Why is mutually supportive implementation important? IRRI’s experiences

Ruaraidh Sackville Hamilton
Why mutually supportive?

- **Objectives of CBD:**
  - conservation of *biological diversity*, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of *genetic resources*

- **Objectives of Nagoya Protocol to the CBD:**
  - the fair and equitable sharing of the benefits arising from the utilization of *genetic resources*

- **Objectives of Treaty:**
  - conservation and sustainable use of *PGRFA* and the fair and equitable sharing of the benefits arising out of their use, in harmony with the CBD, *for sustainable agriculture and food security*
Why mutually supportive?

- **Mission of CGIAR:**
  - Advance agricultural science and innovation to enable poor people, especially women, to better nourish their families, and improve productivity and resilience so they can share in economic growth and manage natural resources in the face of climate change and other challenges ([www.cgiar.org](http://www.cgiar.org))
  - = bring benefits to developing countries
  - = Including through the conservation and sustainable use of PGRFA
Why mutually supportive?
Mutually supportive?

• Demarcating boundaries
  – which agreement applies?

• Working together
Which agreement applies?

• Nagoya 4.4: Nagoya does not apply when the Treaty applies
  – Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.
“Treaty” transfers between Nagoya countries: Does Nagoya apply?

<table>
<thead>
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<th>Treaty applies to Provider?</th>
<th>Treaty applies to Recipient?</th>
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<td>Yes</td>
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<td>Yes</td>
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<td>No</td>
<td>Yes for provider if in scope</td>
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EU regulation 511/2014

• Preambular para 12:
  – The ITPGRFA constitutes a specialised international ABS instrument

• Art 4.1:
  – Users shall exercise due diligence to ascertain that genetic resources that they use have been accessed legally, and that benefits are fairly and equitably shared upon MAT

• Art 4.5
  – When the information in their possession is insufficient or uncertainties about the legality of access and utilisation persist, users shall obtain an access permit or its equivalent and establish MAT, or discontinue utilisation
What proof is required that Nagoya doesn’t apply?

- Material accessed
  - With SMTA
  - Before the CBD
  - After CBD, before 2007
  - After 2007 without SMTA but with authorization to place in the MLS
    - Before Nagoya
    - After Nagoya
When does the Treaty apply?

• Treaty Art 11.2
  – All PGRFA listed in Annex I that are under the management and control of the Contracting Parties and in the public domain

• Who decides what is “under the management and control of the Contracting Parties and in the public domain”?
When does the Treaty apply?

• Treaty Art 11.2
  – the Contracting Parties invite all other holders of Annex 1 PGRFA to include them in the MLS
    • “all other holders” includes holders in countries that are not Parties to the Treaty
    • Compliance with Nagoya?

• CGIAR perspective:
  – Any organization can provide material with SMTA
  – Organizations in non-Party countries must be informed about Nagoya compliance
When does the Treaty apply?

• Treat art 11.3
  – Countries agree to take appropriate measures to **encourage** natural and legal persons within their jurisdiction who hold Annex I PGRFA to include them in the MLS

• CGIAR partners’ perspective:
  – Want “non-monetary benefits” from CGIAR

• CGIAR perspective:
  – Organizations in Treaty parties can provide material with SMTA
Access from farmers under the Treaty?

• Farmers hold PGRFA
  – Treaty art 11.2 → countries invite them to include their PGRFA in the MLS

• Farmers are natural or legal persons
  – Treaty art 11.3 → countries must take measures to encourage them to include their PGRFA in the MLS

• Treaty art 12.3(h)
  – “… access to PGRFA found in in situ conditions will be provided according to national legislation…”

• Legislation under Nagoya?
Working together

• Treaty + CBD + CGIAR common objectives
  – Promoting agrobiodiversity conservation
  – Promoting sustainable use
  – Bringing benefits to developing countries
    • Capacity building
    • Technology transfer
    • Information sharing
Working together

• Treaty Art 17:
  – the Global Information System (GLIS)
    • “cooperation will be sought with the Clearing House Mechanism of the CBD”
  – SMTA
    • Art 5b) providers must make data available
    • Art 5e) providers must report transfers
    • Art 6.9) must make results of R&D available

• Nagoya Article 14
  – ABS Clearing house
    • Documenting transfers and use
Tackling difficult issues: dematerialisation

Norway pays on all seed sales

Use commercially

Use non-commercially to gain knowledge

Annex 1

MLS

Rice science for a better world
Tackling difficult issues

• SMTA article 6.7
  – Users must pay a % of sales if they commercialize a Product that is not available without restriction to others for further research and breeding

• Patents?
  – Unacceptable?
  – Or necessary to generate payments?
SPIKE gene

• Discovered by IRRI + Japan
  – Increases yield by ~30%

• In Indonesian landrace accessed 1972
  – Breeding & research started 1991

• Under the Treaty’s MLS in 2004

• Provisional patent 2016

• Aim:
  – No infringement of rights of Indonesia and farmers
  – Private sector licensees will pay to the Treaty
Conclusions

• Complex interface between Treaty and Nagoya
  – When does the Treaty apply?
  – When does Nagoya apply

• Many opportunities to work together for mutual benefit