



Intellectual Property and Genetic Resources: Relationship with Relevant International Instruments

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SUSTAINABLE DEVELOPMENT KNOWLEDGE PLATFORM



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TRANSFORMING OUR WORLD:
THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

1 NO POVERTY



2 ZERO HUNGER



3 GOOD HEALTH AND WELL-BEING



4 QUALITY EDUCATION



5 GENDER EQUALITY




6 CLEAN WATER AND SANITATION



7 AFFORDABLE AND CLEAN ENERGY



8 DECENT WORK AND ECONOMIC GROWTH



9 INDUSTRY, INNOVATION AND INFRASTRUCTURE



10 REDUCED INEQUALITIES



11 SUSTAINABLE CITIES AND COMMUNITIES



12 RESPONSIBLE CONSUMPTION AND PRODUCTION



13 CLIMATE ACTION




14 LIFE BELOW WATER



15 LIFE ON LAND



16 PEACE, JUSTICE AND STRONG INSTITUTIONS



17 PARTNERSHIPS FOR THE GOALS



UN 2030 Agenda for Sustainable Development

- UNGA A/RES/70/1 adopted in 2015
- Common international framework with targets to shift the world to more sustainable development
- Recognition of the need to reconcile and harmonize:
 - Economic growth
 - Social inclusion
 - Environmental protection
- WIPO is a specialized agency of the UN system

UN 2030 Agenda for Sustainable Development

- Goal 4: end hunger, achieve food security and improved nutrition and promote sustainable agriculture
 - Target: maintain the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species, and promote access to and fair and equitable sharing of benefits arising from the utilization of GRs and associated TK as internationally agreed
- Goal 15: sustainably manage forests, combat desertification, halt and reverse land degradation, halt biodiversity loss
 - Target: promote fair and equitable sharing of the benefits arising from the utilization of GRs and promote appropriate access to such resources, as internationally agreed

Relevant International legal framework: multiplicity and dynamism

Environmental law

Biodiversity conservation and sustainable use: regulates access and benefit sharing from GRs and associated TK

Convention on Biological Diversity

Nagoya Protocol

Bonn Guidelines

Prior Informed Consent

Benefit sharing

FAO ITPGRFA

Farmers' Rights

FAO CPRFA

UNCLOS ABNJ

UN SDGs

Human Rights law

Fundamental, inalienable and universal entitlements

UNHCHR, ILO, FAO

Rights of Indigenous peoples

Right to Food

Right to the protection of the moral and material interests of the author

WG on rights of peasants and other rural workers

WG on transnational corporations

Intellectual Property law

State granted to individual to promote inventiveness and creativity and its dissemination

WTO TRIPS Agreement

WIPO administered treaties

Union for the Protection of Plant Varieties

Trade and investment law

WTO agreements

Regional Trade & Investment Agreements

Customary law

Indigenous customary laws may be recognized in national law

Voluntary guidelines CBD Article 8(j)

Global health law

WHO

Pathogens: Pandemic Influenza
Virus Sharing

Contract law

Contracts on ABS

UNITDROIT Principles of International Commercial Contracts

Intellectual property is a tool of public policy

- Evolving nature of intellectual property law
- “Recognizing the *underlying public policy objectives* of national systems for the protection of intellectual property, including developmental and technological objectives.” TRIPS preamble.
- “The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and *in a manner conducive to social and economic welfare*, and to a balance of rights and objectives”. TRIPS Article 7

Relationship patents and genetic resources

TRIPS Article 27 compromise:

- Patent laws must be technology neutral
- Patents must meet patentability criteria (novelty, inventive step or non-obviousness, industrial applicability, sufficiency of disclosure of the invention)
- Discretion in defining *invention* and application of patentability criteria
- Obligation to protect *micro-organisms*: not defined
- Can exclude:
 - to protect *ordre public* or morality
 - methods of treatment
 - plants and animals and essentially biological processes to obtain them

Relationship patents and genetic resources

TRIPS Article 29: sufficiency of disclosure

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.
2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

On-going Review of TRIPS Article 27.3 (b)

- Of relevance to WIPO as main technical assistance provider to both WIPO and WTO Member States
- Proposals for:
 - limiting scope of patentable inventions in relation to life forms
 - incorporating protection for traditional knowledge and related innovations of indigenous and local farming communities
 - Introducing requirement on patent applicants to disclose origin/source of GRs and associated TK as amendment to article 29 (TN/C/W/59 - 2011)

Relationship PVP and genetic resources

TRIPS Article 27 compromise:

- Obligation to protect plant varieties by patents or by an effective sui generis system or by a combination

Issues: within the patent system

Patents:

- Expanding scope of subject matter
- Low inventive step
- Broad claim scope
- Insufficient prior art search
- Abusive litigation of weak / questionable patents
- Use of free trade agreements to impose patents on plants

Issues:

- Innovation and its dissemination depends on a number of factors – no direct correlation between patent protection and increased innovation
- Patents can constrain follow-on innovation and limit traditional practices of farmers and indigenous communities
- Greater uncertainty for users regarding validity of patents
- Increased genetic uniformity narrowing genetic diversity
- increased concentration and control by few players in food system

Issues: within the patent system

Proposed solutions:

- Exclude plants and animals and essentially biological processes from patent protection
- Advise against FTA provisions that oblige patents on plants and animals
- Increase threshold for inventive step
- Introduce exception to allow farmers to save, re-use and exchange seeds they have obtained in their own fields, not subject to remuneration to patent holder

Issues: in relation to other legal frameworks

- Key ABS concepts not recognized in IP framework:
 - Countries can regulate access (eg collection) and utilization (R&D, commercialization) of GRs and TK and establish compliance measures
 - Prior Informed Consent
 - Mutually agreed terms - Benefit sharing
- *Misappropriation*: illegal access and/or utilization of genetic resources or traditional knowledge
- Public domain concept for “traditional knowledge” in contradiction with pre-existing rights recognized in national legislation and/or customary laws
- Lack of recognition of contribution and value of traditional knowledge associated to genetic resources
- Non-parties to other international agreements

Issues: in relation to other legal frameworks

- **Proposed solutions:**
 - Oblige patent/PBR applicants to provide relevant information pertaining to the origin/sources of GR and/or TK and use for their invention: disclosure requirement
 - Increase transparency in the patent / PVP system
 - Play “check point” function for ABS
 - Mutually supportiveness of CBD/Nagoya Protocol with the TRIPS Agreement and others, i.e. UPOV, Patent Cooperation Treaty
- **Focus of WIPO IGC**

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