

## DAY FOUR

## Session 9 Summary of Overheads

4.9.1

### Session 9: Cross-Cutting Issues

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#### Objective of Session 9

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- ➡ To describe the key cross-cutting issues and their interrelationship with international legal agreements having an impact on genetic resources



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### Interrelationships

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- GR professionals need to be familiar with the key issues arising from international and regional instruments and laws, and regulations in general, and how they link or might potentially link across instruments and institutions
- The interrelationship between issues such as Farmers' Rights, the rights of indigenous and local communities, traditional knowledge, intellectual property rights, conservation of genetic resources, access to genetic resources and benefit sharing from the use of genetic resources challenges the kind of straightforward and linear presentation and analysis that would be useful to decision makers



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4.9.4

### International Policy and Law

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- GR professionals should be aware of the evolution of the international ABS, IP, TK, Farmers' Rights "regime" and the relationships among its components – treaties, regional agreements, national laws, policies, etc.
- Treaties can also pertain to different areas of international law, such as environmental law, IP and trade law.
- Access to biological material is addressed by instruments such as the CBD and the IT, and access to breeding results and genetic innovations are usually regulated by IP instruments such as the national regimes established pursuant to the TRIPS Agreement or UPOV



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4.9.5

### The Convention on Biological Diversity

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- Issues of equity and benefit sharing are the common threads underlying most of the cross-cutting issues
- Benefit sharing is one of the CBD's three objectives and is both explicitly and implicitly reinforced throughout the treaty's provisions
- In the context of access, intellectual property rights, traditional knowledge, the issue of how benefits will be generated, to whom the benefits will flow and what constitutes benefits continue to be subject to considerable debate
- These issues are also at the heart of the debate on the relationship between the CBD and TRIPS and IP provisions in general



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4.9.6

### **The FAO International Treaty and Its Multilateral System**

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- **Benefit sharing is a major topic of debate in the context of the IT**
- **The Treaty's article on benefit sharing recognizes that access itself is a major benefit of the Multilateral System and states that benefits arising from the use of PGRFA under the Multilateral System should be shared fairly and equitably through a number of mechanisms, both voluntary and mandatory in nature**
- **Benefits include information exchange, access to and transfer of technology, training and capacity building, and sharing commercial benefits (if patents are granted)**



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4.9.7

### **Where are the linkages between the cross-cutting issues ?**

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- **Biotechnological products and processes (often directly or indirectly derived from genetic resources) are often subject to IP (especially patents)**
- **These genetic resources are in turn obtained from indigenous lands, using traditional knowledge**
- **Traditional knowledge is also often directly or indirectly "embedded" in protected invention (product or process)**
- **Plant breeder rights present exactly the same situation**



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4.9.8

### **Where are the linkages between the cross-cutting issues ? (continued)**

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- **Protected products or processes generate commercial benefits, which rarely accrue back to the country of origin or its communities**
- **To access genetic resources, institutions, companies and universities need to comply with CBD ABS principles and national ABS laws**
- **IP should be granted only if there is proof available that genetic resources and TK were acquired legally**



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4.9.9

### **International Instruments / Forums Dealing with Cross-Cutting Issues**

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- CBD
- FAO IT
- TRIPS Agreement
- Bonn Guidelines
- WIPO Intergovernmental Committee
- WTO Committee on Trade and the Environment
- CGIAR
- UNESCO



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4.9.10

### **The Situation of Intellectual Property Rights**

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- ✎ IPRs are sometimes extended to refer to the protection of TK and Farmers' Rights
- ✎ The CBD is ambiguous on its relationship to IPRs but it is clear that they should be supportive of and not run counter to the Convention's objectives
- ✎ GR professionals should aim to manage intellectual property in a manner that is in line with national objectives and supportive of the overall CBD objectives
- ✎ Adjustments to IPRs in the TRIPS Agreement and in other agreements and national laws seek to ensure that rights are granted if and when access and TK laws are complied with



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4.9.11

### **Benefit Sharing under the CBD Principles Manifests Itself As . . .**

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- Technology transfer
- Sharing in commercial benefits
- Participating in research and development activities
- Training and capacity building
- Up front payments
- Publication of research results
- Joint IP ownership
- Building scientific partnerships
- Basic taxonomic research and identification
- Other



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