

Agenda: Training on Mutually Agreed Terms: Contracts for Making ABS Possible, 5-8 August 2014, Nadi, Fiji

Tuesday, 5 August	
9:00	Registration
9.30	Opening and welcome remarks by SPREP and introduction of trainers and participants
10.00	Introduction to ABS in the Pacific <i>Clark Peteru</i>
10.30	Coffee break and group photo
11.00	General context for ABS contracts: CBD, Nagoya Protocol and Beyond <i>Kabir Bavikatte</i> <i>Screening of the film: ABS Simply Explained</i> Taking into account the ABS principles and obligations established by the CBD and further developed in the Nagoya Protocol, this session will set the scene for the legal and political background against which agreements between users and providers (ABS contracts) are being negotiated. Besides providing a brief introduction to the basics of ABS this session will also introduce the role and importance of contracts in the implementation of ABS.
12.15	Types of users, types of uses and types of resources <i>Morten Tvedt</i> This session will begin exploring the variety of actors involved in ABS agreements and their different approaches to ABS in practice. Issues to be examined will include: the demand for genetic resources (GR), the market, the types of benefits shared, the use of traditional knowledge, the need for one-time access vs. repeated access to the resource; and how contracts can pave the way to increased valorisation of GR and TK.
13.00	Lunch
14.00	Mutual understanding of the parties to a contract – who are you negotiating with? <i>Kabir Bavikatte and Morten Tvedt</i> <i>Screening of the film: Rooibos Robbery</i> Learning how to find and understand the interest of your counterpart in ABS negotiations – by better understanding the other’s perspective. What do you need to find out about the party you are negotiating with? Who is the company that is accessing? Who has discretion/authority to act on its behalf? Is it this the company, which will sell the products in the market? If so, which market? If not, which company will create the benefits that you target to get a share of?
15:00	Coffee break
15.30	Short practical exercise If you know of any company seeking access to GR and TK in your country, search the internet and research what you need to find out about the company? If there is no such company, identify a company you would want to enter into an ABS agreement with and undertake similar research. Prepare a short briefing on information about the company



	and present it to your colleagues. Task: Search the internet and combine with your knowledge of the company (20min) and do a presentation (5 mins)
16.30	Closing day 1

Wednesday, 6 August 2014	
9.00	Introduction to 2 nd day
9.30	The object and purpose of the contract <i>Morten Tvedt</i> What are you transferring? For what purpose? For what type of utilization? What are the consequences of going beyond the legal transferred actions? Link and gap between the object of an ABS contract and Intellectual Property Rights – IPRs. The distant link between the GR accessed and the product sold in a market. Issues of exclusivity. Challenges and solutions.
10.30	Coffee break
11.00	Exercise: Redraft the object of an agreement <i>Example:</i> the <i>teff</i> exercise with an explanation of the patent and the contract and redrafting relevant provisions of the contract.
12.30	Lunch
13.30	Third-party transfer and change of intent <i>Kabir Bavikatte</i> Complexity of the user side (complex value chains and the role of middlemen/intermediaries). Commercial and academic users: challenges and opportunities. Prospects for following the GR onto becoming a product. A two step-model? Scoping phase and actualisation phase: Bhutanese prospects (potential) and Australian absence (obstacles).
15.00	Coffee break
15.30	Exercise: Drafting third-party mechanisms and obligation clauses for when a scoping agreement ends and a commercialisation phase starts (change of intent/utilization)
16.30	Closing of the day 2

Thursday, 7 August 2014	
9.00	Introduction to 3 rd day
9.15	Benefit-sharing clauses <i>Kabir Bavikatte and Morten Tvedt</i> Non-monetary and monetary benefits. Example of Griffith University in terms of impacts of benefits on national development. How to make benefit-sharing clauses work? What types of benefits are most adapted to a particular situation? At what point in time should they be shared? The links to IPR: How can IPRs contribute to the sharing of benefits? How to bridge the gap between access to a GR and the development of a product based on this resource?
10.30	Coffee break
11.00	Exercise Drafting benefit sharing clauses based on your national priorities and local context.



12.30	Lunch
13.30	Confidentiality and exclusivity <i>Kabir Bavikatte</i> The needs of businesses. Confidentiality and follow-up mechanisms. Building trust or substituting trust with money/ guarantees. Exclusivity on the use of GR and TK: Incentive to invest or invent around/ a race to the product.
15.00	Coffee break
15.30	Compliance and Enforcement <i>Morten Tvedt and Kabir Bavikatte</i> Look at different solutions for compliance and challenges related to enforcement. To support compliance: Reporting requirements; Choice of law; Dispute settlement provisions; Choice of courts or alternative dispute settlement mechanisms (mediation, arbitration). Challenges related to the enforcement of foreign judgements or arbitral awards.
16.30	Closing of the day 3

Friday, 8 August 2014

9.00	Introduction to 4th day
9.15	Introduction to negotiation dynamics <i>Kabir Bavikatte</i> Screening of the film: <i>Getting to Yes</i> Explanation of the basic principles of good negotiation.
10.30	Coffee break
11.00	Separate people from the problem Short presentation and exercise
11: 45	Focus on interests and not on positions Short presentation and exercise
12.30	Lunch
13.30	Invent options for mutual gain Short presentation and exercise
15:00	Coffee break
15.30	Insist on using objective criteria Short presentation and exercise
16.30	Closing day 4 and evaluation

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