Biodiversity, ownership, and indigenous knowledge: Exploring legal frameworks for community, farmers, and intellectual property rights in Africa

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Abstract

Drafted between 1996 and 2000, the African Union’s Model Legislation for the Protection of Indigenous Knowledge, attempts to redress the contradictory obligations of the international instruments affecting biodiversity, namely the Trade Related Intellectual Property Rights Agreement and the Convention on Biological Diversity, by establishing a new philosophical justification for farmers’, breeders’, and community rights. By approaching the question of property rights and farmers’ rights from the perspective of the community, the African Model Law is able to establish a legal framework for access to biodiversity, benefit sharing, and intellectual property that satisfies the needs and requirements of African states by balancing the monopoly rights of breeders against the rights of indigenous communities.

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1. Introduction

Human beings depend on the natural world for their survival. For more than 10,000 years, plants have provided not just food for subsistence, but most of the...
As genetic resources have assumed increasing scientific and (especially) commercial value, debates over access to and ownership of biodiversity have intensified. Indeed, as the raw materials necessary to realize the promises of the “biotech revolution”, control over genetic resources is increasingly contested. Traditional knowledge, historically dismissed as ‘uninformed’ or ‘unscientific’, has simultaneously attracted increased attention, as academic and corporate researchers increasingly rely on the knowledge of local communities about the genetic diversity under their stewardship.

The new interest in plant and animal genomes (and the tensions generated by the increased attention) is reflected in the key international instruments governing the debate: the FAO’s International Undertaking (IU) on Plant Genetic Resources, the Trade-Related Intellectual Property Rights (TRIPs) Agreement and the Convention on Biological Diversity (CBD). In the context of international governance, the concepts of farmers’ rights and community rights have been particularly contested, as the Third World attempts to develop alternative intellectual property regimes that balance the private rights of the innovator with the public rights of the community. Regional approaches have proven particularly popular, and countries in Latin America, Africa, South East Asia, and the South Pacific have collectively attempted to draft legislation to deal with the emerging issues and debates surrounding biodiversity and biotechnology.2 The African Model Law3 is perhaps the most ambitious of these efforts. It seeks to develop a comprehensive regional framework governing all aspects of biodiversity management,

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1 Vinblastine, developed from Madagascar’s rosy periwinkle plant by Eli Lily to treat Hodgkin’s disease, boasts a 90 percent success rate. Vincristine, also developed by Eli Lily from the same plant, is 60 percent effective in the treatment of some types of leukaemia. Collectively, the two drugs have generated annual sales of approximately US$200 million (of which an estimated 88 percent is profit) since their introduction in the 1960s. Critics point out that none of the revenues has been shared with Madagascar (Farnsworth, 1988, p. 95; Stone, 1992; RAFI, 1999, 2000).

2 With the adoption of Decision 391 in 1996, the Andean Community (Bolivia, Columbia, Ecuador, Peru, and Venezuela) was the first regional organization to adopt legislation governing access and benefit sharing. Since then, the Association of Southeast Asian Nations (ASEAN), the South Pacific Regional Environmental Program (SPREP), and the Organization of African Unity (OAU) have undertaken similar efforts (Diaz, 2000).

3 The formal title of the Model Legislation is the OAU Model Law for the Recognition and Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources. In this paper I use the terms “Model Legislation” and “Model Law” interchangeably to refer to the document.
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