



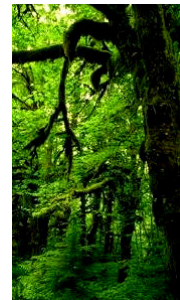
International Frameworks for Access and Benefit Sharing

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Aims of this presentation

- *To show how the CBD and Bonn Guidelines relate to other international frameworks*
- *To highlight interfaces between these frameworks with regard to ABS*
- *To point out potential conflicts, as well as synergies and core challenges for international negotiations and implementation of ABS*



Outline

1. History of the CBD, and of ABS negotiations
 - Including the interface with IPR
2. The International Treaty on Plant Genetic Resources for Food and Agriculture
 - The multilateral system of access and benefit sharing
 - Farmers' Rights
3. The FAO Commission on Genetic resources for Food and Agriculture
4. Other international frameworks/standards
5. Conclusions: Key challenges



How CBD came about

- Conservation approach at the beginning focused on wild biological resources: Initiative by IUCN in 1981
- 1985: First draft convention by the IUCN: UNEP became interested
- 1987: Our Common Future
- 1988: UNEP Ad Hoc Group established to investigate desirability and possible form of a convention



CBD and the 'arms race'

- Uruguay Round of GATT, 1986: Included counterfeit goods
- Led to demand for a TRIPS Agreement under the new WTO
- Developing countries opposed, but accepted in 1989, provided that plants and animals were exempted
- Nevertheless, plant varieties were made subject to IPR
- Response: Demand for ABS in a CBD



The results: The CBD

- Conservation and development aspects:
 - Sustainable use and respect for trad. knowledge
 - Costs of conservation to be borne jointly through benefit sharing and cooperation.
- The CBD to cover all biological and genetic resources except for man



CBD: the objectives

- Conservation of biological diversity
- Sustainable use of its components
- Fair and equitable sharing of the benefits arising out of the utilization of genetic resources



CBD – Article 15:

- Sovereign rights of states over their natural resources
- Each party to facilitate access to genetic resources of which they are countries of origin – or which they have received in accordance with the CBD
- Access to be provided upon mutually agreed terms (MAT) and subject to prior informed consent (PIC)
- Each party to develop legislation and policy measures for sharing in a fair and equitable way the results of research and development and the benefits arising from commercial utilisation.
- Reference to articles 16, 19, 20 and 21 of the CBD.



CBD – Article 8j:

- Parties to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities relevant for biological diversity
- Promote their wider application with the approval & involvement of their holders
- Encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.



Bonn Guidelines on ABS

- Adopted at COP 6 in 2002
- Voluntary and meant to assist countries in establishing legislation and policies on ABS
- Specify:
 - Roles, functions and tasks of authorities to ensure PIC/MAT
 - Conditions for ABS
 - Elements of a material transfer agreement
 - List of monetary and non-monetary benefits
 - Draft elements of action plan for capacity building



International regime on ABS

Proposed instruments for user countries:

- Disclosure of origin – or legal provenance – as condition for intellectual property rights
- Import regulation via customs procedures



International regime on ABS

Proposed instrument for provider countries:

- Certificate of origin – or legal provenance



International regime on ABS

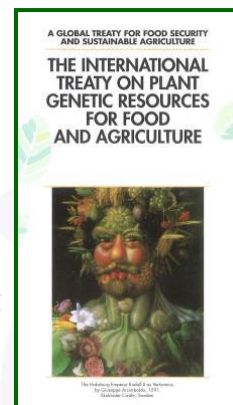
Proposed international-level instruments:

- Monitoring mechanism – information flow
- Support mechanism / Ombudsman
- Dispute settlement mechanism



The Plant Treaty and the MLS

- The first legally binding agreement with mandatory ABS
- Objectives: Conservation, sustainable use and benefit sharing in harmony with CBD
- Difficult to bring in harmony:
 - How to identify countries of origin?
 - All countries are interdependent: Access is the most important benefit
 - Access a precondition for PGRFA, and for food security



The Multilateral System

- A common pool of genetic resources of 64 crops
- ... that are in the public domain and under the control of the Parties.
- Access is to be provided expeditiously
- Material can be shared but on same conditions
- Intellectual property rights are prohibited on the material in the form it is received.
- Benefits shall be shared with custodians of genetic resources – not with ‘providers’



The Multilateral System

- Standard Material Transfer Agreement enables expeditious access (PIC implicit)
- Benefit sharing is fixed in terms of shares from the sales of commercialised products
- A Third Party Beneficiary monitors compliance with the Agreement
- A dispute settlement procedure has been established for the case of non-compliance



The Multilateral System

- An example of ABS adapted to a specific category of genetic resources, and its use
- Hundred thousands of accessions transferred each year – transparent system.
- 11 cases of benefit sharing
- But will the benefit sharing mechanism work as required
- A treaty is a platform for further development of its contents...



MLS: Implications for CBD-ABS

- Synergies: Components of the MLS might be adaptable to an international regime on ABS
- Challenge: Not all crop genetic resources are covered by the MLS: Important to give them adequate attention
- In particular it is important:
 - Not to create unfavourable conditions for gene banks collecting crop genetic resources for *ex situ* conservation
 - Not to create dis-incentives for farmers to share their seeds among themselves



Plant Treaty – Farmers’ Rights

- Recognises the enormous contribution of farmers to genetic diversity
- The responsibility for realising Farmers’ Rights rests with the Governments.
- Four elements (measures):
 - Protection of traditional knowledge
 - Fair and equitable benefit sharing
 - Participation in decision making
 - Save/exchange/sell farm-saved seed



Why Farmers’ Rights?



Approaches to Farmers' Rights

ITPGRFA measures	STEWARDSHIP APPROACH	OWNERSHIP APPROACH
Protection of traditional knowledge (§9.2a)	Protect knowledge <u>against extinction</u> and thus to encourage its further use	Protect knowledge <u>against misappropriation</u> & enable holders to decide over its use
Equitable sharing of benefits from the use of plants (§9.2b)	To be shared between <u>stewards and society</u> , through MS and ODA	To be shared between <u>'owners' and 'buyers'</u> upon PIC and MAT
Participation in decision making at the national level (§9.2c)	Important to ensure <u>legal space</u> and <u>rewards</u> to farmers	Important to ensure adequate <u>legislation on access and IPR</u>
Customary use of propagation material (§9.3)	<u>Uphold legal space</u> to ensure farmers' continued contributions	Introduce farmers' <u>IPR</u> along with <u>PBR</u> - in balance

Farmers' Rights and ABS

- Potential conflict: An ownership approach in ABS issues might reduce exchange of seeds and related knowledge among farmers
- Potential synergy: Both processes strive towards an understanding of the need for access and the fair and equitable benefit sharing.
- Challenge: To develop different forms of ABS for different uses - in harmony



International agreements so far...

FOUR AGREEMENTS pertaining to genetic resources	Conservation, sustainable use and ABS	Intellectual property rights
Biological diversity in general (includes agrobiodiversity)	Convention on Biological Diversity (CBD)	Article 27.3(b) of the WTO-TRIPS Agreement
Plant genetic diversity for food and agriculture	International Treaty on Plant Genetic Resources for Food and Agriculture (IT)	Union for the Protection of New Varieties of Plants (UPOV)

The FAO-CGRFA and ABS



- Commission on genetic resources for food and agriculture under the FAO
- Genetic resources for food and agriculture:
 - Plant genetic resources for food & agriculture
 - Animal genetic resource for food & agriculture
 - Forest genetic resources for food & agriculture
 - Aquatic genetic resources for food & agriculture
 - Microorganisms relevant for food and agriculture
 - Invertebrates relevant for food and agriculture

The FAO-CGRFA and ABS



- Special information seminar with background studies preparing for CGRFA-12
- Resolution on ABS focusing on interdependence in light of climate change, food security and need for access to GRFA
- Invites the COP and AdHocWG to take into account the special nature, distinctive features, and problems of genetic resources for food/agr. needing distinctive solutions.
- Suggests sectoral approaches for differential treatment

The FAO-CGRFA and ABS



- Potential conflict: If the final ABS regime is not conducive to the management of GRFA, the CGRFA might seek to create its own ABS-regime. A large component might move out of the ABS regime
- Potential synergy: Shaping a regime that is conducive to the management of GRFA would strengthen the prospects for the ABS-regime.
- Further challenge: To create conducive conditions for the management of GRFA also at the national level.

The custodians of biodiversity

- Art. 8.j of the CBD and Art. 9 of the Plant Treaty provide for the recognition and rights of the custodians of biodiversity
- They have support in two international frameworks:
 - United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007
 - Convention 169 of the ILO on Indigenous and Tribal Peoples (ILO 169), 1989
- All four address participation, rights to resources/knowledge and benefit sharing



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ABS and the larger contexts

- Payment for Ecosystem Services (PES):
 - UN Programme for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD)
 - ABS can be seen as another PES-approach
- Prospects for conflicts: Competing for funds
- Prospects for synergies:
 - Enormous amounts used for conservation
 - A form of benefit sharing with countries
 - A rights based approach may lead to benefit sharing with custodians of biodiversity
- Challenge: To develop an integrated approach

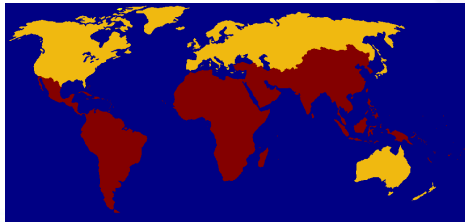


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Futher frameworks/standards

- FairWild Standard on harvest and trade of wild plants: Sustainability and benefit sharing
- Union for Ethical BioTrade: Companies sourcing with respect: Sustainability, TK & BS
- World Health Organization: Work underway on benefit sharing for pharmaceuticals



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Conclusions: Key challenges

- To learn from the ITPGRFA when negotiating an international regime on ABS, and if possible create a stronger benefit sharing mechanism (hopefully influencing ITPGRFA)
- To create conditions for ABS that take into account the special needs related to agrobiodiversity and farmers' rights
- To seek making use of REDD-opportunities for rights based biodiversity management
- To create conditions for scaling up the development of ABS standards from the user side



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Thank you for your attention!