

**Facilitating South-South
Cooperation Using Intellectual
Property to Protect Traditional
Knowledge, Cultural Expressions
and Genetic Resources**

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Setting the context

- Facilitating = *creating a policy/legal/institutional framework*
- South-South = *building on existing experiences and capacities in Southern, developing countries*
- Using IP = *applying and making use of IP tools or frameworks*

Setting the context

- Protecting = *granting a positive exclusive right (or using defensive measures)*
- TK = *CBD/WIPO/national definitions*
- TCEs = *WIPO/national definitions*
- GRs = *CBD/WIPO/Nagoya Protocol/National definitions*

How to find “protection” options ?

- **VERY IMPORTANT:** TK, GRs, and TCEs may require different “protection” strategies and approaches
- **IMPORTANT:** Classic IP tools *may not in every case* serve the interests and needs of communities and developing countries
- Creating institutional bodies (ie. Biopiracy Prevention Commission in Peru; Genetic Resources Council in Brasil; Biodiversity Commission in India; National Council for Genetic Resources in Costa Rica ...)

Possible “protection” options ?

- Analyze novelty and inventiveness in innovations derived from Southern biodiversity components (improve patent examinations and implement “user” measures)
- Use administrative and judicial bodies and take legal actions (put laws into action) (ie. find *pro bono* advice from Public Interest Intellectual Property Advisors and others ...)
- Developing *sui generis* frameworks which include IP tools ...

How to facilitate cooperation ?

- Exchanges of information and sharing experiences in “protecting” TK, TCEs and GRs
- Invest in organizing multidisciplinary meetings, seminars, workshops to recommend and agree on cooperation options
- Identify common features that may need regional actions and collaboration (ie. shared GRs, shared TK ... in regions and among regions)
- Use existing settings such as the Group of Like Minded Megadiverse Countries to raise funds, set regional, South-South agendas, identify common policy positions ...)

Existing mechanisms in the South

- Defensive protection included in IP (or biodiversity) laws and regulations (available in Brazil, the Andean Community, Costa Rica, India, Indonesia, Panama, China, Nepal, etc.)
- Registers (for TK, GRs and TCEs) (Panama, Peru, India ...) – there are many forms of registration mechanisms most of which **do not** grant exclusive rights but act to support defensive protection and serve other critical conservation, preservation, capacity building, research objectives)

Existing mechanisms in the South

- Access and benefit sharing frameworks (in a new scientific and technological scenario ... (shared, common) natural information and its flows accross borders) – how to capture the commercial, economic value of biodiversity/gene/derivatives related products and innovation ?
- **Challenge:** look at whether contractual approaches to ABS offer appropriate incentives and enable overcoming information assymetries and transaction costs in negotiations
- **Challenge:** need for a truly COMMON approach to ABS and adopting and implementing a global regime on the protection of TK and TCEs (IGC process)

THANK YOU
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