for further discussion during the course of the workshop and to further address:

- the reasons why understanding the interface between IPRs and ABS is central for ABS national focal points and ABS policy makers;
- how such an understanding will facilitate the effective implementation of national ABS provisions that are linked to IPRs;
- the identification of relevant links to IPRs included in the Nagoya Protocol and of the relevant links to ABS contained within the different IPRs instruments discussed;
- which/what elements of IPRs are relevant for prior informed consent (PIC) and mutually agreed terms (MAT); and
- what policy issues should be born in mind in relation to genetic resources and the associated traditional knowledge when a national policy on IPRs is being designed.

Example of Good Practice

Brazil's ABS Law and Copyright

According to the Brazilian ABS law (MP 2.186-16/2001), any articles or publications that contain or describe traditional knowledge associated to biodiversity, must indicate that access to such traditional knowledge, for scientific or commercial purposes, is subject to the prior informed consent of the holders of such knowledge, as well as to mutually agreed terms between the holders and users of such knowledge.

Key Learning Elements

- Intellectual property refers to the area of the law that aims to protect the creations of human minds. These creations are usually quite diverse, such as inventions, literary and artistic works, etc. and fall under two categories: industrial property i.e. patents, trademarks, industrial designs, etc. and copyright related to literary works i.e. films, music, artistic work, etc.
- Intellectual property protects the interests of creators by giving them property rights, i.e. IPRs over their creations in the industrial, scientific, literary and artistic fields.
- IPRs do not protect the physical object in which the creation may be embodied but its intellectual creation.
- IPRs constitute rights to exclusive commercial use, generally limited in time and scope and are territorial in nature.
- A creation / invention must contain elements of novelty/ originality, creativity / inventiveness and commercial application / utility.
- The main IPR instruments relevant to ABS and traditional knowledge are patents, geographical indications and plant breeder‘s right (plant variety protection).
- Despite various limitations, some aspects of Intellectual property/IPRs could be used for the protection of certain elements of the traditional knowledge associated with genetic resources and to prevent misappropriation, while at the same time enhancing benefit-sharing through appropriate PIC requirements and carefully drafted MAT.

Question and Answer Session

Traditional knowledge often enters the public domain via publications. Why can’t copyright protect traditional knowledge?

The types of products and processes developed through ABS are usually protected through patents not copyrights (ex: new drugs, cosmetics, etc.). The misappropriation of traditional knowledge associated with genetic resources is more likely to occur through as patents protect the inventions that are developed through access to genetic resources and associated traditional knowledge. Copyright only protects fixed, original, and creative expression, not the ideas or facts upon which the expression is based. It protects a form of expression, such as publications, musical compositions, works of drawing, painting, architecture, sculpture, etc., but not the actual content of what has been written down. Therefore, in itself, it cannot protect traditional knowledge. Hence, copyrights protect forms of expressions but do not protect inventions or ideas. Besides, traditional knowledge usually has a collective and dynamic nature, and it may be very complex to identify individual authorship of traditional knowledge, in order to claim copyright protection.

Other issues raised were as follows:

- The importance of acknowledging knowledge holders in publications.
- The sharing of the benefits generated by a publication on traditional knowledge with knowledge holders.
- To what extent ABS and IPRs would be affected by the transboundary nature of genetic resources and traditional knowledge.
- The difficulties, at times, to identify a specific knowledge holder.

Session 2: An Introduction to Patent Law

Objectives of the Session

1) To provide a general understanding of how the patent system works at the national level.
2) To show how national systems are tied together in regional patent systems.
3) To show how global and international legal harmonisation work together with national systems.

Summary and Objectives of the Session

This session provided a general overview of the basic principles of the patent law system. Participants were taken through the patent application process step by step. First, they thoroughly examined how a patent application process functions. The criteria and considerations taken into account by patent examiners were also explained in great detail. Participants further looked at the exclusive rights conferred by a patent. Finally, issues related to enforcement of patents and potential mechanisms for challenging the validity of patents were examined.

Key Learning Elements

- A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. A patent provides protection for the invention to the owner of the patent for a limited period, generally 20 years. In order to be patentable, the invention must fulfil certain conditions.
- The first step in the patent application process is the filling of a patent. It consists of a written description of the invention/innovation, patent claims and where relevant a deposit of biological material.
- The second step is the search for prior art. This step aims at collecting what is already known prior to the patent application. The search will only target written and public documentation.
- The third step constitutes the patent examination. This step compares the patent description to the literature and assesses it according to three criteria: novelty, inventive step and industrial application. However, these criteria are not fully harmonised throughout the various patent systems.
    - Novelty: Is the invention absolutely novel, defined and operational, identical to the prior source?
    - Inventive step: Is the invention sufficiently different from all sources of prior art, substantially different? Does it constitute an inventive step? Is the invention non-obvious for "a person skilled in the art"?
    - Industrial application: Does the invention have an industrial application?

What is Prior Art?

Prior art is a term used in patent law to broadly describe the entire body of knowledge from the beginning of time to the present. In most systems of patent law, prior art constitutes all information that has been made available to the public in any form before a given date that might be relevant to a patent's claims of originality. Prior art therefore includes any relevant patents, published articles or oral knowledge. If an invention already exists, it constitutes prior art and a patent on that invention cannot be granted.

- If successful, the fourth step constitutes the granting of the patent. The patent is granted when all of the above criteria are fulfilled and the patent applicant pays his/her fees.
- The last step is the enforcement of the valid patent. This takes place at the national level.
- The Patent Cooperation Treaty (PCT) under World Intellectual Property Organisation (WIPO) establishes a global extensive search system for prior art available to members states that are parties to the Treaty.

Question & Answer Session

Is traditional knowledge acknowledged / disclosed in the patent system?
The patent system is not conducive to the protection of traditional knowledge. The focus is on the inventor and what he/she claimed to have invented. The description of the technical process leading to the invention is more important than the origin of the genetic material and associated traditional knowledge. Nevertheless, disclosure requirements, i.e. whether traditional knowledge should be acknowledged and the country of origin disclosed are some of the issues currently debated in the various relevant fora such as the WIPO and the World Trade Organisation (WTO).

Is isolating a virus or a gene an invention?
Isolating a virus or discovering a gene can be regarded as an invention depending on how strict the national patent system is.

When a gene is isolated, how can this discovery be linked to the traditional knowledge used?
The only way to establish a link would be by requiring the disclosure of genetic resources and associated traditional knowledge in the patent application process, a requirement that so far only few countries have included in their national patent systems.

Do patent claims need to be specific?
Patent claims are not always specific, as many patent applicants seek to keep their patents broad so the claims included will cover larger areas of work/inventions. Often patent applicants are requested to be more specific, depending on the patent law of the country. For example, the European Union is stricter on this point than the US.

Where are patent applications submitted to?
Applications can be submitted through national patents system, regional, or through international patent system. For instance, the Africa Regional Intellectual Property Organisation (ARIPO) is the regional patent organisation in Africa (for Anglophones countries). When filing a patent application through ARIPO, or any regional patent system, the patent applicant, as a general rule, may choose the national systems in which the patent will apply among the parties of this system. The European Patent Office (EPO) is another example of regional patent system.
International applications can be conducted under the PCT, which is operated by the WIPO and provides a centralised application process. The PCT system enables an applicant to file a single patent application in a single language. The application, can, at a later date, lead to the grant of a patent in any of the PCT's contracting states. WIPO, or more precisely the International Bureau of WIPO, performs many of the formalities of a patent application in a centralised manner, therefore avoiding the need to repeat the steps in all countries in which a

patent may ultimately be granted. The WIPO coordinates searches performed by any one of the International Searching Authorities (ISA), publishes the international applications and coordinates preliminary examination performed by any one of the International Preliminary Examination Authorities (IPEA). Steps such as naming inventors and applicants, and filing certified copies of priority documents can also be done centrally, and need not be repeated. The main advantage of proceeding via the PCT route is that the option of obtaining patents in a wide range of countries is retained, while the cost of a large number of applications is deferred. In most countries, if a national application succeeds, damages can be claimed from the date of the international application's publication.

Must a deposit of biological material be provided when filing a patent application?
In the context of bio-innovation, it is sometimes not enough to describe the invention/discovery process in words so a combination of a description and a sample of a biological material is provided and kept in a repository. Both the description and the sample of biological material become the object of the right.

What qualifies as an invention/discovery?
There is currently no harmonisation at global level on this point, as there is no agreement on what the characteristics of an invention are and how it distinguishes itself from a discovery. While the general patentability criteria are determined by international law, countries have the discretion to interpret them at national level.

Why is it difficult to acknowledge traditional knowledge as prior art?
In many jurisdictions, prior art needs to be in written form and must be known by and available to the public, especially if such knowledge originates from other countries. It is difficult to recognise traditional knowledge as prior art because most of it is not available to the public and is still in an oral form. ILCs often have no rights to the patent unless they are mentioned as part of the applicants in the patent application or if national ABS laws accord them such rights. Legal vehicles that ILCs could consider include community-co-ownership of the patent or a combination of a contract and co-ownership of the patent.

Can copyright on existing literature prevent a patent from being granted?
In patent law, copyrighted written literature will serve as a documentation of a particular knowledge. However, patents are granted on individual merits for innovation. The literature, therefore, can only undermine the criterion of novelty.

Why is there no global patent system?
Most countries have agreed to the global search system. However, they have not agreed on the criteria for assessing patents and on allowing WIPO to process patent examinations and grant patents on their behalf. This would mean transferring their sovereignty to WIPO and most countries are reluctant to do this. Nevertheless, there is a global trend towards patent law harmonisation, which is of deep concern to many developing countries as it would reduce countries' policy space to determine what is patentable and what is not.

In the case of Teff, could Ethiopia continue to exploit Teff?
The patent on Teff was not granted in Ethiopia but in Europe, therefore Ethiopia could still use Teff as it traditionally used to do. The patent excludes seeds and relates exclusively to

flour that falls under the description of the patent. This means that it is possible for Ethiopia to export flour to Europe, but it would have to be of a different quality.

Is there any patent dispute resolution mechanism?
An international patent court as such does not exist; proceedings have to be brought at national level.

Group Exercise on Patentability Criteria

Participants were divided into four groups and given the task to examine three patent applications and decide if, as a patent examiner, they would grant each of the patents. For each patent application, participants were asked to justify their answers.

Session 3: Introduction to Geographical Indications

Objective of the Session

- To provide participants with a general overview and a good understanding of what geographical indications are and of the main purposes of protecting and registering geographical indications.
- To provide participants with a better comprehension on how geographical indications are regulated by the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement/ WTO, the Bangui/Organisation Africaine de la Propriété Intellectuelle (OAPI) Agreement and how they differ from trademarks and other IPRs.
- To discuss with participants how (and if) geographical indications could be useful legal tools to promote local/traditional products of African countries, therewith contributing to their sustainable development.

Summary of the Session

The session provided a general overview of what geographical indications are, their main purpose, their collective nature how they relate to sustainable local development, cultural identity and heritage and how geographical indications can possibly be used as tools to help ensuring the quality and identity of products associated with certain territories (terroir), conceived in their natural and cultural dimensions. The session also presented the historical background of geographical indications, both in Europe and internationally. It further focused on how geographical indications are regulated by the TRIPS Agreement of the WTO, the additional protection of geographical indications for wines and spirits, and the possible extension of the higher level of protection to other agri-food products. The difference between geographical indications and trademarks was also examined. Finally, the session presented three recent cases of geographical indications registered for African products in the context of the Bangui/OAPI Agreement (Pepper from Penja, Cameroun, registered in 2012, as well as Honey from Oku, Cameroun and Coffee from Ziama-Macenta, Guinea, that are still in the process of being registered) and

Exercise

Can you think of at least two products in your country of origin, which could potentially benefit from the registration as a geographical indication? Which products? What are their main characteristics? How are these products related to traditional knowledge, cultural identity and biodiversity?

Do you think geographical indications could help to promote such products? Do you think GIs could undermine the diversity of such products? In what way?

discussed ARIPO's decision to develop a regional framework for the protection of geographical indications. Possible geographical indications in Africa were also discussed (Ghana Fine Flavor Cocoa, Rwanda Mountain Coffee, Argan Oil from Morocco, Rooibos Tea from South Africa, Vanilla from Madagascar, etc), based on the joint work conducted by the European Commission and the African Union.

Key Learning Elements

- Geographical indications are indications of origin that link product characteristics or quality to a geographical origin. Well-known examples of geographical indications are Champagne (France) and Parmesan Cheese (Italy).
- Geographical indications identify and add value to products associated with certain territories conceived in their natural and cultural dimensions. Geographical indications do not create reputation, quality or tradition / history. They only recognise what already exists. There is no obligation to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country, or that have become "generic" (ex. Cheddar/UK).
- Geographical indications aim to protect cultural heritage, including food heritage associated with certain geographic areas, to ensure quality and identity of products, to protect consumers against fraud and to encourage links between producers and consumers.
- Geographical indications create awareness and markets for specific products, which are strongly associated with cultural values and regional identities in markets dominated by globalised and standardised products.
- Unlike patents, geographical indications do not require novelty or a technical invention but are often based on traditional production methods, which correspond more to the nature of the traditional knowledge associated with genetic resources.
- Geographical indications and trademarks are two different categories of IPRs and are not to be confused. Trademarks are used to distinguish products from other, identical, similar or related ones which are made by different companies or persons. Trademarks differentiate products according to the companies which make them, not to their geographical origins. Geographical indications may create benefits for all actors involved in the production chain, which usually does not happen with trademarks.
- Registration of a trademark containing a geographical indication or constituted by such indication must be refused or invalidated if the use of such indication in the trademark is liable to mislead the public as to the true place of origin of the products.
- The main links between geographical indications and ABS with regard to the protection of traditional knowledge is the possibility of using such legal and economic tools to promote and enhance the value of products associated to biodiversity and cultural diversity, as well as the collective nature of geographical indications as IPRs.

Question and Answer Session

How can geographical indications help with the sharing of benefits with the people of a region?

A geographical indication refers to an entire value chain and specific set of rules. All the producers from one region, which has obtained a geographical indication for a specific product can use this specific geographical indication for their own production and therefore obtain benefits from it.

Can the name of a trademark be similar to a geographical indication?
The name of a trademark is not related to a region or territory. Trademarks cannot use the same name as geographical indications. It is possible to use the same production process in another location as long as the geographical name is not used. A geographical indication is not a patent. It is another instrument of protection based on different compliance standards.

Can GIs be used to protect craft?
Yes, they can, although this is not very common.

What is the justification to declare that a product is linked to a certain geographic region? For example, the origin of coffee is Ethiopia, but many geographical indications can be found for coffee.
Geographical indications do not function on that logic. They have nothing to do with endemic species or the real origin of a plant. Geographical indications are concerned with a set of characteristics that are related to a specific territory, tradition and culture.

Are transboundary or bi-national geographical indications possible?
Such examples exist, e.g. in India and Pakistan in relation to Basmati rice. It could be very interesting to develop such type of geographical indications in Africa where communities are often separated by administrative borders but have the same history and cultural heritage.

Session 4: Protection of Traditional Knowledge

Objectives of the Session

- To provide an understanding of the advantages and shortcomings of IPRs for protecting TK.
- To introduce and discuss other forms of protection available at international law, such as UNESCO´s Conventions on Cultural Heritage, ILO Convention n°169 on Indigenous and Tribal Peoples, CBD and the Nagoya Protocol.
- To provide a better understanding of the concept of *sui generis* models of protection.
- To share experiences from the African continent among participants.

Summary of the Session

The first part of this session provided participants with an overview of the advantages and limitations of traditional forms of IPRs for the protection of traditional knowledge. The key characteristics of traditional knowledge were contrasted with the nature of most forms of IPRs, with a special focus on patents. Participants discussed the benefits of the model of protection offered by geographical indications, their distinctive characteristics corresponding to the nature of traditional knowledge, as well as the limitations of such systems of protection. Other international fora and existing instruments supporting the protection of traditional knowledge such as the UNESCO Conventions, the ILO 169 Convention, and the CBD and the Nagoya Protocol were also carefully reviewed. Finally, the participants explored and discussed the advantages and disadvantages of *sui generis* systems of protection, in particular data basis and stand-alone models. The second part of the session focussed on the protection of traditional knowledge in Africa and presented the Swakopmund Protocol, administered by ARIPO which provides a full *sui generis* system for the protection of tradition knowledge and traditional cultural expression, usually referred as folklore. The Swakopmund Protocol is yet to come into force.

Key Learning Elements

- The dynamic nature of traditional knowledge and other characteristics, such as collective ownership, oral and intergenerational forms of knowledge connected to a specific way of life and stewardship duties necessitating open ended protections stand in sharp contrast to the features of patentable knowledge.
- Existing international instruments, such as the UNESCO, the ILO Convention n°169, the United Nations Declaration on the Rights of Indigenous Peoples, the CBD and the Nagoya Protocol constitute a strong legal basis for the protection of traditional knowledge.
- The motives behind protecting traditional knowledge are either defensive or aspirational in nature:
  - Defensive motives are generally expressed in the creation of databases or registries to create prior art such as the Indian Traditional Knowledge Library, in the disclosure requirements of patent files and in the regulation of access and/or use of traditional knowledge in accordance with customary norms.
  - Aspirational motives ensure the fair and equitable sharing of benefits arising from the utilisation of traditional knowledge or incentivise conservation as well as the affirmation and protection for traditional lifestyles that conserve and generate traditional knowledge.
- Policy models of protection for traditional knowledge are based either on a state-centric approach where the government acts on behalf of the ILCs or on community rights-based models where communities remain very much in control of their traditional knowledge.

What does *sui generis* mean?

Sui Generis – a frequently-used latin phrase, means "of its own kind" or "unique".
In the context of intellectual property law, the phrase refers to a form of intellectual property that does not derive from traditional forms of intellectual property rights, such as patents or copyrights.
Traditional knowledge can be protected to some degree by various IP instruments, but for the most part, there is no effective international framework for the protection of traditional knowledge. This shortcoming has led to a search for additional or alternative models, such as *sui generis* systems for the protection of traditional knowledge.

Question and Answer Session

Will traditional knowledge be in the public domain if protected by geographical indications?
Yes, if the law of the country allows it. Each country develops its own system of geographical indications. For the geographical indications to be respected, they further need to be recognised in other countries too. It therefore depends on whether countries have or have not implemented laws related to geographical indication. As already mentioned, geographical indications are not time bound. However, it is important to note that geographical indications do not protect traditional knowledge in itself, but the product made through the use of traditional knowledge. Hence, the traditional knowledge element will not be protected by geographical indications. Additionally, it is essential that a market exists for this product. If there is no market, there is no real reason for protecting the name through a geographical indication. From this perspective, i.e. the absence of a market, geographical indications are not a useful tool to protect traditional knowledge.

What is the link between all these international instruments and conventions?
There no formal link per se. Some of them are binding conventions, others are not. However, the same idea in relation to ILCs and associated issues seems to pertain all of them. More precisely and more importantly, there is a broad recognition within all international instruments of the need to protect traditional knowledge.

What is the link between international bodies like WIPO and WTO and the traditional knowledge associated with genetic resources?
Both WIPO and WTO propose forms of protection of traditional knowledge through different types of IPRs, the main ones of which are discussed in this training.

How can community protocols contribute to the protection of traditional knowledge?
Community protocols are written documents that can facilitate the recognition of previously oral prior art. Community protocols also serve as a means of negotiation when developing ABS agreements, in particular by articulating prior informed consent and conditions for MAT.

Does traditional knowledge need to meet the three protection criteria of section 5 of the Swakopmund Protocol?
Traditional knowledge needs to meet one of the criteria. Third parties will need an authorisation to access it and will have to share the benefits arising from its utilisation.

Is the grant of a patent (in ARIPO) linked to the protection system of the Swakopmund Protocol?
There is no current link between the two systems but this point is currently discussed. The Harare Protocol could be amended to address the issue of genetic resources and associated traditional knowledge.

What is therefore the relationship between the Swakopmund Protocol and the international patent system?
The Swakopmund Protocol is a *sui generis* system, which will be implemented as an alternative mechanism for the protection of traditional knowledge that is holistic (bio-cultural) and by virtue of its characteristics cannot be protected under the conventional IP regimes.

Session 5: Institutional Overview of the Relevant Global Intellectual Property Policy Making

Objectives of the Session

1) To provide participants with a general understanding of each relevant international organisation.
2) To highlight how each of these organisations contributes to IPRs systems and ABS through relevant legally binding obligations or institutional structures.
3) To provide participants with a general overview and better understanding of the main provisions of the ITPGRFA and its multilateral ASB system and why these are important with regard to IPRs.

Summary of the Session

This session provided the participants with a general overview of the relevant international organisations and instruments, which either constitute the international patent system or contribute by shaping and standardising national patent systems and in doing so, impact on the decision to grant a patent. The session therefore explained in great detail how elements of national patent law have their origin in these different fora and showed how global organisations are connected to national patent systems. Setting the tone for the entire session, a brief introduction to the Nagoya Protocol highlighted the key aspects of the interfaces between ABS and IPRs i.e. the key relevant provisions relevant to IPRs and the importance of understanding this interconnectivity to strengthen national ABS and IPRs implementation processes.

Summary of the Explicit Links to IPRs in the Nagoya Protocol

Provision	Content
Article 6(3)(g)(ii)	Each Party requiring prior informed consent shall take the necessary legislative, administrative or policy measures, as appropriate to establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, inter alia: terms on benefit-sharing, including **in relation to intellectual property rights**.
Annex (1)(j)	Monetary benefits may include, but not be limited to: joint ownership **of relevant intellectual property rights**.
Annex (2)(q)	Non-monetary benefits may include, but not be limited to: **Joint ownership of relevant intellectual property rights.**

The International Treaty on Plant Genetic Resources for Food and Agriculture and the Commission on Genetic Resources for Food and Agriculture

The session went on to present the Food and Agriculture Organisation's International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and described in detail the multilateral ABS system established by the Treaty while outlining the main differences in relation to the bilateral ABS system of the CBD. The main provisions of the ITPGRFA on conservation and sustainable use of plant genetic resources for food and agriculture and the options for the implementation of farmers' rights at the national level were thoroughly discussed as well as the significance of promoting mutual supportiveness in the national implementation of both the Nagoya Protocol and the ITPGRFA. In line with this discussion, a short presentation on the Commission for Genetic Resources for Food and Agriculture provided the participants with a better understanding of the importance of the debate currently taking place in relation to ABS and food security.

Summary of the Non Explicit Links to IPRs in the Nagoya Protocol

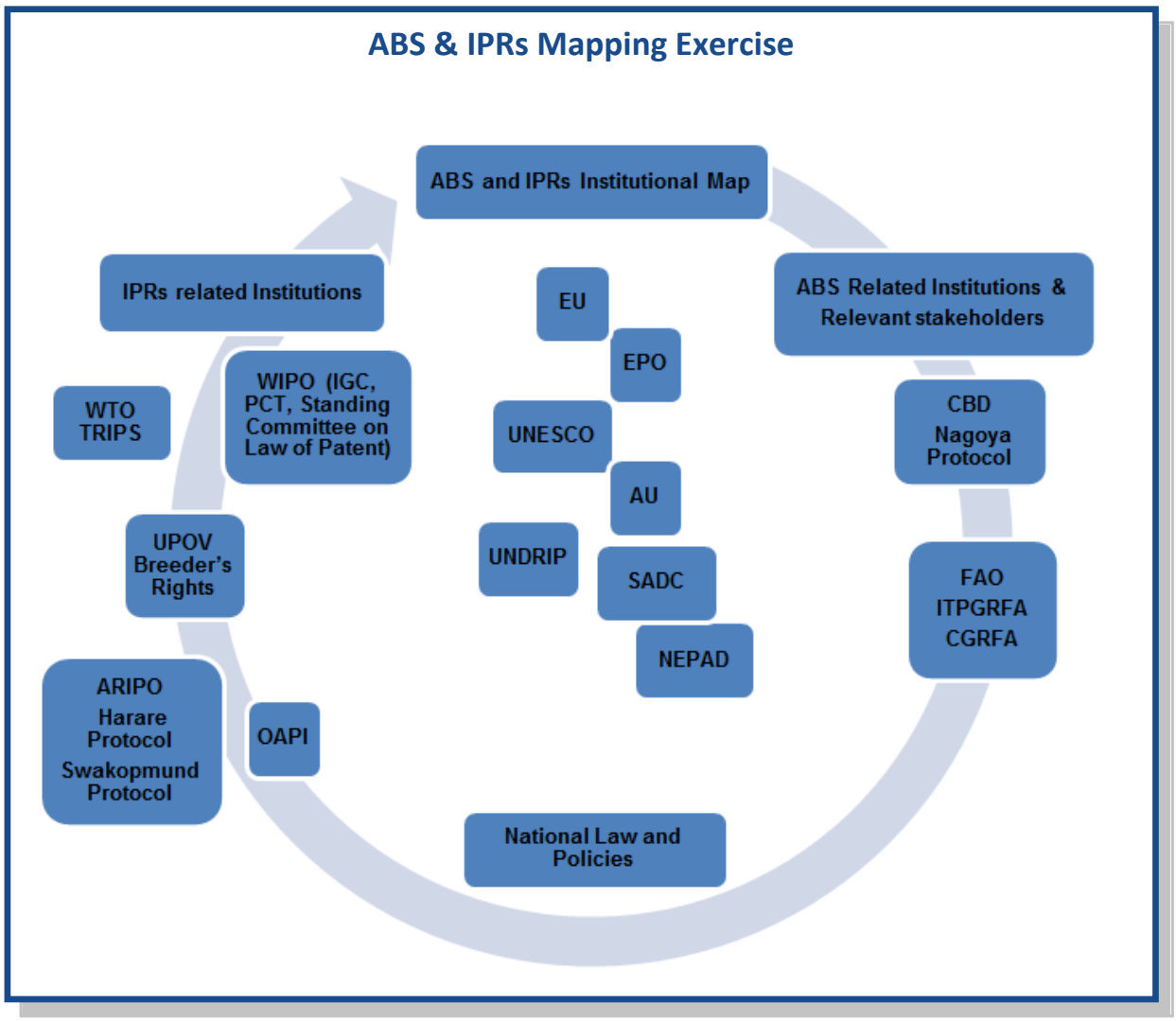
Provision	Content Clarification
Article 6 (3)(a)	Creating legal certainty, clarity and transparency is important to attract (research) investment and to create an enabling environment for the valorisation of genetic resources.
Article 6(3)(b)	Fair and non-arbitrary rules procedures are essential, for instance, to create a trustworthy environment for investment, project conception and timely implementation.
Article 6(3) (e)	Permits or equivalents are evidences needed for IPR applications (e.g. patents).
Article 6(3)(g)	Clear rules and procedures i.e. include intellectual property clauses in MAT and negotiations.
Article12(3)(b)(c)	Regulations in the context of the protection of traditional knowledge
Article 15 &18	Compliance with MAT
Article 14	The Access and Benefit-Sharing Clearing House**,** information-sharing, as well as permits or equivalents, certificate of compliance, model and tools developed to monitor GRs and codes of conduct and best practices are all tools related to IPRs.
Article 17	Checkpoints, certificate of compliance as well as permits or equivalent will help to monitor the utilisation to genetic resources which is linked to IPRs, in particular patents.

World Intellectual Property Organisation, Trade-Related Aspects of Intellectual Property Rights and the International Union for the Protection of New Varieties of Plants

The focus then moved to WIPO and the TRIPS Agreement under the WTO, underlining their influence in development of patent law at international and national levels as well as their respective links to ABS. The first part of this discussion explored WIPO, looking in depth into the various fora and media within WIPO that are relevant to both the global patent system and the African patent system. In this regard, the role of the already mentioned Patent Cooperation Treaty (PCT) as a search mechanism for prior art in a national or regional grant of a patent application and its links to ABS and traditional knowledge was thoroughly explained. Similarly, both the role of the Standing Committee on Law of Patent and the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore were reviewed in great detail while the issue of disclosure requirements and whether or not disclosure was essential to make ABS work were carefully examined. The role of intellectual property as a development tool and its importance on the WIPO development Agenda were discussed. The second part of the discussion looked at the harmonised elements of patent law and the general regulations found in TRIPS and showed how countries and regional offices such as ARIPO are bound by these standards. Lastly, links to ABS and to the alternative system of protection for plants UPOV were explained while the importance in ABS discussions of Plant Breeders' Rights and it links ABS related issues to the protection of plant breeders was highlighted.

The African Regional Intellectual Property Organisation

Finally, the session concluded by discussing the mandate of ARIPO and in particular, the Harare Protocol the main purpose of which is to harmonise and to simplify the general patent application process and also to facilitate the patent process for a PCT application for its member states.



Question and Answer Session

Are genetic resources for food and agriculture under the ITPGRFA also used in the pharmaceutical industry?

No, or it would be a breach/violation of the agreement.

How certain is the system established by the ITPGRFA?

The ITPGRFA provides a framework for an exchange and plant breeding system that has been used for many years in the agriculture sector.

What plants are affected by monetary benefit-sharing mechanisms under the Multilateral System (MLS)?

The monetary benefit-sharing is only mandatory for a new plant variety, which is patented. However, there is some tension with the International Union for the Protection of new

varieties of Plants (UPOV), which protects plant variety through Plant Breeder's rights and which is adhered to by many countries. Any monetary benefit-sharing goes to an international fund and will be used for the preservation, conservation and sustainable use of agro-biodiversity.

With regard to the group of distinct genetic resources and the potential establishment of a new benefit-sharing instrument, how is this dealt with in the Nagoya Protocol?
The Nagoya Protocol is open to the possibility that other specialised benefit-sharing schemes could be set up via other international treaties. The specialised (multilateral) ABS system established under the ITPGRFA illustrates this.

To what extent does the Commission have the power to remove this group of distinct resources from the Nagoya Protocol?
The Commission has the competence to negotiate with another treaty, in this case under Art. 4 of the Nagoya Protocol (just mentioned) and to develop other specialised ABS mechanisms as long as they are aligned to the Nagoya Protocol and consistent with the CBD.

What led to the specific classification of this group of distinct resources?
The mandate was given to the commission based on a research report, which identified these resources as important for food and agriculture.

What is the role of the ILCs in the decision of the Commission?
The ILCs have been participating actively in the debate.

What is the nature of the relationship between WIPO and other patent offices?
In the context where the regional and national systems grant the patent, WIPO carries out the first step in the search of prior art, to assess if the patent could be granted. WIPO also provides standards to be followed by the regional and national systems. In other words, the law making happens at international level and is then translated to the regional and national levels.

How certain is WIPO's search?
The search is conducted thoroughly, but becomes difficult with regard to oral tradition. A certain amount of time is allowed to have a patent revoked in cases where some prior art exists but has not been found by the search carried out by WIPO.

In the case of non-disclosure, would it not be easier to stop the patent application process?
This is not possible because countries have not come to an agreement on the issue of disclosure. Many provider countries have a disclosure requirement in their legislation. However, such a requirement is only enforceable in those countries. It will not be applicable to stop the patent process in countries that do not have such a requirement and where products are developed. To be applicable globally, such measures have to be passed at international law. It is therefore a matter of political will. This is why tools like the Indian Traditional Knowledge Digital Library are important, because by documenting traditional knowledge, they help bridging that gap.

Could a patent be rejected on the ground of morality?
It is technically possible but very hard to reject a patent application on the ground of morality. It hardly ever happens.

According to the CBD, organisms, genetic resources or micro-organisms cannot be patented but those are patentable in other international bodies. Isn't it contradictory?
The CBD shall not run counter the patent system. ABS and intellectual property are instruments that need to work together. Hence, the current debate on *sui generis* systems.

With regard to the Teff case, could the patent be excluded on this specific plant?
No, it could not because the patent is not on the plant but on the flour.

From all these IPR instruments and bodies, what benefits flow back to provider countries?
Real benefits are yet to be seen. The design of agreements and mechanisms, such as PIC and MAT is very important to maximise the benefits flowing back to provider countries.

The various features of ARIPO are very confusing, especially with regard to how ARIPO engages with ABS issues.
The direction of ARIPO with regard to ABS issues has been criticised but the onus is on its member states to request ARIPO to address ABS issues in a more comprehensive and integrated manner.

Session 6: How to Address Challenges of Institutional Coordination on Intellectual Property and ABS?

Objectives of the Session

1) To raise awareness on the complexity of managing cross-cutting issues institutionally.
2) To learn from experiences in the region and beyond.
3) To identify best practices or elements of successful collaboration.

Summary of the Session

The aim of this session was to provide participants with examples of best practices of efficiently and coherently coordinated institutional and policy arrangements and to address the complex nature of IPRs and ABS at national level. In many countries, the lack of coherence of institutionally arrangements is a reflection of the increasing fragmented nature of the international landscape and its inconsistencies. Relevant ministries representing various industry sectors such as trade, intellectual property, environment, agriculture, research, culture, foreign affairs, forests, indigenous affairs, etc. may be involved in developing policies or dealing with issues related to IPRs and ABS. The session highlighted that, while jurisdiction may be wildly spread out among the

Exercise

Policy Coherence and Coordination

How do you institutionally organise yourself in order to integrate IPRs, ABS and Agriculture?

Identify:

- Three Challenges
- Three best practices
- Transboundary issues with ABS and IPRs
- Possible support by regional bodies such as SDCA and ARIPO

different ministries, it is essential to set up procedures which are not too burdensome and which allow for an effective treatment of patent applications. Challenges for achieving domestic policy coherence and efficient coordination between/of the various ministries were pointed out. These included, among others, a clear lack of dialogue between ministries and the fact that ministries have different agenda and tend to prioritise according to their jurisdiction. Finally, and subsequently to a short discussion on the coherence and coordination of policies in Brazil and Norway, participants were invited to share their experiences of any good practices and to discuss the strengths and weaknesses of their respective national systems through a practical exercise.

Group Exercise

Participants were divided into five groups and asked to reflect on a model of policy coherence and coordination that addresses both national and international institutional fragmentation. The following is the compilation of the models suggested and presented by the participants. The outcomes of group discussions are summarised in the table below.

Institutional Arrangements

(i) Identify key players
(ii) Establish an inter-ministerial committee on treaties that reports to the president led by the Ministry of Environment vested with coordinating mandate. This inter-ministerial committee should be composed of relevant ministries (environment, justice, agriculture, trade/commerce, marine resources), civil society, research institutes/universities, council of elders, co-opted members such as experts in the field (IPRs, ABS, FAO, EU, UN, etc.)
(iii) Have focal points/technical committees i.e. inter-departmental committees in all key ministerial ministries/departments with clear terms of reference

Challenges	Best Practices
Policy fragmentation	Coordination of an established inter-ministerial committee to be mandated to a senior influential ministries /consider various level of decision making
Lack of political will	
Lack of a high mandated authority or overlapping mandates	
Lack of continuity and /or key role players	Multi-stakeholder committee/multi(sectoral technical committees with constant engagement (established administratively/legislatively)
Lack of harmony for a common goal	
Lack of capacity, knowledge of key issues and how they relate to each other/low level of awareness	Integrate approach to cater for different mandates
Different priorities although mandates may be complementary	Regular meetings for effective and efficient coordination and collaboration
No commitment to tasks	
Conflict of interest by different ministries -> Legislation and policies	Capacity building/development for regular updating on knowledge in these areas to enhance expertise
Financial resources to implement programmes	
Inconsistent participation and feedback mechanisms	Collating relevant documentation and regular dissemination of information to avoid conflicts on policies formed by
Competing national priorities – getting	

stakeholders to meet consensus	individual ministries Collective validation and reviews of national position on specific issues Create awareness on the linkages related to ABS and IPRs Higher council of environment Parliamentary committee on environment Umbrella /holistic policies and law Harmonise policy and legislation (cross-referencing) Encompassing constitution Mandatory disclosure requirements in patent applications
Transboundary Issues with ABS & IPRs	**Possible Support by Regional Organisations**
Genetic resources (e.g. hoodia, prunus, wild animals, fisheries, etc.) and traditional knowledge are shared by communities along / across borders (e.g. Maasai in Tanzania & Kenya, San & Vanda Peoples in South Africa, Botswana & Namibia, Karamajong in Uganda & Sudan): ▪ Varying laws and policies on access -> harmonisation ▪ Lack of communication between affected countries -> bilateral agreements ▪ Lack of commitment ▪ Lack of transboundary strategy, system or mechanism on ABS and IPRs Geographical/territorial limit of patent which does not recognise transboundary resources and associated traditional knowledge Sovereignty over natural resources and traditional knowledge and issues of political differences Neighbouring states not being members of same regional body(ies) or international body(ies)	Establish transfrontier initiatives Development of policies guidelines -> harmonisation Capacity building and training on ABS, IPRs and ITPGRFA: ▪ Domestication / implementation ▪ Appreciation of linkages Regional instruments – formulation and implementation Develop model laws, agreements, etc. Coordinate development of a common stand/position and approach Fora for constant interaction among implementing institutions at regional level Develop protocols for sharing transboundary resources Use regional bodies, treaties on transboundary issues concerning ABS/IPRs such as SADC, ECOWAS (Economic Community of West African States), ARIPO etc.

Section 7: Integrating Intellectual Property into negotiating ABS Agreements

Objectives of the Session

1) To provide practical training on how to deal with contracts and IPRs.
2) To provide practical training on enforcement and compliance issues.
3) To provide practical training on how to establish successful PIC and MAT.

Summary of the Session

The overall aim of this session was to build participants' capacity with regard to the establishment of PIC and MAT and to improve participants' negotiation skills in relation to the development of these agreements with a particular emphasis on their intellectual property elements. The session was divided into four parts. Participants were first provided with a comprehensive overview of the basic concepts on what is meant by an "agreement" and what constitutes an "agreement" in the context of ABS, including the linkages with IPRs. ABS legal tools such as PIC and MAT were examined in great detail. This newly acquired expertise was then put to test through a practical training on the identification of issues to be aware of when negotiating and drafting PIC and MAT agreements, the aim being to familiarising participants with the level of specificity and legal preciseness that is needed when drafting and phrasing an ABS contract, especially with regard to intellectual property. The second part of the session was dedicated to national experiences with PIC, MAT and IPRs in the context of ABS. Along with experiences from Brazil and Norway, participants from South Africa and Kenya were invited to present the institutional arrangements, policies and procedures currently in place in their respective countries to address ABS agreements and the grant of patents. A brief overview of the draft European Union ABS Regulation was also presented to the participants. A role play aiming at training participants on negotiations skills in the context of ABS concluded the seventh and last session of this intensive week's training on ABS and IPRs.

Key Learning Elements

- In the context of ABS and IPRs, private law agreements are the main legal tool to create obligations for benefit-sharing between users and providers of genetic resources. They regulate the object transferred and allow acts with regard to that object while ensuring the enforcement of the terms of the contract in user countries.
- ABS legal tools are:
  (i) PIC at the point of time of access / utilisation
  (ii) MAT at the point of time of access / utilisation
  (iii) MAT at the point of time when benefit-sharing is taking place
  (iv) (Standard) material transfer agreement (MTA) in the ITPGRFA.

  All are contracts i.e. private law agreements.
- Patents and contracts are legal tools that create legal rights over an object. A contract is binding to contracting parties only while a patent is binding for everyone in the jurisdiction. Patents have more flexibility on object-legal certainty in acts and are binding by law when granted while contracts are only binding elements contained in agreements. In other words, patents are stronger legal tools than contracts.
- Wording/phrasing a contract correctly is essential to reduce open interpretation. To make a contract functional, a high level of specificity is essential. The definition of the object and the type of utilisation may therefore be highly specific in order to make the contract even more binding. Such practice is relevant to develop effective ABS agreements.
- Step by step process for developing a contract:
  (i) Define the object as precisely as possible.
  (ii) Stipulate which types of activities the contract gives right to do or not to do.

(iii) Be as detailed and specific as possible in what the user is allowed to do with the material – it will be easier to assess any breach of the contract and allow the judge to decide in your favour.
(iv) Choose the law you should opt for: foreign user's country or the provider's country.

- Integrating relevant intellectual property clauses in PIC and MAT agreements is essential.

Question and Answer Session

Why establish a MAT twice?

MATs were usually established at the same time as getting access with PIC but this created some difficulties because a majority of research does not necessarily result in any product or patent. Negotiating benefit-sharing agreements at a later stage and before patenting any research outcome/product is then more relevant. Therefore, it is useful to use a MAT twice in order to be more specific with regard to the intellectual property and benefit-sharing elements of the agreement.

Why is the focus so much on contracts?

The Nagoya Protocol is very much based on contracts because it does not impose any obligation of benefit-sharing but implement a system at national level i.e. the binding happens inside the jurisdiction of the users but for that to happen, it is essential to have a contract. The Nagoya Protocol is first binding upon its member states but it needs to become a law in national jurisdiction to become binding. There is no obligation on organisations or individuals in the Nagoya Protocol.

What is a Standard Material Transfer Agreement (SMTA)?

A SMTA is not based on the language of the Nagoya Protocol but on the ITPGRFA. From a technical and legal point of view, the SMTA has a similar role to the MAT. Both are contracts.

With regard to the SMTA under the ITPGRFA, in particular Art. 6.7, what amount of material triggers benefit-sharing?

This is the only clause that incorporates such issues but it is broad and open to interpretation. This needs to be set in the contract. If you breed a special trait in one generation that is successful in further generation, it must be incorporated in the contract.

According to the definition of derivative in the Nagoya Protocol, is Teff flour a derivative?

According to this definition, Teff flour is not a derivative. However, some would consider that it is a derivative because the molecules of Teff do not change. This level of specificity especially regarding definitions established in the contract is essential.

How do you deal with a situation where several communities share the same knowledge about a genetic resource?

There are a number of such cases in South Africa. When it is not possible to obtain a PIC or to identify the source(s) of the knowledge, the state aims to become the custodian of this traditional knowledge.

Exercises

Practical Training on Identifying and Successfully Phrasing Key Issues in ABS Agreements

Participants were tasked to look into the Teff case, to examine the relationship between the Teff MOU and the Teff patent in Europe and to re-draft the Teff agreement in a manner which would have put Ethiopia in a better legal situation i.e. either by securing Ethiopian rights or by preventing the patent from being granted and the transfer of the patent to a third party. Participants were advised to pay attention to the scope of access (article 4 of the agreement) and to the links to IPRs (article 5 of the agreement). The agreement can be found in the references section of this report.

Rooibos Role Play

This exercise was inspired from the film entitled "Rooibos Robbery, a Story of Bioprospecting in South Africa". Participants were divided into six groups. Each person in each group was assigned to play the role of one of the five stakeholders involved in the negotiation aiming to identify a reasonable way forward resulting from the filing of two patents on an innovative use of Rooibos by an international food corporation which did not obtain prior the filing of both patents, in accordance with South African law, a bioprospecting permit from the Department of Environmental Affairs, the national competent authority in South Africa for ABS related matters. Participants were requested to justify the nature of the agreement resulting from the negotiations.

The main lessons learnt from this role play on essential negotiation skills were as follows:

- To come to the negotiation table prepared and be open to negotiate is essential.
- Negotiators must have the authority to make a decision. It is very unproductive to send someone who has no authority to take decisions to a negotiation table. It usually cools the negotiation down.
- However, the lack of decision-making power could also be a bargaining advantage and a powerful negotiation tactic – yet, such approach should be used carefully and in a productive manner.
- Knowing the weaknesses of your counterpart(s) at the negotiating table is very useful.
- A private contract is binding to the first partners only. It is therefore important to specify potential third parties in the contract. Such specifications will result in a stronger and more flexible contract.
- The best way to challenge a patent is to provide either some publications or a product, or both, proving prior art.
- A patent claim and description can be reformulated in order, generally, to be relevant as much as possible. However, a patent claim that is removed cannot be reapplied for.
- Negotiations should not always focus on economic/monetary benefits but also on non-monetary benefits such as skills or/and equipment transfer and environment conservation, protection and sustainable use.
- Reflecting on what could be a common ground to be used as an entry point for further discussion and future agreement is also very useful.

Certificate Ceremony and Closure

Key References & Further Reading

Session 1: What is Intellectual Property and why does it matter in the context of ABS?

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Session 3: Introduction to Geographical Indications

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Valérie Boisvet, *From the Conservation of Genetic Diversity to the Promotion of quality foodstuff: can the French model of "appellation d'origine contrôlée" be exported?* CAPRI Working Paper # 49, 2006.

Session 4: Protection of Traditional Knowledge

WIPO Background Brief on Traditional Knowledge.

Daniel J. Gervais 'Traditional Knowledge & Intellectual Property: A TRIPS Compatible Approach', *Michigan State Law Review*, Spring 2005.

Thomas Greiber, Sonia Peña Moreno, Mattias Åhrén, Jimena Nieto Carrasco , Evanson Chege Kamau, Jorge Cabrera Medaglia, Maria Julia Oliva & Frederic Perron-Welch in cooperation with Natasha Ali & China Williams *"An Explanatory Guide to the Nagoya Protocol on Access and Benefit-Sharing"* IUCN Gland Switzerland, 2012 (esp. pp54-55, 88-91, 109-116 & 137-141 which deal with TK).

Session 5: Institutional Overview of the Relevant Global IP Policy Making

Juliana Santilli "Access and Benefit-Sharing Laws and Plant Genetic Resources for Food and Agriculture: the International Regime", in Juliana Santilli, *Agrobiodiversity and the Law: Regulating Genetic Resources, Food Security and Cultural Diversity*, Earthscan, London, 2012 (Chapter 6).

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Session 6: How to Address Challenges of Institutional Coordination on Intellectual Property and ABS?

Ahmed Abdel Latif, *Developing Country Coordination in International Intellectual Property Standard-Setting*, South Centre, 2005.

Section 7: Integrating Intellectual Property into negotiating ABS Agreements

- The Teff Patent
- The Teff Agreement

Presentations

Day 1

TITLE: What is Intellectual Property Rights (and why does it matter in the context of ABS)
LINK: Presenter: Dr Johanna von Braun, NJ – Natural Justice, Lawyers for Communities and the Environment

TITLE: Introduction to Patent Law in the Bio-Innovation Area
LINK: Presenter: Morten Walløe Tvedt, FNI – Fridtjof Nansen Institute, Norway

Day 2

TITLE: An Introduction to Geographical Indications
LINK: Presenter: Dr Juliana Santilli – Lawyer, Brazil

TITLE: Protecting Traditional Knowledge Associated with Genetic Resources, Intellectual Property Rights and Beyond
LINK: Presenters: Dr Johanna von Braun, NJ – Natural Justice, Lawyers for Communities and the Environment and Dr Juliana Santilli – Lawyer, Brazil

TITLE: Nagoya Protocol
LINK: Presenter: Dr Juliana Santilli – Lawyer, Brazil

TITLE: FAO / ITPGRFA, Agrobiodiversity and Farmers' Rights
LINK: Presenter: Dr Juliana Santilli – Lawyer, Brazil

TITLE: Commission on Genetic Resources for Food and Agriculture under FAO
LINK: Presenter: Ane Elise Jørem, FNI – Fridtjof Nansen Institute, Norway

Day 3

TITLE: International and Regional Patent Organisations
LINK: Presenter: Morten Walløe Tvedt, FNI – Fridtjof Nansen Institute, Norway

TITLE: The Harare Protocol
LINK: Presenters: Keitseng Nkah Monyatsi, ARIPO – African Regional Intellectual Property Organisation

TITLE: The Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore
LINK: Presenter: Keitseng Nkah Monyatsi, ARIPO – African Regional Intellectual Property Organisation

TITLE: ABS and IPRs: Addressing Challenges of Policy Coherence and Coordination
LINK: Presenters: Dr Johanna von Braun, NJ – Natural Justice, Lawyers for Communities and the Environment and Dr Juliana Santilli – Lawyer, Brazil

TITLE: Coordination on IP and ABS - Brazil
LINK: Presenters: Dr Juliana Santilli – Lawyer, Brazil

Day 4

TITLE: Integrating Intellectual Property into Negotiation ABS Agreements
LINK: Presenter: Morten Walløe Tvedt, FNI – Fridtjof Nansen Institute, Norway

TITLE: South African Experience with PIC, MAT and IP/ABS
LINK: Presenter: *Lactitia Tshitwamulomoni, DEA – Department of Environmental Affairs, South Africa*

TITLE: Overview of Access Permit Procedures in Kenya
LINK: Presenter: Veronica Kimutai, NEMA – National Environmental Management Authority, Kenya

TITLE: Brazil – Experience with PIC and MAT
LINK: Presenters: Dr Juliana Santilli – Lawyer, Brazil

Annotated Agenda

Monday, 8th April 2013

Welcome and Introduction

8h30	Arrival and registration
9h00	Opening Session (organisers and host) *Charlotte Sluka, ABS Capacity Development Initiative* *Alex Banda, Southern African Development Community (SADC)*
	Programme Overview *Facilitator: Dr Gudrun Henne*
	Getting to know each other *Facilitator: Dr Gudrun Henne*
11h00	Tea Break

Session 1: Introduction to Intellectual Property Rights

11h15	What is Intellectual Property (and why does it matter in the context of ABS?) *Dr. Johanna von Braun, Natural Justice*
12h30	Lunch

Session 2: Introduction to Patent Law

14h30	Introduction to Patent Law in the Bio-Innovation Area *Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway*
16h00	Tea Break
14h30	Introduction to Patent Law in the Bio-Innovation Area (cont.) *Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway*
16h00	Tea Break
16h30	Group Work on Patentability Criteria and Reporting Back
18h00	End of Day One

Tuesday, 9th April 2013

Section 3: Introduction to Geographical Indications

9h00	An Introduction to Geographical Indications *Dr Juliana Santilli, Lawyer – Brazil*
10h30	Tea Break

Session 4: Protection of Traditional Knowledge

11h45	Protecting Traditional Knowledge Associated with Genetic Resources, Intellectual Property Rights and Beyond *Dr Johanna von Braun, Natural Justice* *Dr Juliana Santilli, Lawyer – Brazil*
	ARIPO – The Harare Protocol and the Swakopmund Protocol *Keitseng Nkah Monyatsi, ARIPO*
13h00	Lunch

Session 5: Institutional Overview of Relevant Global Intellectual Property Policy Making

14h30 Nagoya Protocol
ABS Simply Explained - Short Movie
Dr Juliana Santilli, Lawyer, Brazil

FAO / ITPGRFA, Agrobiodiversity and Farmers' Rights
Dr Juliana Santilli, Lawyer, Brazil

16h45 Tea Break

17h00 Commission on Genetic Resources for Food and Agriculture under FAO
Ane Jørem, Fridtjof Nansen Institute, Norway

18h00 End of Day Two

Wednesday, 10th April 2013

Section 5 (cont.): Institutional Overview of Relevant Global Intellectual Property Policy Making

9h00 International and Regional Patent Organisations:

WIPO and Links to ABS
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

World Trade Organisation and Links to ABS
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

10h30 Tea Break

11h45 UPOV – International System for Making National Plant Breeders' Rights and the ARIPO Draft
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

ARIPO: The Harare Protocol and The Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore
Keitseng Nkah Monyatsi, ARIPO

12h30 Lunch

14h00 ABS and IPRS: Mapping Law Institutions and Negotiation Bodies
Dr Gudrun Henne
Dr Johanna von Braun, Natural Justice

Session 6: How to Address Challenges of Institutional Coordination on Intellectual Property and ABS

14h30 ABS and IPRs: Addressing Challenges of Policy Coherence and Coordination
Dr Johanna von Braun, Natural Justice
Dr Juliana Santilli, Lawyer, Brazil

Coordination on IP and ABS - Brazil
Dr Juliana Santilli, Lawyer, Brazil

Coordination on IP and ABS – Norway
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

16h30 Tea Break

16h45 Group Exercise and Reporting Back

18h00 End of Day Three

Thursday, 11th April 2013

Section 7: Integrating Intellectual Property into negotiating ABS Agreements

9h00 Basic Concepts
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

Practical Training
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

Group Work

10h30 Integrated Tea Break

11h15 Reporting Back

12h30 Lunch

14h30 Practical Training (Cont.)
Morten Walløe Tvedt, Fridtjof Nansen Institute, Norway

15h45 Tea Break

16h00 National Experience with PIC, MAT and IP/ABS

- South African Experience with PIC, MAT and IP/ABS
  Lactitia Tshitwamulomoni, Department of Environmental Affairs
- Overview of Access Permit Procedures in Kenya
  Veronica Kimutai, National Environmental Management Authority
- Brazil – Experience with PIC and MAT
  Dr Juliana Santilli, Lawyer, Brazil
- Draft EU ABS Regulations
  Dr Johanna von Braun, Natural Justice

17h00 Rooibos Robbery: A Story of Bioprospecting in South Africa
Movie, Natural Justice

Group Work: Negotiating an ABS Agreement

18h00 End of Day Four

Friday, 12th April 2013

Section 7 (Cont.): Integrating Intellectual Property into negotiating ABS Agreements

9h00 Group Work: Negotiating ABS Agreements (Cont.)

10h30 Tea Break

11h00 Reporting Back

12h30 Short Break

Session 8: Evaluation, Closure and Certificate Ceremony

13h00 Feedback by Participants and Future Planning

Certificate Ceremony
Charlotte Sluka, ABS Capacity Development Initiative
Alex Banda, SADC

14h00 End of Training

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