

Exercise 1B. Implementing the TRIPS Agreement and the UPOV System at the Regional Level

group work

1. Form groups of four participants each. Each group elects a rapporteur.



Phase 1. Group work (40 minutes)

2. Discuss the following hypothetical case.

- The members of the group are faced with a similar situation in terms of representing a developing country in the region with an emerging sector of agricultural production geared towards export.
- The majority of the farmers are dependent on subsistent farming for survival. Some varieties are used by traditional farmers and some by commercial users.
- Most of the country is dependent on farmer-saved seed and an informal seed-supply system although the emerging commercial sector needs access to improved varieties from outside the country (and needs to be able to sell its products in the global market).
- As in the case of many countries in the region, government policy encourages the private sector (private agricultural companies) to enter crop research and variety development.
- The private sector is involved in imported vegetable varieties and trading in agricultural inputs.
- There is a little funding available for regional co-operation from one of the regional networks that works on harmonizing regional efforts in implementing TRIPS and UPOV.
- Each of the participants is a legal advisor to the Minister of Agriculture in his/her country and has been asked for advice on establishing a legal framework for regional co-operation in the area of PGRFA within the context of the each country's membership in TRIPS, UPOV and other international agreements.

NOTE: Remember the reading review that you have done prior to the workshop on
The Law for the Protection of New Varieties of Plants No. 24 for the Year 2000 (Jordan)

It is also advisable to review the UPOV, TRIPS and IT agreements to build an image of how to lay the basis for regional agreements and co-operation in the area of ABS.

3. The trainer will provide each group member with a questionnaire on the hypothetical case; the rapporteur for each group will be responsible for summarizing and reporting his/her group's results (using a flip chart). The questions are as follows:
 - (a) What objectives do you hope to achieve from establishing a regional agreement related to access and benefit sharing (ABS)?

- (b) What would you recommend to your Minister as the elements of a system for your country?
- (c) Identify how each element addresses a national and regional need/objective. Is this the best and/or an effective way to address each objective?
- (d) Are the elements compatible with TRIPS, UPOV and other international agreements?

Phase 2. Reporting and discussion (55 minutes)

- 4. The rapporteurs present their group's results to the audience. Each rapporteur has approximately 10 minutes to present.
- 5. The trainer distributes Handout 1.B.6 to the participants and invites them to discuss the major issues related to the 'practical considerations' and to comment on the exercise.

Closure: Ask the participants, 'What might you do differently in your job as a result of what you have learned?' and make a transition to the next session. (5 minutes)

Question 1:

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Question 2:

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Question 3:

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Question 4:

Practical Considerations for Exercise 1B

(to be distributed after the exercise has been completed)

At the completion of this exercise, the participants will be able to evaluate the concept of access and benefit sharing (ABS) and how to harmonize regional efforts to maximize benefits provided by TRIPS and UPOV.

General Issues

1. This exercise requires a good understanding of the related material in the TRIPS Agreement and how is it linked to the UPOV system and the IT. In other words, the participants should be aware of the information about the three agreements and how they are relevant in the decision-making process.
2. Participants should know whether the involved countries are members in the two agreements and/or another related agreement that affects ABS systems.
3. Knowledge of current and traditional PGR systems of exchange is crucial to understanding the situation in each country and in the region as whole.
4. Another important factor in this situation is the identification of the role of the public and private sectors in trading and exchanging PGR and other inputs. How large is the market? What is the share of the private sector? What is the market structure of the input markets in the country?
5. What are the major restrictions on imports or exports of PGR?
6. As in any other exercise, presentation and time management skills are important factors in achieving the objectives of the exercise. The participants are encouraged to use illustration aids and instruments such as flipcharts, cards, drawings, pictures, etc.
7. The trainer should encourage the participants to use their own personal experience and judgement along with the available supportive material to achieve the objectives of the exercise.

Specific considerations

An essential technical issue that the different groups should be aware of when they deal with access and benefit sharing in the framework of IT and UPOV is whether their countries are parties to these agreements. This issue should be reflected in their answers to the question raised in the exercise about what the participants would recommend to their Ministers as the elements of a regional legal framework of co-operation.

The trainer should consider whether the IT and UPOV meet the national objectives of the country. In many cases international instruments recommend certain actions that are not compatible with national legislation. In this case, the trainer should help explain to

participants what it takes to bridge the gap between national legislation and international instruments. For instance, harmonizing regional efforts on the issue of ABS requires designing new laws or by-laws that facilitate ABS of PGR.

For answering other questions regarding restrictions imposed on imports or exports of PGR, the trainer may wish to explore the basic assumptions behind the imposition of these restrictions. In some cases these restrictions are imposed because the private sector is not allowed to trade PGR where state boards and public companies have a monopoly on this kind of trade. This kind of market structure will limit the access and benefit sharing and calls for policy reforms if the IT and UPOV are to be adopted.