

Intellectual Property Rights (IPRs) on Genetic Resources and the Fight against Poverty

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Overview of study

1. IPRs, Genetic Resources and Developing Countries (general issues)
2. The Nagoya Protocol and Other Relevant International Institutions
3. Sector-Specific Discussions: Agriculture and Health
4. Case Studies: India, Brazil, South Africa
5. Rights of Indigenous and Local Communities and Traditional Knowledge
6. Implementation of the Nagoya Protocol

Main types of IPRs

Patents (for inventions) for at least 20 years:

- Typical requirements: Novelty, inventive step/non-obviousness, commercial applicability - territorial and granted upon application

Plant breeders' rights for plant varieties for at least 20-25 years:

- Typical requirements: New, distinct, uniform and stable across generations - territorial and granted upon application

Geographical indications (unlimited duration):

- Typical requirements: Originating in a certain territory, having a given quality/reputation/characteristic

Main Issues I

1. IPRs on genetic resources: access issues

- **Restrictions on access to IP protected goods:** problematic in case of seed for small farmers
- **Restrictions on access to markets** of developed countries in some cases of agricultural goods, but overall limited impact today
- **Economic restrictions** when IP-protected are more expensive or “copying” of products is prevented (e.g. pharmaceuticals), but not a problem of IPRs on genetic resources specifically

Main Issues II

2. Benefit-sharing from the utilization of genetic resources/traditional knowledge

- Most IPRs in world held by developed country actors, both in agriculture and health > economic benefits reaped mainly by developed country actors
- As of today, despite rules of Convention on Biological Diversity often no fair benefit-sharing with provider countries or communities therein

Main Issues III

3. Benefits of IPRs for developing countries?
 - **Fostering R&D investment** in relevant areas? No convincing evidence that IPRs on genetic resource foster pro-poor research
 - **Geographical indications** hold some promise for developing countries, where developing country actors have relevant position in value chain

Nagoya Protocol (NP)

- Designed to advance fair and equitable **benefit-sharing** and to prevent **biopiracy**
- **EU ratification** so as to ensure early entry into force
- **Effective implementation in the EU**, including sanctions, recourse in the case of disputes, access to justice, designation of “checkpoints”, etc.
- NP puts high demands on developing countries: need for **capacity building + assistance** (incl. legal advice/counsel)
- NP needs to be **further elaborated** internationally

Reforming the IP System

- **Not in sync with fair+equitable benefit-sharing**
- **Main proposal: mandatory disclosure requirement in patent applications**
 - **On the table in WTO Doha Round and the World Intellectual Property Organisation (WIPO)**
 - **Implementation (as soon as possible) - if not internationally, EU may consider implementation in EU (to be in accordance with international law)**
 - **Explore scope for synergy with “certificate of compliance” under Nagoya Protocol**

Rights of Indigenous and Local Communities (ILCs)

- Rights of indigenous and local communities (ILCs) increasingly recognised (e.g. United Nations Declaration on the Rights of Indigenous Peoples - UNDRIP)
- Overarching principle regarding protection of traditional knowledge: **always consult representatives of ILCs** (including in relevant international organisations such as WHO and FAO)

Traditional Knowledge

- Elaboration of **sui generis system** for the protection of **traditional knowledge in WIPO**
- Granting traditional knowledge same level of protection as genetic resources in **implementation of the Nagoya Protocol**
- Expand on positive experience with a **traditional knowledge “digital library” (India)**

Multilateral Arrangements: Agriculture

- 2002 International Treaty on Plant Genetic Resources for Food and Agriculture (FAO)
 - Elaborate mechanism to generate resources for Benefit-Sharing Fund earlier (“licence”/”concession” system?)
- Possible further specialised ABS systems for food and agriculture under the FAO
 - Ensure that concerns of the poor are appropriately reflected

Multilateral Arrangements: Health

- 2011 WHO framework regarding influenza viruses
 - Needs to be effectively implemented
 - Explore expansion to other viruses/medicines
 - To be reviewed by 2016

Unregulated Genetic Resources

- Possible elaboration of **further multilateral arrangements** for access and benefit-sharing for:
 - **Ex-situ collections** (under Article 10 of the Nagoya Protocol on a Global Multilateral Benefit-Sharing Mechanism)
 - **High Seas/deep seabed** (under the United Nations Convention on the Law of the Sea)
 - **Antarctic Treaty area** (under the Antarctic Treaty System)
- Possible generation of resources for **biodiversity protection, relevant research, access to products**

Bilateral Relations

- **Likely negative effects** in terms of poverty reduction by pushing developing countries, especially LDCs:
 - To accept far-reaching IP-standards through bilateral agreements
 - To adhere to UPOV 1991 (potential impediment to traditional seed exchange practices by farmers)
 - Through taking them to WTO dispute settlement (regarding agriculture and health)



Thank you for your attention!

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