

# Disclosure of Origin

One of the techniques adopted to regulate the use of genetic resources is to require parties making use of those resources to specify, in certain situations, the origin of the resources. Disclosure requirements serve as a tool for ensuring compliance with relevant national and international laws on access and use of genetic resources and traditional knowledge. Disclosure requirements serve a number of different ends, including:

- identifying scientific or commercial use, rights holders or prior art;
- facilitating the monitoring and enforcement of rights;
- preventing illegal and/or unauthorised use;
- preventing the grant of 'bad' patents or plant breeder's rights; and
- promoting equitable sharing of the benefits that arise from the access and use of genetic resources or traditional knowledge.

## National and regional disclosure measures

Disclosure of origin requirements have been adopted by the Andean Community of Nations; the Organization of African Unity; The African Regional Intellectual Property Organization; the European Community; and the South Pacific Forum. At least 32 countries have also adopted disclosure requirements in national law. These are Belgium, Brazil, Burundi, China, Costa Rica, Cuba, Denmark, Djibouti, Ecuador, Egypt, Ethiopia, France, Germany, India, Indonesia, Italy, Kyrgyzstan, Namibia, Norway, Panama, Peru, the Philippines, Romania, Samoa, South Africa, Spain, Sweden, Switzerland, Uganda, Vanuatu, Vietnam, Zambia. In many of these countries, legislation applies to both genetic resources and traditional knowledge, and requires that evidence of prior informed consent and mutually agreed terms of benefit sharing is provided to commercialise these resources or relevant traditional knowledge. Failure to comply with the obligation of disclosure requirements under these national legislation may result in refusal to process intellectual property and access to genetic resources applications, revocation of patents, placing of intellectual property rights in joint ownership, or criminal sanctions.

## Nature of disclosure requirements

Countries that are members of the World Trade Organization (WTO) and/or the International Union for the Protection of New Varieties of Plants (UPOV) are limited in their ability to make disclosure of origin requirements a substantive requirement for patent or plant breeder's rights laws. They have more freedom in establishing procedural disclosure requirements. Failure to comply with procedural requirements may have severe consequences, including the cancellation of intellectual property rights, and criminal sanctions.

## Regularising current practice

Studies indicate that a requirement for disclosure of origin in patent law would simply regularise current practice relating to the filing of patent applications. Disclosure of the origin of traditional knowledge, as opposed to disclosure of the relevant traditional knowledge itself, may not necessarily be required to carry out an invention. However, obligations in existing intellectual property regimes to identify the inventor may require disclosure of sources of traditional knowledge where that knowledge amounts to what a report of the World Intellectual Property Organization (WIPO) has identified as 'inventive contributions.' Where traditional knowledge (known to the applicant) is so close to the claimed invention that it is in

fact intrinsic to it under the legal doctrine that determines 'inventive contribution' in the jurisdiction concerned, then it may be necessary to declare the provider of the traditional knowledge as a joint inventor. Existing requirements to disclose prior art would, in many cases, require disclosure of relevant traditional knowledge in a patent application.

### **Certificates of compliance**

A global standardised certification of compliance system is a central element of the

compliance system established by the Nagoya Protocol, which entered into force on 12 October 2014 (see Fact Sheet 15: Nagoya Protocol). This regime anticipates States will adopt a number of checkpoints where certificates of compliance would be reviewed as a means to monitor and ensure compliance with relevant national and international laws on access and benefit sharing.

### *Fact Sheet 17: Disclosure of Origin September 2022*

*This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.*