

Types of users, types of uses and types of resources – day 1

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THE **ABS**
CAPACITY
DEVELOPMENT
INITIATIVE



Training on Mutually Agreed Terms: Contracts for making ABS functional

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BMZ



Federal Ministry
for Economic Cooperation
and Development



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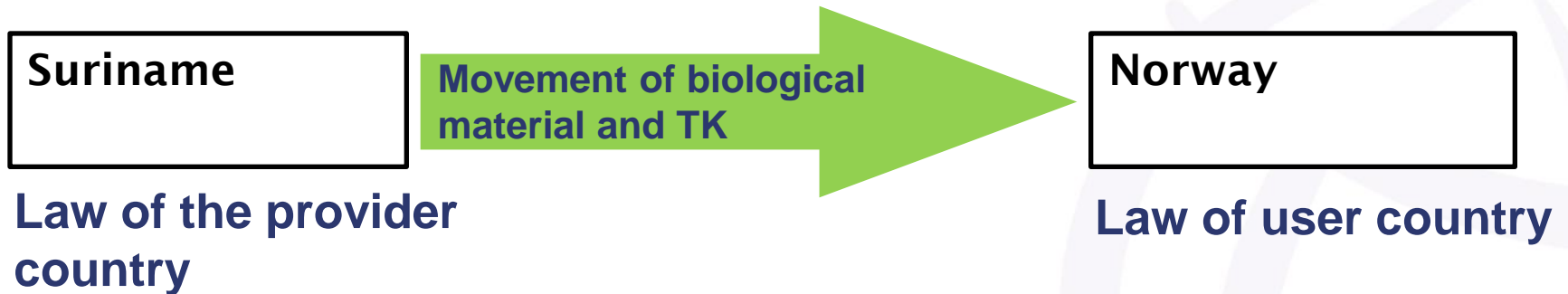
giz | Programme Implementing
the Biodiversity Convention

The situation in GR Policy and Law

International law

- The principle of sovereignty
- Sovereign rights over GR
(permanent sovereignty to nat. resources)

Regional level



The situation in GR Policy and Law

International law

- The principle of sovereignty
- Sovereign rights over (natural resources)

Hinder for
cross-border
enforcement of:

- law,
- policy,
- judgments
and
- adm.
decisions

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Norway



ABS legal tools:

- Prior informed consent (PIC) at the point of time of access
- Mutually agreed terms (MAT) at the point of time of access
- Mutually agreed terms (MAT) at the point of time when benefit sharing is becoming actualised – CBD 15.7 second para.
- (standard) material transfer agreement (MTA) non-CBD, ITPGRFA
- Different kinds of permits (not ABS in focus) see ex.'s

Terms in international law – in implementation adjust!



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Requirements to the
contract

What is required in
the contract?

How will this contract
be treated under the
jurisdiction or legal
situation?



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Requirements to the contract

What is required in the contract?

How will a contract come around or be negotiated?

Norway

How will this contract be treated under the jurisdiction or legal situation?



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Support by the NP and CBD

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National legislation

Norway

Supportive user country measures



Contract law

International law

International private law

- different systems for making contracts work across borders

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Private law Agreement
MAT (PIC)

Norway

Enter into a contract

*how to regulate the object
transferred and allowed acts
regards that object*

**Enforcement of
contracts**

*how to ensure that the
user follows the rights of
the Sands*



Challenges for ABS Contracts I:

- Challenge of creating incentives for the user to share and thus contribute to conservation
- The time-gap challenge: access, utilisation and benefit sharing
- The cross-boarder challenge: sovereignty, jurisdiction, Parties and private parties
- The access-challenge/failure of ABS
- Limited background law on GR and TK contracts



Challenges for ABS Contracts II:

- Procedural contractual issues (how to negotiate)
- Substantive issues (what is the content in the text)

What is the idea of an ABS Contract?

- Regulate the research and development
 - It is a utmost dynamic object in the contract
 - The raw material is unknown and the product is to be developed
- High degree of uncertainty – how to make good rules?
- How to construct mutual trust and collaboration?



Contract law

International law

International private law

- different systems for making contracts work across borders

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Private law Agreement
MAT (PIC)

Norway

Enter into a contract

*how to regulate the object
transferred and allowed acts
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Enforcement of contracts

*how to ensure that the
user follows the rules of
Benin also those set in a
contract*



Key element of the content of contracts:

- Parties – legal persons
- Subject of the contract – what is being transferred?
- Purpose
- Benefit sharing linked to specific utilisation or products (including IPR)
- Subsequent third party use
- Changes of intent
- Confidentiality
- Dispute settlement



The situation in GR Policy and Law

International law

- The principle of sovereignty
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Hinder for cross-border enforcement of:

- law,
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mate

Requirements to the contract

How will a contract interact with the IPR systems?

Norway

How will this contract be treated under the jurisdiction or legal situation?



The situation in GR Policy and Law

International law

- **Two or more worlds are meeting**
- - Indigenous leaders and representatives
 - Corporate lawyers/ companies
 - Human right law
 - International environmental lawyers
 - Biotechnologists/ scientists/ biologists

contract

be treated under the
jurisdiction or legal
situation?



Types of actors in ABS/GR:

- Let's have a brainstorming
-
-
-
-



The variety of actors involved in ABS agreements:

- **Academics**
- **Master student and PhD**
- **Small scale company**
- **Public breeding companies**
- **Large commercial entities**
- **Multinational companies**
- **Traders**
- **Collections**



Their different approaches to ABS in practice:

- **Academics** ➤ Taxonomic, scientific, applied
- **Master student and PhD** ➤ A master/ PhD-thesis
- **Small scale company** ➤ Single product development
- **Public breeding companies** ➤ New varieties for farmers
- **Large commercial entities** ➤ Commercial large scale prod.
- **Multinational companies** ➤ Products for global markets
- **Traders** ➤ Provide others with GR / TK
- **Collections** ➤ Conserve, classify, make available



The demand for genetic resources (GR):

- Academic ➤ Taxonomic, scientific, applied ➤ Search for the new stuff
- Master's and PhD ➤ Dissertation
- Small scale ➤ Single product development ➤ Discover species and sub-species
- Public breeding programs for farmers ➤ Present the newst finds
- Large commercial scale prod. ➤ Become a no. 1 in science
- Multinational companies global markets
- Traders ➤ Provide others with GR / TK ➤ Link to a commercial firm
- Collection ➤ Conserve, classify, make available ➤ Own start-up comp.



The demand for genetic resources (GR):

- Academic & economic, scientific, applied ➤ **Rapid access**
- Master's & PhD-thesis ➤ **Short time**
- Small scale crop & product development ➤ **Exciting project**
- Public breeding for farmers ➤ **Professor interest**
- Large commercial scale production ➤ **Finding something to live of**
- Multinational companies & global markets ➤ **Commercial pressure from the host university**
- Traders & Provide others with GR / TK ➤ **Strict policies**
- Collection & conserve, classify, make available



The demand for genetic resources (GR):

- Academic > Economic, scientific, applied ➤ **Specific needs**
- Master's > Advanced PhD thesis ➤ **Targeted GR and good TK leads**
- Small > **Single product development**
- Public > Newing rice for farmers ➤ **Exclusive rights**
- Large > Commercial scale prod. ➤ **Knowlegde of what they search for**
- Multinational > span global markets ➤ **Special traits**
- Traders > Provide others with GR / TK
- Collection > Conserve, classify, make

available



The demand for genetic resources (GR):

- Academic & economic, scientific, applied ➤ **Broad number of samples**
- Master's and PhD thesis
- Small scale crop development ➤ **Special traits**
- Public breeding companies ➤ **Easy access**
- Large commercial scale prod. ➤ **On going work**
- Multinational companies ➤ **Limited paymentability**
- Traders Provide others with GR / TK
- Collection & conserve, classify, make available



The demand for genetic resources (GR):

- Academic, taxonomic, scientific, applied ➤ **More random collecting**
- Master's and PhD thesis
- Small scale crop development ➤ **Higher number of accessions**
- Public breeding programs for farmers
- Large scale commercial large scale production ➤ **Larger and faster turn over (may be)**
- Multinational corporations and global markets
- Traders Provide others with GR / TK
- Collection, conserve, classify, make available



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Target**
- Master's and PhD thesis ➤ **General collection**
- Small scale product development ➤ **Low success rate**
- Public breeding for farmers ➤ **Huge potentials**
- Large commercial scale production ➤ **High risks**
- Multinationals ➤ **Products for global markets** ➤ **Challenging to grasp**
- Traders ➤ Provide others with GR / TK
- Collection ➤ **Conserve, classify, make available**



The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Middle man**
- Master's and PhD thesis ➤ **No standalone own interest**
- Small scale crop development ➤ **Representing others**
- Public breeding programs for farmers ➤ **Longer time lag**
- Large commercial scale prod. ➤ **More complex structures**
- Multinational companies global markets
- Traders ➤ **Provide others with GR / TK**
- Collection, conserve, classify, make

available



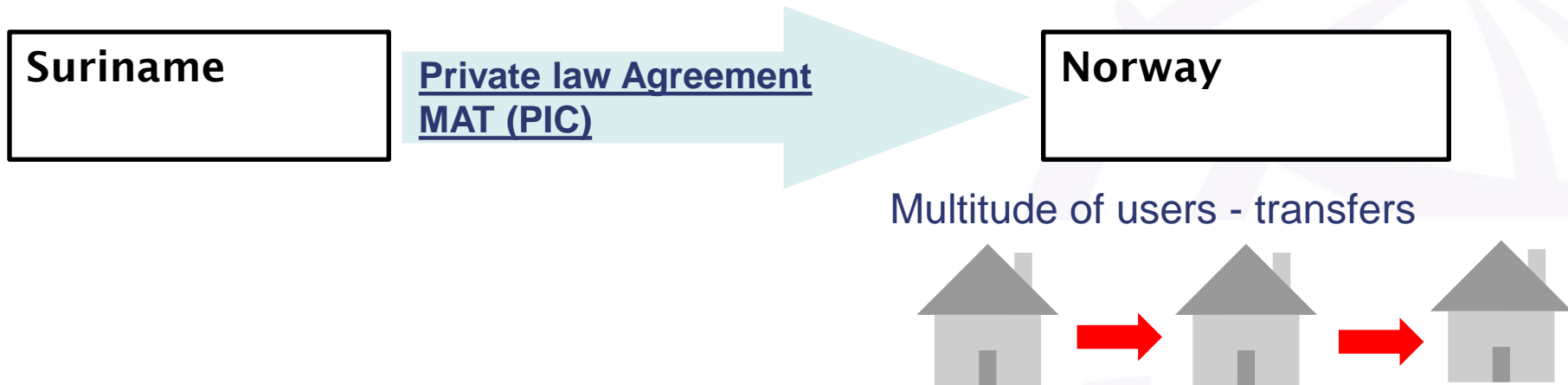
The demand for genetic resources (GR):

- Academic, economic, scientific, applied ➤ **Share**
- Master's and PhD thesis ➤ **Maintain**
- Small scale crop development ➤ **Broker – honest?**
- Public breeding for farmers ➤ **Time lag**
- Large commercial scale production ➤ **Spur innovation**
- Multinational companies global market ➤ **Blurry links back**
(historic, present and future)
- Traders Provide others with GR / TK
- Collection ➤ **Conserve, classify, make available** ➤ **Tracing**



Contract law

Describing the user in a way that will grasp future situations



Key element of the content of contracts:

- Parties – legal persons – turning them into being bound
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Thank you for your attention

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