

Are proposed ABS mechanisms meeting CBD objectives?

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The CBD Goal

New regime providing improved access to and benefit sharing from use of Genetic Resources

The Challenge

No common agreement on the problem

No legally instructive definition of key terms

No common agreement on the mode



A basic problem with the ABS/CBD debate

The aim of the ABS elements in the CBD is to secure economic gain for the state.

They have nothing to do with the core purpose of the CBD which is to protect biodiversity.

Until this is recognized, debate will remain incoherent.

Ambition in the CBD

A Treaty on Access and Benefit sharing which:

creates rights for Governments to nationalize genetic resources;

dictates terms of exploitation;

extracts rent from their use and development;

limits application of the norms of protection of invention; and

controls the terms of delivery of the benefits.

Key features of the ABS debate

- **1. The proponents**

Brazil

India

The African Group

- **2. Protection of Traditional knowledge**

Grant of rights of access to traditional people

Proposed at the behest of the State



Key features

The demandeurs model

State control of genetic resources

The key question

Does this improve access to genetic resources and provide greater gains to owners of genetic resources?



What is the justification?

- Biopiracy
- Misappropriation of rights
 - under IP law,
 - and of traditional knowledge

Misappropriation of Rights?

- **Under IP law**

There are no cases where good IP law is at fault.

Examine every case

- **Of traditional knowledge**

Few countries grant property rights to genetic resources in traditional knowledge to traditional people

There is no biopiracy

A legally binding ABS regime – the problem

It is entirely disproportionate to the problem.

- Every transaction of a genetic resource from one party to another would be regulated.
- The “mere” obligation of prior disclosure would impel introduction of regulation.
- All regulation carries a cost



Problem Two

The current benefits of easy exchange would be severely impaired.

- Every transaction of a genetic resource (e.g. every food product) would have to be recorded.
- Including supply of seed varieties, now free from gene banks to small farmers and researchers.
- Agricultural research and development of drugs would be impaired

Problem Three

Economic losses to the economy.

Government agencies may increase control and gain some revenue.

Economic losses to the economy would be bigger

- bioprospecting stalls
- agricultural innovation and food production slows, especially important given concerns about boosting global food production
- research falls
- foreign investment slows.

A better approach to ABS

- Facilitative, not punitive
 1. Grant property rights to genetic resources
 2. Promote the Bonn Guidelines
 3. Clarify legal definitions for IP in WIPO
 4. Enhance capacity in developing countries to establish effective ABS regimes
- Offers prospect of a result in 2010

