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Identifying models of best practices in the provision of
technical assistance to facilitate the implementation of the
TRIPS Agreement

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“Impacts of the IPR Rules on Sustainable Development” (IPDEV)



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INTRODUCTION AND BACKGROUND TO RESEARCH

1. INTRODUCTION

At present there is a considerable emphasis on international cooperation on intellectual property (IP) rights involving developed countries, developing countries, least-developed countries and various developmental agencies. These international efforts focus on providing technical assistance (TA) on issues relating to intellectual property rights (legislation-making, administration, enforcement, etc) to the recipient nations (usually developing nations) by the provider-nations (generally consisting of developed nations and their agencies).

This issue has risen to never-before prominence mostly due to the uniform minimum-standards relating to intellectual property rights that have been established across the world under the Trade Related Intellectual Property Rights (TRIPS) treaty. Such programmes/efforts, however, have been often criticised on the grounds that they further the interests of provider nations and agencies, rather than addressing the concerns and priorities of recipient nations. Such criticism not only makes recipient nations somewhat hostile towards any future collaboration with the developed nations and their agencies, but also affects the effectiveness of the current programmes. In addition, various authors have argued that technical assistance so far has only achieved a limited objective. It has failed to create sustained capacities in recipient nations to help them participate effectively in international norm-setting, and to understand and evaluate the domestic implication of international treaties.² Even the UK Commission on IPR Report has concluded that the technical programmes so far have under-achieved in comparison to the amount of resources and time that has been spent. Moreover, these programmes were not always responsive to the developmental needs of the targeted country.³ Various authors have therefore emphasised on the need to find novel ways of preparing and conducting technical assistance programmes.⁴

Under this background, the report intends to provide general and specific recommendations for both provider and recipient nation/institution that they should take into account while undertaking any TA programme in a recipient nation. It is emphasised that the report is not exhaustive but nonetheless critically evaluates the needs, concerns and experiences of the recipient organisations and provide suggestions to address them. The proposed guidelines/checklist aims at building better understanding for future collaborations between EU, its member states and any recipient nation in relation to trade, intellectual property rights and development. It may also increase the likelihood of acceptance of any future programme proposed by the EU, its organisations and/or member states to recipient countries.

The recommendations in this report have been formulated on the basis of past and current instances of technical assistance on IP provided by various international agencies and organisations, including the USA, to various stakeholders in developing countries. These stakeholders include government, patent office, business organisations, enforcement agencies, NGOs and educational institutions.

² KOSTECKI, M., 'Technical Assistance Services in Trade Policy: A Contribution to Discussion on Capacity Building in the WTO', <www.ictsd.org/pubs/respaper/TApaper5-12-01.pdf>, Accessed 18 January 2006.

³ COMMISSION ON INTELLECTUAL PROPERTY RIGHTS, 'Integrating Intellectual Property Rights and Development Policy', (London, UK: UK Commission on Intellectual Property Rights, 2002)

⁴ Tom Pengelly, 'Technical Assistance for the Formulation and Implementation of Intellectual Property Policy in Developing Countries and Transition Economies', (Geneva, Switzerland: ICTSD, 2005).

1.1 SCOPE OF THE REPORT

In line with the research priority of developing common approaches to IPR rules, the study, through the analysis of both formal and informal routes for the provision of technical assistance, has examined the extent to which financial assistance and specialist advice has been an efficient use of resources and whether it has been sufficiently tailored to reflect the best interests of developing country WTO Members. The study has sought to build a comprehensive picture of the quantity, quality and appropriateness of financial assistance and specialist advice by evaluating the extent to which the content of the technical assistance fully represents the best interests of recipient countries rather than simply reflecting the interests of technical assistance providers.

1.2 RATIONALE OF THE REPORT

The study therefore differs, but is complementary to, WP 5. This report will focus on the provision of technical assistance in the form of financial contributions and advice relating to public and private enforcement issues targeted at government policy advisers, patent office officials, judiciary, enforcement officers and other institutions in developing countries, while WP 5 will focus instead on the implementation of access and property rights legislation in the area of agricultural biodiversity and seeks to engage specifically with national policy officials with responsibility for agricultural issues.

2. METHODOLOGY AND RESEARCH TOOLS

2.1 METHODOLOGY

The study takes its starting point, but not restricts itself to, the terms of reference set out in Article 67 of the TRIPS Agreement, namely the obligation on developed countries to provide, on request, technical and financial cooperation in favour of developing and least-developed WTO Members. The type of technical cooperation to be provided by the Article 67 mechanism includes assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights, as well as the prevention of their abuse, and support regarding the establishment or enforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

Within the scope of activities set out in Article 67, the study seeks out models of best practice in relation to the provision of formal and informal routes of technical advice to developing countries by means of empirical research and analysis. The conduct of the empirical research and analysis is best understood in terms of the quantitative and qualitative data included in the study.

In quantitative terms, the study has gathered data on levels of funding provided by way of financial cooperation and has investigated the extent to which direct payments have been made to developing countries and the ways in which such payments have been used by recipient nations. As an alternative to direct payments, financial contributions were also directed to third party agencies that possess the relevant experience and expertise to provide technical assistance to developing countries (such as the World Trade Institute in Switzerland). The study has therefore also investigated the role of specialist providers of this type.

In qualitative terms, the study has not restricted itself only to the formal routes of technical assistance provided by way of fulfilling developed countries' obligations under Article 67 TRIPS. The types of technical assistance considered by the study therefore include: (i) the formal role for developed countries envisaged by Article 67 of the TRIPS Agreement; (ii) the informal role of experts seconded by multinational companies or industry representative bodies in support of Article 67 objectives (particularly prevalent in the US context); (iii) the formal capacity building activities of multilateral organisations such as WIPO, WHO and UNCTAD; and (iv) the informal advice given to developing countries by NGOs, often involving experts from academia (for instance ICTSD has worked with UNCTAD on a capacity building project on intellectual property rights and sustainable development and both South Centre and the Third World Network have strong links with developing country governments). NGOs and associated academics included in the interview programme have provided a critical analysis of the technical assistance provided by developed countries and multilateral organisations.

Therefore, the study has encompassed the provision of “technical assistance” in the widest sense, and has a remit that goes beyond the scope of Article 67. It is on the grounds that both formal and informal types of advice and technical assistance are inextricably linked when internalised and acted upon by recipient developing countries.

The qualitative aspects of the research seeks out models of best practice in the provision of technical assistance to developing countries by undertaking face-to face interviews with: (i) the

providers of technical assistance and (ii) developing country recipients of technical assistance. The providers of technical assistance included in the interview programme includes: (i) policy officials, business representatives and academics from developed countries (particularly the United States and Switzerland); (ii) representatives from multilateral organisations (including WIPO, WHO and UNCTAD) and (iii) policy experts and associated academics from NGOs (including ICTSD, South Centre and CIEL). A total of 25 interviews were carried out with technical assistance providers. The recipients of technical assistance included in the interview programme reflected a cross-section of countries at different stages of socio-economic development and displaying different institutional capacities. The range of recipient countries included in the study also reflects the existing expertise and contacts of the research team, which facilitated the identification of the appropriate interview participants and assisted with securing access to these individuals. The recipient countries were: (i) Cameroon (a sub-Saharan African nation, which hosts the headquarters of the African Intellectual Property Organisation, OAPI. This was particularly relevant since OAPI received WIPO technical assistance in the preparation of the Bangui Agreement, which entered into force on 28 February 2002); (ii) India (a sub-continent country); (iii) Thailand (a newly industrialised economy in South East Asia); (iv) and Argentina (a Mercosur country) which, together with Brazil, has the most acute trademark counterfeiting problems in South America and accordingly remains on the US Trade Representative Priority Watch List in the 2003 Special 301 Report.

The following officials & individuals, as recipients of technical assistance, were interviewed in each of the four countries: (a) government policy officials; (b) representatives of the judiciary; (c) patent office officials; (d) customs and trading standards officials; (e) NGOs; (f) experts and (g) public and private industry. A total of about 45 interviews were carried out in the cohort of countries identified as recipients of technical assistance.

The details of the individuals interviewed or the transcripts of the interviews are not enclosed with the report to maintain confidentiality and secrecy of the individuals.

3. TECHNICAL ASSISTANCE: DEFINITION, SCOPE AND CHARACTERISTICS

3.1 DEFINITION, CHARACTERISTICS & LEGAL BASIS FOR TECHNICAL ASSISTANCE

There is no legal definition of technical assistance within any of the treaty dealing directly or indirectly with intellectual property rights. From a general stand point, one can define technical assistance *as support provided by a provider institution to build or enhance the capacity, whether human, infrastructural or financial, of the recipient to deal with a particular issue.* Within the embrace of TRIPS and intellectual property paradigm, the Article 67 provides the legal basis for the provision of technical assistance and provides a list of inclusive activities that can be categorised as technical assistance:

In order to facilitate the implementation of this agreement, developed country members shall provide, on request and on mutually agreed terms and conditions, technical and financial co-operation in favour of developing and least-developed country Members. Such co-operation shall include assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

Thus, following points emerges from the above article of TRIPS:

- ❖ The provision of technical assistance presumes that the providers of technical assistance are developed countries.
- ❖ There has to be a request by recipient country (usually a developing or an under-developed country) for technical assistance and an agreement must be entered with the provider nation on mutually agreed basis.
- ❖ The section provides for an inclusive definition of technical assistance
 - ✚ **shall include** *in the preparation of laws and regulations on the protection and enforcement of intellectual property rights*
 - ✚ *as well as on the prevention of their abuse, and*
 - ✚ **shall include** *support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.*

Therefore, the type of technical assistance is not exhaustive and can encompass activities or fields where a need is felt by the recipients and providers. However it has been pointed out that the above article encourages a dependency culture amongst the recipient nation and is also responsible for the skewed technical assistance that focuses highly on enforcement and increasing the level of protection.⁵

⁵ Duncan Matthews, 'Bilateral Technical Assistance and Trips: The United States, Japan and the European Communities in Comparative Perspective', *The Journal of World Intellectual Property*, 9/6 (2006), 629-53.

Emanating from this definition, are some of the characteristics attributed to technical assistance by Kostecki.⁶ According to him, technical assistance is an intangible service that is provided at international level, and the recipients do not have to bear the costs associated with the delivery of the service.⁷

3.2 WHY TECHNICAL ASSISTANCE

The second pertinent question arises as to why there should be technical assistance within the field of Intellectual property? There are numerous reasons for significant emphasis on TA within the paradigm of intellectual property; especially when one has to deal with nations where the IP standards are either completely novel concepts, or are required to be re-structured due to treaty obligations. The main reasons emphasising the importance of technical assistance are described below:

3.2.1 MULTILATERAL, REGIONAL AND IP BILATERAL TREATIES

There has been a phenomenal increase in the number of bilateral, regional and multilateral treaties focussing on intellectual property. These new treaties are not only setting new IP standards, but are also creating and introducing new IP rights and tougher enforcement measures.⁸ These mushrooming of IP treaties require major significant legislative, enforcement and administrative changes by the adhering parties which are generally developing and underdeveloped countries. The absence of enough internal capacity to deal with these issues coupled with the prospects of future sanctions requires the nations to accept technical assistance in implementing these measures.

3.2.2 IPR, INNOVATION AND CREATIVITY

Increasing emphasis on intellectual property rights and their role in economic development has made the nations realise that it is important for them to increase local innovation and creativity, and management of intellectual property rights is an important tool towards this end. Thus, with increased focus on IPR in the knowledge based economies, nations are undertaking significant efforts to increase their competitiveness by putting emphasis on IPR creation and management. Thus, creation, management and exploitation of the IPR holds key importance for these nations as well as the research based industries.

3.2.3 IPR AND THEIR IMPACT ON KEY SECTORS OF DEVELOPMENT

There is an increasing overlapping between the intellectual property rights and the sectors such as agriculture, education and health. Since these sectors hold critical importance for the future development and growth of the nations, it is imperative them for them to realise the impact of granting intellectual property rights in these key sectors. Hence, the grant of rights and regulations of these rights assume very important role in the developing and underdeveloped nations.

⁶ Michel Kostecki, 'Intellectual Property and Economic Development: What Technical Assistance to Redress the Balance in Favour of Developing Nations?' (Geneva: International Centre for Trade and Sustainable Development, 2006).

⁷ Ibid.

⁸ For example, US negotiated FTA agreements with the individual nations contain chapter on intellectual property.

3.3 TYPES OF TECHNICAL ASSISTANCE

The interaction of intellectual property rights and their role in various strategic sectors of the nation's economy requires that TA should encompass a broad range of activities so that holistic evaluation of intellectual property rights can be taken in the recipient nation. One of the key goals of TA should be to achieve sustainable development in the recipient countries. Within this policy objective, the TA can be broadly categorised into following categories:

3.3.1 POLICY FORMULATION

The policy making in developing countries is generally fragmented and compartmentalised. Different departments deal with different intellectual property rights. For example, in India, Ministry of Commerce deals with patents and trade mark, while copyright is in exclusive domain of Ministry of Human Resources Development. Moreover, the impacts of patents go beyond the industry such as having an impact on the public health. This requires close coordination between the health ministry and commerce ministry. However, many nations are not equipped to understand this complex relationship and to ensure a constant and cohesive inter-ministry and inter-department coordination and communication. Hence, technical assistance can focus on to ensure internal coordination and policy coherence.

3.3.2 ANALYSIS AND NEGOTIATION SKILLS DEVELOPMENT

As stated earlier, there has been an increase in number of treaties focussing on IP. Not only these treaties deal with different subject matters, but they are also negotiated, deliberated and concluded in different fora. Although WIPO and WTO are predominantly characterised for undertaking IP norm setting, there are increasing regional fora and specialised agencies⁹ where the intellectual property rights are directly or indirectly being deliberated in these. This present enormous challenges for the negotiating officials of the developing and developed countries to participate, understand and provide meaningful contributions to the debate so that their interests are adequately protected while international norm setting is undertaken.

3.3.3 LEGAL AND REGULATORY ADVICE

Once a country adheres to the international treaty, it requires substantial legislative changes at national level along with strengthening of administrative, enforcement and judicial capabilities. The policy makers have to traverse through this increasingly complex path while implementing the intellectual property treaties but also at the same time, understand, evaluate and integrate the domestic interests to achieve an adequate level of balance between the rights and obligations arising within the IP framework. Apart from the creation of rights and obligations, there is a need to ensure participation of civil society, academia and private sectors and hence, technical assistance can help in achieving these objectives.

3.3.4 IPR ADMINISTRATION AND ENFORCEMENT ADVICE

The development of legal and regulatory framework is one aspect of the intellectual property paradigm. Simultaneously, there is a need to enhance the capabilities of the administrative, procedural, judicial and enforcement agencies to deal with IP related matters. This involves enhancing human resources, operating procedures and computerisation of the offices that deal with filing, search and examination of patent, trade-mark and design applications. The extent and

⁹ For example, Convention on Biological Diversity is one instrument that deals directly with IPR through its Article 16.

viability of each option will depend on the individual countries priorities and legislations. The technical assistance towards this end can result in the efficient management of IPR applications. On the other hand, there is also a need to enhance the skills of the police and customs official to deal with the legislative changes. Such efforts are highly desirable due to high-tech advances in the field of technology such as computer piracy. At the same time emphasis should be made on the legal profession and judiciary to deal with the infringement issues arising from the IP right assertions by the holders.

3.3.5 CREATING AND STRENGTHENING OF NATIONAL INNOVATION SYSTEMS

At present, the IPR creation is highly skewed towards the developed countries especially in the arena of patents. One of the major reasons is that the developing countries often face shortage of human and financial resources that have a negative impact on their research capabilities. However, it can be systematically addressed through building of indigenous research institutions and educational institutions.

4. STAKEHOLDERS IN TECHNICAL ASSISTANCE

4.1 PROVIDERS

Although under Article 67 of TRIPS, the primary responsibility for providing technical assistance on intellectual property related issues lies with the developed countries. But there are many international organisations, donor agencies and non-traditional providers such as CIEL, QUNO that are involved in the technical assistance delivery exercise. The technical assistance providers either provide financial contributions, or undertake programmes that involve long-term and short-term skills and capacity development within the recipient country/organisations.

Based on above, the providers can be classified in three main categories:

1. **Bilateral providers:** This mainly constitutes the governments of developed countries. For the purposes of our present study, we have undertaken a survey of the technical assistance provided by United States and its various agencies.¹⁰
2. **Multilateral providers:** These include multilateral organisations such as World Intellectual Property Organisation (WIPO), World Trade Organisation (WTO), World Bank and United Nations Conference on Trade and Development (UNCTAD).
3. **Non-traditional providers:** This category of providers include civil society institutions and inter-governmental organisations and include organisations such as Advisory Centre on WTO Law (ACWL), The Centre for International Environmental Law (CIEL), and International Centre for Trade and Sustainable Development (ICSTD).

4.1.1 BILATERAL: USA

The United States believes strongly in the value of protecting intellectual property rights and is instrumental in securing higher standards of intellectual property rights across the world. The US government's basic assumption is that the "***Countries with effective intellectual property (IP) protection reap the benefit of protecting their own intellectual property, as well as creating a positive foreign investment environment.***" It also acknowledges that "*many countries face serious obstacles to IP protection, such as a lack of IP awareness, inadequate laws, and ineffective enforcement mechanisms, and many do not have the resources to address these issues*".

These two factors form the basic premise for the U.S. government and its agencies and U.S.-based private industries and organisations to provide extensive training for foreign officials and nationals. U.S. government IP training providers include the following: the United States Patent and Trademark Office, the Department of Commerce, the Department of Justice, the Department of Homeland Security, and the Library of Congress' Copyright Office. Apart from that, the U.S. State Department funds many training programmes, either through the Agency for International Development (USAID), the Bureau of International Narcotics and Law Enforcement, or the Bureau of Educational and Cultural Affairs. The table below provides a complete overview of the technical assistance funding provided by USA to different countries for implementation of TRIPs agreement.

¹⁰ The information provided under this section provides a reflection of the type of technical assistance activities undertaken by the US, the government agencies and other US based organisations. It shall not be taken as an authoritative account of providing a comprehensive and complete information of the TA activities of USA.

Table 1: Table United States Trade Capacity Building Assistance: Agreement on TRIPs (\$US) ¹¹

Countries	1999	2000	2001	2002	2003	2004	2005	2006
Albania	.	.	14,200	.	450,000	10,000	10,000	.
Algeria	129,450	.	150,000	.
Armenia	85,000	75,000
Bolivia	.	.	.	56,000	150,000	.	.	.
Bosnia and Herzegovina	450,000	.	.	.
Brazil	.	.	.	120,000	.	20,000	5,475	.
Bulgaria	562,500	.	.	43,232
Chile	4,722	.
China (P.R.C.)	.	.	.	62,723	.	.	.	400,812
Costa Rica	.	.	.	6,560	40,952	.	.	.
Croatia	562,500	.	.	.
Dominican Republic	.	.	.	7,850	15,000	17,000	.	.
Egypt	.	2,373,000	2,496,000	1,450,000	.	170,000	.	375,000
El Salvador	.	.	.	6,560	.	.	.	.
Guatemala	.	.	.	9,515	.	.	.	.
Honduras	.	.	.	6,560	.	.	.	.
Hungary	.	.	.	3,083	.	.	.	137,630
India	100,000	.	100,858
Indonesia	9,982	9,991	.	37,750	.	.	.	5,600
Iraq	251,475
Jamaica	.	.	.	75,000	.	.	.	.
Jordan	.	.	95,946	354,602	115,000	100,000	.	.
Korea, Rep.	.	.	.	350	.	.	43,919	.
Kyrgyzstan	614,100	30,000	74,300	.	.	.	.	.
Lebanon	.	.	.	486,000	.	.	.	.
Macedonia	.	.	.	37,500	617,750	15,000	17,817	116,347
Malaysia	.	.	.	43,000	.	.	.	.
Mexico	150,000	65,591	19,268
Moldova	.	.	.	105,000	.	.	.	.
Morocco	116,032	804,425	15,600
Nicaragua	.	.	.	6,560	.	.	.	350,000
Nigeria	.	.	.	312,500	190,000	.	.	.
Pakistan	199,000
Panama	26,336	.
Paraguay	270,000	.	20,160

¹¹ The USAID Data Services (DS) collects trade capacity building information from U.S. government agencies. DS maintains and furnishes the information through the Online TCB Database at <http://quesdb.usaid.gov/tcb/index.html>.

Peru	.	.	.	.	190,000	.	.	.
Philippines	74,000	80,000	415,720	438,668	70,400	269,490	.	.
Poland	.	.	.	3,509	.	.	.	.
Romania	.	.	.	3,683	450,000	.	.	.
Russia	.	.	.	135,000	60,000	149,935	.	229,000
Senegal	.	.	.	.	77,000	.	.	.
Serbia and Montenegro (FRY)	.	.	276,000	242,000	157,750	70,000	106,600	.
South Africa	.	.	61,400	565,891	195,500	90,000	.	.
Sri Lanka	32,800	339,840	49,200	40,000	.	.	.	.
Thailand	.	.	.	.	.	415,000	.	32,000
Tunisia	.	.	.	.	12,000	.	150,000	.
Turkmenistan	39,750	.	.	.	.	.	.	.
Ukraine	.	.	.	123,959	50,000	650,000	.	55,000
Vietnam	.	.	.	25,000	.	121,030	.	100,000
Zambia	.	.	3,840	4,000	5,130	.	.	.

Other Groups**	1999	2000	2001	2002	2003	2004	2005	2006
Andean ns	369,475
Asia ns	.	28,000	.	49,000	.	220,000	38,580	.
Central America ns	.	.	.	4,580	1,307,972	422,800	.	.
Central and Eastern Europe ns	.	.	.	729,502	.	523,004	17,892	.
Former Soviet Republics ns	16,800
Global ns	.	35,000	36,000	585,454	500,000	265,000	.	3,000,000
Latin America and Caribbean ns	.	111,000	.	.	.	.	.	.
Middle East and North Africa ns	434,433	.	.
SADC Secretariat	137,920	.	.	.
South America ns	145,000
Southern Asia ns	9,810	.	.
Sub Saharan Africa ns	.	14,000	.	78,000	.	100,000	.	183,551

Western Africa ns	36,346	531,000			
Total	770,632	3,020,831	3,558,952	6,215,359	7,027,824
	4,708,533	1,526,357	6,240,808		

** These are activities not targeted to a specific country.
ns = not specified

The following table provides a general reflection on the kind of activities undertaken by the US government in association with its various agencies. One can see, that majority of the activities undertaken are focusing on the enforcement and custom measures.

Table 2: TA Activities undertaken by the US government in association with its various agencies¹²

TCB Category: Agreement on TRIPs Year: 2006 Total Funding: \$6,240,808

(Note: Funding values are not necessarily activity totals, but represent the proportion of the activity allocated to this trade category.)

Activity	Activity Description	Country/Region	2006 Funding
Andean Region Trade Capacity Building Programme	The Andean Trade Capacity Building Programme (TCB) provides a highly leveraged form of development assistance that increases the participation of Andean countries in the global trading system. The programme is designed to increase the ability of these countries to take part in trade negotiations, implement the rules and seize the opportunities offered by international trade. The Andean TCB programme will focus on the implementation of the TPA agreements signed by the U.S. with Peru and Colombia, will continue to support Ecuador in the negotiations of a TPA, and will assist Bolivia in the most appropriate manner. Funded and implemented by USAID/Peru.	Andean ns	369,475
Commercial Law and Economic Regulation Programme - WTO Compliance	This programme provides a variety of WTO compliance related assistance to the Armenian private and public sectors. Activities include providing advice, guidance, and assistance to the Armenian government in adopting WTO-compliant technical regulations, helping the government to prepare for its Trade Policy Review, working with the Standardization Institute to reduce the list of products subject to mandatory certification in line with the TBT Agreement, and collaborating with government agencies to enforce differentiation between private, voluntary standards and government-established standards. The programme also conducts public awareness campaigns to build awareness of WTO agreements such as IRP, TBT, and SPS through public seminars and workshops and publication and dissemination of information brochures on specific WTO issues. The private and public sectors also receive guidance on implementing an effective international trade policy development strategy. Funded and implemented by USAID/Armenia.	Armenia	75,000
Basic Intellectual	Basic intellectual property training helps police in Bulgaria develop fundamental skills in the investigation and enforcement	Bulgaria	16,688

¹² Ibid.

Property Training for Police in Bulgaria	of existing intellectual property laws. Funded by Department of State and implemented by Department of Justice.	
Seminar on Legal Challenges in the Prosecution of IPR Violations	The seminar introduced prosecutors to the necessity of prosecuting intellectual property (IP) rights cases, and included a review of existing IP legislation in Bulgaria and the practical application of these laws. A resident legal advisor from the Office of Overseas Prosecutorial Development, Assistance and Training participated in the seminar, which was held in Hisarya, Bulgaria, in conjunction with a private partner specializing in intellectual property rights issues. Funded by Department of State and implemented by Department of Justice.	Bulgaria 26,544
China Forum on Criminal Intellectual Property Protection	The Department of Justice provided an Intellectual Property Law Enforcement Coordinator to participate in the 2006 China Forum on Criminal Intellectual Property Protection in Shanghai, China. The forum was hosted by the Ministry of Public Security and the State Office of Intellectual Property Protection of China. Funded by Department of State and implemented by Department of Justice/Criminal Division.	China (P.R.C.) 2,262
Intellectual Property Rights Training Programme	The proposed intellectual property rights training programme would provide training courses on methods and techniques to identify counterfeit and pirated goods for customs officials in China. The U.S. Trade and Development Agency anticipates trainers would include officials from Customs and Border Protection of the Department of Homeland Security, other U.S. Government agencies, and private sector experts. Funded and implemented by Trade and Development Agency.	China (P.R.C.) 383,000
Assistance for Customs and Trade Facilitation Project	This activity targets all aspects of trade capacity building including customs, trade policy, trade facilitation, inspection, import and export procedures, trade agreements, competitiveness, and port services. Funded and implemented by USAID/Egypt.	Egypt 375,000
Intellectual Property Rights (IPR) Enforcement Training	The U.S. State Department Bureau for International Narcotics and Law Enforcement Affairs (INL) will provide training and technical assistance relating to intellectual property protection at locations around the globe. The operation of this activity utilizes the technical expertise of several other U.S. agencies. Funded and implemented by Department of State.	Global ns 3,000,000
Intellectual Property Rights Eurasian Regional Conference	This regional conference focused on identifying, investigating, and prosecuting intellectual property crimes more effectively within the context of a technologically complex Eurasia. It informed participants of current international standards and treaties, empowering participating countries in the region to protect intellectual property with the proper knowledgebase and resources necessary. Funded by Department of State and implemented by Department of Justice.	Hungary 137,630

IPR Enforcement Program for Indian Judges and Experts	The Intellectual Property Rights Enforcement Program assists in familiarizing the delegation of nine Indian judges and other intellectual property (IP) experts with models from the United States used to handle complex IP matters and reduce court backlogs. Funded by Department of State and implemented by Department of Justice.	India	90,330
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4.1.1.1 USPTO (United States Patents and Trademark Office)

The USPTO is a federal agency in the Department of Commerce. Through its Office of External Affairs, which consists of two main arms: office of International relations and office of Enforcement, it plays a leading role in providing technical assistance to foreign governments to develop and improve their intellectual property laws and systems; and provides training programmes to foreign intellectual property officials on intellectual property enforcement. These activities are either carried in association with other US agencies, private industry or with other international/regional agencies. For example, in the year 2005-2006, it carried several training programmes for the Chinese enforcement agencies and prosecutors on piracy and border enforcement measures. Similar activities were carried out in other Asian countries, Africa and Middle East. It also provides training programmes through GIPA: Global Intellectual property Agency. A recent programme was organised on intellectual property rights for the African countries. These courses are generally have experts from DOJ, federal judge, attorneys, who come and talk in either classroom style or take case studies during the courses for the recipients. The recipients are generally judges, police officials, custom officials and prosecutors from the recipient country.

At the same time, we have also send IPR Attaches to many countries for example Tom Keating to India. These generally establish a strong relation between the local patent office looking at the administrative issues. Moreover, most of the countries are now WTO compliant. TA focuses on that TA enforcement and areas beyond that. More detailed ways of effective compliance of TRIPS. Since we are also entering into FTAs with countries and that include TRIPS plus provisions, we are providing TA for that also.

4.1.1.2 USTDA (United States Trade and Development Agency)

USTDA is responsible for the economic development and U.S. commercial interests in developing and middle-income countries. To achieve its objective, the agency undertakes two major project sponsorships within the fields of: 1. trade capacity building and sector development; and 2. project definition and investment analysis. Within these two broader themes, the agency funds various forms of technical assistance, investment analysis, training, orientation visits and business workshops that support the development of a modern infrastructure and a fair and open trading environment in the recipient nation. The primary way of conducting these programmes is to draw from the expertise of the US private sector.

IPR related TA programme activities were limited earlier but probably in the last two to three years a lot of work has been done. The TA is provided for helping countries to adhere to WTO requirements, especially providing TA to help identify custom organisations to counterfeited goods and to the countries that are looking to strengthen their IPR regime. The main consideration for undertaking the project is that it should be of mutual benefit for the US and the recipient country. The total budget is about 50 millions and there is no specific allocation for IP

related projects. Two specific examples of the kind of IP related projects that were carried out in the past relates to training for enforcement in Sao Paulo, Brazil where we the project was carried out with the local chamber of American commerce. The other was to work with China on enforcement issues and focuses on establishing the curriculum on IPR training specifically focussing on customs enforcement for the Shanghai Customs College, China.

Table 3: TCB by Category (\$US)
Funded by: Trade and Development Agency

	1999	2000	2001	2002	2003	2004	2005	2006
Agreement on TRIPs	383,000

4.1.1.3 Office of Intellectual Property Enforcement, Department of State

The Office of Intellectual Property Enforcement (IPE) within the Department of State's Bureau of Economic and Business Affairs develops and implements policies to promote effective intellectual property rights (IPR) protection worldwide in close cooperation with other U.S. agencies and the private sector. The office was set up seven years ago to work in close association with State Department's Bureau of International Narcotics and Law Enforcement Affairs. The primary reason behind the establishment of the office was to watch closely the increasing nexus between the intellectual property crimes and the trans-national criminal organizations. The primary focus of the office is to focus on enforcement of laws to combat piracy, prosecution of pirates and creating public awareness programmes on IPR issues. Towards this end, it coordinates with various enforcement agencies around the work and enlists resources from agencies such as USAID, WIPO and private sector industry organizations such as the Recording Industry Association of America (RIAA), the Motion Picture Association of America (MPAA), and the International AntiCounterfeiting Coalition (IACC).

This office was created seven years ago for protection and enforcement of IP rights and also to counter the operation of criminal organisation engaged in the IPR theft. The budget and activities of this department has evolved over a period of time:

Year	Amount of Funds	Number of Programmes
2004	2.5 Millions	16 programmes
2005	3 millions	13 programmes
2006	3 millions	13 programmes

The money is further apportioned to the agencies and the US embassies to undertake activities of enforcement for prosecutors, judges and custom units in developing and LDCs. For example, one of the present programmes that the office is currently undertaking is to set up a special unit on tracking & compiling statistics of IP Piracy in Paraguay on IP.

4.1.1.4 USAID (United States Agency for International Development)

USAID is the principal US agency that extends assistance to country under various thematic areas. It is the independent federal government agency that receives overall foreign policy guidance from the secretary of state. USAID 2003 Strategy document titled “Building trade capacity in the Developing world” states that the primary objective in the arena of intellectual property right is to provide technical assistance for creating awareness, and enabling countries to build their intellectual property legislations so as to streamline their WTO accessions and

commitments.¹³ This in-turn will enable countries to better implement and benefit from the WTO agreements such as TRIPS.

Table 4: USAID-Funded Trade Capacity Building Assistance Agreement on TRIPs

(\$US)

Countries	1999	2000	2001	2002	2003	2004	2005	2006
Albania	.	.	14,200	.	450,000	10,000	10,000	.
Algeria	129,450	.	.	.
Armenia	85,000	75,000
Bolivia	150,000	.	.	.
Bosnia and Herzegovina	450,000	.	.	.
Bulgaria	562,500	.	.	.
Costa Rica	.	.	.	6,560	.	.	.	.
Croatia	562,500	.	.	.
Dominican Republic	15,000	17,000	.	.
Egypt	.	2,372,000	2,496,000	1,450,000	.	170,000	.	375,000
El Salvador	.	.	.	6,560	.	.	.	.
Guatemala	.	.	.	6,560	.	.	.	.
Honduras	.	.	.	6,560	.	.	.	.
Indonesia	9,982	9,991	.	.	.	.	.	.
Iraq	251,475
Jamaica	.	.	.	75,000	.	.	.	.
Jordan	.	.	95,946	354,602	115,000	100,000	.	.
Kyrgyzstan	614,100	30,000	74,300	.	.	.	.	.
Lebanon	.	.	.	486,000	.	.	.	.
Macedonia	.	.	.	37,500	617,750	15,000	17,817	116,347
Moldova	.	.	.	105,000	.	.	.	.
Morocco	116,032	358,975	15,600
Nicaragua	.	.	.	6,560	.	.	.	350,000
Nigeria	.	.	.	312,500	190,000	.	.	.
Pakistan	199,000
Peru	190,000	.	.	.
Philippines	74,000	80,000	415,720	425,680	10,400	269,490	.	.
Romania	450,000	.	.	.
Russia	.	.	.	135,000	60,000	.	.	10,000
Senegal	77,000	.	.	.
Serbia and Montenegro	.	.	276,000	242,000	157,750	70,000	106,600	.

¹³ USAID 2003 Strategy document titled "Building trade capacity in the Developing world's

(FRY)

South Africa	.	.	61,400	559,800	195,500	90,000	.	.
Sri Lanka	32,800	339,840	49,200	40,000	.	.	.	.
Turkmenistan	39,750	.	.	.	.	.	.	.
Ukraine	.	.	.	120,358	50,000	.	.	55,000
Vietnam	.	.	.	.	.	121,030	.	100,000
Zambia	.	.	3,840	4,000	5,130	.	.	.

Other Groups**	1999	2000	2001	2002	2003	2004	2005	2006
Andean ns	369,475
Central America ns	1,307,972	312,800	.	.
Central and Eastern Europe ns	.	.	.	726,000	.	.	17,892	.
Global ns	.	.	.	500,000	500,000	.	.	.
SADC Secretariat	137,920	.	.	.
Southern Asia ns	9,810	.	.
Sub Saharan Africa ns	.	.	.	78,000	.	.	.	.
Western Africa ns	.	.	36,346	.	531,000	.	.	.
Total	770,632	2,831,831	3,522,952	5,684,240	6,914,872	1,301,161	596,284	1,916,897

** These are activities not targeted to a specific country.

ns = not specified


4.1.1.5 Private Organisations

As stated earlier, the efforts of the US agencies in IPR technical assistance are strongly coordinated through private and industry organisations. Therefore, we also interviewed office-bearers from organisations such as International Intellectual Property Institute, The Global Bioscience Development Institute, International AntiCounterfeiting Coalition and Creative and Innovative Economy Centre, George Washington University, apart from independent experts. This helped us to encapsulate their experiences and views on the technical assistance programmes.

4.1.2 MULTILATERAL

4.1.2.1 WIPO & WTO

WIPO is a specialised UN agency which has the overall responsibility for intellectual property rights management, regulation and exploitation across the globe. It was established in 1967 and was entrusted with the task of promoting intellectual property throughout the world with the active participation of its member states. WIPO has the mandate to provide legal and technical assistance on IP. Its future strategic goals defined in the 2006-2007 budget are:

-  To promote IP culture

- ✚ integrate IP within the national developmental policies
- ✚ Develop international IP laws and standards and

WTO was established in the year 1995 as a result of Uruguay round negotiations. Alongside the agreement for WTO, TRIPS was also negotiated and signed. TRIPS agreement provided minimum levels of protection for different intellectual property rights such as patents, trademarks, designs and geographical indications. Although TRIPS was negotiated within the WTO forum, a 1995 agreement entrusted the chief responsibility of providing technical assistance on TRIPS related issues to WIPO. This cooperation was further strengthened by the two joint initiatives launched by the Directors General of the two Organizations in July 1998 and in June 2001, respectively. The first, launched in 1998, was for developing countries to help them meet the 1 January 2000 deadline for conforming to the TRIPS Agreement. The second, in 2001, is a similar programme for least-developed countries, to help them with their 1 January 2006 deadline.

With these objectives and cooperation in mind, WIPO undertakes a broad range of technical assistance programmes. These programmes can be sub-divided into three main categories:

1. **Legislative Advice:** WIPO's legislative advice falls into four broad categories, namely, submission of draft laws to Member States; comments on draft laws prepared by Member States; legal advice in general; and advisory visits. For example, Advice, comments and draft laws were provided to Brazil, the Dominican Republic, Egypt, Jordan, Kuwait, Lebanon, Mauritius, Oman, Pakistan, Paraguay and Saudi Arabia.¹⁴
2. **Capacity building and awareness that includes human resource development, automation of offices.**
3. **Enforcement related activities**

The financial outlay for the technical assistance activities are given below:^{15,16}

Table 5: Financial outlay of WIPO for TA programmes

Year	Budgetary Allocation
1996-1997	SFr 45,000,000
1998-1999	SFr 58,000,000
2000-2001	SFr 71,000,000
2002-2003	SFr 100,000,000
2004-2005	SFr 71,700,000
2006-2007	SFr 73,700,000

4.1.2.2 WORLD BANK

The World Bank projects relating to intellectual property rights were generally included in the broader science and technology projects and private sector development. These projects dealt with the overall developmental projects and did not deal with specific IP issues. For example, the Brazilian IP project component was encompassed in the broader project titled “Project on support in science of Technology” and has three generations: one in 1980s, second in 1990s and then the third was from 1995-96. One of the issue was the IP rights and as Brazil was undertaking reforms of its IP laws and was making endeavours to increase its the efficiency and administration of their IP

¹⁴ WIPO 2006 submission to WTO.

¹⁵ M. Leesti and T. Pengally, 'Institutional Issues for Developing Countries in Intellectual Property Policymaking, Administration and Enforcement', (London, UK: UK Commission on Intellectual Property Rights, 2002).

¹⁶

office and thus, component was incorporated to improve the quality of the office with a view to improve the ability of private sector to appropriate knowledge. The project amount was USD 4 million out of the total sanctioned loan of USD 160 million. Similar projects were carried out in China, Indonesia and Mexico. For China, various studies were carried out keeping in mind the objective of China's accession to WTO, and to ensure that its various intellectual property laws comply with TRIPs. The financial outlay for IP related project component in Indonesian and Mexico was USD 14.7 millions and USD 32.1 million respectively.

Apart from the financial assistance, WB also regularly provides resource personnel for the seminars organised by other UN agencies etc, and has also co-sponsored events and seminars with the civil societies.

4.1.2.3 UNCTAD

The transfer of technology and IP team in the Investment, Technology and Enterprise Development division deals with the technical assistance programmes relating to intellectual property. The mandate of the division is to provide technical assistance in the integrated treatment of IP and technology transfer within the context of foreign direct investment and international arrangements.

The team is currently carrying out two main projects relating to intellectual property rights. One of the projects is the UNCTAD-ICTSD project that began in 2001. This is essentially a collaborative project between IGO and an NGO, ICTSD. The project was founded on the common vision and respective strengths of the two organisations. Outputs of this project are research oriented and are particularly focussing on developing countries and their negotiators. The outputs of the projects are: resource book on TRIPs, monthly and weakly digest on intellectual property issues; website for information disseminations, studies, research papers and policy documents in developmental aspects of IPRs. These outputs are not targeted to specific countries but are geared towards the topical issues affecting the developing and LD countries. The first phase of the project was started in 2001 and was for two years; the second phase of the project is from 2003 to 2006. The funding for the project was secured from Swiss International Developmental Agency (SIDA), Rockefeller foundation and DFID and the financial commitment for the project is USD 1 million.

The other main IP project is focussing on access to medicine issue in the four targeted countries. This project is partly funded by Germany and DIFD and is divided into two main segments. The first one is in collaboration with Germany and UNIDO and is carried out with GTZ. The duration of this project is two years and is to undertake comprehensive building of medicinal manufacturing capacity of Ethiopia and Tanzania. The financial outlay of the project is USD 250000. The second part of the project is carried out in collaboration with DIFD and is for an year duration. The project will focus on assessing the industrial capabilities of Botswana and Kenya for manufacturing medicines and will provide outlay to enhance their capacities. It has the financial outlay of USD 190000.

4.1.3 NON-TRADITIONAL

4.1.3.1 QUNO

The Quaker United Nations Office, located in Geneva and New York, represents Quakers through Friends World Committee for Consultation (FWCC). Quakers share United Nation's aims and supports its efforts to abolish war and promote peaceful resolution of conflicts, human rights, economic justice and good governance. FWCC has consultative status with the United Nations'

Economic and Social Council as an international non-governmental organisation, allowing the QUNO staff to attend UN meetings, to receive documents and to suggest agenda items to the Economic and Social Council. QUNO also works with other multilateral organisations, such as the World Trade Organisation, International Labour Organisation, World Bank and the International Monetary Fund. They believe in multilateral solutions to global problems rather than bilateral, thus, they work at that level and support and strengthen the UN system, which brings the parties together to solve their issues.

They are not a classic TA organisation, and do not provide TA in a formal or direct way. Quakers shares WTO philosophy and has been aiding their work in terms of creating trade rules for the benefit of the members, especially developing countries. In this sense, they recognise that these organisations like WTO and UN create an even field, but developing countries face certain problems that developed countries do not face. Their work is thus to enhance and support the developing countries negotiators so that they can better articulate and achieve their goals, in order to arrive at a global system that is more equal.

They work on IP issues only when they are being asked for help by developing countries on this area, so basically they respond to direct needs as articulated by the developing countries. Any reports or notes they make are strictly confidential, and do not publish them. They follow a non-intervention approach, in the sense that they don't establish the expert group on the issue to discuss. They only provide information on the implementation and understanding of the issues, and propose suitable experts. It is the missions and their delegate who decide from whom they want to take legal, technical and strategic advice on the specific treaties and issues to be negotiated before the organisations. QUNO does not give opinions, and tries to ensure that the delegates, who are not economists and trained in IP, get the adequate knowledge and information on the issues concerned. Delegates decide whether they want to take the advice or leave it, and are completely free of taking further advice from others. QUNO also hosts dialogues in which developing countries can discuss to one another at an equal level in a neutral territory, giving the delegates an opportunity to ask and exchange views and to find out as to who their allies are. Developed countries can also join, so that alliances can be formed with the developing countries. QUNO also works closely with the other centres such as UNCTAD, South Centre, CIEL, CPTECH, etc.

Their funding comes from their internal sources, however, they often solicit small funds for activities and programmes to governments who appreciate their work and will not interfere with their work or policy guidelines.

4.1.3.2 ICTSD

The International Centre for Trade and Sustainable Development (ICTSD) was established to contribute to a better understanding of development and environment concerns in the context of international trade. It is an independent non-profit and non-governmental organisation that engages a broad range of actors in ongoing dialogue about trade and sustainable development. It has created a wide network of governmental, non-governmental and inter-governmental partners, and facilitates the interaction between policy-makers and those outside the system to help trade policy become more supportive of sustainable development. Their mission can be summarized as influencing the international trade system such that it advances the goal of sustainable development, by empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research, and capacity building.

In the field of IP, they started their work in year 1998 with a focus on TRIPS agreement. They consider this to be a challenging area because it is very controversial and there is an important

unbalance in the information, economic relations, power relations, etc among the actors involved. This leads to the existence of very unequal partners in the terms mentioned before. Between 1996 and 2000, they focused on facilitating the understanding on TRIPS by holding consultations on first generation issues with many developing countries. These involved examining the real needs, interests, problems and real implementation issues on subjects like health, access to genetic resources, negotiations on GIs, etc. In year 2000, there was a second phase to have a more comprehensive understanding of TRIPS on issues such as articles, standards, legislation formulation, etc. It was found that few countries were able to understand the implications of TRIPS, so the focus was to generate understanding and awareness. Some of the initiatives included resource books on TRIPS, issue papers and case studies on GIs, compulsory licenses, TK and TA itself. The aim was providing policy options and recommendations, but from an advisory point of view only. Regional dialogues to discuss the countries' agendas on these issues based on the needs for their own regions were also held.

ICSTD receives funding from agencies like DIFD, SIDA, Rockefeller Foundation, Swiss Corporation Agency, IDRC of Canada, etc. The funding bodies they approach should have similar interests and objectives, promote sustainable development, have ethical behaviour, and allow ICSTD to maintain independence in their work and activities.

4.1.3.3 CIEL

The Centre for International Environmental Law (CIEL) is a non-profit organization working to use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society. They provide services such as legal counsel, policy research, analysis, advocacy, education, training, and capacity building. CIEL'S main focus is acting as an intermediary between the civil society and activists. They provide legal advice, legal interpretation and legal analysis to civil society in issues such as procedures for approaching WIPO, which are quite legalistic. They also provide help in dispute settlement issues, help the organisations to understand the complexities of the matters and help them with the negotiations, making legal arguments towards a particular option, etc. In countries where civil society is not so well established, their work involves quite a lot of lobbying, especially in developing countries.

Some of the tools and products they provide are general research for general audiences in the form of regular updates with an IP quarterly, back ground notes on procedural and substantive issues, legal analysis, relationship between FTA and IP, private papers sent to delegates and civil society, etc. One major project they have is on FTAs and IP, focusing on how international NGOs started to intervene and work on the regional FTAs, as well as identifying the substantive elements to work in a regional FTA

Their assistance on TA is mainly on international deliberation level in the form of some publications and updates, as it is difficult to know the real situation of the domestic stage of policy making in many countries. In terms of institutional and project funding, they provide legal advice and also on assisting delegates and civil society as to how work with WIPO. They consider that the improvement of technical assistance is the key to find more international local partners, passing the resources and capacity building to them, and getting them involved in the regional, national and international negotiation processes. Their main goal on TA is to achieve a real multi-stakeholder process.

4.1.3.4 ACWL

The Advisory Centre on WTO Law (ACWL) is a public international organisation that provides legal advice on WTO law, support in WTO dispute settlement proceedings and training in WTO law to

least developed and developing countries. Their basic mission is to ensure that these Members of the WTO have a full understanding of their rights and obligations under WTO law, and an equal opportunity to represent effectively their interests in WTO dispute settlement procedures. Apart from providing legal services to the countries, they provide a training programme through internships for the developing and least-developed countries government officials engaged in the trade negotiations. These trainings focus on procedural laws; substantive laws and topical issues.

They completely operate on the demand basis: they do not initiate or solicit clients, but only act once they are contacted by the countries. Their funding is secured through the donations from 10 developed countries and from the fixed contribution of the member states, and the fees being charged from the services. Charges for the litigation depend on membership status of the nation, and on its developmental status. They provide free legal advice whenever a member country approaches them; however, the service is not free for the litigation before the dispute settlement board in order to avoid instances of abuse of the service.

The structure of the institution allows for financial self-sufficiency and neutrality thanks to regulation through the general assembly, which has both developed and developing countries as members. This objective neutrality allows complete independence in the functioning and avoids the conflict of interests. No conditions are prescribed for the countries to join the centre and avail its services. They do accept funds and sponsorship provided that there are no conditions attached to it.

4.1.3.5 SOUTH CENTRE

The South Centre is an intergovernmental organization of developing countries which has its root in the recognition of the need for enhanced South-South co-operation. The South Centre intends to help meeting the need for analysis of development problems and experience, as well as to provide intellectual and policy support required by developing countries for collective and individual action, particularly in the international arena. The Centre has the following among its central objectives to promote South solidarity, in the form of various types of South-South co-operation and action, fostering convergent views and approaches among countries of the South with respect to global economic, political and strategic issues related to evolving concepts of development, sovereignty and security, and contributing to a better mutual understanding and co-operation between the South and the North. Their work is either demand driven when approached by the countries or through information gathered from seminars, internal meetings and daily activities. Agenda setting is set through research, perception of topical issues and past experience.

The South Centre started the interdisciplinary Programme Innovation, Access to Knowledge and Intellectual Property in late 2005. The work programme includes three individual programmes which are Trade for Development, Innovation, Access to Knowledge and Intellectual Property and Global Governance for Development. The Programme seeks to bring economic, political-economy, legal and related research, as well as policy analysis, to bear on the formulation of policy responses to the development challenges facing developing countries with respect to innovation, access to knowledge, and intellectual property policy. These challenges relate first to the extent to which the current forms of intellectual property regimes and the international rules regarding their implementation contribute to or otherwise hinder the achievement of aspects like health, agriculture and education, and secondly, determining what mechanisms will be required in the future to support and facilitate the efforts by developing countries to generate development-related knowledge, develop their local systems of innovation, and promote the transfer of technology and knowledge between countries of the South.

There are three main elements of the Programme, namely: thematic areas for research and policy analysis; policy advice; and capacity building and training. The thematic areas for research and policy analysis, include: innovation, technology and patent policy on, health, biotechnology, and nanotechnology; access to knowledge including digital and other educational and scientific knowledge; technology transfer including mechanisms for South-South cooperation and governance and regulation of innovation, access to knowledge and intellectual property including key issues in the WTO, WIPO and bilateral and regional free trade agreement (FTAs). Policy advice activities range from oral advice through telephone, e-mail or in informal meetings and during meetings where South Centre is an observer such as at WIPO and WTO, Ministerial Conferences, to informal and background papers and briefing notes. The capacity building and training component of the Programme includes the development of materials for online courses; Fellowship and Internship Programme; professional courses and workshops; Journal on Development and Innovation, Access to Knowledge and Intellectual Property; and The Intellectual Property Quarterly Update published jointly with CIEL.

They have no representation, no interference and no censorship from the governments in their work, which allows for intellectual independence. They have two sources of funding: a capital fund created through the voluntary contribution of the countries themselves, and extra budgetary sources like the Rockefeller Foundation, SIDA, Open Society Institute, etc. The prime condition in all cases is to maintain intellectual independence.

4.2 RECIPIENTS

4.2.1 INDIA

In India the administration of intellectual property rights is fragmented and different departments deal with different intellectual property rights. For example, Department of Industrial Policy and Promotion, under the Ministry of Commerce is responsible for patents, designs, trademarks and geographical indications; while Department of Secondary Education, Ministry of Human Resource Development is responsible for copyright. Since India was given ten years transition period to comply with its obligation under TRIPs, the government had undertaken substantial legislative, administrative and procedural measures. At the same time, it has laid an increased emphasis on intellectual property rights in its 2003 Science and Technology policy. However, undertaking such major administrative changes was achieved through the technical assistance, financial assistance and collaboration with various UN agencies and organisations.

Government of India had laid out Rs. 130 crores for the modernisation of IP offices in India. For achieving this, WIPO provided the requisite technical assistance for upgradation and computerisation of the system. At the same time, WIPO had sent an expert commission to evaluate the Intellectual Property Training Institute, administered by Indian Patent Office. This is done in order to create a blue print for the National Institute of IP management in India. Another current programme in India is currently being executed with the help of GTZ to train the patent and trade mark examiners on various procedural aspects of patent and trade mark laws. Apart from that, recently Memorandum of understanding was signed between the Korean Intellectual Property Office and European Patent Office to allow the Indian patent office to participate in the international bench-marking and sharing of the experiences.

Apart from this, the government of India has also carried out substantial upgradation of its patent information system with the help of UNDP. The programme started in the year 2002 and was completed in the year 1996. This project helped in creating effective retrieval and dissemination of

patent information by providing computer aided methods and CD-ROM. Apart from that, various programmes have been carried out in collaboration with industrial organisations, Indian government and foreign institutions such as WIPO, EPO, USPTO for creating awareness and sensitisation on intellectual property rights. Under the EU-India Trade and Investment Development programme, intellectual property rights have been given sufficient emphasis and accordingly provisions have been made to assist India in mainstreaming its IPR administrative and enforcement infrastructure through various schemes such as study abroad, field visits, seminars and training programmes.

In order to incorporate the experiences of stakeholders involved in the latter activity, we also spoke to representative of public and private organisations such as Council for Scientific and Industrial Research India, Confederation of Indian Industries, Federation of Indian Chambers of Commerce and Industry, academics, experts, members of judiciary, enforcement agencies and legal profession. This further provided us with a holistic picture of the issues involved in the implementation of technical assistance programmes in India.

4.2.2 ARGENTINA

The National Institute of Industrial Property is the agency in charge of the record of Trademarks, Patents, and Utility Models of the Argentine Republic. It was created in 1996. The structure of the INPI follows the French model. There is a Commission of patents and within this commission, it has divisions for Trademarks and Utility Models and Industrial Designs, the maximum authorities are Directors. From the beginning the INPI received technical cooperation from WIPO basically, through training programmes for its technical staff. These programmes either took place at the WIPO offices or in the Offices of Patents and Trademarks registration in other European countries through joint collaboration. Apart from that, WIPO has also collaborated in providing the institute with computer programmes and automation procedures for patents and trademarks applications. This work has also been supported by the EPO. This cooperation from the WIPO and EPO is periodic and continuous and was first envisioned under the WIPO Model.

Apart from that, WIPO also conducts travelling seminars throughout the country for creating awareness on intellectual property issues. Since INPI with Brazil, Paraguay and Uruguay is seeking to establish a regional Centre to train examiner, WIPO is currently helping within the Mercosur framework to establish such a centre. The continuous training of the personnel and the upgrade of the computer administration, education of personal administrative, provision of equipment and the possibility of using adequate programmes is provided by the EPO, the WIPO and the Spanish patent office.

The National Direction of Copyright, Ministry of Justice and Human rights is the highest office dealing with copyright of the country. It is part of the Ministry of Justice and depends directly from the Under Secretary of registers. It has received cooperation from the WIPO during the last 10 years through the organisation of courses exclusively for people of collective societies. Alongside, the courses are also organised at regional level and for the Latin American courses experts of Uruguay, Brazil, Argentina, Chile, Venezuela, and Spain are invited. This group of experts is transferred annually or biannually to a Latin American city where the course is presented. Normally two people from the office receive this training at the Latin American course and one for the European. WIPO has also financed economic studies about the impact of cultural industries. It has financed a study on cultural industries in MERCOSUR. This was made on a non-uniform basis (it has 3 or 4 years old now). Apart from that, WIPO also partly finances the participation of foreign and local speakers in annual seminars for judges. This year judges of bordering countries as Paraguay, Uruguay, and Chile were also invited.

The Officials from Secretariat of Industry, Ministry of Economy are given courses and training at organised at WIPO Academy. Officials from the Ministry of Foreign Affairs and Religion, Argentine Republic has also received training courses. These courses are organized by WIPO, in order to train staff members in some specific are of IP. There are also publications that the WIPO finances, for example, the ministry was provided a handbook on Management of IP in S&M enterprises that WIPO publish last year. There is cooperation of academic entities of the developed world with educational entities of our country. Apart from that, WIPO organizes seminars with funds contributed by Spain. In these courses WIPO covers the financial aspects and the technical aspects are more a society. The Ministry also receives Technical cooperation in the form of a course organized by the INPI and the University Pompeu Fabra of Spain.

4.2.3 OAPI

4.2.3.1 Introduction

The African Organisation of Intellectual Property (hereinafter ‘OAPI’) administers the harmonised system of protection of intellectual property across its fifteen member states.¹⁷ On 03 March 1977, OAPI was created within the framework of the revision of the 13 September 1962 Libreville Agreement, which created the African and Malagasy Patents Rights Authority (OAMPI) which was intended to take over the administration of patents after the independence of most French Speaking African countries in 1960. Prior to 1960, patents rights in the most French Speaking African countries were governed by French patent regulations and administered by the French National Institute of Intellectual Property (INPI). So far, the 1977 Bangui Agreement of OAPI has undergone one revision, which led to the 1999 Revised Bangui Agreement.¹⁸

The 1977 Bangui Agreement strengthened the institutional capacities of OAPI with the creation of specialised departments responsible for the administration of patent, trademark and copyright laws across the member states. However, it is submitted that such improvements of the institutional capacities of OAPI were not translated into concrete industrial development of the sub-region as resulting from effective intellectual property protection. Instead, alongside the improvement of the institutional capacities of OAPI, the implementation of the 1977 Bangui Agreement which entered into force in 1982 made the protection of intellectual property constraining to the rights holders. These constraints are linked to the following elements:

- the increase of the compulsory licenses and the institution of the *de facto* licenses in relation to patents
- the division of the total duration of protection of patent rights and the rights related to the utility models and industrial design in various stages. A transfer from one stage to another is subject to the provision of evidence of exploitation of the intellectual property title. The division was: 10 years +5years +5 years for patents; 5 years +3 years for the utility models and 5 years +5years +5years for industrial designs.
- the obligation to the owner of a trademark to provide evidence of use of the mark for the purpose of renewing its registration every 10 years,

¹⁷The member States of OAPI are: the Republic of Benin, the Republic of Burkina Faso, the Republic of Cameroon, the Central African Republic, the Republic of Chad, the Republic of the Congo, the Republic of Cote d’Ivoire, the Gabonese Republic, the Republic of Guinea, the Republic of Guinea-Bissau, the Republic of Mali, the Islamic Republic of Mauritania, the Republic of the Niger, the Republic of Senegal, the Togolese Republic.

¹⁸ Agreement Revising the Bangui Agreement of March 2, 1977 on the Creation of an African Intellectual Property Organization (Bangui, 24 February 1999)

- the invalidation of patent or trademark rights on the basis of non-working after the issuance of the patent or the registration of the trademark
- without evidence of exploitation of the relevant intellectual property title (e.g. patents, trademark, utility model etc), the right holder has no legal right to challenge anyone who infringes his/her intellectual property title.

This approach of the 1977 Bangui Agreement in the protection and exploitation of the intellectual property in the sub-region led to the reduction of the revenues of OAPI due to several desertions of intellectual property titles. Moreover, with the wind of changes at the international level, the provisions of the 1977 Bangui Agreement were no longer reflecting the international intellectual property environment, especially the 1994 WTO-TRIPS Agreement.¹⁹

The revision of the 1977 Bangui Agreement was therefore necessary and was meant to make the OAPI system of protection of intellectual property conducive to the development needs of the sub-region and to reflect the 1994 WTO-TRIPS Agreement.

Initiated by the administrative council of OAPI, the revision of the 1977 Bangui Agreement started in 1994 and culminated with the signing of the Revised Bangui Agreement on the 24 February 1999 at the diplomatic conference convened by OAPI in Bangui-Central African Republic. The main stakeholders involved in the revision process are national partners to OAPI including experts from technical government departments such as those in charge of commerce and industrial affairs and those in charge of culture. Also, national partners from OAPI member countries included the national collecting societies and OAPI patent agents such as the ‘Cabinet Ekani’ based in Yaounde. International partners to OAPI provided the technical assistance the organisation needed throughout the revision process. The main international partners involved in the revision process are the World Intellectual Property Organization (WIPO) which acted mainly to ensure that the final product of the revision process would reflect the 1994 WTO-TRIPS Agreement; the International Convention for the Protection of New Varieties of Plants (UPOV); the French Institut National de la Propriete Intellectuelle (INPI); the International Trademark Association (INTA); the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the University of Alexandria (Egypt).

The remainder of this brief addresses: (i) the principal attributes of the 1977 Bangui Agreement, (ii) the shortcomings of the 1977 Bangui Agreement addressed in the 1999 Revised Bangui Agreement, (iii) the process of revision of the 1977 Bangui Agreement, stressing the involvement of international partners and their technical assistance to the process, and (iv) some concluding remarks.

4.2.3.2 Principal characteristics of the 1977 Bangui Agreement

15 years after the creation of the African and Malagasy Patents Rights Authority (OAMPI) under the Libreville Agreement in 1962, the administrative council of OAMPI decided to strengthen the institutional capacities of the organisation in order to better administer the system of protection of intellectual property among its member states. In this respect, the 1977 Bangui Agreement was concluded and created OAPI. The 1977 Bangui Agreement assigned OAPI a number of responsibilities including:

¹⁹TRIPS Agreement, General Agreement on Tariffs and Trade, Uruguay Round, World Trade Organization (Marrakech, 15 April 1994), Annex IC.

- OAPI's responsibility to administer and implement the harmonised administrative procedures of protection of industrial property among the member states while ensuring that member states fulfil their commitment under international intellectual property treaties to which they are party,
- OAPI's commitment to the protection of literary and artistic property as expressions of cultural and social values of its member states,
- OAPI's commitment to promote the creation of collective societies in the member states where such societies do not exist,
- OAPI's responsibility to centralise, coordinate and make available to every member state that makes a formal request, all information about the protection of literary and artistic property in the sub-region.

In addition to the above mentioned institutional role, the 1977 Bangui Agreement had the following specific characteristics in relation to the exploitation of industrial property titles such as patents, trademarks and the utility models:

- The lifetime of a patent of 20 years was divided into three phases. The first phase was 10 years followed by two phases of 5 years. Any patent holder who wanted to work his/her patent in one phase was expected to provide evidence of working of his/her patent during the previous phase. This was a similar approach in relation to the exploitation of the utility models, whose lifetime was 8 years divided into two consecutive phases of 5 and 3 years respectively.
- The 1977 Bangui Agreement provided that the owner of any industrial property title should provide evidence of working or exploitation of his/her title for the purpose of renewal or prolongation.
- The 1977 Bangui Agreement provided that a licence contract negotiated between a national stakeholder and a foreign operator or between an operator based in one of the member states with another operator originating from one of the member states but residing outside the jurisdiction of OAPI should be approved by a national authority within 12 months of their conclusion prior to their insertion in the special register of OAPI. In the absence of a national approval, such a contract was considered null and void.
- In the 1977 Bangui Agreement, the protection of literary and artistic rights was limited to the protection of copyright and cultural heritage.

4.2.3.3 Shortcomings of the 1977 Bangui Agreement addressed in the 1999 Revised Bangui Agreement.

The 1977 Bangui Agreement had strengthened the responsibilities of OAPI to implement the harmonised regime of protection of intellectual property across its member states. However the implementation of the regime of protection embedded in this Agreement had provoked a dramatic reduction of the revenues of the organisation. Moreover, with the fast changing landscape of intellectual property protection at the international level, the 1977 Bangui Agreement became increasingly outdated, especially as it was not in line with the 1994 WTO-TRIPS Agreement. In light of these limitations, OAPI launched in 1994 the process of revision of the 1977 Bangui Agreement. This process culminated with the signing of the Revised Agreement by representatives of member States at the diplomatic conference on the 24th February 1999 in Bangui (Central African Republic). The main innovations of the 1999 Revised Bangui Agreement are as follows:

- The expansion of the mission of OAPI beyond its role provided by the 1977 Agreement which was essentially limited to the administration of IP in the sub-region. Under the 1999 Revised Bangui Agreement, OAPI's role was broadened to include its contribution to the development of the sub-region through an effective protection of intellectual property and to include training in intellectual property in the sub-region.
- The 1999 Revised Bangui Agreement removed the phasing approach in the exploitation of industrial property titles (patents, utility models, industrial designs) during their lifetime. It also removed the obligation from holder of intellectual property titles to provide evidence of actual exploitation of such titles as a prerequisite for a transfer to the next phase.
- Abolition of the requirement to provide evidence of exploitation of industrial property titles as a condition for its renewal or extension
- Abolition of control and approvals of licence contracts at the national level as a prerequisite to their insertion in the special register of the organisation,
- Subtraction of the former annexes 8 and 9 addressing the centralised system of documentation and information related to patents and the inclusion of the related provisions in the 1999 Revised Agreement itself.
- Inclusion in the 1999 Revised Bangui Agreement of provisions addressing the industrial property titles registered in a State before its accession to OAPI
- Inclusion in the 1999 Revised Bangui Agreement of provisions addressing copyright and related rights
- Inclusion of an annex addressing the protection of layout designs (topographic) and integrated circuits,
- Inclusion of an annex addressing the protection against unfair competition
- Inclusion of an annex addressing plant variety protection and plant breeders' rights

At OAPI, there is a feeling of satisfaction in respect of the outcome of the process of revision of the 1977 Bangui Agreement. It is believed that, because the revision process (described below) was predominantly controlled by member States, the 1999 Revised Bangui Agreement addresses the development needs and ambitions of the OAPI member states, assists member states to fulfil their commitment under international law, especially because it is in line with the 1994 WTO-TRIPS Agreement.

4.2.3.4 From the 1977 to the 1999 version of the Bangui Agreement: the process and partner involvement.

The Bangui Agreement administered by the African Organisation of Intellectual Property (OAPI), is the code which embeds the harmonised regime of protection of intellectual property in force in all the member states. The Agreement comprises the Agreement itself and several annexes. The 1999 Revised Agreement resulting from the revision of the 1977 Agreement comprises the Agreement itself and 10 Annexes. The practice of project development and implementation at OAPI is that, the organisation initiates its own projects and controls the implementation of the related activities drawing mainly from the organisation's own financial resources, technical expertise and administrative capacities. However, the organisation works also with its network of partners²⁰ seeking their contribution in areas where there is no internal expertise. Therefore, the organisation does not

²⁰ OAPI main partners involved in the process of revision of the 1977 Bangui Agreement are mentioned in the introduction.

normally accept offers of technical assistance for the projects it has initiated neither from its partners nor from stakeholders not belonging to its network of partners.

The process that led to the 1999 Revised Bangui Agreement was to a large extent in line with the above mentioned approach. In 1994, the administrative council of OAPI launched the revision of the 1977 Bangui Agreement with surveys in all member states. These surveys were intended to record the concerns of all the member states about the 1977 Bangui Agreement and their preliminary expectations from an eventual Revised Agreement. These surveys were followed in 1995 by a comparative study of the 1994 WTO-TRIPS Agreement and the 1977 Bangui Agreement carried out by the organisation's technical experts in consultation with the national counterparts and the overseas partners such as WIPO (WTO), INTA, UNESCO, INPI and the University of Alexandria in Egypt which provided the international technical assistance and expertise needed in the process. The purpose of this comparative study was to identify the specific areas where the 1977 Bangui Agreement needed adjustment to the 1994 WTO-TRIPS Agreement. This study was immediately followed in 1996/1997 by the development of the draft texts of the modified version of the 1977 Agreement. These texts were submitted to and examined by the OAPI member states and partners in 1997 followed by a series of meetings of technical experts of OAPI member states and partners to discuss the proposed drafts. Four of such meetings were held between 1997 and 1998 notably:

- in November 1997 in Conakry (Republic of Guinea)
- in February 1998 in Abidjan (Ivory Coast)
- in July 1998 in Ouagadougou (Burkina Faso)
- in November 1998 in Nouakchott (Mauritania)

All the technical experts' meetings of the series were organised in such a way that every meeting was chaired and reported by delegates from the member States. A technical expert from OAPI was selected to assume the role of secretary of every technical experts' meeting of the series. At OAPI, it is believed that the member States controlled the final texts of every meeting and subsequently of the 1999 Revised Bangui Agreement because their representatives chaired all the meetings and reported them. However, an examination of the process of revision of the 1977 Bangui Agreement from the angle of overseas' partner involvement suggests that, perhaps the OAPI member States or their representatives did not really control the process which was heavily driven and controlled from outside.

After the comparative study of the TRIPS and the 1977 Bangui Agreement in 1995, OAPI provided one of its agents 'Cabinet Ekani' based in Yaoundé the outcomes of both the 1994 surveys and the 1995 comparative study and commissioned this particular agent the task of drafting the texts the Revised Bangui Agreement. Cabinet Ekani, owned by one of the former Director General of OAPI, drafted the texts of the main agreement and all the annexes excluding annex VII on Literary and Artistic Property and Annex X on Plant Variety Protection. Subsequently, OAPI commissioned the development of Title I of Annex VII (Copyrights and Related Rights) to some experts from national collecting societies of its member States and Title II of Annex VII (Protection and Promotion of Cultural Heritage) to experts from UNESCO and the University of Alexandria (Egypt). Annex X of the 1999 Revised Bangui Agreement was commissioned to the International Union for the Protection of New Varieties of Plants (UPOV). As a result of their technical works, the texts proposed by Cabinet Ekani, UNESCO/the University of Alexandria and UPOV were those that were discussed throughout the revision process and amended during the series of technical experts meetings in order to reflect the development needs and expectations of the OAPI member States. However, it should be noted that throughout the revision process, OAPI frequently consulted with its international partners especially WIPO, INTA and INPI whose input, according to OAPI, helped

significantly to prevent the final texts of the 1999 Revised Bangui Agreement from going against international treaties, especially the 1994 WTO-TRIPS Agreement.

Among the international partners of OAPI who were involved in the revision process, WIPO was the major one whose involvement was very critical to the final outcome. WIPO's involvement was not limited to simple consultations when OAPI sought technical advices in specific areas of intellectual property during the revision process. WIPO's involvement went beyond simple participation to the series of technical experts' meetings at which the other international partners to OAPI attended. In fact, OAPI commissioned WIPO the project of the revision of the 1977 Bangui Agreement and all the annexes. WIPO carried out this task in 1996/1997 and submitted the draft texts of the (to be) new Bangui Agreement and the 10 Annexes to the administrative council of OAPI. An insider at OAPI advised that, the texts proposed by WIPO are not the current texts of the 1999 Revised Bangui Agreement. However, WIPO's submission was substantially used to feed the revision process especially the discussions during the series of technical experts meetings and to improve the submissions of the other partners including Cabinet Ekani, UNESCO/ the University of Alexandria (Egypt) and UPOV.

4.2.3.5 Concluding remarks

Four years after the entry into force of the 1999 Revised Bangui Agreement in 2002, it is perhaps too early to make a judgement about the impact of this Agreement in achieving industrial and scientific development of OAPI member states. However, this assessment will be needed sooner or later because the issue of development was central in the organisation's move to revise its intellectual property code. One possible avenue to undertake this assessment in the future will be through a candid evaluation of the graduates of the 'Denis Ekani Intellectual Property Training Centre'. This evaluation will look at their contribution to making intellectual property protection in their countries of origin to promote the valorisation of local innovations and improve their countries' scientific and technological capacities for instance through effective technology transfer. Indeed, the 1999 Revised Bangui Agreement expanded the mission of OAPI to include the training of intellectual property professionals, which was materialised by the creation of the Denis Ekani Intellectual Property Training Centre following the decision of the Administration Council of OAPI at its 44th ordinary meeting in Cotonou (Republic of Benin) from 03 to 04 December 2004.

An important objective of the revision process was to assist OAPI member states to fulfil their commitment to international law for instance by ensuring that the Bangui Agreement reflects the 1994 WTO-TRIPS Agreement. However, a close scrutiny of the 1999 Revised Bangui Agreement and its 10 Annexes suggests that these instruments bear the intellectual property standards that are stronger than the TRIPS Agreement and may therefore not be appropriate to the current development situation of OAPI member States. The TRIPS Agreement does not mention the Budapest Treaty, especially Article 1 of this Treaty which requires parties to recognise the deposit of micro-organisms as a proof of disclosure for the purpose of patent filing. The 1999 Revised Bangui Agreement makes several references to the Budapest Treaty and requires such proof of deposit of a sample of micro-organisms at an international depositary centre as a proof of disclosure for the purpose of patent filing for innovations based on micro-organisms.²¹ Also, in relation to the protection of new plant varieties and plant breeders' rights, OAPI has clearly chosen the path of

²¹ In the 1999 Revised Bangui Agreement, the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedures is mentioned in the Preamble; in Article 7(4) of the General Provisions of the Agreement and in Article 20(4) of Annex I on Patents.

UPOV 1991 which is reflected in Annex X of the 1999 Revised Bangui Agreement while the WTO-TRIPS Agreement makes no mention of UPOV.

There is no specific answer as to why the 1999 Revised Bangui Agreement ended-up to be stronger than TRIPS. One can arguably suggest that the significant involvement of external partners such as WIPO that provided the technical assistance throughout the revision process might have contributed to this end result. However, the revision process involved frequent consultations between OAPI and its member states, internal discussions within member states and the various meetings organised by OAPI were largely chaired and reported by delegates representing the member states. In this respect, OAPI member countries had the opportunity to influence the end result to make it more TRIPS compliant, and would therefore have prevented the 1999 Revised Agreement to go beyond TRIPS. It is therefore surprising to see that OAPI member countries have not learnt from history which shows that the today developed countries such as the United States, United Kingdom, France, Germany strengthened their intellectual property standards as the need arose especially on the basis of their industrial growth. If stronger intellectual property standards than TRIPS have prevailed in the final texts of the 1999 Revised Bangui Agreement, it may arguably be due to the lack of expertise within OAPI member countries to candidly assess the role of intellectual property in development.

At OAPI, there is a tacit recognition that the 1999 Revised Bangui Agreement does not reflect the current technological, scientific and economic situation of the member States. Nonetheless, intellectual property experts of the OAPI argue that the organisation wanted to be pro-active by putting such a comprehensive intellectual property code for its member States. The idea was to make the sub-region an attractive area in terms of intellectual property protection which can incentivize multinational companies and other overseas operators to invest in the region, thus contributing to the development.

5 ACHIEVING BEST PRACTICE IN TECHNICAL ASSISTANCE ON INTELLECTUAL PROPERTY: CONCLUSIONS AND RECOMMENDATIONS

The primary focus of the majority of technical assistance activity has been on the preparation of domestic legislation for the protection of intellectual property and the strengthening of enforcement measures. The main reason cited for such a trend is the fairly narrow mandate provided to main donors and providers such as WIPO and WTO. If one looks at Article 67, this emphasis on IP protection and enforcement becomes clear:

In order to facilitate the implementation of this agreement, developed country members shall provide, on request and on mutually agreed terms and conditions, technical and financial co-operation in favour of developing and least-developed country Members. Such co-operation shall include assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

In practical terms, the priority areas within TRIPS TA are as follows:

- (i) Implementation of legislation which is consistent with the TRIPS Agreement
- (ii) Modernization of intellectual property offices and collective management societies
- (iii) Strengthening of the means to enforce rights
- (iv) Promoting and encouraging technology transfer to least-developed countries
- (v) The use of intellectual property systems for development purposes; and
- (vi) issues currently under discussion /negotiation in the WTO.

The entire TA programme delivery-exercise can be divided into five stages:

1. Needs assessment

This part of the delivery programme deals with the identification of the actual needs and priority areas for the technical assistance by the recipient organisations.

2. Identifying partners and securing funding

This involves identifying partners, approaching them, securing funding and coordinating technical assistance.

3. Planning and design

These activities precede actual implementation and involve entering negotiations with a particular provider on issues such as designing the content and delivery exercise of the technical assistance

4. Actual execution

This involves undertaking the planned technical assistance and executing the same either at the provider's institution or at the recipient's organisation

5. Progress monitoring, evaluation and follow-up

This involves undertaking steps for evaluating the performance of the TA programme both during the execution of the programme and after the programme has finished. On the other hand, the post follow up focuses more on the results achieved vis-à-vis the objectives of the programme undertaken. It is set to undertake an impact assessment of the programme on the recipient institution both on the short-term and long term basis.

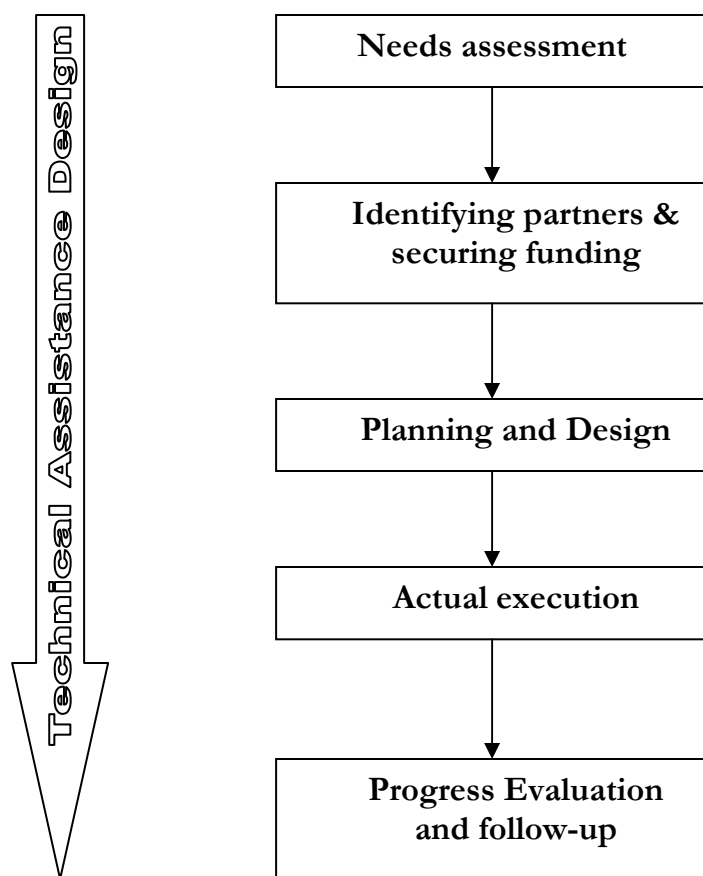


Figure 1: Various stages in technical assistance programme design

After undertaking qualitative and quantitative analysis of each of these stages through the case studies of stakeholders involved in the TA delivery exercise, our conclusions and recommendations focus on strengthening these important stages. These findings undertake the SWOT analysis of each stage vis-à-vis the participating stakeholders and provide guidelines that are aimed to equip both the recipients and providers in their quest to provide and receive effective technical assistance.

<p style="text-align: center;">S = Strengths</p> <ul style="list-style-type: none"> • Expertise of the organisations in a particular field • Credible institutional structure to carry on the project • Local awareness and grass-root level connections • Strong past experience • Perceived acceptability of the organisation by the recipients. 	<p style="text-align: center;">W = Weaknesses</p> <ul style="list-style-type: none"> • Lack of expertise in the field of TA • Lack of institutional strength to undertake the programme • Lack of local knowledge • Lack of past experience in the field of providing TA programmes. • Narrow policy mandate or goals of providing IP related TA
<p style="text-align: center;">O = Opportunities</p> <ul style="list-style-type: none"> • Enhancing capacity of the recipient partners in dealing with IP related matters. • Creating sustained basis for IP creation, enforcement and management in the recipient organisation • Strengthening local legislative and regulatory framework based on local needs and public interest • Increasing efficiency and quality of patent offices 	<p style="text-align: center;">T = Threats</p> <ul style="list-style-type: none"> • Affect of local political situation • Affect of the foreign policy of the recipient nation • Vulnerable due to the biases emanating at the providers end • Failure due to lack of commitment from the recipient's side • No adaptation of TA to focus on local needs.

Figure 2: A Typical example of SWOT analysis for the TA stakeholders

5.1 NEEDS ASSESSMENT

5.1.1 NEEDS ASSESSMENT PROCEDURES

It was found that the recipient organisations in developing nations have variable “needs-assessment procedures” for identifying priority areas for technical assistance. In some organisations such as patent offices and enforcement agencies, the needs assessment and decision making process was found to be highly formalistic. It is generally based on inputs from several committees and individuals. On the other hand, private institutions such as national NGOs and law firms tend to have no formal setup for evaluating their needs. They are often determined through very informal procedures involving personal interaction. For national NGOs, the existence of such a situation is due to the lack of financial and human resources and want of knowledge of technical assistance opportunities. Several other categories of institutions such as judiciary and the public sector research institutions were found to encompass both informal and formal setups for evaluating their needs.

It is to be noted that each type of setup had its own advantages and disadvantages. The formalistic type of procedures provides both the recipient organisation and provider organisation a sense of objectivity in relation to the need assessment and the evaluation of the proposed technical assistance offer as noticed during the upgrading of patent offices in India in the year 2000. But more often than not, they were also found to be too bureaucratic resulting in loss of time and resources, for example, as

happened during the execution of a recent TA programme executed by GTZ, a German agency, in India. The informal setup on the other hand overcomes these disadvantages due to its inherent flexibility.

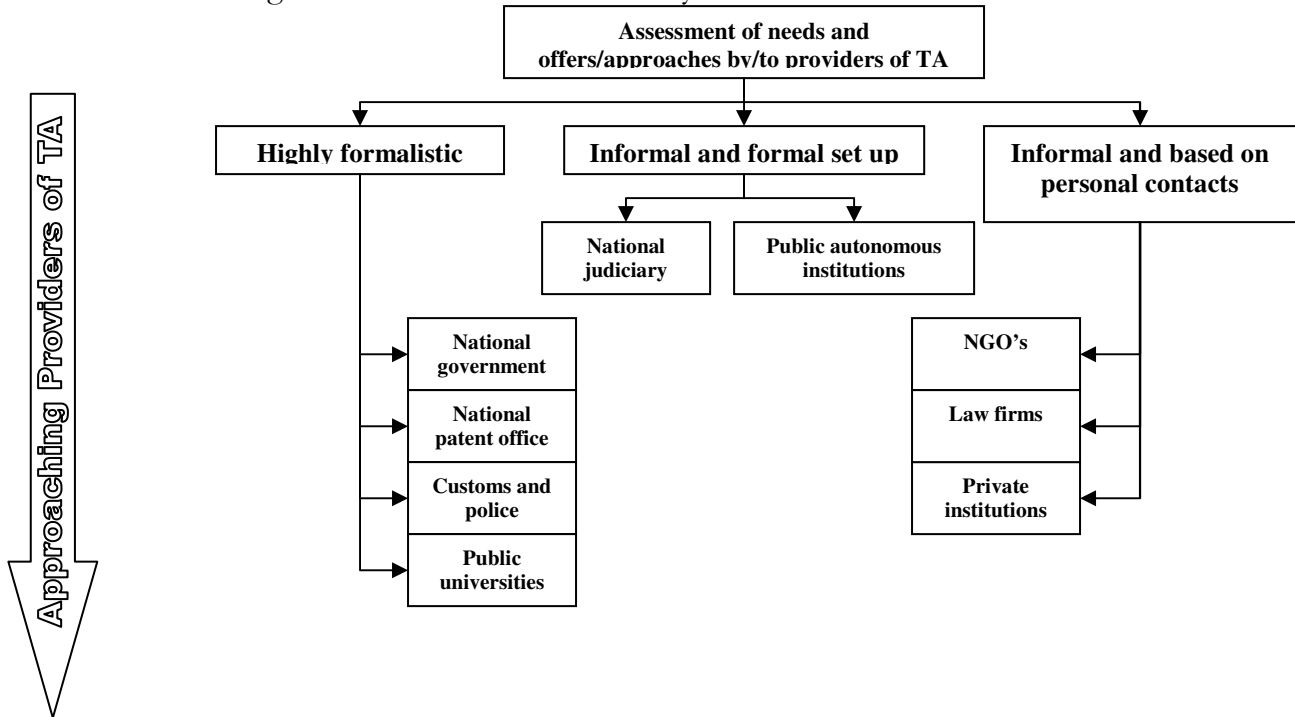


Figure 2: Needs assessment procedures for different institutions

Recommendations:

- a. *Unless the needs are identified properly by the recipients, the technical assistance exercise will not be able to provide effective results and intended impacts. As a starting point, the financial and technical assistance should be provided to organisations so that they can build effective mechanisms to establish and consolidate their needs assessment procedures and identify specific areas that could be addressed through further assistance by providers who would then be in a better position to direct their resources and personnel to achieve optimum results. Moreover, the fact that there is generally a time gap between the request of TA to an implementing agency and its execution, it is imperative that these procedures be strengthened so that timely TA can be provided.*

5.1.2 PRIORITY AREAS FOR DELIVERY OF TA

The representation below summarises priority areas identified at the national level for TA requirements and is based on the personal views given by individuals during interview. There appears to be a general consensus on this. However, it is important to note that each stakeholder had its own specific further needs which may or may not fall in any of the categories mentioned below.

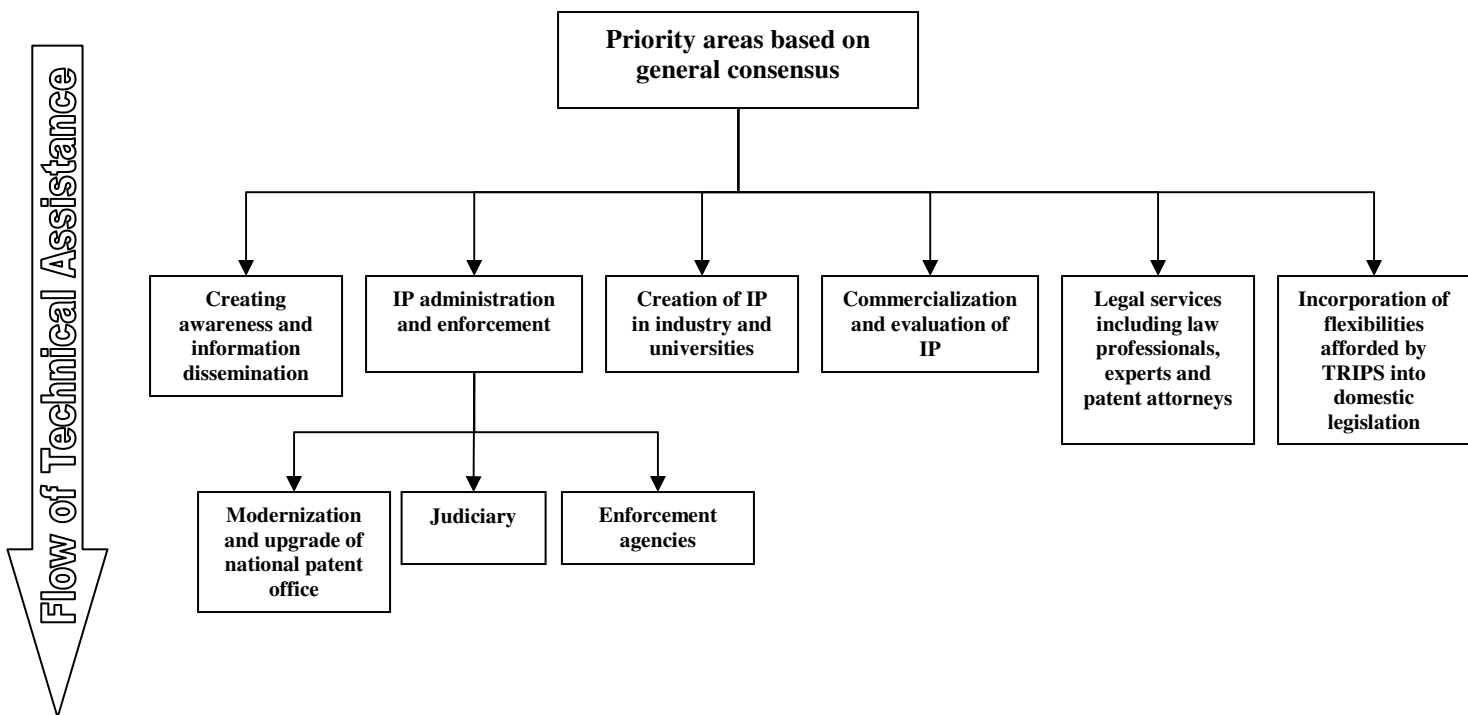


Figure 3: Priority areas to be targeted through technical assistance

5.1.3 RECIPIENT NEED AWARENESS AMONGST THE PROVIDERS

The awareness of recipients' needs and their systematic integration into TA activities varies considerably within the two principal modes of technical assistance delivery models: the bilateral North-South cooperation and the South-South Cooperation (involving IGOs such as South Centre, ACWL and regional cooperation agreements such as the Mercosur Agreement). Within the South-South cooperation, providers were highly aware of the needs and hence were able to provide advice suited to the particular recipient country. But on the other hand, the bilateral North-South cooperation often lacked a high awareness level of the actual needs of the recipients. The developed country institutions and countries were more guided by their institutional policy goals and mandates relating to intellectual property. This was highly evident from the instances of technical assistance provided by the US and its various agencies. The participation of the private sector in US technical assistance was also a significant factor for why these activities focussed highly on enforcement and protection of rights. Other reasons for such an approach from the US were:

1. The primary actors in US technical assistance are basically bound by their policy goals of providing technical assistance only on enforcement and protection of rights. For example, grants from the Department of State are tied to the provision of technical assistance relating to enforcement of rights.
2. The participation of right holder organisations such as BSA, ESA etc. further provides a tilt towards the strong right-regime.
3. Even the developmental aid agency USAID seems to be influenced by the right holders rather than impartially focussing on the developmental aspects in which IP could play a positive role.

Such a scenario of North-South cooperation has given rise to many of the problems that negatively affect the quality of the technical assistance delivered:

- a. Provider bias
- b. Content bias
- c. No local adaptations

Recommendations:

- a. *The strong success of South-South cooperation is based on the systematic integration and focus on the topical needs and concerns of the recipient countries and organisations. It is suggested that the efforts should be made to replicate this model at regional/national level by creating more such centres.*
- b. *On the other hand, the North-South cooperation especially provided by the US needs to be more open and more cohesive in its approach. Since most of the involved organisations in the US are based on right holders' interests, there is a need to restore balance in the US TA exercise by incorporating other agencies and civil society. This could be achieved by*
 - a. *engaging developmental related NGOs in the US, and*
 - b. *earmarking specific funds of the agencies for specific purposes other than enforcement and protection.*

5.1.4 SOUTH-SOUTH COOPERATION

Although numerous complaints were made in respect of TA provided by the developed countries and their agencies and institutions such as those concerning content bias, they were generally absent when compared with the work of South-South cooperation of IGOs such as South Centre. Complaints were not forthcoming, however, when developed country financial assistance was used for setting up specialised independent agencies such as ACWL which work in a completely transparent manner, or alternatively where the financial assistance has resulted in the creation of or support for NGOs with credibility and strong transparency such as CIEL, ICTSD etc. Due to the perceived independence and the quality of the institutional facilities being maintained by these institutions, there was a very high level of acceptance, confidence and success.

Recommendations:

4. *Given that such NGOs tend to be established at an international level mainly concentrated in Geneva, Switzerland, there is a need to replicate their models at the regional and national level so that the TA delivery exercise can be attuned and strengthened at the regional and national level policy debate relating to IP. Providing financial assistance and technical advice towards that end should be a priority.*
5. *Other centres can be established focussing on providing key advice on IP related issues such preventing abuse of IP rights, creating public-private partnerships and for IP management practices.*
6. *Since the US is one of the key players in providing TA, at the same time it is advisable to strengthen the role of NGOs in the US so that they can play an active role in restoring the balance of IP rights and the public interest.*

5.2 IDENTIFYING PARTNERS AND SECURING FUNDING FOR THE PROGRAMMES

5.2.1 AWARENESS REGARDING TA OPPORTUNITIES

This awareness varies not only from the country to country but also from the particular institutions/stakeholders within the country. For example, the governments especially in respect of the patent offices were generally aware of the needs, but on the other hand, NGOs were not quite considerably aware of the TA opportunities.

Recommendations:

- a. *There is a need especially for stakeholders such as NGOs, universities and public research institutions for strengthening information dissemination relating to the technical assistance opportunities. It is recommended that a central web portal be instituted for providing information on technical assistance including financial assistance for the institutions from developing countries. This would be important as many of the institutions are unable to spend manpower and resources looking for opportunities.*
- b. *At the same time, the technical assistance component should also focus on the capacity building of NGOs in the developing countries by providing specific financial assistance.*
- c. *TA should also focus on capacity building by helping in setting-up procedures, infrastructure and employment of dedicated staff for identifying opportunities of TA available at the international level. To this end, the possibility of building an international platform should be considered where recipients and donors can be brought together.*
- d. *Periodic seminars can be organised to provide general information on the TA opportunities that exist at the international and regional level.*

2. ***TA project initiation***

Most of the programmes were initiated either through informal talks or through formal procedures. Most often, the offers of TA were made by the providers rather than being initiated by the recipients. Recipients have been rather more passive than proactive. A number of reasons can be attributed to such a situation:

- a. Lack of TA opportunity awareness
- b. Lack of needs-assessment procedures
- c. Lack of cohesive action plan regarding IP

Recommendations:

- a. *As stated earlier, the capacity building in terms of need assessment of the recipients organisations coupled with the increased awareness that would be built through the established network, will make the recipients more proactive in their approach for sourcing technical and financial assistance. Since the project would be mostly on the terms of the recipients, one could see significant benefits flowing through the TA exercise.*

5.2.2 LACK OF INSTITUTIONS FOCUSSED ON DEVELOPMENTAL ASPECTS OF IPRS

Related to the point explained earlier, there has been a strong presence and focus of the institutions providing TA on enforcement and protection. The other important areas such as management of IP, valuation of IP, use of IP as a commercial and research strategy tool, creating public-private partnerships, strengthening the local innovation system, prevention of abuse of intellectual property rights, have been neglected. These programmes, if available, are generally taken as part of a very large project in which IP management is a small component. Moreover, there are hardly any recognised or well respected TA providers focussing on these issues. There is an urgent need to address this issue if a pro-IP scenario is to be established in the recipient country.

Recommendations:

- a. *As stated above, this lack could be addressed first by establishing certain IGOs or institutions through financial assistance. This could be achieved either through South-South participation, or following the model of ACWL.*
- b. *The other possibility could be for enhanced North-South cooperation whereby the developed countries could earmark some percentage of their TA funds specifically for these areas. Such a thematic approach in apportioning funds would ensure that these neglected areas would receive due regard in future.*

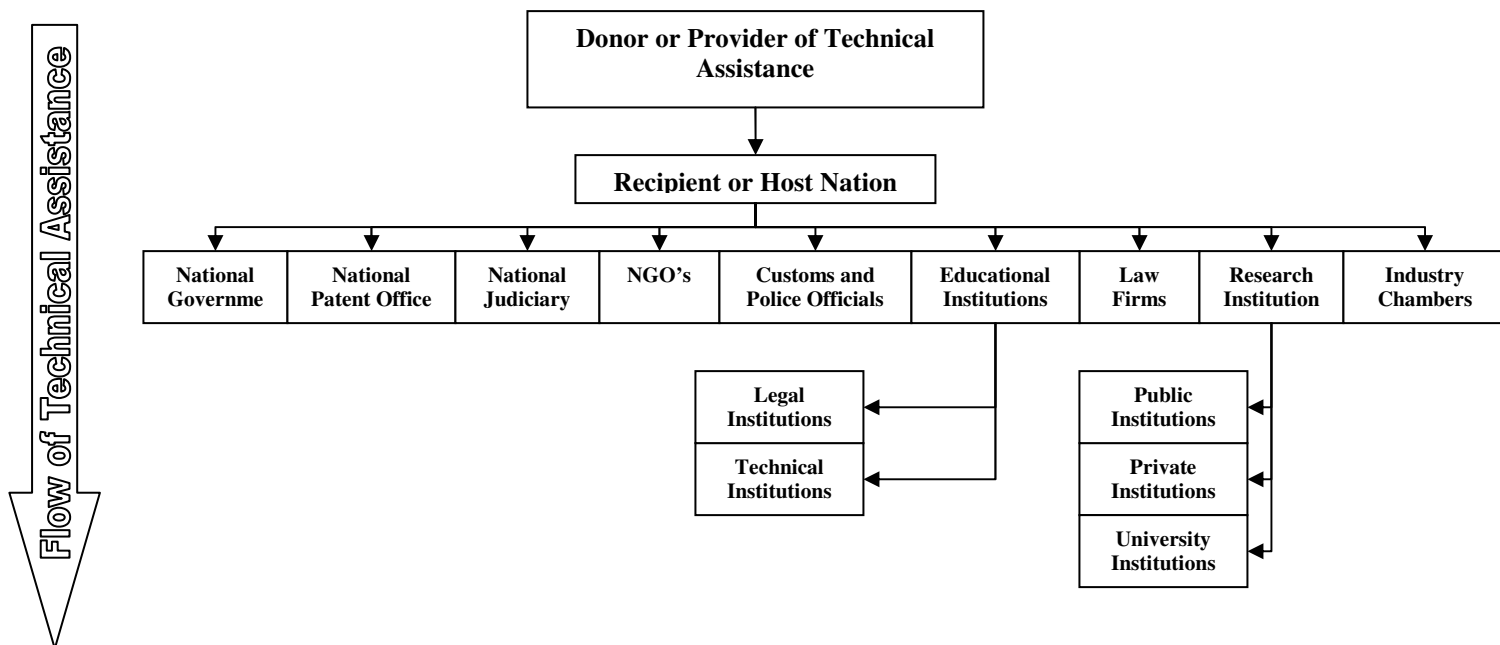


Figure 4: New approach to stakeholders in the recipient country

5.2.3 GOVERNMENT-CENTRIC APPROACH

There is too much emphasis on the government-centric approach in providing technical assistance to the recipients. This is coupled with the fact that the governments generally lack a specific holistic plan in respect of the technical assistance. It results in the exclusion of other stakeholders such as NGOs, research institutions, public educational institutions. Their participation in the TA delivery exercise is very important to ensure the developmental impacts of IP are felt including the diffusion of benefits of IP to all parts of society.

Recommendations:

- a. *Although in many cases, due to the international character of the TA involved, it is difficult not to undertake programmes without the participation of government, but this situation is not mandatory or warranted where cooperation is sought with the NGOs, private institutions and autonomous research institutions. It is advisable that positive efforts should be undertaken to enhance participation of other stakeholders such as NGOs, law firms, industry chambers, autonomous research institutions so that the positive impact of TA can permeate across the broad spectrum of recipients and increases the quality of debate of IP in the developing and least-developed countries.*

5.2.4 TA COORDINATION

There appears to be a serious lack of coordination on the part of the providers and recipients. TA often occurs in an ad-hoc and random fashion. There is little coordination amongst the different stakeholders from both provider and recipient sides. From the provider's perspective, there is no coordination amongst them at the international level. This scenario has resulted in two negative implications:

- a. TA Skewed towards a few countries
- b. Duplication of efforts

Recommendations:

- a. *This is an area which also requires considerable inputs from the both the recipients and the providers. The WTO has a database that provides information on technical assistance activities, but the information presentation is not obligatory on the institutions/countries or agencies. It is envisaged that any technical assistance being provided should as a matter of obligation be reported to the WTO.*
- b. *On the other hand, regional level information centres could be established from whereby the TA could be regulated and coordinated. A portal providing information on these aspects is a necessity and highly desirable.*

5.3 NEGOTIATING TECHNICAL ASSISTANCE PROGRAMMES

5.3.1 CONTENT AND PROVIDER BIAS

The training programmes tend to be skewed towards the enforcement and protection of rights without focussing on the other critical areas such as IP valuation, creation of IP, strengthening of the national innovation systems, etc. This scenario is also posing considerable hardship in building a pro-IP scenario in the recipient country because they are unable to appreciate the local benefits that can arise through the better management of IP. The primary reason for such emphasis on the TA is primarily due to the domination of the right holder's interest mainly arising from the developed countries.

Recommendations:

- a. *As stated above, the effective participation of the recipients from the project-conception to project post-follow up, capacity building in establishing need assessment procedures and creating awareness about the opportunities that are available in this area, will significantly address the issue of bias prevailing currently in the TA delivery exercise. Such concerns were found to be mitigated where a local partner was spearheading the programme. Therefore, creating a partnership with local bodies for delivering TA might be a good way forward.*
- b. *At the same time, the use of the term "Partnership Programmes" rather than "Technical Assistance", found more amenable attitude for future programmes amongst the interviewed stakeholders.*

5.3.2 CORE CONCERNS OF TA RECIPIENTS

The TA recipient organisations have various concerns regarding the TA programmes conducted in the past. Most of them thought that the credibility of the TA provider is critically important. The other important concerns were: TA is not primarily focussed on the recipients' needs; it is generally driven by the policy agenda of the provider-institutions; it is not adapted to take into account the local conditions; TA programmes are prepared and delivered without any consultations by the providers; and the technical assistance is generally made with many strings attached to it that interferes with the independence and functioning of the recipient institutions. However, these factors weighed differently for different stakeholders. For example, the NGOs were highly sensitive towards their independence in relation to any future technical assistance including financial grants; while the governments had strict criteria focussing on the credibility and suitability of the provider for executing a particular project.

Another major concern raised by most of the stakeholders was the use of the term "technical assistance". According to them, the term deprives an equal status to the recipient stakeholder, which is often reflected in the behaviour of the provider institutions. It was suggested that a term such as "partnership programmes" should be used for defining future technical assistance activities.

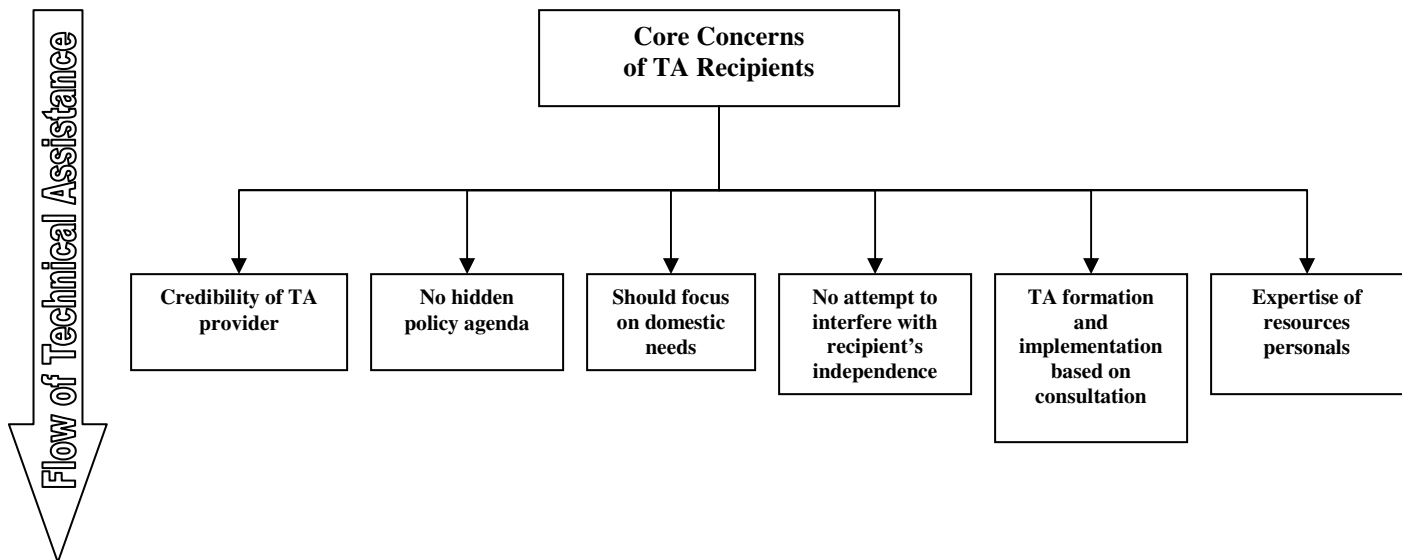


Figure 5: Core concerns of TA recipient stakeholders

Recommendations:

- a. *The technical assistance providers should be aware of these core concerns of the recipients. The programmes of assistance should be designed effectively and with due participation of the recipients to address these concerns.*
- b. *The participation should be ensured from the very stage of the project conception to the project execution. Since there will be participation of the recipients organisation at each stage, their concerns arising at every stage will be adequately catered to and responded to.*

5.3.3 SOCIAL, CULTURAL AND POLITICAL FACTORS AFFECTING DELIVERY OF TA

There were other factors that could affect the execution and coordination of technical assistance programmes. These factors do not directly arise from the relationship between recipient and provider, but nonetheless could influence the position of the recipient stakeholder to a major extent, both prior to and during the execution of the programme. For example, the domestic political scenario is set to play an important role while negotiating a programme with the Indian government, where it has to seek views of its coalition partners. Thus, at any given stage, the Indian government has not only to respect the sensibilities of its coalition partners, but has also to evaluate its foreign policy issues that could arise from any future collaboration in respect of the technical assistance programme. Therefore, the concerned ministry will also seek clearance from the foreign ministry.

Recommendations:

- a. *Since in few instances these factors were overlooked and resulted in project delays, it is strongly advised that providers should understand and identify the stakeholders apart from the recipients who might be involved in the decision making or providing clearance to the technical assistance projects. This is of particular importance especially where the project directly involves a recipient's government organisation or department.*

5.4 ACTUAL EXECUTION OF THE TECHNICAL ASSISTANCE PROGRAMME

5.4.1 TECHNICAL ASSISTANCE PROGRAMME DESIGN AND METHODOLOGY

TA project execution was found often to be highly skewed towards classroom type learning sessions and seminars. This basically resulted in the unidirectional flow of information without providing much emphasis on the information exchange or participation of the recipients.

Recommendations:

- a. *It is to be emphasised that although TRIPS provides minimum standards on the intellectual property rights, there is a considerable variance in its actual implementation by many nations incorporating different legislative framework, enforcement procedures (criminal and civil procedure code, evidentiary requirements) and the use of flexibilities enshrined within TRIPS. This requires that the training exercise should be a mix of various techniques such as brainstorming sessions, discussions and case studies that are adapted to local situations. Incorporation of such mechanisms would ensure effective delivery of technical assistance and provide an opportunity to integrate local situations into the programme.*

5.4.2 PROGRAMME DURATION

It was also noted that with a few exceptions, most of the TA programmes were of short-term duration varying from either one day seminars to few week courses. Within these programmes, there was too much emphasis on knowledge imparting, and far less on long term skill development.

Recommendations:

- a. *The short term programmes are beneficial for imparting knowledge but they are not advantageous for imparting skills for example, in assessing patent application pertaining to a particular field of technology. There should be an urgent focus on undertaking long term programmes within the recipient countries and sustained level of programmes for the recipient organisations if new skills are to be developed for improving IP administration.*

5.4.3 DOMINATION OF TA DELIVERY BY LAWYERS

There is too much domination by trade-industry lobbyists and the lawyers who are more active in the facilitation and conduct in the conduct of TA. Such predominance ignores or actually pre-empts the necessary policy dialogue relating to developmental aspects of IP thereby focussing on enforcement and IP protection. Such an arrangement also makes it unlikely to move away from the narrow confines of IP enforcement and protection. This is actually observed in the case of technical assistance provided by the US.

Recommendations:

- a. *Today IP criss-crosses a diverse range of topics such as health, agriculture and access to information. Apart from that, the creation, management, exploitation and regulation of IP require personnel with diverse professional backgrounds such as management, economics and science. Thus, the TA providers should draw on the strengths of different experts depending on the content of TA delivery exercise.*
- b. *As stated above, earmarking of funds for different issues would help in drawing on the experiences of these professionals who have dual expertise in IP and the related subject matter such as agriculture or management.*

5.4.4 OBLIGATIONS OF RECIPIENTS

Although the effectiveness of TA is compromised to a large extent by the providers' conduct, yet in many instances the recipients were responsible and could not be absolved of the blame. The issues that frequently affected the quality of the TA delivery programme was the commitment levels of the participating personnel, strong bureaucracy, frequent changing of the lead ministry officials, non-coordination between various government ministries, sending non-appropriate personnel abroad for training were some of the issues that impacted the training and technical assistance. The absence of a national level IP policy and an integrated approach to TA needs has an adverse affect on the overall impact of the TA.

Recommendations:

- a. *The governments and the organisations should formulate long term IP strategy and accordingly once the targets and policies are defined with individual roles, effective participation can be ensured. Such a mindset could only be countered if the TA programme can emanate from needs-orientation of the recipients and emphasise on the benefits that would accrue to the nation in the long term by actual demonstrations.*
- b. *At the project level, many of these issues could be addressed by undertaking effective participation of the recipients and joint evaluation exercises whereby issues can be pointed out and addressed.*
- c. *Since it is frequently the higher authorities that guide the policy implementation, it is very important to ensure their participation in the programmes.*
- d. *More emphasis can be placed to conduct programmes within the country by sending the experts rather than sending invitations for the participation in foreign countries.*

5.4.5 WIPO AND ITS TECHNICAL ASSISTANCE PROGRAMME

Technical assistance relating to legislative reforms by WIPO, a UN institution, and other bilateral providers has not adequately focussed on tailoring the IP regimes of the nations to their developmental needs. The TRIPS flexibilities within which the countries could operate were either not explained or overlooked. In certain cases, even TRIPS-plus measures were introduced in the recipient country resulting in either excessive protection of subject matter even though there was hardly much creativity on these areas, or resulted in the maintenance of administrative structures resulting in high drainage of resources.

Recommendations:

- a. *There is not much transparency and information available on the TA delivery exercise taken by WIPO. Although WTO has initiated an independent evaluation of its TA exercise and has provided all information related to its TA exercise, WIPO has so far abstained from undertaking such an evaluation and information dissemination exercise. There is an urgent need to review the WIPO role in TA delivery as it is by far the largest and strongest player in the field.*
- b. *Although the development agenda seeks to redefine the role of WIPO, there is a further need to reorganise the administration and the practices of WIPO in providing TA.*

5.5 PROGRESS MONITORING, EVALUATION AND POST-FOLLOW UP OF THE TA PROGRAMMES

5.5.1 EVALUATION DURING PROJECT EXECUTION AND POST-EVALUATION

Almost every technical assistance programme was subjected to very limited or almost negligible evaluation. Barring one or two projects, none of them involved any independent evaluators to undertake an in-depth assessment of the delivery or project execution. This has failed to provide any kind of quality feedback mechanism to improve future TA programmes.

Recommendations:

- a. *Despite a decade of technical assistance being provided by the developed countries and their institutions, there is hardly any remarkable progress in both the IP creation and IP protection in these countries. It is advisable that the programme once sponsored or undertaken should as a necessity have strong in-built independent evaluation procedures.*
- b. *It is advisable that evaluation should be undertaken by independent experts.*
- c. *Furthermore, there is a need felt to incorporate strict procedures for monitoring and evaluation to check regular progress of TA programmes through report preparation and/or financial audit reports. Even surprise personal inspections might be a good idea in order to obtain a first hand account of the efforts. However, these procedures should be put in place in consultation so that the participating institution does not feel that they are being forced into entering this scheme or that*

their independence is compromised. It is better to emphasize that the procedures are only to regulate the delivery of TA or to check financial viability rather than structured to control the contents of the TA.

- d. It might also be a good idea to nominate an independent agency to review the progress of the project/programme.*

5.5.2 POST-FOLLOW UP THROUGH “DEVELOPMENT IMPACT ASSESSMENTS”

Once again this critical area has been completely ignored. There have been no mechanisms or qualitative or quantitative targets being set in order to understand the development impact of the delivered TA and the actual implementation of the knowledge and skills acquired by the recipients.

Recommendations:

- a. This area could be addressed partly by providing long term programmes that would have in-built periodic evaluation strategies and benchmarks. However, at the same time, certain qualitative & quantitative targets could be specified in consultation with the recipients. For example, in terms of backlog of patent applications, a time period could be specified based on the training and resources being provided to the patent office.*
- b. Similarly, statistical basis could be used for measuring improvement in the enforcement training, while for research institutions, the best IP management practices could be incorporated with the targets being defined as establishing technology transfer offices and IPR institutional policies.*

6. ANNEXURE

6.1 ANNEXURE I: QUESTIONNAIRES

6.1.1 QUESTIONNAIRE FOR RECIPIENTS

1. “Past Experiences on Technical Assistance”

Are there any technical assistance programmes that your organization received in the past? If yes, could you please provide the details as to the providers, duration, financial and other details?

2. “Necessity Assessment”

- a. How the analysis and determination of the need for technical assistance is carried out in your organization?
- b. Are other agencies (government or non-government, national or international) involved in your need assessment exercise? If yes, what kind of inputs do you receive and what kind of mechanisms are in store to ensure this cooperation?
- c. What are the main priorities areas for your organization in terms of technical assistance re intellectual property?

3. Approaching and Negotiating with Providers for Technical Assistance

- a. How do you approach different providers and donors? Do you generally bid for the projects or the provider institutions contact you?
- b. How do you evaluate the proposals of assistance? Are there any criteria's and guidelines involved?
- c. What kind of difficulties/concerns have you encountered for approaching the technical assistance providers or for bidding, or during negotiations?

4. Evaluation Exercise During and on Conclusion of Technical Assistance Project

- a. In what areas maximum assistance is provided? In what ways was it most helpful or least helpful? What could have been improved?
- b. How closely the technical assistance that you have received matched your or the countries core needs and priorities?
- c. What is your evaluation of the performance of your organization regarding technical cooperation both during and on conclusion of the TA project? Were you able to make optimal use of the available assistance? If not, what prevented it from doing so?
- d. What is your evaluation of the provider of technical cooperation? What are your views with respect to the quality and independence of the assistance provided?

6.1.2 QUESTIONNAIRE FOR PROVIDERS

1. “Past Experiences on Technical Assistance”

If you can please provide details of any past technical assistance programmes that your organization had provided. For example:

- ✚ receivers of the programmes.
- ✚ duration of the programmes.
- ✚ financial and other details of the programmes.

2. Approaching and Negotiating with Recipients or Financial Providers for Technical Assistance

- a. How do you approach different receivers/project donors for TA programmes? Do you generally bid for the projects, or have internal financing? Is the bidding done in collaboration with the receiver institution?
- b. How do you evaluate/prepare the proposals of technical assistance and choose the recipients? Are there any criteria's and guidelines involved? Does the receiver institution have any say in these criteria guidelines?
- c. What kind of difficulties/concerns have you encountered for approaching the technical assistance receivers or for bidding, or during negotiations at each level? What were the chief concerns of the receivers, if any? How did you approach them?

3. “Necessity Assessment for the Recipients or Focus Areas for Technical Assistance”

- a. What are the main priorities areas for your organization in providing technical assistance to the recipients?
- b. How the analysis and determination of this need for technical assistance is carried out in your organization?
- c. Are other agencies (government or non-government, national or international) involved in your need assessment exercise? If yes, what kind of inputs do you receive and what kind of mechanisms are in store to ensure this cooperation?
- d. Is there a mechanism to integrate the needs of recipients into the technical assistance programme? Can you provide some past examples?

4. Evaluation Exercise During and on Conclusion of Technical Assistance Project

- a. In what areas maximum assistance is provided by your organization? Was the subject matter of technical assistance decided in consultation with the recipients?
- b. In what ways was the programme most helpful or least helpful? What could have been improved?
- c. How closely the technical assistance that you had provided matched the recipients or their countries core needs and priorities?
- d. How was the evaluation exercise designed and carried out? Was any consultation with the receiver organisation being done before deciding any evaluation programme? Did you encounter any problems?
- e. What is your evaluation of the performance of your organization regarding technical cooperation both during and on conclusion of the TA project? Were you able to make optimal use of your position vis-à-vis the recipient? If not, what prevented it from doing so?

- f.** What is your evaluation of the recipient of technical cooperation? Did you receive any feedback with respect to the quality and independence of the assistance provided from the recipient? Were they able to achieve the optimum results?