

Workshop: Processes of negotiation: theory and practice

Western intellectual property, traditional knowledge and development

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IP and Development

- **What is intellectual property?**
 - Exclusive rights in
 - technological innovation – patents
 - works of literature and arts – copyright
 - signs indicating the origin of products and services – trademarks
 - etc.
 - Their purpose
 - Reward innovation
 - Foster innovation
 - Establish a market for innovations
 - IP rights as a western concept of individual ownership

- **IP protection in Mali = Uniform regional protection**
 - ORGANISATION AFRICAINE DE LA PROPRIETE INTELLECTUELLE (OAPI)
 - Until 1962: French Law and French Patent Office
 - 1962: Libreville Agreement (Mali not a member); Mali member of the Berne Convention (copyright)
 - After withdrawal of the Malagasy Republic 1977: Bangui Agreement (BA) by 16 francophone countries including Mali
 - 1983/84 Paris Convention, Patent Cooperation Treaty
 - 1999 revision of BA, in force since 2002
 - 2002 WIPO Internet Treaties

IP and Development

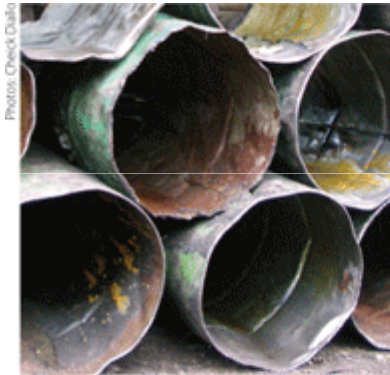
- **In particular: WTO – TRIPS**
 - Mali member since 1995
 - Is a least developed country
 - Thus Art. 66(1) applies: “In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement” until 1 January 2006.
 - Transitional period extended
 - In 2002 for pharmaceutical products until 1 January 2016
 - In 2005 generally until 1 January 2013

IP and Development

- **OAPI – Bangui Agreement**
 - Uniform IP protection in these 16 countries
 - One examination and registration in Yaounde, Cameroon
 - Aims of OAPI:
 - Issuing of protection titles
 - Documentation and information
 - Involvement in development
 - Financial resources
 - Covering patents (including pharmaceutical products), utility models, designs, plant varieties, semiconductor chips, trademarks and trade names, geographical indications, and copyright and related rights
 - IP protection even beyond the obligations under TRIPS and other conventions!

IP and Development

- Example for the application of this western concept in Africa:
“Enhancing use of IP for Development”, November 09,
http://www.wipo.int/wipo_magazine/en/2009/06/article_0011.html
- Cheick Diallo, Bamako



IP and Development

- **Criticism concerning IP protection, in particular in least developed countries**
 - Do IP rights foster innovation at all (cf. neglected diseases)?
 - No local innovation-sensitive industries to protect
 - No technology transfer (markets insignificant etc.)
 - No learning and development by imitation (cf. Switzerland, USA, India etc.)
 - Increase of prices for imported goods, in particular concerning pharmaceuticals
 - Costs of the system (patent office, civil servants etc.)

- **What is traditional knowledge?**
 - Annex VII Art. 68 Bangui Agreement: Folklore means the literary, artistic, religious, scientific, technological and other traditions and productions as a whole created by communities and handed down from generation to generation. This includes in particular
 - (a) literary works of all kinds, whether in oral or written form, stories, legends;
 - (b) artistic styles and productions (dances etc.);
 - (c) religious traditions and celebrations (rituals);
 - (d) educational traditions (games, social conventions);
 - (e) scientific knowledge and works (medicine)
 - (f) technical knowledge and productions (textile)

IP and Development

- **Protection of TK**
 - Responsibility of the state (Ann. VII Art. 72 BA)
- **Negative: Prevent patenting (“biopiracy”)**
 - Novelty and databases (Ann. VII Art. 93: archives)
 - Prior informed consent as prerequisite for patenting (not in BA)
- **Positive: Rights in TK**
 - Preserve traditional knowledge and share benefits under Art. 8 j of the Convention on biological diversity (Mali 1995)
 - Certain measures are claimed to have been taken in connection with decentralization (3d report 2005)

- **Protection of folklore**
 - Ann. VII Art. 73(2) BA: Except where a special authorization is issued by the competent national authority ..., the following shall remain prohibited when carried out for profit making purposes:
 - (a) the publication, reproduction and distribution of copies of any cultural property listed or not, ancient or recent, and considered by this Act as part of the national cultural heritage;
 - (b) any ... form of communication to the public of any cultural asset considered by this Act as an element of the national cultural heritage.
 - Art. 8 and 9 Malian CA 1977: Exploitation of folklore only after authorization by the government; fees may apply