

Types of users, types of uses and types of resources – day 1

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Training on Mutually Agreed Terms: Contracts for making ABS functional

Nadi, Fiji, Cape Town, 5th – 8th August 2014

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CAPACITY
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Programme Implementing
the Biodiversity Convention

FNI's ABS Publications

- The **Australian ABS** Framework - A Model Case for Bioprospecting?, By Christian Prip, G. Kristin Rosendal, Steinar Andresen and Morten Walløe Tvedt, *FNI Report 1/2014*
- Medaglia, Jorge Cabrera, Morten Walløe Tvedt, Frederic Perron-Welch, Ane Jørem and Freedom-Kai Phillips. *The Interface between the Nagoya Protocol on ABS and the ITPGRFA at the International Level - Potential Issues for Consideration in Supporting Mutually Supportive Implementation at the National Level*. Lysaker, Fridtjof Nansens Institutt, 2013. (FNI Report, no. 1/2013)
- Book: **Global Governance** of Genetic Resources Access and Benefit Sharing after the Nagoya Protocol. Edited by Sebastian Oberthür and G. Kristin Rosendal Routledge, 2014.
- **Implementing** the Nagoya Protocol on ABS: A Hypothetical Case Study on Enforcing Benefit Sharing in Norway (with Ole Kristian Fauchald 2011)



FNI's

- The **Aust**
Bioprospec
Andresen a
- Medaglia,
Welch, An
the Nagoya
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Nansens In
- Book: **Glo**
Benefit Sha
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- **Implemen**
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ROUTLEDGE RESEARCH IN GLOBAL ENVIRONMENTAL GOVERNANCE

Global Governance of Genetic Resources

Access and benefit sharing after the Nagoya Protocol

Edited by
Sebastian Oberthür and
G. Kristin Rosendal



Initiative tools to be developed

- Check list
- Contract study book
- Sector briefs
- Templates
- Negotiating tool
- Contract training:
 - How and who? A group of persons that will be negotiating

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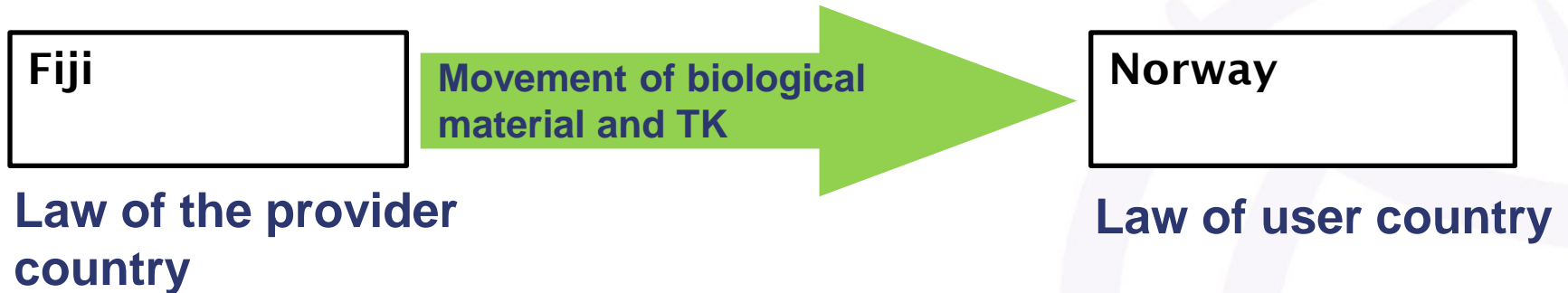


The situation in GR Policy and Law

International law

- The principle of sovereignty
- Sovereign rights over GR
(permanent sovereignty to nat. resources)

Regional level



Basic terminology

- Genetic resources
- Access
- Benefit sharing
- Traditional Knowledge

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Basic terminology

- Genetic resources
 - “**genetic material**” means any material of animal, plant, microbial or other biological origin containing functional units of heredity;
 - “**genetic** includes-
 - (a) any genetic material; or
 - (b) the genetic potential or characteristics of any species
- Access
- Benefit sharing

The situation in GR Policy and Law

International law

- The principle of sovereignty
- Sovereign rights over (natural resources) sovereignty to nat.

Hinder for cross-border enforcement of:

- law,
- policy,
- judgments and
- adm. decisions

Fiji

Mov
mate

Norway



ABS legal tools:

- **Prior informed consent (PIC) at the point of time of access**
- **Mutually agreed terms (MAT) at the point of time of access**
- **Mutually agreed terms (MAT) at the point of time when benefit sharing is becoming actualised – CBD 15.7 second para.**
- **(standard) material transfer agreement (MTA) non-CBD, ITPGRFA**



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Requirements to the contract

What is required in the contract?

How will this contract be treated under the jurisdiction or legal situation?



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How will a contract come around or be negotiated?

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Support by the NP and CBD

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National legislation

Norway

Supportive user country measures



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Norway

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What is required in the contract?

How will this contract be treated under the jurisdiction or legal situation?



Contract law

International law

International private law

- different systems for making contracts work across borders

Fiji

Private law Agreement
MAT (PIC)

Norway

Enter into a contract

how to regulate the object transferred and allowed acts regards that object

Enforcement of contracts

how to ensure that the user follows the rights of the Sands



Challenges for ABS Contracts I:

- **Challenge of creating incentives for the user to share and thus contribute to conservation**
- **The time-gap challenge: access, utilisation and benefit sharing**
- **The cross-boarder challenge: sovereignty, jurisdiction, Parties and private parties**
- **The access-challenge/failure of ABS**
- **No background law on GR and TK contracts**



Challenges for ABS Contracts II:

- Procedural contractual issues (how to negotiate)
- Substantive issues (what is the content in the text)

What is the idea of an ABS Contract?

- **Regulate the research and development**
 - It is a utmost dynamic object in the contract
 - The raw material is unknown and the product is to be developed
- **High degree of uncertainty – how to make good rules?**
- **How to construct mutual trust and collaboration?**



Contract law

International law

International private law

- different systems for making contracts work across borders

Fiji

Private law Agreement
MAT (PIC)

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Enter into a contract

how to regulate the object transferred and allowed acts regards that object

Enforcement of contracts

how to ensure that the user follows the rules of Benin also those set in a contract



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Fiji

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Requirements to the contract

How will a contract interact with the IPR systems?

Norway

How will this contract be treated under the jurisdiction or legal situation?



The situation in GR Policy and Law

International law

- **Two or more worlds are meeting**
- - **Indigenous leaders and representatives**
 - **Corporate lawyers/ companies**
 - **Human right law**
 - **International environmental lawyers**
 - **Biotechnologists/ scientists/ biologists**

S
R

contract



be treated under the jurisdiction or legal situation?



Types of actors in ABS/GR:

- Let's have a brainstorming
-
-
-
-



The variety of actors involved in ABS agreements:

- **Academics**
- **Master student and PhD**
- **Small scale company**
- **Public breeding companies**
- **Large commercial enteties**
- **Multinational companies**
- **Traders**
- **Collections**



Their different approaches to ABS in practice:

- **Academics** ➤ Taxonomic, scientific, applied
- **Master student and PhD** ➤ A master/ PhD-thesis
- **Small scale company** ➤ Single product development
- **Public breeding companies** ➤ New varieties for farmers
- **Large commercial enteties** ➤ Commercial large scale prod.
- **Multinational companies** ➤ Products for global markets
- **Traders** ➤ Provide others with GR / TK
- **Collections** ➤ Conserve, classify, make available



The demand for genetic resources (GR):

- Academic ➤ Taxonomic, scientific, applied ➤ **Search for the new stuff**
- Master ➤ And master/PhD thesis
- Small scale ➤ Single product development ➤ **Discover species and sub-species**
- Public ➤ New ingredients for farmers ➤ **Present the newst finds**
- Large scale ➤ Commercial large scale prod. ➤ **Become a no. 1 in science**
- Multinational ➤ Products on global markets
- Traders ➤ Provide others with GR / TK ➤ **Link to a commercial firm**
- Collection ➤ Conserve, classify, make available ➤ **Own start-up comp**



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Rapid access**
- Master/PhD-thesis ➤ **Short time**
- Small scale product development ➤ **Exciting project**
- Public breeding programs ➤ **Professor interest**
- Large commercial scale production ➤ **Finding something to live of**
- Multinational companies global markets ➤ **Commercial pressure from the host university**
- Traders Provide others with GR / TK ➤ **Strict policies**
- Collection, conserve, classify, make available



The demand for genetic resources (GR):

- Academic & economic, scientific, applied ➤ **Specific needs**
- Master's and PhD thesis ➤ **Targeted GR and good TK leads**
- Small business ➤ **Single product development**
- Public breeding programs for farmers ➤ **Exclusive rights**
- Large commercial scale prod. ➤ **Knowledge of what they search for**
- Multinational companies global markets ➤ **Special traits**
- Traders ➤ Provide others with GR / TK
- Collection ➤ Conserve, classify, make

available



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Broad number of samples**
- Master's and PhD thesis
- Small scale product development ➤ **Special traits**
- Public ➤ **New varieties for farmers** ➤ **Easy access**
- Large commercial scale prod. ➤ **On going work**
- Multinational companies global markets ➤ **Limited paymentability**
- Traders Provide others with GR / TK
- Collection, conserve, classify, make

available



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **More random collecting**
- Master's and PhD thesis
- Small scale product development ➤ **Higher number of accessions**
- Public breeding programs for farmers
- Large scale production ➤ **Larger and faster turn over (may be)**
- Multinational companies global markets
- Traders Provide others with GR / TK
- Collection, conserve, classify, make

available



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Target**
- Master's and PhD thesis ➤ **General collection**
- Small scale product development ➤ **Low success rate**
- Public breeding for farmers ➤ **Huge potentials**
- Large commercial scale production ➤ **High risks**
- Multi-national products for global markets ➤ **Challenging to grasp**
- Traders Provide others with GR / TK
- Collection, conserve, classify, make

available



The demand for genetic resources (GR):

- Academic & economic, scientific, applied ➤ **Middle man**
- Master's & doctorate/PhD thesis ➤ **No standalone own interest**
- Small scale crop & product development ➤ **Representing others**
- Public breeding & preparation for farmers ➤ **Longer time lag**
- Large commercial & high scale prod. ➤ **More complex structures**
- Multinational & companies & global markets
- Traders ➤ **Provide others with GR / TK**
- Collection & conserve, classify, make

available



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Share**
- Master's and PhD thesis ➤ **Maintain**
- Small scale product development ➤ **Broker – honest?**
- Public breeding for farmers ➤ **Time lag**
- Large commercial scale production ➤ **Spur innovation**
- Multinational companies global market ➤ **Blurry links back**
(historic, present and future)
- Traders Provide others with GR / TK
- Collections ➤ **Conserve, classify, make available** ➤ **Tracing**



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Thank you for your attention

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