science & technology
Department:
Science and Technology
REPUBLIC OF SOUTH AFRICA

NATURAL JUSTICE

THE ABS CAPACITY DEVELOPMENT INITIATIVE

L'INITIATIVE DE RENFORCEMENT DES CAPACITES POUR L'APA

UNIVERSITY OF CAPE TOWN
INTELLECTUAL PROPERTY UNIT

Global Congress on Intellectual Property
& the Global Interest

Workshop

Documentation of Traditional Knowledge in the Context of Access and Benefit-Sharing

Cape Town, South Africa, 11th-14th December 2014

REPORT

funded by
BMZ Federal Ministry for Economic Cooperation and Development
ORGANISATION INTERNATIONALE DE la francophonie
INSTITUT DE LA FRANCOPHONIE POUR LE DÉVELOPPEMENT DURABLE IFDD
NORWEGIAN MINISTRY OF FOREIGN AFFAIRS
DANISH MINISTRY OF THE ENVIRONMENT
implemented by
giz Programme Implementing the Biodiversity Convention


THE ABS CAPACITY DEVELOPMENT INITIATIVE
L'INITIATIVE DE RENFORCEMENT DES CAPACITÉS POUR L'APA


Welcome
From Global to Local:
ABS Capacity Development
Initiative


11:15 TK documentation in South Africa
12:00 Panel
REPUBLIC

Table of Contents

Background....4
Outcome....6
Process....7
Feedback....24
Presentations....22
Annotated Agenda....24
List of Participants....29
Annex 1 – Why Documenting Traditional Knowledge?....34
Annex 2 – Inventory of Traditional Knowledge Sources in West and Central Africa....35
Contact....42

Background

In February 2013, the ABS Capacity Development Initiative (ABS Initiative) supported the participation of a group of representatives from Indigenous and Local Communities (ILCs) and from the research community at a workshop on traditional knowledge documentation for African countries organised in Bengaluru, India by the Indian National Biodiversity Authority. In response to the number of questions the workshop raised, the ABS Initiative commissioned and funded the French Muséum National d'Histoire Naturelle to carry out a study on the mapping of traditional knowledge associated with genetic resources, stakeholders and access conditions regarding *in situ* and *ex situ* collections in three Francophone African countries: Senegal, Cameroon and Benin.

Following up on the work initiated with the Muséum National d'Histoire Naturelle, the workshop on traditional knowledge documentation in the context of Access and Benefit-Sharing (ABS) that took place in Cape Town was the first of its kind organised by the ABS Initiative in cooperation with the South African Department of 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. The workshop aimed at exploring and assessing the role of documentation in the protection of traditional knowledge and in the prevention of misappropriation and biopiracy.

The workshop was 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). The first day and a half of the programme were held in conjunction with the Traditional Knowledge Track of the congress and focussed on the relationship between traditional knowledge documentation and Intellectual Property Rights (IPRs).

Objectives

Traditional knowledge (TK) has been and continues to be central to of the life of ILCs in Africa. These communities have developed complex systems of knowledge, innovations and practices that guide them in the sustainable use of their local resources. TK can provide valuable benefits to both the custodians of the knowledge and the wider society. Such benefits include, among others, the conservation and sustainable use of biodiversity or the development of new medicines. Indeed, genetic resources associated with TK are continuously used for the development of a wide range of applications in a variety of industries from pharmaceuticals over cosmetics and food to agriculture. These industries combine TK with modern science to develop new products. This generally implies developing agreements with ILCs to access their TK associated with genetic resources. At the same time, this may also imply the development of partnerships with the ILCs opening new livelihood and market opportunities for them to exchange their products and expertise.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilisation (Nagoya Protocol), adopted at the 10th Conference of the Parties to the Convention on Biological Diversity (CBD), is a landmark agreement of particular importance for ILCs. Building on the ABS provisions of the CBD, it advances the third objective of the convention, the fair and equitable sharing of benefits arising from the utilisation of genetic resources, and introduces significant obligations regarding access to traditional knowledge associated with genetic resources held by ILCs. The Nagoya Protocol provides for greater legal certainty and transparency for both providers and users of TK and strengthens the ability of communities to benefit from the use of their knowledge, innovation and practices**.** Similarly, a legal regime that will provide guidance for the effective protection of traditional knowledge is currently being negotiated under the auspices of the Intergovernmental Committee on Intellectual Property and Genetic Resources (IGC) at the World Intellectual Organisation (WIPO).

The successful implementation of the Nagoya Protocol requires identifying what potential TK has for economic development (traditional medicines, cosmetics, agriculture, natural resources conservation and sustainable use, etc.). Additionally, it is important to develop an understanding of who TK holders are and how such knowledge is held and transmitted from one generation to the next. This entails considering inventorying existing sources of TK and creating a documentation system that will enable preserving, accessing and using traditional knowledge. Some TK has already been recorded in scientific literature and some other is held in museums and ethnobiological databases. However, most TK is living knowledge that is orally transmitted within local communities. Very few African countries, among them South Africa, have a TK documentation system in place similar to the Indian Traditional Knowledge Digital Library (TKDL) or the Peruvian Registry.

Other concerns arise from the relationship between the documentation of TK, its legal protection and IPRs. Depending on how TK is held, in what form and by whom, it can be subject to very different types of IPRs. For instance, TK may be protected by patents or geographical indications, held in the public domain, under copyrights or trademarks. On occasion, such legal instruments are able to provide protection against acts of misappropriation or biopiracy (i.e. appropriation of TK without the consent of the holders of such knowledge and benefit-sharing), and add financial value to TK. Nonetheless, the conventional IPR instruments are generally not the most appropriate mechanisms for the legal protection of TK.

Building on this background, the objectives of the workshop were to:

- Present the study of the French Muséum National d'Histoire Naturelle on the inventory of the sources of TK in West and Central Africa;
- 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 traditional knowledge databases;
- Understand to whom the TK held in databases is or should be accessible and under which conditions;
- Explore the potentials and the risks posed by documenting traditional knowledge and investigate possible approaches to counter those risks;
- Discuss whether the documentation of TK should be done on a local, national or regional level and the most appropriate models to do so; and
- Examine possible traditional knowledge documentation models and the relationship with IPRs.

Participants

The workshop welcomed participants from selected African countries, Peru, India, France and Switzerland, including representatives of ABS National Focal Points and National Competent Authorities, national and regional research institutions, ILCs and non-governmental organisations, as well as representatives of the private sector involved in biotrade and bioprospecting. Participants invited by the ABS Initiative were joined for two days by interested IPR experts attending the 3rd Global Congress on Intellectual Property and the Public Interest and Open A.I.R Conference on Innovation and Intellectual Property in Africa.

Outcome

The workshop provided an opportunity for 62 participants from Africa, India, Peru, France and Switzerland to discuss ways and means of documenting traditional knowledge in the context of ABS so as to define key elements of a strategy and develop mechanisms for the effective protection of TK in Africa. During the four-day meeting, participants were exposed to a variety of recording systems and strategic approaches from different parts of the world, revealing the existence of substantial landmark experiences in documenting TK, be it at the regional, national or local level. Participants also gained familiarity with international forms of IPRs and discussed how *sui generis* systems of protection were more appropriate to address the multifaceted nature of traditional knowledge. Participants reflected on the objectives of TK documentation while exploring the merits and risks of such an undertaking.

The sharing of experiences and viewpoints provided participants with ideas and food for thought on possible ways to address issues and challenges encountered when documenting traditional knowledge. Two forms of TK were identified in the discussion: The traditional knowledge that is already placed in the public domain, such as the Indian traditional medicine systems of Ayurveda, Siddha, Unani and Sowa-rig-pa, and the traditional knowledge that is considered as confidential and which is usually orally transmitted through elders and healers. The discussions also highlighted the emergence of growing interaction and use of modern science techniques for verification, validation and marketing of traditional knowledge to support TK documentation. This led the participants to discussing the value of TK in the current global knowledge economy through examples of value chain development where the fruitful interaction of TK and scientific innovation generated economic benefits for knowledge holder communities, securing better livelihoods and improving health security. Participants agreed that indigenous knowledge systems represent a massive potential for research, development and innovation and that such an invaluable asset had to be preserved and protected. One way of preserving largely oral traditions is to document them. On the whole, the general consensus was that TK documentation should not be seen as an end in itself but as a means that contributes to an integrated protection of traditional knowledge.

Proceedings of the workshop, constructive exchanges, group exercises and activities contributed to:

- Constructive reflections on the objectives of documenting traditional knowledge in Africa;
- A better understanding of the relevance of IPRs in the context of TK documentation;
- A better understanding of how TK documentation in Africa can promote the rights of TK holding communities (prior informed consent (PIC), fair and equitable sharing, respect of customary laws and community protocols); and
- The identification of critical elements that could inform the development of recommendations for TK documentation strategies and contribute to an effective national implementation of the Nagoya Protocol.

Process

What are the Goals of Documenting Traditional Knowledge in the context of ABS?

As an introduction to the theme of traditional knowledge documentation, participants were divided into seven groups representing various sub-regions of the African continent, the island country of Madagascar, and the rest of the world and asked to reflect on the objectives of TK documentation in the context of ABS. The results of the exercise showed that the motivations for documenting traditional knowledge could be classified in five main clusters:

- The protection of traditional knowledge to prevent misappropriation and biopiracy;
- The recognition of the rights of ILCs over their traditional knowledge associated with genetic resources and related intellectual property rights;
- The preservation, revitalisation and transmission of traditional knowledge to prevent it from being lost;
- The development of a better understanding of traditional knowledge and its ecosystem; and
- The valuation and valorisation of traditional knowledge.

The results of the exercise are provided in Annex 1 of this report.

Introduction to Intellectual Property Rights

This first session offered a short training module on the core principles of IPRs. Participants learnt that IPRs are legal instruments that governments legislate and enforce to protect intellectual property. The term intellectual property refers broadly to the creations of human minds. IPRs are therefore legal mechanisms that protect the moral and economic interests of creators by giving them property rights over their creations. IPRs usually give inventors exclusive rights over the use of their creations for a certain period of time. Core concepts commonly applied to all forms of IPRs are novelty, inventiveness, commercial applicability and a single identified inventor. Each form of IPRs also contains built-in limitations and well-defined criteria unique to each. Common forms of IPRs include patents (time bound monopoly within specific geographical zone in exchange for the disclosure of technical information), industrial design, trademarks (renewed every 7 or 10 years), geographic indications (perpetuity) and copyrights (life rights).

In the plenary discussion that followed, participants inquired whether the various forms of current intellectual property instruments could protect traditional knowledge to avoid misappropriation and biopiracy. They agreed that, although some IPRs were able to offer some degree of protection, none of them seems to be suitable to adequately protect the multifaceted and complex characteristics of TK. They were informed that this shortcoming has led to a search for alternative models, i.e. *sui generis* legal regimes to protect traditional knowledge effectively. Furthermore, it is important to understand the difference between a defensive and a positive approach to the protection of TK. A defensive protection means documenting traditional knowledge and making this documentation available to patent offices in order to facilitate the search for “prior art.” A defensive protection therefore helps to proactively prevent misappropriation and the granting of erroneous patents. However, the downside of such an approach is that any TK placed in the public domain cannot be effectively protected through IPRs anymore. The landmark Indian TKDL was referred to as a very effective example of a defensive approach in the protection of traditional knowledge. A positive protection, on the other hand, aims to grant ILCs rights over their traditional knowledge that allow them to control its use and benefit from

its commercial exploitation. This positive protection can only partly be achieved by means of the existing IPR system. The efforts at the international level to develop a *sui generis* system for the protection of traditional knowledge aim to close this gap.

Overview of Traditional Knowledge Documentation in Africa

In a panel discussion, a closer look was then taken at TK documentation endeavours in Africa. The Panel was composed of representatives from WIPO, the South African DST, the African Regional Intellectual Property Organisation (ARIPO), the Organisation Africaine de la Propriété Intellectuelle (OAPI), the Indigenous Peoples of Africa Coordinating Committee (IPACC) and the ABS Initiative. Panellists debated the merits and risks arising from TK documentation while introducing the ARIPO TKDL and the South African National Recordal System (NRS) which are two African initiatives that had already started recording traditional knowledge at the regional and national level. The discussion highlighted that one of the main reasons for documenting TK was to stop its disappearance and keeping it alive as younger generations were less and less interested in pursuing such ancestral practices. Most panellists also stressed the complexity of documenting traditional knowledge and provided practical guidance on issues to be taken into account when engaging in such a process. These were among others:

- What are the strategic goals for documenting traditional knowledge?
- Is the traditional knowledge to be documented secret, sacred or shared with other communities across Africa and other continents?
- Has the traditional knowledge to be documented been accessed with the consent of knowledge holders?
- What are the rights, needs and expectations of ILCs holders of traditional knowledge?
- What documentation (books, published theses, science articles, etc.) already exists?
- What are the relevant legislation and regulations to develop such a system at national level?

IPACC, in providing an indigenous peoples' perspective on the matter, reiterated the importance of well-defined strategic goals for documenting TK. IPACC also emphasised that it was essential that the documentation of TK was a community-led process for which the capacity of the communities needed to be strengthened. Finally, the ABS Initiative stressed that due to the absence of any agreed international definition, and because most of it remained undocumented, the valorisation and commercial exploitation of TK was surrounded by legal uncertainty. The ABS Initiative concluded that it was therefore critical to establish better legal clarity around the utilisation of TK.

In plenary, the risks associated with putting traditional knowledge in the public domain were reiterated and cautioned against as doing so undermines the possibility of applying for patent protection. At the same time, if TK is not protected, the risks are that IPRs could be awarded to persons other than the knowledge holders. For this reason, some participants felt that documentation of TK should not be regarded as an end in itself but as part of a broader intellectual property strategy that aims at the preservation and protection – be it defensive, positive or a combination of both - of traditional knowledge.

National Documentation of Traditional Knowledge – Examples from the World

The Peruvian Experience

The presentation reported on the *sui generis* system for traditional knowledge protection developed and implemented in Peru which was introduced in 2002 under the Law 27811 for the Protection of Collective Knowledge of Indigenous Peoples Related to Biodiversity. This legal framework recognises the rights of ILCs over their collective knowledge associated with genetic resources and combines a defensive and a positive approach to its protection. The system combines classic intellectual property tools with non-intellectual property instruments to protect TK and ensure that the social, cultural, economic and intellectual property interests of ILCs are safeguarded. The regime establishes three different types of registers to record the collective knowledge of indigenous peoples in Peru. These are as follows:

- A Confidential National Register which collects and records traditional knowledge that may not be accessed by third parties;
- A Public National Register which collects documented traditional knowledge which is already in the public domain (such as books, articles, etc.); and
- Local Registers which are created and managed by ILCs with the technical assistance of the National Institute for the Protection of Competition and Intellectual Property (INDECOPI).

The presentation pointed out the on-going challenges at national and local levels arising from the development of such a documentation system in relation to the continuous diffusion of the Law 27811, the promotion and strengthening of the capacities of ILCs and the development of strategic alliances with national institutions, NGOs and the private sector to advance and consolidate the databases and recording processes. Finally, the presentation gave an account of the effectiveness of such a system to support the efforts of the National Anti-Biopiracy Commission in preventing the application and the granting of illicit patents worldwide that are based on Peruvian biological resources or indigenous peoples' collective knowledge. The identification of the country of origin of both the resources and traditional knowledge used was one of the major challenges reported.

Reflecting on the Peruvian case, participants agreed that if a *sui generis* system for the protection of traditional knowledge like the Peruvian registers system were to be replicated in other countries, it would have to be adapted to address each country's reality and circumstances. Some participants felt that the effectiveness of such a system will be strengthened by the issuance of international certificates of origins as those will provide the proof of the source(s) of the genetic material and associated TK used in wrongly obtained patents. Collaboration with other countries in relation to shared resources and knowledge was also seen as critical. In terms of confidentiality, the discussion revealed that the system establishes user licenses that are signed with the consent of the ILCs concerned along with agreed terms on the use and potential benefits. To conclude, participants were informed that Peru was very keen to share its know-how and lessons learnt with other countries.

The Indian Traditional Knowledge Digital Library

The presentation provided an insightful overview of the Indian TKDL, a unique repository of India's traditional knowledge and medicine systems that is combined with a Global Biopiracy Watch System. Using a defensive protection approach, the objectives of the TKDL are to preserve this knowledge and protect it from misappropriation by third parties so as to ensure there is no illegitimate granting of patents. To do so, the TKDL documents existing knowledge electronically in languages and formats that are understandable and accessible to international patent offices. So far, this innovative system has proven to be successful, acting as a deterrent to patent applications filed wrongly while saving the government of India millions in lawsuits. Since its introduction, a dramatic drop of applications using

Indian resources and knowledge has been observed. The access to the Indian TKDL is limited to international patent offices that have signed an access agreement. Yet, the TKDL is not a substitute for an international legally binding instrument for the protection of TK. Rather, it would complement such a system when it gets established. The TKDL is currently focussing on traditional knowledge associated with genetic resources, which is still a small component of the library, to support the implementation of the Nagoya Protocol at the national level.

The plenary discussion that followed highlighted the very active nature of knowledge systems in India. It also stressed that traditional medicine systems are legally recognised by the Indian government. Two forms of TK emerged from the discussion: the traditional knowledge that is already placed in the public domain, such as the Indian traditional medicine systems of Ayurveda, Siddha, Unani and Sowa-rig-pa, and the traditional knowledge that is considered as confidential and which is usually orally transmitted through elders and healers. The discussion brought to light that the TKDL was developed in harmony with Indian legislation and customary law under the auspices of two major ministries and through the implementation of collaborative programmes with various ministries. It also highlighted that the Indian Patent Act has a provision which states that TK cannot be patented. Finally, the discussion emphasised the importance to make sure that TK is first recorded correctly in the native language. This will avoid traditional knowledge from being wrongly documented and lost. Only then can the documentation be translated into other languages.

The South African National Recordal System

This presentation provided a comprehensive overview of the NRS of South Africa. The NRS is an ambitious initiative of the DST aimed at preserving, protecting, recording and promoting South Africa's invaluable wealth of indigenous knowledge for the socio-economic and development benefits of local communities. The NRS operates an online repository platform for oral forms of indigenous knowledge and creates a legal framework for the dissemination of this knowledge that is aligned with ABS national legislation and customary law and international law. The collection of unrecorded indigenous knowledge is facilitated by the introduction of innovative and new technologies and the use of a bottom up approach which promotes the respect of the entire value system of the knowledge holders. This includes, among others, the spiritual aspects of indigenous knowledge, the culture, beliefs, customs, rituals and traditions. The NRS proposed both positive and defensive protection of indigenous knowledge. Access to data collected has very strict rules and procedures while being monitored continuously. The whole system's aim is to be used as an inter-governmental tool for researchers, patent officers and other relevant stakeholders. Along with the NRS, a digital pharmacopoeia was developed to create an online source of information on the use, quality, efficacy and safety of traditional African medicines in South Africa. The information collected in this sister database is drawn from various published resources (books, articles, research outputs, etc.) for researchers, community members and any global users to use. Any information that is sourced is linked to international databases to allow for verification as well as to the WIPO International Classification referencing system.

In the plenary discussion that followed, participants debated the transboundary nature of TK and how a system such as the NRS, or other forms of recording systems presented previously, could help managing this issue. Participants also exchanged views on the different approaches to strengthen ILCs' capacity in the documentation process. For example, the NRS Team reported promoting the NRS as a *sui generis* system of protection within the communities while educating them on all the issues related to documentation and intellectual property and the importance of the collectiveness of traditional knowledge, as a move from collective ownership of knowledge to individual ownership had been observed. To build a relationship of trust on the very values of these communities, a Biocultural Community Protocol (BCP) approach generated a high degree of involvement from the communities during the documentation process. With regard to the financing of such an undertaking, participants

were informed that the NRS was a state funded project which allowed for a higher degree of independence than foreign funding. The NRS also supports the promotion of an information policy that takes into consideration all the different intellectual property instruments as opposed to just patents. The NRS is a system that reflects the multicultural diversity of knowledge systems. The classification of TK is related to different types of access and based on international standards. Finally, participants also discussed the importance of knowledge in the current global economy. They agreed that indigenous knowledge systems represent a massive potential for research, development and innovation. Such an invaluable asset has to be preserved and protected. One way of doing so is documenting it through a system such as the South African NRS or the other recording systems being presented in this session.

Community Initiatives for Traditional Knowledge Documentation

The Kukula Traditional Healers Association, South Africa

This presentation reported on how the Kukula Traditional Healers Association of Bushbuckridge (Kukula Association) decided, as a result of the development of a BCP, to document their traditional knowledge so as to protect it from misappropriation and ensure that it is transmitted to younger generations. Any third party must ask the consent of the members of the Kukula Association to access and use their TK. Indeed, rules for access and utilisation of this knowledge are included in the BCP. The presentation also highlighted that developing various strategic partnerships has been critical to assist the Kukula Association in their efforts to conserve and protect their knowledge. For example, partnering with Natural Justice, an international NGO working with communities to affirm their rights over their genetic resources and associated TK, has helped in building their legal capacity around ABS issues. In parallel, collaborating with the Kruger to Canyons Biosphere Region has provided them with the opportunity to use their knowledge to foster the conservation and sustainable use of biodiversity and generate economic benefits from it. Both partnerships resulted in the enhancement of the healers' pool of knowledge and in turn contributed to the Association's project of documenting their traditional knowledge.

In plenary, participants discussed how traditional healers, through the development of a biocultural community protocol, have learnt to organise themselves into one legal structure which is recognised by the South African law. Members of the Kukula Association are also registered with the Department of Health as 'tradipractitioners'. Participants were informed that the documentation process involves creating a common pool of knowledge where individual knowledge is shared among members of the Kukula Association. This process avoids intergenerational knowledge from being lost while allowing it to be continuously renewed.

The Medical Plants Association, Egypt

This presentation introduced the work of the Medicinal Plants Association (MPA), which operates since 2003 in the Saint Katherine Protectorate situated in the South Sinai in Egypt. Through its programmes and projects, MPA raises awareness about the conservation and sustainable use of wild medicinal plants and their habitats while promoting the protection of the traditional knowledge associated with their use. In doing so, MPA supports the development of sustainable livelihood activities for local and marginalised Bedouin communities. The strategy adopted triggers the establishment of ABS arrangements with institutions that might be interested in commercially exploiting medicinal plants, generating income and creating jobs. The successful experience of Saint Katherine, as a model on how the conservation of protected areas and sustainable use of its components can support and improve the livelihoods of communities, has played an important role in the development of the Egyptian national regulatory framework for ABS. After a challenging ten years of work in the field, MPA had gained the respect of the Bedouin communities. Together with the elders and healers, the organisation has now started documenting TK on medicinal plants. MPA is currently fostering a new generation of healers through the establishment of a school to continue creating economic benefits for the Bedouin

communities so that the communities carry on enjoying the benefits arising from the use of biological diversity and associated TK.

Following the presentation, participants discussed the importance of respect in winning the trust of TK holders. MPA reported that it first started to interact with one tribe representing the same family before extending the programme to include other Bedouin tribes. Participants were informed that MPA is working closely with the Ministry of Trade and the Intellectual Property Office to adopt the most effective protection for the various utilisations of TK developed in Saint Katherine. Finally, participants agreed that the initiative of creating a school which caters for the transfer of traditional knowledge to younger generations was another option, complementary to documentation, to prevent TK from being lost while at the same time keeping the ecosystem in which it is generated alive.

Indian Community Initiatives: Documentation of Traditional Health Practices and ABS

The presentation focussed on the ABS model in the medicinal plant sector developed by the Foundation for the Revitalisation of Local Health Traditions (FRLHT), Bangalore, India. The model aims to support poor and rural knowledge holder communities who grow and collect these plants. It consists of an assessment and documentation of local health traditions and of the establishment of community owned enterprises that sustainably produce, process, market and sell affordable medicinal plants. The presentation also gave a brief overview of the Indian legal context in which these community initiatives take place. It is important to note that such community based ABS sharing models preceded the enactment of the Indian Biodiversity Act passed in 2002 and its regulations enacted in 2004 as well as the adoption of the Nagoya Protocol in 2010. Further, the major role that the pioneering Public-Private Partnership Programme for the Conservation of Medicinal Plants, their Sustainable Use and ABS implemented in India since 1993 had played to foster such initiatives was specifically highlighted. Currently, 15 community-owned enterprises have provided monetary benefits. Other ABS community initiatives based on other forms of TK reported were, among others, honey production and marketing, non-timber forest products, traditional crops, freshwater fishery, fishery and limeshell in coastal areas and organic food.

In the subsequent discussion, the presenters stressed that documentation must not be seen as the only means to preserve TK. They insisted that the best way to keep TK alive is to use it, practice it and make it available within communities. In their opinion, TK has continued to flourish in India because communities use it. Women, in particular, are key stakeholders in this process. The discussion then highlighted that in developing economies, such knowledge is essential for the health care of poor communities. For this reason, while the choice to make TK public rests with the knowledge holder, it is still critical to either transfer or document traditional knowledge. To conclude, the importance of TK validation by modern science to improve the legitimacy of traditional medicine and its practice was strongly emphasised.

In Situ Documentation, Capacity Building and Traditional Healers in Western Uganda

The presentation introduced Excel Horst Consult Ltd, a Uganda-based consulting company which provides value chain development services to agribusinesses. As part of its capacity development programme for traditional healers, the company facilitates knowledge exchange among traditional healers as well as the documentation of their knowledge on medicinal plants. Excel Horst Consult Ltd is currently establishing an Institute of Indigenous Knowledge to harness local knowledge, innovation and practices so as to integrate them into research in order to enrich development approaches and improve the livelihoods of rural communities. Excel Horst Consult Ltd aims to establish a model that links and emphasises the interactions between TK, modern science for verification and validation and the role of the private sector in bringing products to markets.

The plenary discussion essentially focussed on the need to build the legal capacity of traditional healers while also building their capacity in relation to the valorisation of traditional knowledge associated with genetic resources. It was also felt that indigenous knowledge systems needed to be empowered together with western systems, i.e. modern science, product development, marketing, etc., so that these systems can work together to enhance the livelihoods of people.

International and Regional Advances on Documentation of Traditional Knowledge

Intellectual Property and Indigenous Knowledge Systems/Traditional Knowledge: International Developments at the World Intellectual Property Organisation

This presentation updated the participants on the latest developments in the negotiations related to the international legal instrument(s) on the effective protection of genetic resources, traditional knowledge and traditional cultural expressions at the WIPO IGC. The work of the IGC was described as embracing a profound and unprecedented rethinking of intellectual property instruments and concepts to ensure the effective protection of TK associated with genetic resources and traditional cultural expressions. Indeed, the ultimate aim is to develop a model of protection for traditional knowledge or indigenous knowledge within the existing international intellectual property system that addresses the features of TK – in other words, protecting traditional knowledge through a special system based on the kinds of rights, measures, principles and trade-offs that are found in the international intellectual property system and adapted to respond to the multifaceted nature of TK. Although this process raised challenges on many levels, the role played by the African Group in this historical developing country-led process in intellectual property was highlighted and commended.

The presentation then discussed in more detail the current status of the IGC's text and articles related to the protection of TK. These articles are raising four main technical and policy issues that are critical to finalise the text. These are defining (a) the scope of the subject matter (i.e. definition of traditional knowledge), (b) who are the beneficiaries, (c) the scope of rights and (d) what exceptions and limitations on those rights there ought to be. Finally, the presentation highlighted that one of the major challenges that still needed to be addressed was the reticence to clarify policy objectives which directly impedes the resolution of the four technical and policy issues mentioned above. To conclude, the presentation emphasised the need to bridge the gap between protecting and documenting traditional knowledge.

In the subsequent plenary discussion, some participants questioned the non-binding nature of this instrument and highlighted that indeed the African Group's position was binding on the text. Participants also learnt that a voluntary fund was in place to allow traditional knowledge holders, ILCs and developing country representatives to participate as much as possible in the WIPO IGC process.

Development of the ARIPO Traditional Knowledge Digital Library

This presentation described the key steps undertaken to develop the ARIPO TKDL. The creation of the TKDL falls under ARIPO's mandate on the protection of TK and addresses the need to ensure the most integrated approach for the effective protection of traditional knowledge. Such a system was requested by and for the member states to prevent illicit patenting or use of patents. The presentation highlighted that ARIPO's approach supported the view that documenting TK was not a goal in itself. Rather, it is a means that contributes to an integrated protection of traditional knowledge. Conventional intellectual property tools, customary laws and a *sui generis* system were also presented as other legal possibilities and important components to consider for complementing the documentation process. The objectives for the development of the ARIPO TKDL are to, among others, implement the Swakopmund Protocol, prevent misappropriation and avoid granting of patents for TK-based inventions, facilitate the implementation of the Nagoya Protocol, promote TK-based industries and provide educational programmes on traditional knowledge. Both a defensive protection and a positive protection are being considered, while a differentiated access policy will be implemented (for

patent examiners, ILCs, researchers, etc.) The next steps are to improve on the design of the current database, undertake data collection and incorporate international data standards in the documentation system.

In the ensuing discussion, some participants expressed their support to the ARIPO TKDL, while others emphasised that there was still a need for a greater involvement of the ILCs in ARIPO's processes. The plenary agreed that the work of ILC organisations and NGOs will help to increase the participation of ILCs in processes related to the utilisation and documentation of TK associated with genetic resources. Participants were also informed that the traditional knowledge collected by ARIPO had been provided in trust. Indeed, there is no obligation for knowledge holders to provide their knowledge. Further, ARIPO conveyed to the participants that they were aware of the fact that there were some aspects of TK, such as the spiritual dimension, that knowledge holders did not want to document. Finally, the discussion highlighted that OAPI and ARIPO were collaborating on many levels while both developing their own approach and programmes. However, there is potential for convergence to develop a better protection of traditional knowledge in Africa.

Traditional Knowledge Documentation in the OAPI Context

The presentation reported on OAPI's draft text related to the protection of TK, which will be added as annex XII to the Bangui Agreement, making it binding on all its members. Unlike ARIPO, OAPI has not developed any particular tool or mechanism such as a digital library to document traditional knowledge. Rather, it advocates that documentation should be done at national level and provides a few directives to its members. For instance, subject to national policies, laws and procedures, competent national authorities may decide to keep records and document TK. Additionally, in any national documentation process, provisions must be made to take into account the needs, aspirations and interests of knowledge holders and protect undisclosed knowledge. ABS agreements have to be approved by competent national authorities and the utilisation of TK beyond its traditional context must be acknowledged. National legislation on documentation must also stipulate that access to TK does not mean access to associated genetic resources. Furthermore, the protection of TK must not in any case be detrimental or prevent its use as traditional medicine, for household purposes or for public health purpose. Finally, benefits arising from industrial or commercial application of any TK that has already been placed in the public domain must be equitably shared.

In the discussion that followed, some participants agreed with OAPI's position on the fact that documentation needed to be initiated at national level first, highlighting that each country has its own identity and culture. Only then could national traditional knowledge inventories be shared.

How is Traditional Knowledge Being held in Africa?

Inventory of the Sources of Traditional Knowledge in West and Central Africa

The presentation provided a comprehensive overview of the outcomes of a study on the inventory of the sources of traditional knowledge in Benin, Cameroon and Senegal, commissioned by the ABS Initiative and carried out by the French National Museum of Natural History (MNHN). This study was described as a first attempt to address queries made to the ABS Initiative on how to reference TK. This research work is therefore a first screening exercise to map where *in situ* and *ex situ* traditional knowledge can be found. Additional research still needs to be done to better understand the multifaceted nature of TK. Nevertheless, the approach developed for this research could be replicated and used as a tool to identify and take stock of *in situ* and *ex situ* sources of traditional knowledge in any country. A detailed summary of the results of the study can be found in Annex 2 of this report. The full study will be available on the ABS Initiative's website.

Following the presentation, the discussion focussed on the necessity to look at the complementarities of scientific and traditional knowledge. For instance, the spiritual aspects of TK should be considered separately from its scientific component. The spiritual dimension has no economic value as opposed to the commercial potential of the scientific component. Participants also highlighted the importance of returning identified *ex situ* sources of traditional knowledge and related information to the countries of origin.

How is Traditional Knowledge Being used in Africa?

Case Studies from Communities and the Private Sector: Success and Challenges linked to the Utilisation of Traditional Knowledge

Presentations in this session reported on successes and challenges linked to the utilisation of TK, providing perspectives from communities, the private sector, the research industry and a field-based NGO. The *Lippia javanica* case study illustrated a successful example of adding value to South African biodiversity through the fruitful interaction between traditional knowledge and scientific innovation while at the same channelling economic benefits to the rural communities. This is done through the development of value chains and ABS agreements with local communities that are holders of the traditional knowledge. Parceval Pharmaceuticals, a South African company operating in the field of herbal and homeopathic medicine, reported on the challenges of establishing, prior and after the South African ABS regulatory framework came into force, ABS agreements with indigenous communities providing them with genetic resources associated with traditional knowledge. Over time, despite difficult beginnings, a level of trust was achieved, leading to the development of a strong partnership enhancing economic benefits flowing down to these communities. Representatives of the Khoi & San People discussed the Hoodia case and their experiences in dealing with a body of knowledge shared with other communities. They highlighted how this case helped raising awareness on the need to protect TK associated with genetic resources and influenced the development of the South African ABS legislation and regulations. Finally, Integrated Rural Development and Nature Conservation (IRDNC), a field-based NGO, provided a brief overview of their efforts in reviving and documenting traditional knowledge and practices among marginalised ILCs living inside the Bwabwata National Park in Namibia. For historical reasons, these communities are slowly losing many of their traditions and values, including important knowledge related to the sustainable use and management of natural resources. Very little intergenerational transfer of TK is taking place. With the support of Natural Justice, IRDNC assisted the communities to regain, maintain and promote their traditional knowledge and ancestral values through the development of a BCP. As a result of these combined efforts, the communities have now started documenting their traditional knowledge, customary practices and way of life and in the process restored their identity and dignity as a people while securing their livelihood inside the park. On the whole, all case studies highlighted the importance of an appropriate and conducive legal framework to nurture an enabling environment that will foster the protection of TK and the development of sustainable value chains bringing economic benefits and opportunities to knowledge holder communities.

The subsequent discussion touched upon various topics from the revitalisation of TK and the need for dignity restoration of the ILCs to the valorisation process of genetic resources. With regard to the latter, the role of TK in guiding scientific research in a particular area of study was strongly highlighted. Some participants described TK as being the “power” of ILCs. This led to the question: how can traditional knowledge be valued and how can this value be translated into economic or non-economic benefits for the communities through benefit-sharing agreements? Could TK documentation be part of the answer? Participants from the private sector also remarked that national ABS legislation can be cumbersome at times. Finally, a few participants pointed out the difficulty in identifying knowledge holders, especially in the case of shared knowledge and highlighted the important role TK documentation could play to facilitate this process.

Group Discussions

As an introduction to the group discussions, participants looked back at the different clusters developed at the beginning of the workshop on the objectives of TK documentation with a view to identifying critical elements that could inform the development of a roadmap. They agreed that TK databases must be looked at from both an intellectual property angle and an ABS perspective. They also stressed that it was important to take into account that some communities or individuals did not want to document their TK and that other forms of TK existed besides those associated with genetic resources. Further, they stressed that all the objectives identified were mutually supportive and reinforcing each other and that each should be given equal attention. Some participants also highlighted that depending on the strategy chosen to document TK, considerations must be given to the elaboration of rules to manage and access data, possibly different levels of access and confidentiality. Considerations must also be given to benefit-sharing related issues, including IPRs arising from the utilisation and valorisation of genetic resources associated with TK.

Strengths and Limitations of Traditional Knowledge Documentation

Participants were divided into six groups and asked to reflect on the strengths and limitations of TK documentation at regional, national and local levels. The outcomes of each group discussion were presented and discussed in plenary with other groups. The table below is a summary of these discussions.

Strengths		
Regional	**National**	**Local**
Existing regional IP organisations providing an institutional and legal framework for TK documentation; Existing expertise and initiatives; Identification and management of transboundary/shared TK and related applications/ utilisations; Exchange of TK information in general; Prevention of misappropriation and biopiracy through patent provision; Capacity building schemes /training programmes on IP & ABS; Opportunities for better cooperation and partnerships; Existing ILC network organisations (e.g. IPACC) combined with the work of NGOs on the protection of TK (Natural Justice, IRDNC, etc.); Different cultures & languages	Ability and willingness of states to create an enabling environment for TK documentation; Sound laws for the protection of TK; National recordal systems (e.g. India, Peru and South Africa); Development of *sui generis* systems of protection (e.g. Peru); Contribution to policy formulation; Documentation initiatives prevent knowledge from being lost; Existing skills for TK documentation; Work of community-based organisations and NGOs (Natural Justice, IRDNC, etc.)	Repository of TK; Local application of TK keeps it alive; Sharing of TK information; Improved documentation through monitoring and recording of TK; Formalisation of ABS application has improved documentation; Documentation of TK encouraged through IP and patentability; Increased value/interest; Empowerment of community through TK (use); Increased sense of identity, pride and ownership - community legitimacy; Local biodiversity meets community's food, health & livelihood needs through the use of TK; Dynamic nature of TK; Work of community-based organisations and NGOs (Natural Justice, IRDNC, etc.) to

		increase the legal capacity of ILCs and link them with other stakeholders; Improved conservation and sustainable management of biodiversity; Ontology (storytelling, way of life) of knowledge when documenting

Limitations		
Regional	**National**	**Local**
Lack of IPRs adapted to the protection of TK; Limited coordination and communication between regional blocks; Inadequate collaboration between regional institutions; Lack of political will; Disabled national environmental policy; Lack of harmonisation - varying regulations from the states; Lack of records / databases / registers; Lack of capacity building; Lack of human and financial resources; Shortage of expertise; Limited inclusion of ILCs in policy making; Instability on the continent - regional conflicts/wars limit TK documentation	Lack of IPRs adapted to the protection of TK; Low level of implementation of international treaties & conventions; Lack of political will, competent authorities, appropriate legislation & regulations; Lack of definition of TK; Poor explanations and understanding of the objectives of documentation; Lack of funds to facilitate documentation; Lack of experts (sensitive to social & community circumstances); Shortage of expertise, human and technical resources; Lack of capacity building; Lack of awareness; Lack of inter-agency linkages & synergies; Disconnect between stakeholders & actors; Sovereignty of governments over TK documentation; No benefits from TK documentation; Difference of approach and opinion on documentation of custodians and states; Information management problem; TKcan be hijacked Lack of recognition of ILCs and TK in national laws	Unwillingness to disclose TK due to mistrust; Inadequate/lack of skills for TK documentation; Language barriers; Lack of IP awareness; TK documentation in conflict with IP application of individuals; Use of botanical names for local names; Limited transfer of TK from elders to youth or other members of the community; Lack of social access for local communities; Loss/death of elders that hold TK; Loss of ownership; Conflict of ownership; Privatisation of TK; Trivialisation of TK; Lack of capacity building; Unsustainable harvesting

Strengths and Limitations of Traditional Knowledge Documentation

Participants were divided into the same groups to reflect on the following questions:

- What are the crucial first steps of TK documentation?
- What is needed to take these steps?

The table below is a summary of these discussions.

Needs	Steps
Political commitment	Identify all relevant stakeholders/institutions; Define strategic goals of TK documentation (defensive protection, positive protection or both?); Design policy and regulatory framework or strengthen existing legislation (participatory process).
Financial resources	Resource mobilisation (national resources; engagement in technical and financial partnerships)
Preserve traditional knowledge and associated genetic resources	Protect them, manage them in a sustainable way, promote sustainable use and develop sustainable value chains that benefit ILCs.
Understanding TK and related priorities through continued research, identifying its location, documentation of TK	Start consultation process with ILCs to seek and obtain their consent before starting any research and stocktaking exercise; Identify and map TK holders and practices; Study to determine the amount of TK still available in the communities; Document the different types of TK (plant/animal related, traditional medicine, spiritual, sacred, cultural and traditions) in local languages and then translate into other languages; Create a national inventory/ register/ database to store collected data with rules for access depending on the type of TK (common or confidential) and benefit-sharing aligned with national legislation and regulations.
Awareness raising and support to local communities to help TK holders participate in the documentation process	Market and publicise existence of documentation process and explain the reason why it is important to document TK, also highlighting the benefits and challenges of such undertaking; Identify and develop partnerships with community-based organisations and NGOs; Invite ILC representatives to relevant meetings, workshops and trainings.

Capacity building (of all relevant stakeholders, but with a special attention given to ILCs)	Empowerment of ILCs on TK documentation, IP, ABS and related legal issues through training; Translation of the above into adequate commercialisation; Design training programme for information collectors, researchers, etc.
Expertise on IP, TK documentation, ABS and information technology	Identify relevant resource people and institutions / organisations
Regional and international collaboration, including collaboration with IP organisations	Elaboration of regional guidelines, harmonisation of definitions and concepts and development of guides/manuals on TK, IPRs and ABS.
Food security, health security and livelihood security	

Plenary Discussion on the Potential Contribution/role of the Various Stakeholder Groups to Initiate the Process of Documenting Traditional Knowledge

Generally speaking, most proposed contributions involved collaboration, dissemination of information, lessons learnt and expertise between countries and across continents, a summary of which is presented in the table below.

Stakeholder Groups	Role/Contribution
ABS National Focal Points	Collaboration between ABS National Focal Points and IPR officials (institutional aspect); Exchange programmes with India on TK documentation to build the capacity of ABS National Focal Points, ILCs and other relevant stakeholders; Dissemination of the experiences, information, lessons learnt and outcomes of the workshop on TK Documentation all the way down to the ILCs; Preliminary investigation, elaboration of an action plan with the active participation of all relevant stakeholders, especially ILCs (TK holders, researchers, private sector, etc.) and fund raising for implementation; Elaboration of a definition of traditional knowledge at national level; Valorisation and consolidation of existing ABS initiatives to enable the development of a comprehensive strategy for TK documentation; Better understanding of international IPR systems to better valorise traditional knowledge; Establishing of a "one-stop shop" (incorporating relevant information in relation to stakeholders, TK, access conditions, links to ABS and IPRs, and training programmes to build ILCs' capacity);

		Better involvement of ILCs in national committees and international fora relevant to ABS issues and TK documentation.
Countries	South Africa	Share technical expertise on database and policy development as well as capacity building; Link national research institutes together; Use existing bilateral cooperation agreements to include the collaboration on TK documentation.
	Cameroon	Share experiences on training of healers and related documentation.
	Tanzania	Share expertise and provide support on IPRs and ABS.
	Ivory Coast	Share experience related to the development of a software programme that enables the census of traditional health practitioners.
	Peru	Share expertise and knowledge on documenting traditional knowledge and interacting with ILCs.
NGOs	FRLHT, India	Share experience on medicinal plants and associated TK; Share relevant literature and research reports; Share FRLHT's pool of resource persons and develop partnerships to provide support and build the capacity of African countries.
	MTA, Egypt	Share experience to prevent biopiracy and build capacity on TK documentation; Raise funds to build database.
	Natural Justice, South Africa	Share expertise, experiences and lessons learnt on community processes from the BCP Africa Initiative.
Regional Organisations	OAPI	Provide support on raising awareness and building capacity on IPRs; Provide support and expertise for developing *sui generis* systems of TK protection and definition of critical concepts; Collaborate with ARIPO.
	ARIPO	Review regional strategy on TK documentation; Develop a network to protect TK against misappropriation and biopiracy by taking advantage of national initiatives.
ILC Networks & Organisations	IPACC	Provide support in identifying and mapping TK holders and their territories.
	Network of ILCs for Sustainable Management of Forest	Liaise and exchange/share information with REPALEAC on ILCs and their territories.

	Ecosystems in central Africa (REPALEAC)	
Other	Muséum National d'Histoire Naturelle	Share the final version of the Inventory of the Sources of Traditional Knowledge in West and Central Africa; Share lessons learnt and methodology used and assess whether this study could be replicated or extended to include other countries; Provide support to research projects.
	Organisation Ouest Africaine de la Santé (OOAS)	Liaise with OOAS and invite representatives to ABS workshops as they do similar work and research.
	UNU-IAS	Explore opportunities for knowledge exchange programmes/ community exchange programmes and availability of resource people.
	Universities	Promote and raise awareness on TK documentation with students.
	African Ethnobotany Network (AEN)	Liaise and develop relationship with AEN.

Closure

Presentations

The full list of presentations made during the workshop is listed here for download.

Day 1

Introduction to Intellectual Property Rights for ABS Stakeholders: Session 1 – Bernard Maister, Intellectual Property Unit, University of Cape Town, South African

Introduction to Intellectual Property Rights for ABS Stakeholders: Session 2 – Bernard Maister, Intellectual Property Unit, University of Cape Town, South African

Introduction to Intellectual Property Rights for ABS Stakeholders: Session 3 – Bernard Maister, Intellectual Property Unit, University of Cape Town, South African

Keynote Speech: Traditional Knowledge in a Global Economy – the Politics of Knowledge – Professor Muxe Nkondo

Day 2

The Peruvian Experience – Andres Valladolid Cavero, National Anti-Biopiracy Commission, Peru

Traditional Knowledge Digital Library – Balakrishna Pisupati, National Biodiversity Authority, India

The National Recordal System – Carol van Wyk and Dr Yonah Seleti, Department of Science and Technology, South Africa

The Kukula Traditional Healer Association – Rodney Sibuyi, The Kukula Traditional Hearler Association and Tumelo Mafago, Kruger to Canyons Biosphere, South Africa

The Medical Plants Association, Saint Katherine Protectorate, Egypt – Khalil Soliman, the Medicinal Plants Association and Elbialy Elsayed Ahmed Hatab, Environmental affairs Agency, Egypt

Community Initiatives from India for Traditional Knowledge Documentation of Traditional Health Practices and ABS – Govindaswamy Hariramamurthi, Institute of Ayurveda and Integrative Medicine, Foundation for Revitalisation of Local Health Traditions, India

***In Situ* Documentation, Capacity Building and Traditional Healers in Western Uganda –** Anke Weisheit, Excel Hort Consult Ltd, Uganda

Day 3

Intellectual Property and Indigenous Knowledge Systems/Traditional Knowledge: International Developments at WIPO – Wend Wendland, World Intellectual Property Organisation, Switzerland

Development of ARIPO Traditional Knowledge Digital Library – Emmanuel Sackey, ARIPO, Zimbabwe

Avancées Internationales et Régionales sur la Documentation des Connaissances Traditionnelles : le Contexte OAPI – Solange Dao Sanon, OAPI, Cameroon

Inventaire des Sources de Savoirs Traditionnels en Afrique Central et en Afrique de l'Ouest – Jean-Dominique Wahiche, Muséum National d'Histoire Naturelle, France

Bioprospecting Benefit Sharing Case Studies: A Chess Game or Relay Race? – Professeur Vinesh Maharaj, University of Pretoria, South Africa

IRDNC Namibia: Supporting People and Securing Livelihood inside a National Park – Friedrich Alpers, IRDNC, Namibia

Day 4 (Side Event)

Documentation Assessment of Traditional Health Traditions – Govindaswamy Hariramamurthi, Institute of Ayurveda and Integrative Medicine, Foundation for Revitalisation of Local Health Traditions, India

Annotated Agenda

Wednesday, 11th December 2013

Opening of the workshop

8h30 Arrival and registration

9h00 Welcome and Introduction
Barbara Lassen, ABS Capacity Development Initiative, Germany and Mouhamed Drabo, Burkina Faso (Facilitators)

Getting to know each other

What are the goals of Traditional Knowledge Documentation in the context of ABS?

Introduction to IPRs for ABS Stakeholders

11h00 Introduction to IPRs for ABS Stakeholders – Session 1
Bernard Maister, Intellectual Property Unit, University of Cape Town, South Africa and Naana Halm, The Rights Place Consulting, Ghana

11h30 Coffee /Tea

11h45 Introduction to IPRs for ABS Stakeholders – Session 2
Bernard Maister, Intellectual Property Unit, University of Cape Town, South Africa and Naana Halm, The Rights Place Consulting, Ghana

13h00 Lunch

14h00 Introduction to IPRs for ABS Stakeholders – Session 3
Bernard Maister, Intellectual Property Unit, University of Cape Town, South Africa and Naana Halm, The Rights Place Consulting, Ghana

15h15 Coffee /Tea

Opening Session of Traditional Knowledge Stream: "Framing Traditional Knowledge"

15h45 Introduction
Barbara Lassen, ABS Capacity Development Initiative, Germany and Gino Cocchiaro, Natural Justice, South Africa

Keynote Speech

16h00 "Traditional Knowledge in a Global Knowledge Economy: the Politics of Knowledge."
Professor Muxe Nkondo, South Africa

Panel Discussion

16h30 Overview of Traditional Knowledge in Africa: Significance and Use
Kanyinke Sena, Indigenous People of Africa Coordinating Committee (IPACC), Kenya
Wend Wendland, World Intellectual Property Organisation (WIPO), Switzerland
Emanuel Sackey, African Regional Intellectual Property Organisation (ARIPO), Zimbabwe
Solange Dao Sanon, Organisation Africaine de la Propriété Intellectuelles (OAPI), Cameroon
Patricia Liebetrau, Department of Science and Technology, South Africa
Suhel al-Janabi, ABS Capacity Development Initiative, Germany

17h30 Q&A session

18h00 End of Day

19h00 Dinner

Thursday, 12th December 2013

National Documentation of Traditional Knowledge: Examples from the World

9h00 Introduction
Barbara Lassen, ABS Capacity Development Initiative, Germany

9h15 Traditional Knowledge Documentation in Peru
Andreas Valladolid Cavero, National Anti-Biopiracy Commission, Peru

9h45 Q&A Session

10h00 India: Presenting the Traditional Knowledge Digital Library
Balkrishna Pisupati (via skype), National Biodiversity Authority, India

10h30 Q&A session

10h45 Coffee /Tea

11h15 South Africa: Presenting the National Recordal System (NRS)
Carol van Wyk and Dr Yonah Seleti, Department of Science and Technology, South Africa

11h45 Q&A session

11h45 Panel Discussion with National Examples

13h00 Lunch

Community Initiative for Traditional Knowledge Documentation

14h00 South Africa: The Kukula Traditional Healer Organisation

Rodney Sibuyi, the Kukula Traditional Hearler Association and Tumelo Mafago, Kruger to Canyons Biosphere, South Africa

14h30 Q&A Session

15h00 Egypt: The Medicinal Plants Association, Saint Katherine Protectorate
Khalil Soliman, the Medicinal Plants Association and Elbialy Elsayed Ahmed Hatab, Environmental affairs Agency, Egypt

15h30 Q&A Session

16h00 Coffee /Tea

16h15 India: Community Initiative for Traditional Knowledge Documentation of Traditional Health Practices and ABS
Govindaswamy Hariramamurthi, Institute of Ayurveda and Integrative Medicine, Foundation for Revitalisation of Local Health Traditions, India

16h45 Q&A Session

17h 15 Uganda: Traditional Healers, *In Situ* Documentation and Capacity Building
Anke Weisheit, Excel Hort Consult Ltd, Uganda

17h45 Q&A Session

18h00 End of Day

Friday, 13th December 2013

International and Regional Advances on Documentation of Traditional Knowledge

9h00 Intellectual Property and Indigenous Knowledge Systems/Traditional Knowledge: International Development at WIPO
Wend Wendland, World Intellectual Property Organisation(WIPO), Switzerland

9h30 Q&A Session

9h45 Development of the ARIPO Traditional Knowledge Digital Library
Emmanuel Sackey, African Regional Intellectual Property Organisation (ARIPO), Zimbabwe

10h00 Q&A Session

10h15 OAPI Context
Solange Dao Sanon, Organisation Africaine de la Propriété Intellectuelles (OAPI), Cameroon

10h45 Q&A Session

11h00 Coffee /Tea

How is Traditional Knowledge being Held in Africa?

11h30 Introduction
Suhel al-Janabi, ABS Capacity Development Initiative, Germany

11h45 Report of the Study of the Muséum National d'Histoire Naturelle on the Documentation of Traditional Knowledge in Africa
Jean-Dominique Wahiche, Muséum National d'Histoire Naturelle, France

12h45 Q&A Session

13h00 Lunch

14h00 Perspectives and Closing Remarks from the Global Congress on Intellectual Property & the Global Interest

15h00 Coffee /Tea

How is Traditional Knowledge being used in Africa?

15h30 Adding Value to South African Resources
Professor Vinesh Maharaj, University of Pretoria, South Africa

16h00 Q&A Session

16h30 Private Sector Perspective of Using Traditional Knowledge
Ulrich Feiter, Parceval, South Africa

17h00 Q&A session

16h30 Koi & San People and their Relationship to Plants

17h00 Q&A session

17h15 Perspective from a Field-Based Non-Governmental Organisation, Namibia
Friedrich Alpers, Integrated Rural Development and Nature Conservation(IRDNC), Namibia

17h45 Q&A session

18h00 End of Day

Saturday, 14th December 2013

Group Guided Discussions

9h00	Recap of Previous Days *Suhel al-Janabi, ABS Capacity Development Initiative, Germany*
9h30	Group Guided Discussion on Risks and Potentials of Traditional Knowledge Documentation
10h15	Reporting Back on Group Discussions
10h45	Coffee /Tea
11h15	Group Guided Discussion on Proposals for Traditional Knowledge Documentation in Africa
13h00	Lunch
14h00	Reporting Back on Group Discussions
16h00	Closing Remarks and End of the Workshop

List of Participants

First Name	Last Name	Institution	Country	E-Mail
Hugues	Akpona	Ministère de l'Environnement, de l'Habitat et de l'Urbanisme	Benin	akpona@gmail.com
Ronel	Albers	CSIR	South Africa	
Friedrich	Alpers	IRDNC	Namibia	falpers@iway.na
Véronique	Amari Koffi	Ministère de l'Environnement, de la Salubrité Urbaine et du Développement Durable	Ivory Coast	koffialaki@yahoo.fr
Tolotra	Andriamparany	Chef de service de la médecine traditionnelle - Ministère de la Santé	Madagascar	tolotrandria@gmail.com
Vital	Bambanze	UNIPROBA / IPACC	Burundi	vbambanze@hotmail.com gibambanze@yahoo.fr
Bienvenu	Bossou	Organisation Non-Gouvernementale Cercle pour la Sauvegarde des Ressources Naturelles	Benin	cesarenong@yahoo.fr bmbc1957@gmail.com
Nicolas	Brou	Université Félix Houphouet Boigny	Ivory Coast	nicolas.brou@gmail.com
Gladman	Chibememe	Chibememe Earth Healing Association (CHIEHA)	Zimbabwe	gchibememe@yahoo.co.uk
Nigel	Crawhall	IPACC	South Africa	ipacc@iafrica.com
Solange	Dao Sanon	OAPI	Cameroon	daosolange@yahoo.fr
Samuel	Dieme	Direction des Parcs Nationaux du Sénégal	Senegal	sam_casa@yahoo.fr
Diégane	Diouf	Université Cheick Anta Diop	Senegal	diegane.diouf@ucad.edu.sn
Fernando	Dos Santos	ARIPO		
Latifa	Douch	Association Hillala pour le développement coopérationnel et la solidarité	Morocco	latifa.douch@gmail.com
Lynne	Emery	UKZN	South Africa	Emery@ukzn.ac.za
Ulrich	Feiter	Parceval (Pty) Ltd	South Africa	ulrich.feiter@parceval.co.za

Ngu Edward	Fominyen	Président des Tradi-Praticiens du Cameroun, Membre du Comité de Pilotage APA	Cameroon	faifominyen@yahoo.fr
Fernand	Gbaguidi	Centre Béninois de la Recherche Scientifique et Technique (CBRST)	Benin	ahokannou@yahoo.fr
Hariramamurthi	Govindaswamy	Centre for Local Health Traditions, Institute of Ayurveda and Integrative Medicine	India	g.hari@frlht.org hariram_01@yahoo.com
Samson	Gwali	Natural Forestry Resources Research Institute	Uganda	gwalis@yahoo.co.uk
Naana	Halm	The Rights Place Consulting	Ghana	
Elbialy Elsayed Ahmed	Hatab	Egyptian Environmental Affairs Agency	Egypt	ehatab1@yahoo.com
Roch	Houngnihin	Ministère de la Santé	Benin	roch_houngnihin2001@yahoo.fr
Joseph	Itongwa	REPALEAC	Democratic Republic of the Congo	itojose2000@yahoo.fr
Lesle	Jansen	Natural Justice	South Africa	lesle@naturaljustice.org
Lazarus	Kairabeb	Nama Traditional Leaders Association	Namibia	kairabeb@iway.na
Esther	Katuura	Natural Chemotherapeutics Research Institute	Uganda	katuurae@gmail.com ekatuura@yahoo.com
Déassio Jean Jacques Omer	Koulai	Programme National de Promotion de la Médecine Traditionnelle	Ivory Coast	Deas72000@yahoo.fr
Eliamani	Laltaika	The Nelson Mandela African Institute of Science and Technology	Tanzanie	laltaika@gmail.com
Cecil	LeFleur	National Khoi-San Council	South Africa	lefleurcecil@gmail.com
Patricia	Liebetrau	UKZN	South Africa	liebetraup@ukzn.ac.za
Margaret	Lomonyang	Tobari	Uganda	mlomonyang@yahoo.com mlomonyang@gmail.com

Tumelo	Mafogo	Kruger to Canyons Biosphere Reserve Management Committee	South Africa	mafogotumelo@yahoo.co
Bernard	Maister	University of Cape Town	South Africa	
Zodwa	Masinga	UKZN	South Africa	Masingaz@ukzn.ac.za
Lucy	Mulenkei	Indigenous Information Network	Kenya	mulenkei@gmail.com
Bernard Aloys	Nkongmeneck	Ethno-Botaniste , Prof à l'Université de Yaondé I.	Cameroon	bnkongme@yahoo.fr
Martha	Ntoipo	Pastoralist Information and Development Organisation	Tanzania	marthantoipo@gmail.com
Marisella	Ouma	Kenya Copyright Board	Kenya	mouma@copyright.go.ke mwarsie@justice.com
Unnikrishnan	Payyappallimana	United Nations University-Institute of Advanced Studies	India	payyappalli@ias.unu.edu unnipm@yahoo.com
Riette	Pretorius	CSIR	South Africa	heaston@csir.ac.za
Naritiana	Rakotoniaina	Ministere de l'Environment et des Eaux et Forêts	Madagascar	naritiana.sage@blueline.mg naritiana2003@yahoo.fr
Claudine	Ramiarison	Ministère de l'Enseignement Supérieur et de la Recherche Scientifique	Madagascar	ramiaris@moov.mg
Michel	Ratsimbason	Directeur du Centre National sur la Recherche appliquée à la Pharmacologie	Madagascar	mratsimbason@yahoo.com michel.ratsimbason@cnarp.mg
Britta	Rutert	Free University of Berlin/ Natural Justice	Germany	britta.rutert@gmail.com
Emmanuel	Sackey	ARIPO	Zimbabwe	esackey@aripo.org
Ndiaga	Sall	Enda Tiers Monde	Senegal	ndiagasall@endatiersmonde.org
Kauna	Schroder	Ministry of Environment and Tourism (MET)	Namibia	kauna@met.na
Yonah	Seleti	Department of Science and Technology	South Africa	yonah.seleti@dst.gov.za
Kanyinke	Sena	IPACC	Kenya	kanyinke@gmail.com

Elize	Shakalela	Ministry of Environment and Tourism (MET)	Namibia	eshakalela@gmail.com
Wilson	Shey	Ministry of Environment and Protection of Nature	Cameroon	sheywilson@yahoo.fr
Rodney	Sibuye	Kukula Traditional Healers Association	South Africa	info@kruger2canyons.org res@ottersden.co.za
Khalil	Soliman	Medicinal Plants Association	Egypt	mpo_sinai@yahoo.com
Andries	Steenkamp	South African San Council	South Africa	leanacloete@ymail.com
Andres	Valladolid	President of the National Anti-Biopiracy Commission	Peru	avalladolid@indecopi.gob.pe
Carol	van Wyk	Department of Science and Technology	South Africa	carol.vanwyk@dst.gov.za
Jean-Dominique	Wahiche	MNHN	France	wahiche@mnhn.fr
Anke	Weisheit	Excel Hort Consult Ltd	Uganda	aweisheit@excelhort.com
Wend	Wendland	WIPO	Switzerland	wend.wendland@wipo.int
Marie	Wilke	Natural Justice	Germany	mwilke@cisdl.org
Hoda	Yacoub	Egyptian Environmetal Affairs Agency	Egypt	hyacoub2012@yahoo.com
Team				
Suhel	Al-Janabi	ABS Capacity Development Initiative	Namibia	s.aljanabi@geo-media.de
Stephanie	Buri	ABS Capacity Development Initiative	Germany	s.buri@geo-media.de
Gino	Cocchiaro	Natural Justice	South Africa	gino@naturaljustice.org
Mouhamed	Drabo	Facilitator	Burkina Faso	draboh@yahoo.fr
Kas	Kasanga	Interpreter	South Africa	kasangam@gmail.com
Barbara	Lassen	ABS Capacity Development Initiative	Germany	barbara.lassen@giz.de
Chantal	Mariotte	Interpreter	Kenya	chantal.mariotte@gmail.com
Nadine	Pauly	ABS Capacity Development Initiative	Germany	nadine.pauly@giz.de
Emmanuel	Petros	Interpreter	Ethiopia	emmanuelpetros@yahoo.com
Guilia	Sajeva	Natural Justice	South Africa	giulia@naturaljustice.org.za

Tom	Suchanandan	Department of Science and Technology	South Africa	Tom.Suchanandan@dst.gov.za
Mesfin	Wolde-Giorghis	Interpreter	Ethiopia	meswolde@gmail.com
Sabine	Zajderman	ABS Capacity Development Initiative	South Africa	sabinezajderman@gmail.com

Annex 1 – Why Documenting Traditional Knowledge?

West Africa	To develop a better knowledge and understanding of TK (localisation, knowledge holders, utilisations/purposes, etc.) To protect TK more appropriately (transfer, conservation, sustainable use, etc.) To develop better valorisation strategies (economic, social and scientific benefits and better policy)
North Africa	To prevent TK from being lost To conserve ILCs' rights to get a share of the benefits arising from the use of their resources and associated traditional knowledge To regulate the utilisation of TK by establishing PIC & MAT requirements To develop IPRs to protect TK associated with genetic resources
East Africa	To stop TK from being lost To ensure access and benefit-sharing To prevent exploitation/biopiracy
Central Africa	For protection & valorisation To allow TK holders to benefit from it. To recognise the intellectual property rights of TK holders over their knowledge associated with genetic resources
Southern Africa	Defence/protection Value of traditional knowledge Ownership preservation
Islands	To preserve traditional knowledge To protect the intellectual property rights of ILCs/knowledge holders over their TK For the protection and valorisation of traditional knowledge
Other Continents	To preserve traditional knowledge To fight biopiracy Endogenous development and ABS

Annex 2 – Inventory of Traditional Knowledge Sources in West and Central Africa

Inventory of Traditional Knowledge Sources in West and Central Africa

Executive Summary
2013

CONTEXT

Nagoya Protocol

In 2010, the International Year of Biodiversity, the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD) adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS).

In the spirit of the CBD, the Protocol places particular emphasis on indigenous and local communities (ILCs) and seeks to strengthen their ability to receive a share of the benefits that could arise from the utilisation of their traditional knowledge, innovations and practices associated with genetic resources (aTK).

The ABS Capacity Development Initiative

Since 2006, the ABS Initiative has been working to strengthen ABS capacities in Africa. Its aim is to provide support to states for the ratification of the Nagoya Protocol and assist stakeholders in putting ABS into action, as each state is responsible for implementing it domestically.

The study

In the course of its training and capacity building activities, the Initiative became aware of a lack of available information on the question of traditional knowledge associated with genetic resources (aTK) and the indigenous and local communities that hold this knowledge. With a view to addressing the complex issues surrounding associated traditional knowledge, the Initiative (through the Deutsche Gesellschaft für Internationale Zusammenarbeit – GIZ) commissioned the French National Museum of Natural History (Muséum national d'Histoire naturelle – MNHN) to draw up an inventory of traditional knowledge sources in West and Central Africa.

The study comprises two components:

- an inventory of *in situ* sources of knowledge (that is, in their countries of origin) in three pilot countries: Senegal, Cameroon and Benin;
- an inventory of *ex situ* sources of knowledge from West and Central African countries (conserved in France); this component was undertaken by the MNHN.

The MNHN engaged the consulting firm AnthropoLinks to conduct the *in situ* study. A ten-day mission was carried out in each country covered by the study, during which around a hundred actors were interviewed. The research for the *ex situ* study was conducted by students of MNHN's EDTS (environment, development, territories and societies) master programme.

Report structure

The report is divided into five free-standing parts.

Part 1 describes the context of the study and the methodology adopted.

Part 2 provides an overview of the main actors identified *in situ* who have an interest in and document traditional knowledge. This part also examines the problem of defining the terms 'traditional knowledge' and 'indigenous and local communities'.

Part 3 contains a list of all the documentary sources identified in each country covered by the study. These sources are listed according to type (database, university library, etc.). Descriptive elements are also provided, giving details of the contents and how they can be accessed and searched. At the end of the inventory, there are some points of analysis and reflections on the databases and the status of the data contained in them.

Part 4 presents the findings of the *ex situ* study, including a list of institutions that are repositories of written ATK sources and an analysis of the documents they hold. A brief description of each institution is provided, stating how the documentation can be accessed and the number of references to traditional knowledge in West and Central Africa.

Part 5 contains the following annexes

- the methodological tools used for the study;
- a detailed description of the information gathered on each of the three case studies;
- a list of the names and contact details of sources identified in each of the countries covered by the study.

MAIN FINDINGS

Definitions

In the context of the CBD, the Protocol's ABS provisions refer to traditional knowledge associated with genetic resources, held by indigenous and local communities and embodied in a traditional way of life.

However, in practice, there is no clear definition in the law of the countries studied of the concepts of 'indigenous and local communities' and 'traditional knowledge associated with the use of genetic resources'. This absence of legal definitions, which is not exclusive to these countries, leads to serious difficulties in putting ABS into practice and raises fundamental questions about its implementation. As a result, communities might have elevated expectations (they might assume that any kind of knowledge has an economic value and therefore expect financial benefits) or they might feel that they are being ransacked.

In the African context, the territory of cultural identity groups often extends beyond national borders. In some cases, people on different sides of a border have long engaged in intensive exchanges and often share a common pool of knowledge. In such cases, the definition of who holds knowledge – that is, who has the right to profit from benefit-sharing – could become a source of potential conflict.

In this context, it is no easy task to identify *in situ* knowledge sources. The question of who holds knowledge, with all its political implications, is too complex and sensitive to be addressed in the course of a short expert mission. In the absence of a contextualised ethnographic study, we decided

to confine this study to drawing up an **inventory of actors who have an interest in traditional knowledge and document it in written form**.

The purpose of this study is therefore not to make an inventory of traditional knowledge and, still less, to determine who it belongs to.

What type of knowledge is documented?

The *ex situ* and *in situ* studies lead to the same conclusion: most of the knowledge documented in writing concerns traditional medicine, followed by agricultural practices and food. References to crafts and cosmetics appear less frequently in the documentary searches carried out.

The works concerned are mainly on pharmacology and seldom document the knowledge itself. They are generally vague on social data and do not contextualise the uses mentioned. Very often, the documentation consists solely of references to the use of plants.

In the *ex situ* and *in situ* documents, the cultural context of the knowledge is seldom described. *Ex situ* documents rarely give the vernacular name (and where it is provided, the language is not specified), identify the place where the information was gathered (except in monographic works) or state who provided the information.

On the other hand, *in situ* documents often specify the vernacular names and the language they are from, but provide little in the way of additional information.

	Pharmacopoeia and traditional medicine	Agriculture and food	Veterinary medicine	Crafts	Cosmetics	General uses
In situ	227	99	10	9	2	5
Ex situ	316	146	28	6	6	207

Pharmacology and ethnobotany are the main disciplines that document traditional knowledge. It is worth noting that while in France there are dwindling numbers of specialists in the areas of botany and **ethnobotany** and less and less teaching of these subjects, this does not seem to be the case in the countries covered by the study, where ethnobotany seems to be a research methodology employed in numerous disciplines.

Who are the sources and actors?

Practitioners of traditional medicine are the main actors defined as holders of traditional knowledge associated with the use of genetic resources. However, they seldom formalise their knowledge in written form. Some healers put their knowledge into writing, with a view to passing it down to the next generation within their community, and while this practice continues, it does so in an extremely personal and confidential manner.

The valorisation and institutionalisation of traditional medicine in the 1990s led to the creation of groups and associations of traditional healers, which collaborated with national research institutions and programmes focused on researching and developing improved traditional medicines. In this connection, three important findings emerged:
1) These associations and groups of traditional healers represent communities of interest rather than indigenous and local communities. While they can be considered as intermediaries, or even mediators, they cannot be regarded as actors representing the communities. Very often, the emergence of such organisations is an urban phenomenon or (as in the case of Benin, for example), an almost obligatory response to administrative requirements.
2) **National research institutions and universities** are the main actors who investigate, document and formalise traditional knowledge. They are therefore key actors, as evidenced by their role as an interface between different types of actors, including local communities (which they are studying),

international research institutions (with which they create partnerships and exchange information on a variety of subjects, including traditional knowledge) and national private enterprises (mainly for the development of improved traditional medicines). When it comes to ABS in the context of North-South relations, the vast majority of researchers now define themselves as knowledge providers (to foreign universities and companies through their publications). In this capacity, they position themselves as legitimate partners in benefit-sharing. They take a different line, however, in the debate in the national context, where they position themselves as resource users and as entities that enable communities to share in the benefits. The 'translation' process that they undertake in respect of the communities is regarded as key to ensuring that the knowledge is truly useful.
3) The question of intellectual property rights is particularly important in relation to knowledge associated with traditional medicine. The researchers interviewed raised many issues concerning the links between traditional knowledge, analyses conducted by scientists and intellectual property rights. At present, the patent is the most common option in traditional medicine for protecting aTK, although it is not well suited to the concept of joint ownership, as provided for in the Protocol.

NGOs are also important actors, not because they document knowledge (in reality, they do little in this sphere), but because they often act as an interface between international **private companies** and local communities.

The way traditional knowledge is documented and exchanged between these two types of actors and the nature of their relationship warrants further examination in specific studies.

In the three countries covered by the study, national private enterprises with an interest in traditional knowledge are mainly run by pharmacists (Senegal), traditional healers (Benin) and biologists (Cameroon). These enterprises have direct access to indigenous and local communities.

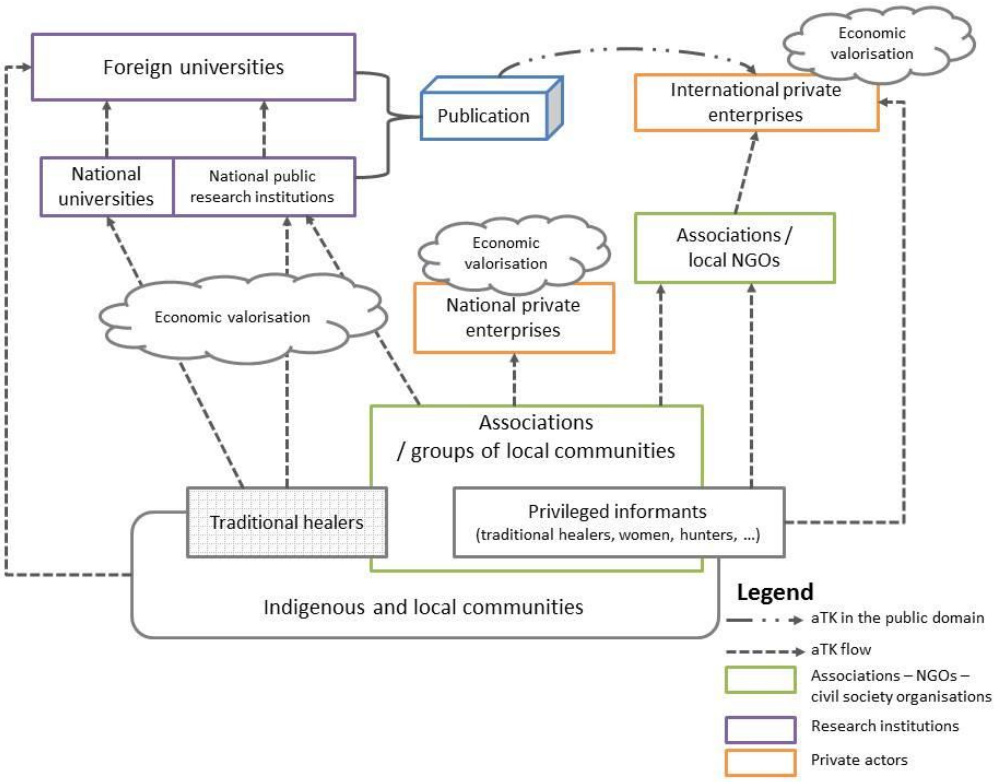

Figure 1: Schematic representation of the flow of aTK between the different types of actors

Traditional healers are not the only actors to hold traditional knowledge and form communities of interest. In the three countries covered by the study, there is a regime of collective rights relating to the use of resources established on a community basis (community-managed areas in Senegal and sacred forests in Benin) or on a territorial basis (ZICGC[1] and community-managed forests in Cameroon). Although legalised (often in the form of associations), these structures do not necessarily represent the indigenous and local communities. There are entities that do represent them (traditional chiefs, councils of elders, etc.), but they are not necessarily formalised and legalised.

The solution must be tailored to each specific context and can only be formulated on the basis of in-depth knowledge and understanding of local and traditional forms of governance.

Where is traditional knowledge documented in the countries covered by the study?

An important factor in this field of study is that information on traditional knowledge associated with the use of genetic resources in French-speaking Africa is disparate and dispersed and is not capitalised.

There are no specific national databanks for the protection of aTK in the countries covered by the study, as there are in India, Peru and South Africa. Only Benin, through its national programme for pharmacopoeia and traditional medicine undertaken by the Ministry of Health, has started work on documenting aTK by including it in a limited-access database. Only a part of the knowledge recorded has been published. Apart from this database and a few other exceptions, today, the vast majority of documented traditional knowledge has passed into the public domain.

A considerable amount of information can be found in paperless free-access databases. Many of these online databases can no longer be accessed or searched today.

<table>
<tr><th>Online specialised databases on Africa and useful plants</th><th>Online specialised databases on traditional knowledge</th><th>Online specialised databases on pharmacology and organic chemistry in Africa</th></tr>
<tr><td>Pharmel (no longer accessible online)</td><td rowspan="5">None of these databases, such as the Indigenous Knowledge (IK) database and Indigenous Knowledge and Development Monitor (IKDM), are accessible online today.</td><td rowspan="5">NAPRALERT
NB: specialised databases on Southern and East Africa have not been included in this document.</td></tr>
<tr><td>Prélude</td></tr>
<tr><td>Prota4U</td></tr>
<tr><td>SEPASAL</td></tr>
<tr><td>Enda-plantes médicinales</td></tr>
<tr><th>Databases not geographically limited to Africa</th><td></td><th>Databases not geographically limited to Africa</th></tr>
<tr><td>Kew Economic Botany Collection</td><td></td><td>Duke’s Phytochemical and Ethnobotanical Databases</td></tr>
</table>

The Pharmel programme would seem to be the most important databank created to date to record knowledge relating to ethnobotany, traditional medicine and medicinal plants in Africa. In 1999, it contained 19,691 prescriptions involving 4,000 plants. However, this database is no longer accessible online, and the status of the data it contains and how it can be accessed need to be reviewed.

In Senegal, the main sources of aTK in written form are the central library at Cheick Anta Diop University (160 documents, 149 of which – mainly pharmacology theses – are concerned with traditional medicine) and the herbarium of the Fundamental Institute of Black Africa (IFAN) (documenting 1,097 uses, involving 574 species).

[1] ZICGC: Zone d’Intérêt Cynégétique à Gestion Communautaire – community-managed hunting areas.

In Benin, the main repositories of documentary material in this area are the Ministry of Health's pharmacopoeia and traditional medicine programme (number of prescriptions recorded was not determined) and the laboratories of universities and national research institutions. The pharmacognosy laboratory of the Benin Centre for Scientific and Technical Research (Centre Béninois de la recherche Scientifique – CBRST) is the laboratory with the largest amount of aTK associated with traditional medicine. Part of this documentation is not published, because it is considered sensitive in terms of intellectual property rights.

We were unable to clearly identify a documentary source in Cameroon, mainly because of a computer failure which paralysed all the university library systems.

RECOMMENDATIONS

Establish definitions and legal recognition of the concepts 'indigenous and local communities' and 'associated traditional knowledge'

The most critical issue is probably the need to define and ensure legal recognition of the concepts of 'indigenous and local communities' and 'associated traditional knowledge'. The establishment of a shared, consensus-based definition agreed at the national and regional level is an important prerequisite for effective national implementation of ABS provisions. It will help to avoid frustrations and potential conflicts arising from different interpretations of what is and is not included in benefit-sharing.

The next step in the study could be to carry out monographic analyses of different projects in which community structures have been created and/or institutionalised, with a view to providing insights into 1) ILCs and individuals who could be consulted to give their consent to access resources and, where appropriate, knowledge and 2) options for formalising agreements (biocultural protocols, for example).

Take measures to ensure that communities are informed, where possible, of the use of their knowledge when it has passed into the public domain

Once knowledge has passed into the public domain, ownership can no longer be claimed by a third party or by the communities holding that knowledge. The Protocol is not retroactive, which means that knowledge published in the literature does not fall within the Protocol's scope of application. However, it could be provided that measures be adopted to ensure that, wherever feasible, the knowledge holders are informed of any use of published knowledge. However, states cannot be compelled, on the basis of regulations, to inform the communities concerned of such measures.

Specific attention should be paid to databases that are no longer available online, such as Pharmel. We recommend further research into the Pharmel database in order to clarify the current status of the data it contains. Those involved in creating this database could provide useful feedback on benefits and constraints in relation to the creation and operation of a database designed to centralise aTK.

Protect unpublished traditional knowledge: a **sui generis** *regime and databases*

Two main options could be considered:

- the creation of a *sui generis* regime legally recognising the existence of indigenous and local communities and the legal link with their traditional knowledge (thereby recognising its distinctive nature);

- establish protection by integrating and developing the existing intellectual property system; the most commonly considered option is the creation of a limited-access database.

Many of the actors interviewed seem to favour the creation of a database as the solution to protecting traditional knowledge and permitting benefit-sharing. However, the effectiveness of such a tool is influenced by numerous factors, and many issues would need to be clarified before it could be implemented. The document contains a substantial section setting forth the benefits and constraints of this option and relevant recommendations.

Contact

For questions and comments on the workshop please contact the organizers:

Barbara Lassen
ABS Capacity Development Initiative
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Postfach 5180
65726 Eschborn
Germany
E barbara.lassen@giz.de
I www.abs-initiative.info

For questions and comments on the ABS Capacity Development Initiative or the topic of Access and Benefit-sharing, please contact:

ABS Capacity Development Initiative

Email: abs-initiative@giz.de