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# Complexity in governance of genetic resources: CBD/ABS and sector approaches under the FAO

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# Research question and approach

- Complexity: Improved management through fine-tuning approach to complex problems, or increased conflicts through forum shopping?
- Here: We look into the root causes of the conflicts and identify who benefits from the results:
- Is there agreed division of labour between international regimes (treaties) involved in governing genetic resources?
- or is sectoral specialization result of forum shopping by powerful actors?



# International objectives for genetic resources

- **Access:** Farmers, breeders and bioprospectors need **access** to genetic resources for food and medicine production, genetic improvement and innovation.
- **Innovation and legal protection:** Breeders and bioprospectors need legal **protection** (intellectual property rights) of genetic material to assure return from investments in genetic improvement and stimulate innovation.
- **Conservation:** Biodiversity is threatened and there is a need to create incentives for conservation through **equitable benefit sharing**
- Conflict between providers and users. How to balance legal protection, innovation, access, equity and conservation?



# Complexity and genetic resources governance: measuring effects

- We take ABS/CBD/NP as measuring rod for assessing the effectiveness of related regimes.
- We argue that lack of mutual supportiveness may have negative impact on ABS/CBD/NP.
- The regime complex triggers remaining conflicts in the ABS regime, namely over:
  - *user measures (e.g. disclosure of origin),*
  - *definition of scope – what is covered by ABS?*
  - *need for sectoral approach to govern genetic resources?*



# Biodiversity and the ABS regime: the basic conflict

- The Access and Benefit-Sharing regime of the CBD was a breakthrough for developing (provider) countries' principles:
  - Because ABS encompass the of value of genetic resources, including domesticated material – and
  - Because the ABS regime links access to benefit sharing.
  - User countries preferred free access to continue while maintaining IPR on own genetic material.
- This is where the CBD/ABS regime interacts with access to seeds under the FAO, to pathogens under the WHO, and with intellectual property rights (IPR) systems under the WTO/TRIPS, UPOV and WIPO.
  - These regimes have different approaches to establish economic conditions on legal use of genetic material.



# ABS/CBD/NP and IPR regimes

- Complexity here has hardly increased the conflict level compared to the original struggle;
- but neither have users wanted to apply the stronger IPR systems to ease user compliance with the ABS regime.
- The ABS-IPR relationship is less one of turf battles and forum shopping;
- but it is a missed opportunity to strengthen mutual supportiveness and aid problem solving effectiveness.
- The regimes involved in governance of genetic resources are all affected by this original provider vs user/ South vs North conflict line.

# FAO ITPGRFA vs IPR and ABS

- **FAO: access to breeding material (seeds)**
  - 1983–89: from common heritage of mankind to IPR
  - 2001: treaty on plant genetic resources (ITPGRFA)
  - Access hampered by ABS and/or IPR?
- **Weak defence against IPR (“in the form received”): IPR not part of FAO debates**
- **Different definitions of ‘benefit sharing’:**
  - CBD’s ABS links access to mandatory benefit sharing and providers.
  - ITPGRFA: voluntary benefit sharing; access to breeding material is a benefit in itself. Users prefer free access while maintaining IPR on own genetic material.



# Plant Treaty: Original scope and rationale

- FAO ITPGRFA original scope: genetic material in gene banks (*ex situ*) collected prior to entry into force of CBD.
- EU wanted 287 food crops; Africa wanted 9. Result: 35 food + 29 forage crops (Annex 1).
- Rationale:
  - multiple sources,
  - interdependent user/providers,
  - incremental breeding process.



# ITPGRFA & CGRFA: expanding scope

- Attempts to expand Plant Treaty model to all genetic resources for food and agriculture:
  - ITPGRFA/MLS: include all pgrfa, *in situ* and wild material of Annex 1 crops,
  - CGRFA: to all GRFA (microorganisms, invertebrates, aquatic, and animal grfa).
- Benefit-sharing in ITPGRFA is voluntary and decoupled from provider.
  - Attempts also to establish system to get plant breeders to share benefits.
- Forum shopping?



# Concluding comments

- The ABS complex has not increased effectiveness
- Mixed picture but more conflicts than synergy
- Lingering North–South conflict, with South tending to be on the losing end
- Future research: How to secure effective and legitimate division of labour between regimes governing genetic resources?



# Thank you!

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