



Kansai university and Faculty of Economics



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Africa and Asia Entanglements in Past and Present : Bridging
History and Development Studies

Biodiversity, Traditional Knowledge and Intellectual Property Rights

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Abstract

The legal framework controlling the ownership, access and the exploitation of genetic resources has undergone profound change thanks to the adoption of two international legal framework in the late 1990s: First, the Convention on Biological Diversity (CBD) was signed in Rio de Janeiro on June 5, 1992. Second, as Annex IC to the Marakesh Agreement establishing the World Trade Organization(WTO), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) was concluded on April 25, 1994. The main over-lapping area in these two conventions which have become the matter of great concern and controversy.

The TRIPs obligates the contracting parties to protect the plant varieties through patent or a sui generis system or combination of both and grant patents in all field of technology, on the other hand, the CBD requires contracting countries to recognize conservation of biodiversity as well as the means for access and use of genetic resources, transfer of relevant technologies which might be the subject of patents and other intellectual property rights. The most important part of the CBD is that it makes genetic resources subject to ownership of the State and prior informed consent (PIC) of the State is a pre-requisite for access to the genetic resources (Art.15). And, the CBD requires the countries to protect and promote the rights of communities, framers and indigenou people.

After CBD concluded, the country providing genetic resources and related traditional knowledge started implement the regulation to get benefit from the commercial use of them. However, the existing international intellectual property system does not fully protect traditional knowledge, many communities and governments have called for an international legal instrument providing *sui generis* protection. Many discussions have been going on at WIPO (World Intellectual Property Organization) IGC (Intergovernmental Committee on Intellectual Property and Genetic Resource, Traditional Knowledge and Folklore), TRIPs Council as well as CBD COP (Conference of the parties). Basing on these historical back ground and recent proposed international protection system (Nagoya Protocol), I would like to introduce newly amended South African legal framework for the protection and utilization of biological diversity and traditional knowledge.